

PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, Irvin C. Tillman, legal owner, of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition (1) that the zoning status of the herein described property be reclassified, pursuant to the Zoning Law of Baltimore County, from an M.R. zone to an B.M. zone; for the following reasons:

Because of error in new zoning map for Central Sector adopted by the County Council for Baltimore County on 3/24/71 and approved and enacted by the County Executive on April 2, 1971.

See attached description

and (2) for a Special Exception, under the said Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property, for:

Property is to be posted and advertised as prescribed by Zoning Regulations. I, or we, agree to pay expenses of above reclassification and/or Special Exception advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

Irvin C. Tillman
Legal Owner
Address: 800 Huntsman Road
Towson, Maryland 21204

W. Lee Thomas
Petitioner's Attorney
Address: 102 W. Pennsylvania Avenue
Towson, Maryland 21204

Protestant's Attorney

ORDERED By The Zoning Commissioner of Baltimore County, this 3rd day of August, 1971, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 12th day of September, 1971, at 11:00 o'clock A.M.

Irvin C. Tillman
Zoning Commissioner of Baltimore County.

(over)

RE: PETITION FOR RECLASSIFICATION
from M.L.R. zone to B.M. zone
N/S Kenilworth Drive 750 feet
from West Road
9th District - Central Sector
Irvin C. Tillman
Petitioner - Appellant
Zoning File No. 72-63-R

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW
Misc. Docket: 9
Folio: 206
File: 4858

ORDER

The within Appeal having come on for hearing on March 2, 1973 with no party appearing in opposition thereto, the County Solicitor for Baltimore County having been duly notified and written confirmation of the County's intent not to intervene having been received, the Court having considered Appellant's Petition for Appeal, Memorandum on Appeal, reviewed and considered the record and transcript of testimony of the hearing before the County Board of Appeals, received additional evidence, pursuant to Article 41, Section 255 of the Annotated Code of Maryland (1957), in the form of affidavits of John W. Edelen, Jr. and E. Hamilton Niles, Jr., received and reviewed the Opinion of the Court of Appeals of Maryland in Eugene F. Ford, et al v. Baltimore County, Maryland, No. 163, September Term 1972, and having heard and considered arguments of counsel on behalf of Appellant,

IT IS, this 5th day of March, 1973, ORDERED that upon a finding as a matter of law that the decision of the Baltimore County Board of Appeals was erroneous in several respects (as more specifically set forth in the Court's Opinion filed herein), arbitrary, capricious, illegal and an abuse of the Board's administrative discretion, said Order of the Baltimore County Board of Appeals, dated June 7, 1972, is hereby REVERSED and reclassification of the subject property from Manufacturing, Light Restricted to Business, Major is GRANTED.

True Copy Test

ELMER H. KAHUNE, JR., Clerk

Per John W. Edelen, Jr.
Deputy Clerk

JUDGE

Rec'd 3-14-73
9:30 am

RE: PETITION FOR RECLASSIFICATION
from M.L.R. zone to B.M. zone
N/S Kenilworth Drive 750 feet
from West Road
9th District - Central Sector
Irvin C. Tillman
Petitioner

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. 72-63-R

OPINION

This case comes before the Board on an appeal by the Petitioner from an Order of the Deputy Zoning Commissioner dated December 13, 1971 denying the petitioned reclassification from a Manufacturing Light Restricted (M.L.R.) zone to a Business Major (B.M.) zone.

The subject property is located on the north side of Kenilworth Drive and the south side of the Baltimore County Beltway, 750 feet west of West Road, in the north Towson area, in the 9th Election District of Baltimore County, Maryland. It consists of 8.43 acres of vacant land.

The contiguous property to the east along Kenilworth Drive is vacant B.M. zoned land. North and east of this, along West Road and bounding the rear of the subject property, is an M.L.R. zoned tract improved with several modern industrial plants and office buildings; adjacent on the west side of the subject is the County owned Riderwood Hills Park. Across from the subject, on the south side of Kenilworth Drive, is D.R. 16 zoned land, being developed as the Towson Woods Apartments.

If successful in his petition, the Petitioner proposes to construct a two million dollar two-story furniture store, combined with warehouse facilities, containing a total of approximately 192,000 square feet of floor space.

The prior comprehensive zoning map for this area, adopted in 1966, affirmed the then existing Manufacturing Restricted zoning on the subject property, which had been obtained originally by the zoning petition process around 1960 or 1961. On March 24, 1971 the County Council replaced the 1966 map with a new comprehensive zoning

ENS/jan
8/3/72

RE: PETITION FOR RECLASSIFICATION
from M.L.R. zone to B.M. zone
N/S Kenilworth Drive 750 feet
from West Road
9th District - Central Sector
Irvin C. Tillman
Petitioner

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
Misc. Docket: 9
Folio: 206
Case No. 4858

ORDER

Upon the foregoing Petition of Irvin C. Tillman, it is this 9th day of August, 1972, by the Circuit Court for Baltimore County,

ORDERED, that the time for the transmittal of the record in the above-captioned proceedings be and is hereby extended until October 1, 1972.

JUDGE

ROBERT H. MUELLER,
THOMAS & MCLEAN
SUITE 401
120 W. PENNA. AVE.
TOWSON, MD. 21204
833-1200

Rec'd 8/7/72
9:30 am

Irvin C. Tillman - No. 72-63-R

2.

map, which is currently in use, wherein it reclassified the subject property to a Manufacturing Light Restricted (M.L.R.) zoning category. The Petitioner claims that this action of the County Council constituted "error" in zoning, and is the basis for his seeking the instant petition.

To support his claim of error, the Petitioner produced testimony to the effect that the existing and proposed streets are more than adequate to handle the anticipated vehicular traffic that is expected to be generated by the proposal; that public utilities are available; that there are no protests of record in the petition; and that the public hearing held at the Dulany Valley High School relating to the adoption of the comprehensive zoning map was conducted in such a state of confusion that the Petitioner walked out of the hearing without trying to be heard on the review of his property.

In contradiction to the claim of "error", there was testimony before the Board that the subject property was properly publicized as an item to be considered for rezoning by the County Council preceding its adoption of this new comprehensive zoning map. It was listed on the Log of Issues for review at the public hearing as Item #317 and was noted to be a live zoning issue. Also, the Planning Board recommended to the Zoning Commissioner, in the first cycle zoning hearings, that the subject tract remain as M.L.R. (see Petitioner's Exhibit No. 4).

While recognizing that the subject property has been reclassified by the County Council on the new zoning map from M.R. to M.L.R., possibly to the misfortune of the Petitioner, the Board feels compelled to rely on the Court, where it said in McBee v. Baltimore County, 221 Md. 312, p. 317:

"When such new map is adopted, it is entitled to the same presumption that it is correct as in original zoning."

Also, see Somerset v. County Council, 229 Md. 42, p. 48, reaffirming the presumption of correctness in comprehensive rezoning.

Furthermore, the granting of the petition would add 8.43 acres of B.M. zoned land to a contiguous tract of 7.4 acres of existing B.M. zoned land. The Board believes this is undesirable, as it would permit an overconcentration of B.M. zoned land

RE: PETITION FOR RECLASSIFICATION
from M.L.R. zone to B.M. zone
N/S Kenilworth Drive 750 feet
from West Road
9th District - Central Sector
Irvin C. Tillman
Petitioner

BEFORE THE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. 72-63-R

ORDER FOR APPEAL

Please note an Appeal on behalf of Irvin C. Tillman, Petitioner, from the Order of the County Board of Appeals, dated June 7, 1972, to the Circuit Court for Baltimore County, pursuant to Rule 81 et seq. of the Maryland Rules of Procedure.

E. Harrison Stone
E. Harrison Stone
102 West Pennsylvania Avenue
Towson, Maryland 21204
Attorney for the Petitioner

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that a copy of the foregoing Order for Appeal was served on the Baltimore County Board of Appeals on the 6th day of July, 1972.

E. Harrison Stone
E. Harrison Stone

Rec'd 7-6-72
2:45 PM

Irvin C. Tillman - No. 72-63-R

3.

In the neighborhood, with the inherent potential danger of being developed in uses which are permitted as a matter of right by the Zoning Regulations other than that which is proposed in the instant petition. It should be noted that the aforementioned adjacent 7.4 acre tract was rezoned by the Board of Appeals from M.R. to B.M. in June, 1969, in zoning case No. 68-104-R, with specific testimony that it was to be developed immediately for a new car sales agency. Yet today, three years later, the tract is still undeveloped.

The Board can find no compelling testimony or evidence of "error" as claimed by the Petitioner, and hereby finds that the Petitioner has failed to overcome the burden of proving that in fact an error was committed in placing the subject property in an M.L.R. zoning category when the County Council adopted the comprehensive zoning map on March 24, 1971.

Therefore, for these reasons, and from all of the testimony and evidence presented, the Board hereby affirms the Order of the Deputy Zoning Commissioner dated December 13, 1971, and denies the petitioned reclassification from M.L.R. to B.M. on the subject 8.43 acres of land.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 7th day of June, 1972, by the County Board of Appeals ORDERED, that the Order of the Deputy Zoning Commissioner dated December 13, 1971 is hereby affirmed, and the reclassification petitioned for from M.L.R. zone to B.M. zone be and the same is hereby DENIED.

Any appeal from this decision must be in accordance with Chapter 1100, subtitle B of the Maryland Rules of Procedure, 1961 edition.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

John A. Miller
John A. Miller
Walter A. Reiter, Jr.
John A. Miller



James J. Hall
JAMES J. HALL
1735 OLD TOWSON RD. BALTIMORE, MD.
797-5702

RE: PETITION FOR RECLASSIFICATION : BEFORE THE
CATION : DEPUTY ZONING
N/S of Kenilworth Drive, 750' :
from West Road - 9th District : COMMISSIONER
Irvin C. Tillman - Petitioner :
NO. 72-63-R (Item No. 6) : OF
BALTIMORE COUNTY

The Petitioner seeks a Reclassification from a M. L. R. Zone to a B. M. Zone for 8.43 acres of land located on the north side of Kenilworth Drive, seven hundred and fifty (750') feet west of West Road.

The Brooks property located adjacent to, and to the east, has frontage on West Road as well as Kenilworth Drive. This property is presently unimproved and was originally zoned B. M. for use as a new car agency. County owned property is located adjacent to, and to the west, and is proposed as a future park. The park will primarily serve the area residents of Orchard Hills and the apartment complexes on the north side of Kenilworth Drive. The rear of the subject property is bounded by the Baltimore Beltway and a Manufacturing Restricted area, improved with industrial plants and office buildings. This area has been developed under the M. R. regulations that require approval of construction materials, landscaping and land coverage, et cetera.

Kenilworth Drive is proposed to be developed as a seventy (70') foot roadway with forty-eight (48') feet of paving and is to connect Bosley Avenue and Charles Street and has a total length of 1.3 miles, more or less. However, at the present time, sections of this roadway have not been constructed.

The Petitioner's engineer testified that the proposed 192,000 square foot building was planned to be used for furniture sales and warehousing. The first floor of the two (2) story building would be used for a

warehouse with loading docks on grade at the rear. The second floor would be utilized for retail sales with the entrance on grade at the front. The remainder of the 8.43 acres would be a paved parking area for five hundred and eleven (511) cars with two (2) points of ingress and egress to Kenilworth Drive.

The Petitioner, Irvin C. Tillman, testified giving his occupation as an investor, developer, financier, and an insurance broker. He stated that three (3) furniture firms were interested in the subject site, and felt that the M. L. R. uses were not economically feasible as related to the subject property. Further, he cited a number of office buildings in the area including some nearby with vacancies.

Mr. Howard Shalowitz, a County engineer with the Bureau of Engineering, testified that the uncompleted sections of Kenilworth Avenue to the east of the subject site would be constructed by Spring, and the uncompleted section to the west would be under construction by the end of the year. He also indicated that there would be no objection to the use of the road by any type traffic, and he could foresee no traffic problem after the road is complete.

In summing up the Petitioner's case for error, the following points were made:

1. B. M. zoning is compatible with other zoning in the area.
2. The site is restricted to M. L. R. uses that prohibit it from being developed to its highest and best use.
3. The Council erred in not classifying the property B. M. because the decision was predicated on traffic problems that no longer exist, i.e., with the completion of Kenilworth Drive.
4. Testimony by the Bureau of Engineering indicated other uses would not be objectionable.

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MEMORANDUM

The Petitioner, Irvin C. Tillman, asserts that the new zoning map adopted by the County Council for Baltimore County for the Central Sector on March 24, 1971 and approved and enacted by the County Executive on April 2, 1971, was in error in classifying the tract of land involved in these proceedings MLR instead of BM.

The subject tract is located on the north side of Kenilworth Drive, west of York Road and immediately south of the Baltimore County Beltway. Adjacent to the west is land owned by the Baltimore County Department of Recreation and Parks, and adjacent to the east is land owned by Brooks Buick, Inc., presently zoned BM.

Located northwest of such tract are several plant and offices, including those of Park Davis & Co. and Young and Selden Co. These facilities are used for general manufacturing and office purposes.

The requested BM zoning for the tract is identical and compatible with the existing BM zoning immediately to the east. In addition, there are tracts of existing BL and BR zoning within a short distance; and the land immediately to the south of Kenilworth Drive directly across from the subject tract is zoned DR 16 and is used for apartment development.

This tract of land is unique in that its access to major roadways in Baltimore County, including York Road, the Baltimore County Beltway, Bosley Avenue and Charles Street is excellent.

Since the tract abuts the Baltimore County Beltway, it is ideally suited for a furniture store with warehouse facilities. These facilities would serve not only the daytime population of the nearby office buildings, but also the nighttime population emanating from the large number of apartment units adjacent and nearby. In order to construct such furniture store and warehouse, a commercial BM classification is necessary and would be far more desirable than a manufacturing operation as permitted under the present MLR zoning which would involve heavy traffic loads at peak times as employee shift changes occur.

For the above reasons, Petitioner believes it was in error not to assign a BM classification to the subject tract.

E. Harrison Stone
E. Harrison Stone
Attorney for Petitioner

Irvin C. Tillman
Irvin C. Tillman
Legal Owner

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5. The fact that no protests appeared.

The Petitioner presented evidence to the effect that, once completed, Kenilworth Avenue will have access to Bosley Avenue on the west, Charles Street on the east, and York Road and the Beltway via West Road. He placed great emphasis on the fact that the proposed store and warehouse would not greatly increase the trip density on these roads.

This assumption is true only if the property is developed as proposed. Consideration has not been given to the fact that a zoning reclassification cannot be conditioned on a specific use. The Department of Traffic Engineering comments state that:

- a. M. L. R. development would generate eight hundred and forty (840) trips per day.
- b. The proposed warehouse and store would generate nine hundred (900) trips per day.
- c. Commercial development as B. M. would generate forty-two hundred (4200) trips per day.
- d. The intersection of West Road and the Beltway could not be expected to handle this increased trip density that could be expected with B. M. zoning.

The development and use of M. L. R. Zones are designed to function as a buffer with uses and design that are compatible with residentially zoned areas. Basic retail stores, that generate large amounts of traffic, are not permitted in this zone. However, furniture warehousing, including incidental retail sales, is permitted and seems to be a reasonable use for the area in question.

To grant the requested zoning would represent an intrusion in an area which is presently improved with a large apartment complex to the south of Kenilworth Avenue, existing industrial uses immediately adjacent and contiguous to the property and other residential uses. The Comprehensive Zoning Map of March 24, 1971, established a large B. M. Zone to the east of the subject property. This B. M. Zone is undeveloped. The necessity of an

- 3 -

Anthony Tassi, et ux et al : IN THE CIRCUIT COURT
Appellants : FOR BALTIMORE COUNTY
vs. : IN EQUITY
Irvin C. Tillman, SR. : Case No. 76860
and : Docket 99
S. ERIC DI NENNA : Folio 299
Appellees :

NOTICE FOR APPEAL

MR. CLERK:

PLEASE note an appeal on behalf of the Protestant-Appellants to the Court of Special Appeals of Maryland in the above-entitled matter.

I HEREBY CERTIFY, that a copy of the foregoing Notice of Appeal was mailed this 25th day of September, 1973, to John B. Howard, Esquire, Cook, Mudd, Murray & Howard, Mercantile-Towson Building, 409 Washington Avenue, Towson, Maryland 21204, and E. Harrison Stone, Esquire, Royston, Mueller, Thomas and McLean, 102 W. Pennsylvania Avenue, Towson, Maryland 21204, attorneys for Appellees.

J. Michael McLaughlin, Jr.
J. Michael McLaughlin, Jr.
Attorney for Petitioner

additional B. M. Zone is unfounded and not supported by the evidence. The impact of traffic on Kenilworth Drive emanating from the established uses of apartments and industry coupled with the present B. M. Zone, and the establishing of more commercial zoning in this area would be detrimental to the health, safety and general welfare of the community. The burden of proof is upon the Petitioners to show error and this burden has not been met.

Therefore, IT IS ORDERED by the Deputy Zoning Commissioner of Baltimore County, this 13th day of December, 1971, that the above Reclassification be and the same is hereby DENIED and that the above described property or area be and the same is hereby continued as and to remain a M. L. R. Zone.

James H. ...
Deputy Zoning Commissioner of
Baltimore County

ORDER RECEIVED FOR FILING
DATE 12/13/71
BY J. C. ...

ANTHONY TASSI, et ux et al : IN THE CIRCUIT COURT
Petitioners : FOR BALTIMORE COUNTY
vs. : IN EQUITY
IRVIN C. TILLMAN, SR. : Case No. 76860
and : Docket 99
S. ERIC DI NENNA : Folio 299
Respondents :

ORDER OF DISMISSAL

The above entitled case having come on for hearing on the 19th day of September, 1973, testimony having been taken and the matter having been considered by the Court, it is this 25th day of September, 1973, by the Circuit Court for Baltimore County, in Equity,

ORDERED, that the Petition for Injunction filed herein be and it is hereby dismissed.

/s/ John B. Wayne, Jr.
Judge

I HEREBY CERTIFY, that a copy of the foregoing Order of Dismissal was mailed this 25th day of September, 1973, to John B. Howard, Esquire, Cook, Mudd, Murray and Howard, Mercantile-Towson Building, 409 Washington Avenue, Towson, Maryland, 21204, and E. Harrison Stone, Esquire, Royston, Mueller, Thomas & McLean, 102 W. Pennsylvania Avenue, Towson, Maryland 21204, attorneys for Respondents.

/s/ J. Michael McLaughlin, Jr.
J. Michael McLaughlin, Jr.
Suite 503
102 W. Pennsylvania Avenue
Towson, Maryland 21204
Attorney for Petitioners

LAW OFFICES
HESSIAN & SOLENT
TOWSON, MD. 21204

IN THE COUNTY OF SPECIAL APPEALS
OF MARYLAND
No. 700
September Term, 1973

ANTHONY TASSI, et al

V.

IRVIN C. WILLMAN, et al

Gilbert
Henchman
Davidson, JJ.

PER CURIAM

Filed: May 23, 1974

Anthony Tassi and Joan Tassi, his wife, Frances Kuppinger, Richard Elmerod and Gloria Elmerod, his wife, Rita Rudley, John Feeney and Alice Feeney, his wife and Peter Stewart and Ann Stewart, his wife, (appellants) as adjacent or neighboring property owners, filed a bill in equity against Irvin C. Tillman, owner of an unimproved tract of land in Baltimore County fronting on Kenilworth Drive, comprising 8.43 acres, and against S. Eric Di Menna, Zoning Commissioner of Baltimore County (appellees). All appellants reside in the development known as Riderwood Hills, distant about 1000 feet west from the subject tract and separated from it by a partially cleared, partially wooded Baltimore County Playground.

The bill of complaint sought to enjoin the owner from development of the land for any use other than those permissible under M.L.R. (Manufacturing, Light Restricted) classification. The bill also sought to compel the zoning commissioner to change the Baltimore County Zoning Maps applicable to the subject property from B.M. (Business Major) classification to the M.L.R. classification.

The complaint acknowledged that the tract had been reclassified from its former M.L.R. zoning to its current B.M. zoning, but alleged that the change was a nullity by reason of the alleged failure by zoning authority to comply with the mandate imposed by that portion of Section 22-22(c) (as amended by County Council Bill No. 72, 1969 and

1/ Prior to the passage of Council Bill 72 (1969) the sole mandate for notice was prescribed by then Section 22-22(c) and read as follows: "(c) Notice of such petition and of the time and place of the hearing thereon before the zoning commissioner shall be conspicuously posted upon the property, and notice thereof shall also be

I recall the first time that portion of Kenilworth Drive became a thoroughfare; it was in September of 1972. My reason for remembering this is for the first time I was able to use the road and I would do so to take our children to Intermediate Conception grade school. The road was not open for traffic either during the summer of 1972 or at any time prior thereto.

At no time during 1972 was I ever aware nor informed by other persons of a posting of a notice of appeal with regard to the subject property. The first time I was made aware of any zoning change, let alone application for such change, was at a neighborhood community meeting on April 9, 1973. At no time prior was I aware of any proceedings occurring concerning an application for change of zoning with regard to the subject property.

[John Feeney] "I recall riding my bicycle for exercise down Kenilworth Avenue to the subject property which, until the end of the summer of 1971 was completely wooded. At this time bulldozers cleared that portion of the subject property which was to be a future part of Kenilworth Drive. At no time did I see any sign posted on the property giving notice of a hearing for reclassification. At no time did anyone make me aware of any signs posted on the subject property. I rode my bicycle through the subject property approximately two to three times a week. During the first part of 1972 while I was riding my bicycle frequently through the subject property I never noticed any signs posted on the property for the purposes of informing persons of an appeal related to the subject property. Neither did anyone make me aware of such signs. At this time also I exercised on my bicycle frequently.

Kenilworth Drive, specifically the section through the subject property was not open for traffic until September of 1972. The first time I became aware of a change in zoning classification with regard to the subject property was around April 9, 1973 when my wife informed me she had been told at the neighborhood community association meeting.

Shortly thereafter I attempted to contact Mr. Richard Murray who returned my phone call a few days later both to seek information about

possible legal action and to request him to represent both me and my wife, landowners. I was informed he would not be able to represent us. By the time I learned of the actual legal posture of the property the time for appeal had passed."

Personal testimony of John Feeney, one of the appellants, also was taken. That testimony did not in any material way differ from any add to the allegations contained in his affidavit. All records pertaining to the reclassification of the subject tract, i.e., those of the Circuit Court, the zoning commissioner and the zoning board, also were before the trial judge at the summary judgment hearing.

At the conclusion of the hearing the trial judge delivered an oral opinion. In due course an order was passed dismissing the bill of complaint.

An extensive description of the location and appearance of the tract is necessary for clear understanding of the issues presented here. Kenilworth Drive was planned as a county road or street to connect Charles Street Avenue with West Road in a relatively straight course. Thereafter, it would continue by a curve to the southeast to make connection with Bosley Avenue. A connection to York Road is provided through West Road. Kenilworth Drive thus serves to connect three major traffic arteries--existing Charles Street Avenue and York Road and planned Bosley Avenue, the latter now in course of completion. At the time of the reclassification of the subject tract, however, Kenilworth Drive was paved only at the two ends of its straight course. From Charles Street Avenue it was paved to the eastern boundary of the Riderwood Hills development in which appellants reside. From West Road it was paved for seven hundred and fifty feet to a point at or near the east boundary of the subject tract.

Bill No. 42, 1970) that reads as follows:

"* * * For a period of at least fifteen days prior to the time of such hearing, each property shall be conspicuously posted with notice of the time and place of the hearing on the petition relating thereto, * * *"

The answer of the zoning commissioner admitted that reclassification had been authorized by the Circuit Court for Baltimore County on appeal after prior denials by both the zoning commissioner and the zoning board. Further answering he declared that "he has no personal or official interest in the outcome of this case and that he will await the adjudication of the case on the merits and act in accordance with this Court's decision."

The owner denied that the property was improperly posted and moved for summary judgment. An affidavit by owner, conforming to the requirements

given in two newspapers of general circulation in the county for a period of at least fifteen days prior to the time of such hearing. In each case, such notice shall describe the property involved in the petition and the relief prayed for therein. This and other sections of the Baltimore County Code relating to zoning were substantially changed by Bill 72 (Council Bill 42 related solely to the time schedules at which Bill 72 would become effective). Among other things, Bill 72 mandated a new county-wide zoning map; required complete review thereof every fourth year thereafter; provided for cyclical (twice yearly) consideration of all applications for zoning reclassifications (rather than piecemeal consideration of single applications) and significantly increased the requirements for notice to the public. We deem it appropriate to attach the full text of Section 22-22 as amended by Bills 72 (1969) and Bill 42 (1970) as Appendix A to this opinion for the reason that we shall comment in the opinion upon those actions taken by zoning authority in accordance with its dictation, in attempts to assure that interested citizens of the county would or could have knowledge: (a) of all requests for reclassification; (b) of the dates (within two 45 day periods annually) upon which every such request was scheduled for hearing; and (c) the date of hearing as to each particular request. The subject property was one of 54 petitions for reclassification included in the first cycle of hearings processed under the new law.

Six tracts of land front upon Kenilworth Drive between Riderwood Hills and West Road. For purposes of illustration they may be visualized as six squares fronting on Kenilworth Drive, three on the north side and three on the south side. On the north side (from east to west) these tracts are: (1) B.M. zoned land (unimproved at the time of the subject rezoning); (2) the subject tract; (3) the Baltimore County Playground (extending to the easternmost border of Riderwood Hills). On the south side (also from east to west) their opposite numbers are: (1) the Colony Apartment-Townhouse Complex (fully completed at the time of rezoning); (2) the Somerset Manor Apartment Complex (under construction at the time of rezoning); and (3) a wooded, unimproved tract (extending to the easternmost border of Riderwood Hills). On both sides of Kenilworth Drive the tracts numbered (2) and (3) above fronted on a paper street when the petition for reclassification of the subject tract was filed. Some clearing and grading for its ultimate paving had commenced, however, at the time the subject property was posted. Attached as Appendix B. is Petitioners' Exhibit 1.

Section 22-22, as amended, completely revised the procedures by which petitions for rezoning reclassification were processed in Baltimore County. A cycle system of filings, notices and hearings was provided.

The zoning file showed that the subject tract was one of fifty-four properties (involving every county zoning district) included within the first reclassification cycle following adoption of the county-wide zoning map. It showed also that pursuant to the provisions of amended Section 22-22, the zoning commissioner of Baltimore County had caused to be published on April 29, 1971 a full page advertisement in each of two newspapers of general circulation in Baltimore County, i.e., in The Jeffersonian, Towson, Maryland, and in The Times, Catonsville, Maryland. Each carried an identical heading, namely:

ments of Rule 610, was appended to the motion and alleged the following facts:

"Prior to the hearing before the Deputy Zoning Commissioner on September 17, 1973, I visited the subject property and observed the sign giving notice of the requested zoning reclassification posted in a conspicuous place on such property on the north side of Kenilworth Drive approximately 800 feet west of its intersection with West Road. Such sign was located at the end of the paved portion of Kenilworth Drive and was, therefore, readily accessible to vehicular traffic from West Road. The unpaved portion of Kenilworth Drive west of such sign and the subject property was graded and clearly accessible to at least pedestrian traffic coming to and from both ends of Kenilworth Drive. Subsequently, I also observed on occasion the sign giving notice of my appeal to the County Board of Appeals and the date of the hearing on such appeal, March 23, 1972."

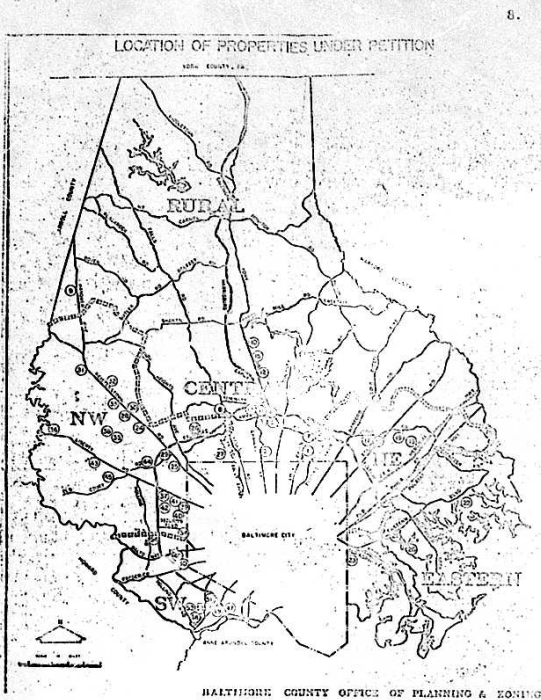
The motion for summary judgment came on for hearing before Judge John E. Haine, Jr., in the Circuit Court for Baltimore County on September 18, 1973. At that hearing countervailing affidavits by Alice Feeney and John Feeney, also conforming to Rule 610, were submitted in behalf of appellants. They alleged the following facts:

[Alice Feeney] "I recall the summer of 1971 specifically with regard to the property involved in this suit. Towards the end of the summer, while my children were at the County playground adjacent to the subject property, I had walked my children to the playground and saw a bulldozer knocking down trees on the subject property for the purpose of clearing a section of the property to make a roadway. Prior to this time the entire portion of the now constructed Kenilworth Drive was completely wooded. During this summer I would take my children to the playground at least once a week and sometimes more often. At this time neither did I see any notice of a hearing for a zoning change with regard to the subject property nor did anyone in the neighborhood bring my attention to any notice."

"Baltimore County, Maryland PUBLIC NOTICE

Zoning Reclassification Petitions accepted for filing by the Baltimore County Zoning Commissioner for the 1971 April-October Zoning Reclassification Cycle."

A map of Baltimore County was centered in the notice. We reproduce the map herein.



8.

LOCATION OF PROPERTIES UNDER PETITION

9.

The subject property bore number 6 in that notice and was thus described:

"6. Property Owner: Irvin C. Tillman
Location: N/2 Kenilworth Dr., 750' E. of West Rd.
Present Zoning: M.L.R.
Proposed Zoning: Recl. to B.M.
District: 9th Sector: Central
No. Acres: 0.43."

During the period of the running of that published notice, county authorities also were required to "make such listing and map available in the form of a press release, and for a period of at least three weeks shall publicly display a copy of such listing and map in the county office building or other appropriate place for public inspection." Although the zoning file itself did not affirmatively demonstrate compliance with that provision of law, there is neither allegation nor proof of a failure by county authorities to do so. It will be presumed accordingly, that this duty was performed by the authorities. Johnston Coal & Coke Co. v. Bishop, 198 Md. 457, 474, 88 A.2d 874, 850.

"In further compliance with amended Section 22-22, the zoning commissioner caused to be published on August 12, 1971 a full page advertisement in the same two newspapers of general circulation in Baltimore County. Each carried an identical heading, namely:

"Baltimore County, Maryland
PUBLIC NOTICE
Zoning, Reclassification Petitions, Schedule for
Hearing by Baltimore County Zoning Commissioner
for the 1971 April-October Zoning Reclassification
Cycle."

A map of Baltimore County identical to that heretofore reproduced herein also was centered in that notice. The scheduled hearing date for the

10.

subject property (along with two others) was thus shown in the notice:

"Friday September 17, 1971

6. Property Owner: Irvin C. Tillman
Location: N/2 Kenilworth Drive, 750 feet West of West Road
Present Zoning: M.L.R.
Proposed Zoning: B.M.
District: 9th
No. Acres: 0.43."

In further compliance with amended Section 22-22, the zoning commissioner caused to be published on August 26, 1971, in the same two newspapers of general circulation in Baltimore County, an individual notice relating to the subject property. That notice bore the heading: "Petition for Reclassification 9th District." It gave a full legal description of the subject tract; the existing and proposed zoning for the property; stated the location of the property, and announced the date and place of hearing before the zoning commissioner.

The zoning file contained a certification that the property was posted in accordance with the mandate of the section reading as follows:

"CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
TOWSON, MARYLAND

District -- 9th -- Date of Posting Aug. 26-1971
Posted for: Reclassification
Petitioner: Irvin C. Tillman
Location of property: N/2 of Kenilworth Dr. 750 ft. from West Rd.
Location of Signs: N/2 of Kenilworth Dr. 800 ft. + - from West Rd.
Remarks: --
Posted by: a/ Charles H. Neal
Signature Date of return: Sept. 7-1971"

In addition, a second posting of the property (although not required by law) was made prior to the hearing held by the zoning board on March

11.

23, 1972, evidenced by the following:

"CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
TOWSON, MARYLAND

District -- 9th -- Date of Posting Jan. 17-1972
Posted for: Appeal
Petitioner: Irvin C. Tillman
Location of property: N/2 Kenilworth Drive 750 ft. from West Road
Location of Signs: N/2 of Kenilworth Drive 800 ft. + - W. of West Road
Remarks: --
Posted by: a/ Charles H. Neal
Signature Date of return: Jan. 22-1972"

The following colloquy occurred during the personal testimony of Mr. Feeney:

"Q (By the Court) Did your neighborhood community association have any first hand knowledge of this zoning on April the 9th, had it been in existence for the preceding year?

A Yes, the community association?

Q Yes.

A Oh yes, sir.

Q Did it, as some associations do, did it have a zoning committee that acted as sort of a watchdog for the community?

A Yes, it did."

The witness made no explanation as to why association members remained unaware of the subject retaining request in spite of the massive public notices as previously detailed.

In short, appellants sole explanation for the failure of any

12.

protestant to appear at any of the three hearings was that Mr. and Mrs. Feeney had not seen sign posted upon the property.

The affidavit of the owner declared affirmatively: that he had observed the sign, having notice of the requested reclassification posted as indicated on the certificates, and that they were posted at the end of the paved portion of Kenilworth Drive, the only part that was accessible to vehicular traffic from West Road. He added that the unpaved portion of Kenilworth Drive west of the paved surface had been graded prior to the postings and would provide notice to at least pedestrian traffic coming to and from both ends of Kenilworth Drive.

The affidavit and testimony of Mr. Feeney and the affidavit of Mrs. Feeney, on the other hand, merely declared that they had not seen the posted signs.

In Heath v. Baltimore, 187 Md. 296, 49 A.2d 799, strikingly similar in its facts to the subject case, a witness had testified that she saw a posted sign. Two other witnesses testified that they did not see the sign. On that evidence, the Court of Appeals said at page 309 [F]:

"Negative testimony of this kind does not disprove the positive testimony that the sign had been posted for the period of ten days in accordance with the rules of the board."

In the subject case formal certifications show that posting, on the subject tract had been made at its southeast corner. That southeast corner of the tract was diagonally opposite the only populated tract within 1000 feet. More, the signs were posted directly across from the ongoing construction of the extensive Somerset Manor Apartment Complex.

In short, the property had been posted at the single point where the signs could be observed by the adjoining residents of the Colony

13.

Apartment-Townhouse Complex (and by their guests) and by workmen engaged in the construction of the Somerset Manor Complex (and by visitors to that site). The southwest corner of the subject tract, on the other hand, was wooded at its border with the Baltimore County Playground. The latter tract also was wooded at that border.

In commenting on this evidence Judge Raine said:

"It seems to me that it's clear that the sign was right at where the paved portion of Kenilworth Drive ended, which was about 800 feet, which was right past the east edge of the subject property; and that to have located the sign anywhere else on the subject property would of necessity have placed it in a wooded area, not accessible to vehicular traffic. If they posted it on the other side of the woods so that it could have been seen by vehicular traffic in the area west of the woods, it would not have been on the subject property. It would have been at least separated by the property held by the Department of Recreation and Parks."

"Well, there's no real issue of fact. I think the matter is one of law; because on the evidence that is before the Court, I can only find that there was a zoning notice posted on the north side of Kenilworth Avenue, right at the end of the paved portion of Kenilworth Avenue, and that was at a point some 800 feet west of West Road which would put it some 50 feet from the southeast corner of the subject property, because that property is located 750 feet from West Road; so if you go 50 feet further away, it makes your 800 feet. That's where it was."

Now, it is quite clear to me that it would not be likely for people driving out of the woods to see them to have seen this sign. But I find as a fact that the sign was there. It then taken this case a question of whether that is substantial compliance with the Zoning Department regulations that the sign must be placed in a conspicuous spot. But I think it's also got to be posted on the property."

Now, since this property was this wooded area, it seems to me the only really conspicuous spot was the spot that was chosen. I don't see where else you could have put it."

14.

No evidence whatever contradicts that factual summary by the trial judge.

The guide to decision upon a motion for summary judgment was declared in Guarresio v. American Bankers, 236 Md. 500, 503, 204 A.2d 569, 570:

"* * * appellants were required either to disavow appellants' averments as untrue or to specify evidence which would give rise to a triable issue of material fact."

In Knisley v. Keller, 31 Md. App. 269, 272, 273 A.2d 624, 625, this Court said:

"The party opposing the motion must show by facts, which would be admissible in evidence, that there is real dispute between the parties. The dispute must be material to the outcome. Parties are required to raise whatever issues they desire to interpose to the motion at or before the time of hearing in the trial court by affidavit or deposition."

We agree that no issue of fact exists. We turn then to the question whether, upon uncontradicted facts, the appellants were entitled to judgment as a matter of law.

In the subject case the record below shows literal compliance with the statute mandating the posting of the property that was the subject of the requested zoning reclassification. It shows as well literal compliance with the three other required official publications of notice to interested persons required by Section 22-22. Moreover, all of the evidence supports the conclusion, stated by the trial judge, that "the only really conspicuous spot was the spot that was chosen [for posting]."

ORDER OF DISMISSAL AFFIRMED.
COSTS TO BE PAID BY APPELLANTS.

15.

APPENDIX A

Sec. 22-22

"(a) The zoning commissioner shall have the power to make a change as to the district, division or zone within which a particular piece of property is classified (zoning reclassification) as hereinafter provided:

(b) A petition for a zoning reclassification of a property (reclassification petition) may be filed with the zoning commissioner only by the legal owner of such property, or by his legally authorized representative. Each such petition shall include an explanation of the reasons why, in the petitioner's opinion, the reclassification sought should be made, set forth in sufficient detail to properly advise the planning board and the zoning commissioner of the petitioner's case. Any allegation of change in conditions as justification for the action sought shall be supported in the petition by precise description of such change, and any allegation of error shall be so supported in similar detail. No such petition by the owner of the property concerned shall be accepted for filing unless it meets the zoning commissioner's rules of practice and procedure.

(c) For the purpose of considering contemporaneous zoning reclassification petitions in relation to each other and according to a standard schedule, the following semi-annually recurring schedule periods as a hereby established, to be applicable on and after April 16, 1971, subject to provisions hereinafter set forth:

APRIL-OCTOBER CYCLE	OCTOBER-APRIL CYCLE
Period I April 16-May 31	and October 15-Nov. 30
Period II June 1-July 31	and December 1-Jan. 31
Period III August 1-Sept. 15	and February
Period IV Sept. 1-Oct. 15	and March 1-April 15

(d) With the exception of those reclassification petitions exempted under the procedure set forth in subsection (c), but and with the further exception of those reclassification petitions which have been received for filing in the office of planning and zoning as of May 5, 1970, copies of all zoning reclassification petitions accepted for filing by the zoning commissioner before April 16, 1971, and during each cycle thereafter shall be transmitted to the director of planning within the first five days of period I of the following cycle. Within fifteen days thereafter, the director of planning and the zoning commissioner shall publish a listing of all such petitions, together with a map

showing the locations of all properties under petition. In the newspapers of general circulation in the county for a period of at least two weeks. They also shall make such listing and map available in the form of a press release and, for a period of at least three weeks, shall publicly display a copy of such listing and map in the county office building or other appropriate place for public inspection.

(e) During each period I, the director of planning shall review the petitions transmitted to him by the zoning commissioner and shall submit to the planning board and publish a report thereon containing at least the following information:

(1) Maps showing properties under petition and the reclassifications sought therefor; such maps may also identify groups of such properties located close to each other and show other indications of the interrelation of petitions with respect to planning considerations.

(2) Recommendations on the petitions.

(3) Supporting data for the recommendations, including any pertinent data and recommendations submitted by other county agencies.

(4) Recommendations for scheduling of all hearings (to be held during the next period IV), prepared in consultation with the zoning commissioner.

(f) During each period II, the planning board shall:

(1) Publish and submit to the zoning commissioner a report on all the reclassification petitions submitted during the preceding cycle except those exempted under subsection (1), such report to contain the board's recommendations on such petitions, appropriate maps, and supporting data;

(2) Submit to the zoning commissioner a recommended schedule for his hearings on the petitions, so arranged that hearings on related petitions shall with the petitioners' consent, be combined, and/or shall be held successively.

(g) During each period III, the zoning commissioner shall establish his schedule for hearings on petitions reported upon by the planning board during the preceding period II, considering the schedule recommended by the planning board. He shall publish his entire schedule of

hearings in at least two newspapers of general circulation in the county within the first fifteen days of such period, together with a map showing the locations of all properties under petition. For a period of at least fifteen days before the time of such hearing, such property shall be conspicuously posted with notice of the time and place of the hearing on the petition relating thereto, and individual notice thereof shall also be given in the newspapers of general circulation in the county for the period in which on-notice posting is required.

(h) The zoning commissioner, during each period IV, shall hold the hearings scheduled pursuant to subsection (g), subject to such postponement or continuation as circumstances may require.

(i) In any case where the planning board certified to the county council that early action upon a zoning reclassification petition is manifestly required in the public interest or because of emergency, and the county council by an affirmative vote approves said certification, such petition shall be exempted from the regular cyclical procedure of subsections (c) through (h), above and also from the suspension of reclassification-petition filing required under section 22-22.1. For any such petition, and for any petition received for filing on or before May 9, 1970, said petition shall be referred to the joint zoning advisory committee (as established by the County Administrative Officer in 1963) for consideration and, after acceptance for filing of said petition by the joint zoning advisory committee, the zoning commissioner shall schedule a public hearing for a date not less than thirty nor more than ninety days after said acceptance for filing, or after the county council's approval of the board's certification in cases where the board has so acted. For a period of at least fifteen days prior to the time of such hearing, notice of the time and place of the hearing relating to the property under petition shall be conspicuously posted thereon and shall be given in at least two newspapers of general circulation in the county. Such notice shall describe the property under petition and the action requested therein. Upon establishing a hearing date for such a petition, the zoning commissioner shall promptly forward a copy of the petition to the director of planning (or his deputy) for consideration and written report thereon containing his findings thereon with regard to planning factors.

(j) No zoning reclassification of property shall, for a period of one year after a zoning map applicable thereto has by an ordinance of the county council have been adopted, be granted by the zoning commissioner or board of appeals on the ground that the character of the neighborhood has changed.

REP PETITION FOR RECLASSIFICATION : IN THE
from M.L.R. zone to B.M. zone
N/S Kenilworth Drive 750' feet
from West Road
9th District - Central Sector : CIRCUIT COURT
FOR
Irvin C. Tillman : BALTIMORE COUNTY
Petitioner-Appellant : AT LAW
Zoning File No. 72-63-R : Misc. Docket No. 9
Folio No. 206
File No. 4858

ANSWER TO ORDER OF APPEAL TO CIRCUIT
COURT FOR BALTIMORE COUNTY AND
CERTIFIED COPIES OF PROCEEDINGS BEFORE
THE ZONING COMMISSIONER AND BOARD
OF APPEALS OF BALTIMORE COUNTY

Mr. Clark:

Please file, &c.

Muriel E. Buddemeier
County Board of Appeals of
Baltimore County

cc: Stone, Esq.

Zoning

John B. Howard, Esq.

RE: PETITION FOR RECLASSIFICATION : IN THE
from M.L.R. zone to B.M. zone
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File No. 4858

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come John A. Slowik, Walter A. Reiter, Jr. and John A. Miller, constituting the County Board of Appeals of Baltimore County, and in answer to the Order for Appeal directed against them in this case, herewith return the record of proceedings had in the above entitled matter, consisting of the following certified copies or original papers on file in the office of the Zoning Department of Baltimore County:

ZONING ENTRIES FROM DOCKET OF ZONING COMMISSIONER
OF BALTIMORE COUNTY

No. 72-63-R
May 18, 1971 Comments of Baltimore County Zoning Advisory Committee - filed
July 15 Comments adopted by Baltimore County Planning Board (Item No. 6)
Aug. 3 Petition of Irvin C. Tillman for reclassification from M.L.R. zone to B.M. zone, on property located on N/S Kenilworth Drive 750' from West Road, 9th District, Central Sector - filed
" 3 Order of Zoning Commissioner directing advertisement and posting of property - date of hearing set for September 17, 1971 at 11:00 a.m.
" 26 Certificate of Posting of property - filed
" 30 Certificate of Publication in newspaper - filed
Sept. 17 At 11:00 a.m. hearing held on petition before Deputy Zoning Commissioner - case held sub curie
Dec. 13 Order of Deputy Zoning Commissioner denying reclassification
Jan. 7, 1972 Order of Appeal to County Board of Appeals from Order of Deputy Zoning Commissioner
Mar. 23 Hearing on appeal before County Board of Appeals - case held sub curie

Irvin C. Tillman - #72-63-R 2.
June 7, 1972 Order of County Board of Appeals denying reclassification
July 6 Order for Appeal filed in Circuit Court for Baltimore County by E. Harrison Stone, Esq.
" 10 Certificate of Notice sent to all interested parties
" 14 Petition to accompany Order for Appeal filed in Circuit Court for Baltimore County
Aug. 8 Order extending time for transmittal of record until October 1, 1972
Sept. 28 Transcript of testimony - filed - 1 volume
Petitioner's Exhibit No. 1 - Aerial Photo of subject property (outlined)
" " 2 - Zoning Map 3-C - Towers, 3/24/71
" " 3 - File in Case No. 72-63-R
" " 4 - Comments for first cycle from Planning, Item #6
" " 5 - Letter from Mr. H. B. Staub, Industrial Development Commission
Sept. 29 Record of proceedings filed in the Circuit Court for Baltimore County
Record of proceedings pursuant to which said Order was entered and said Board acted are permanent records of the Zoning Department of Baltimore County, as are also the use district maps, and your respondents respectfully suggest that it would be inconvenient and inappropriate to file the same in this proceeding, but your respondents will produce any and all such rules and regulations, together with the zoning use district maps of the hearing on this petition, or whenever directed to do so by this Court.

Respectfully submitted,

Muriel E. Buddemeier
County Board of Appeals of
Baltimore County

RE: PETITION FOR RECLASSIFICATION : IN THE
from M.L.R. zone to B.M. zone
N/S Kenilworth Drive 750' feet
from West Road
9th District - Central Sector : CIRCUIT COURT
FOR
Irvin C. Tillman : BALTIMORE COUNTY
Petitioner-Appellant : AT LAW
Zoning File #72-63-R : Misc. Docket No. 9
Folio No. 206
File No. 4858

CERTIFICATE OF NOTICE

Mr. Clark:

Pursuant to the provisions of Rule 1101-8 (4) of the Maryland Rules of Procedure, John A. Slowik, Walter A. Reiter, Jr. and John A. Miller, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the appeal to the representative of every party to the proceeding before it, namely, E. Harrison Stone, Esquire, 102 West Pennsylvania Avenue, Towson, Maryland 21204, Attorney for the Petitioner, a copy of which notice is attached hereto and prayed that it may be made a part thereof.

Edith T. Elmhurst, Adm. Secretary
County Board of Appeals of Baltimore County
County Office Building, Towson, Md. 21204
494-3180

I hereby certify that a copy of the foregoing Certificate of Notice has been mailed to E. Harrison Stone, Esquire, 102 West Pennsylvania Avenue, Towson, Maryland 21204, Attorney for the Petitioner, on this 10th day of July, 1972.

Edith T. Elmhurst, Adm. Secretary
County Board of Appeals of Baltimore County

cc: Zoning
J. Ogle

72-63-R
JTH

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW
File No. 4858
Docket Misc. 9
Folio 206

March 2, 1973

Before: HONORABLE JOHN CRASON TURNBULL, Judge

APPEARANCES:

E. Harrison Stone, Esquire,
and John B. Howard, Esquire,
on behalf of the Petitioner.

Reported by:
Paul G. Griffin
Official Court Reporter
In the Circuit Court for Baltimore County

THE COURT: Let the record show that there were no intervenors in this matter, although the County was notified of this hearing; and let the record show that the Court will accept the affidavits of Mr. Miles and Mr. Edelen, there being no objection to their admission, as additional evidence under the authority of Article 41, Section 255, sub section E of the 1971 replacement volume of the Annotated Code.

It is apparent from the Board's opinion, and the Board almost says so in so many words, that the reason for the Board's refusal to grant this classification was that it was fearful of what use might be made of BM property at this location. There is, in the Court's opinion, ample evidence of error on the part of the Board. The Act of the County Council on March 24, 1971 changed the then existing classification "from Manufacturing Restricted to Manufacturing, Light Restricted, which was a more restrictive classification of the property; and, according to the allegations of this Petition, and the affidavits and the testimony indeed before the Board itself there was no opportunity for the Applicant here properly to be heard before the Council meeting, and

indeed no evidence before the Council which would warrant the downgrading of the property. The Zoning Regulations in Section 247 specify that M.L. categories are intended, amongst other things, "to permit grouping of high types of industrial plants in industrial sub-divisions with convenient access to expressways or other primary motorways so as to minimize the use of residential streets...and as transitional bands between residential or institutional areas and M.L. or M.H. zones." The map shows that there are no contiguous M.L. or M.H. zones, nor indeed any located in near proximity to this property. So that it is apparent that the County Council, in making this change, ignored the pertinent section of the Zoning Regulations. Indeed, the evidence shows that commercial uses, such as that which is requested in this Petition, characterize largely the immediately surrounding area.

The Board based some part of its decision, because it mentioned it, on the fact that the Brooks tract, which immediately adjoins this tract, had not been developed. Well, the testimony before the Board was that Mr. Brooks was going to develop the property this year, which meant 1972, and the

affidavit before the Court, Court's exhibit number 2, confirms what Mr. Tillman's testimony was, because it states that bids went out for construction on Mr. Brooks' property in the spring of 1972, site preparation began during the latter part of 1972, and as of the date of the affidavit, March 1st, 1973, construction was under way. So that at least to that portion of the basis for its decision the Board was in error, because it paid no attention to the testimony of Mr. Tillman.

I note the opinion of the Court of Appeals of Maryland in Ford vs. Baltimore County -- obviously I haven't had an opportunity to read a twenty-four page opinion -- but the conclusion reached by the Court in the last paragraph is, "It is apparent that the appellants were never 'heard' in regard to their opposition to the proposed zoning of a portion of the subject property from the B.L. zoning recommended by the Planning Board to the D.R.-2 zone. The subsequent attempted action of the County Council upon this issue, therefore, was void because of the failure to give the required hearing -- a condition precedent to valid action by the County Council. Consequently, the case must be

remanded to the lower court for the passage of an order directing the County Council to afford the appellants a proper hearing and for further proceedings thereafter."

In that case, the Ford case, no application for reclassification was made, so that obviously the Board of Appeals had to remand it to the County Council. In this case the application for reclassification has been made, which differentiates it from the Ford case, and it is going through the normal processes on the basis of mistake or error. The matter, in my opinion, should be determined in the zoning area and not by action of the County Council, because this applicant has elected to proceed in that fashion, whereas Mr. Ford elected to proceed in another fashion, either one of them perfectly proper.

The uncontradicted evidence in this case was that there would be no problem of traffic hazard, or anything of that kind. The evidence was that, in considering what you might call the greater Towson Area, the County Council made no provision for any further business major zones, despite the fact that the evidence shows in this case, and obviously the County Council had to know of the tremendous growth of

business and residential areas in the 9th Election District of Baltimore County, particularly in the Towson area, and the Board also ignored that. It is the Court's opinion that the classification by the County Council was definitely in error, and that the Board of Appeals should have corrected the error of the Council after hearing this evidence, and that having failed so to correct the error, the Board acted in an arbitrary, capricious and illegal manner. And on the basis of the record before me it is my opinion that the order of the Board denying the petition for reclassification must be reversed, and an order passed granting the reclassification from M.L. to B.H. zones.

Gentlemen, prepare such an order and I will sign it. Make sure to make enough copies so that the zoning authorities can get copies thereof. And, Mr. Griffin, please write up the Court's remarks, make the necessary corrections, and see that they are properly distributed, and charge the costs thereof as part of the cost of this case.

ROYSTON, MUELLER, THOMAS & MCLEAN

ATTORNEYS AT LAW
SUITE 600
100 WEST BOWLING GREEN AVENUE
TOWSON, MARYLAND 21204

AREA CODE 301
823-1800

October 17, 1971

Mr. James E. Dyer
Deputy Zoning Commissioner
Jefferson Building
Towson, Maryland 21204

Re: Petition for Reclassification for
Irvin C. Tillman, Case No. 72-63-R,
Item No. 6

Dear Mr. Dyer:

Upon the conclusion of the hearing in the above-entitled case on September 17, 1971, you inquired as to whether or not I wished to submit a memorandum in support of the Petitioner's request. After further reflection, I decided that such a memorandum in letter form might prove helpful in enabling you to fully understand our position.

First, the requested BM zoning is totally compatible with the other uses in the immediate area. As your file will indicate, the subject tract is presently zoned MUR and is located on the north side of Kenilworth Drive, west of York Road, and immediately south of the Baltimore County beltway. Adjacent to the west is land owned by the Baltimore County Department of Recreation and Parks, and adjacent to the east is land owned by Brooks Buick, Inc., which is presently zoned BM. Located northeast of such tract are several plant and office facilities, including those of Park Davis & Co. and Young & Seiden Co. These facilities are used for general manufacturing and office purposes. In addition, there are tracts of BL and BR zoning within a short distance; and the land immediately to the south of Kenilworth Drive directly across from the subject tract is zoned DR-16, where the Towson Woods Apartments are under construction.

Mr. James E. Dyer
Page 2
October 13, 1971

It is important to note that although the hearing was well advertised in advance, not one protestant appeared. Petitioner simply points this out as further evidence in support of his contention that BM zoning is appropriate here.

Second, the written comments of both the Zoning Advisory Committee and the Planning Board make it clear that the proposed use of the property as a furniture store and warehouse "would not greatly increase the trip density of the property, and, therefore, would not create serious capacity problems." What concerned the Committee and the Board were possible traffic problems engendered by a use of the property other than as proposed; however, these concerns did not take into consideration the recent developments in regard to the full extension of Kenilworth Drive. As you will recall, Mr. Harris Shalowitz of the Department of Public Works testified at the hearing that: (1) Bids had already been received and opened for the construction of the road section in front of the Baltimore County property to the west of the subject tract, thus giving complete access to Charles Street; and (2) Engineering studies and construction plans were complete with respect to a section of proposed road east of the subject property, which upon completion will give the latter complete access to Bosley Avenue. I further understand from Mr. Shalowitz that this section should be under construction by the end of the year.

Thus, in summary as to traffic, it clearly appears that the Council was in error in not classifying the subject property BM because it was predicated upon traffic conditions no longer in existence. By the time Petitioner obtains the required building permits, the property will have four (4) major accesses: (1) Kenilworth Drive to Charles Street; (2) Kenilworth Drive to Bosley Avenue; (3) Kenilworth Drive to West Road to York Road; and (4) Entrance from Beltway West and Exit on to Beltway East.

Thanking you for your consideration, I am

Very truly yours,

E. Harrison Stone

RE: PETITION FOR RECLASSIFICATION from M.L.R. to R.M. zone N/S Kenilworth Drive 750 feet from West Road 9th District Central Sector

IRVIN C. TILLMAN, Petitioner

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW

File No. 4898
Docket Misc. 9
Folio 206

March 2, 1973

Before: HONORABLE JOHN GRASON TURNBULL, Judge

APPEARANCES:

E. Harrison Stone, Esquire,
and John B. Howard, Esquire,
on behalf of the Petitioner.

Reported by:
Paul G. Griffin
Official Court Reporter
In the Circuit Court for Baltimore County

THE COURT: Let the record show that there were no intervenors in this matter, although the County was notified of this hearing; and let the record show that the Court will accept the affidavits of Mr. Niles and Mr. Edelman, there being no objection to their admission, as additional evidence under the authority of Article 41, Section 255, sub section E of the 1971 replacement volume of the Annotated Code.

It is apparent from the Board's opinion, and the Board almost says so in so many words, that the reason for the Board's refusal to grant this classification was that it was fearful of what use might be made of BM property at this location. There is, in the Court's opinion, ample evidence of error on the part of the Board. The Act of the County Council on March 24, 1971 changed the then existing classification from Manufacturing Restricted to Manufacturing Light Restricted, which was a more restrictive classification of the property; and, according to the allegations of this Petition, and the affidavits and the testimony indeed before the Board itself there was no opportunity for the Applicant here properly to be heard before the Council meeting, and

indeed no evidence before the Council which would warrant the downgrading of the property. The Zoning Regulations in Section 247 specify that M.L. categories are intended, amongst other things, "to permit grouping of high types of industrial plants in industrial sub-divisions with convenient access to expressways or other primary motorways so as to minimize the use of residential streets...and as transitional bands between residential or institutional areas and M.L. or M.H. zones." The map shows that there are no contiguous M.L. or M.H. zones, nor indeed any located in near proximity to this property. So that it is apparent that the County Council, in making this change, ignored the pertinent section of the Zoning Regulations. Indeed, the evidence shows that commercial uses, such as that which is requested in this Petition, characterize largely the immediately surrounding area.

The Board based some part of its decision, because it mentioned it, on the fact that the Brooks tract, which immediately adjoins this tract, had not been developed. Well, the testimony before the Board was that Mr. Brooks was going to develop the property this year, which meant 1972, and the

affidavit before the Court, Court's exhibit 1, does 2, confirms what Mr. Tillman's testimony was, because it states that bids went out for construction on Mr. Brooks' property in the spring of 1972, site preparation began during the latter part of 1972, and as of the date of the affidavit, March 1st, 1973, construction was under way. So that at least to that portion of the basis for its decision the Board was in error, because it paid no attention to the testimony of Mr. Tillman.

I note the opinion of the Court of Appeals of Maryland in Ford vs. Baltimore County -- obviously I haven't had an opportunity to read a twenty-four page opinion -- but the conclusion reached by the Court in the last paragraph is, "It is apparent that the appellants were never 'heard' in regard to their opposition to the proposed zoning of a portion of the subject property from the R.L. zoning recommended by the Planning Board to the D.R.-2 zone. The subsequent attempted action of the County Council upon this issue, therefore, was void because of the failure to give the required hearing -- a condition precedent to valid action by the County Council. Consequently, the case must be

remanded to the lower court for the passage of an order directing the County Council to afford the appellants a proper hearing and for further proceedings thereafter."

In that case, the Ford case, no application for reclassification was made, so that obviously the Board of Appeals had to remand it to the County Council. In this case the application for reclassification has been made, which differentiates it from the Ford case, and it is going through the normal processes on the basis of mistake or error. The matter, in my opinion, should be determined in the zoning area and not by action of the County Council, because this applicant has elected to proceed in that fashion, whereas Mr. Ford elected to proceed in another fashion, either one of them perfectly proper.

The uncontradicted evidence in this case was that there would be no problem of traffic hazard, or anything of that kind. The evidence was that, in considering what you might call the greater Towson Area, the County Council made no provision for any further business major zones, despite the fact that the evidence shows in this case, and obviously the County Council had to know of the tremendous growth of

business and residential areas in the 9th Election District of Baltimore County, particularly in the Towson area, and the Board also ignored that. It is the Court's opinion that the classification by the County Council was definitely in error, and that the Board of Appeals should have corrected the error of the Council after hearing this evidence, and that having failed so to correct the error, the Board acted in an arbitrary, capricious and illegal manner. And on the basis of the record before me it is my opinion that the order of the Board denying the petition for reclassification must be reversed, and an order passed granting the reclassification from M.L. to R.M. zones.

Gentlemen, prepare such an order and I will sign it. Make sure to make enough copies so that the zoning authorities can get copies thereof. And, Mr. Griffin, please write up the Court's remarks, make the necessary copies, and see that they are properly distributed, and charge the costs thereof as part of the cost of this case.

ROYSTON, MUELLER, THOMAS & MCLEAN
ATTORNEYS AT LAW
SUITE 400
202 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204

January 6, 1972

Mr. James E. Dyer
Deputy Zoning Commissioner
County Office Building
Towson, Maryland 21204

Re: Petition for Reclassification - n/s of Kenilworth Drive, Ninth District, Irvin C. Tillman, Petitioner No. 72-63-R (Item No. 6)

Dear Mr. Dyer:

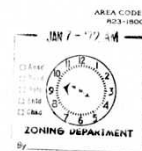
Please enter an appeal from your decision in the above-captioned matter to the Board of Appeals of Baltimore County on behalf of Irvin C. Tillman, Petitioner, and legal owner.

A check in the amount of \$70.00 is enclosed in payment of the appeal fee.

Very truly yours,

E. Harrison Stone

EHS/jen
Enclosure



December 13, 1971

E. Harrison Stone, Esquire
102 West Pennsylvania Avenue
Towson, Maryland 21204

RE: Petition for Reclassification
N/S of Kenilworth Drive, 750'
from West Road - 9th District
Irvin C. Tillman - Petitioner
NO. 72-63-R (Item No. 6)

Dear Mr. Stone:

I have this date passed my Order in the above captioned matter in accordance with the attached.

Very truly yours,
James E. Dyer
Deputy Zoning Commissioner

JED:jmc
Enclosure

ITEM NO. 6

72-63-R

PROPERTY OWNER: Irvin C. Tillman
LOCATION: N/S of Kenilworth Drive, 750' west of West Road
ELECTION DISTRICT: 9

ACREAGE: 8.43

GEOGRAPHICAL GROUP: VIII FUNCTIONAL CATEGORY: D, E

RECOMMENDED DATE OF HEARING: During the period 9/20/71-9/26/71, consecutively with Item No. 5

ZONING PRIOR TO 3/24/71: M.L.R.
EXISTING ZONING: (as adopted by County Council, 3/24/71): M.L.R.
ZONING REQUESTED BY PETITIONER: M.L.R.

PLANNING BOARD RECOMMENDATION: Retain existing zoning (M.L.R.)

The subject property is a vacant, wooded tract, bounded on the north by the Baltimore County Parkway, and on the south by Kenilworth Drive. The property to the west is public land, Ridewood Hills Park. On the south side of Kenilworth Drive, Towson Town Apartments, a large garden-type apartment project, are presently under construction. Kenilworth Drive in this location is non-urban, and will be constructed in conjunction with the Towson Woods Apartment development.

The proposed use of the property is a furniture store with warehouse facilities which requires B.M. zoning. This request came before the County Council during its processing of the new map; at that time, however, the petitioner said the intended use was an office building complex with retail facilities.

The Industrial Development Commission's representative on the Zoning Advisory Committee states that development of this property would be a detriment to the development of the site. M.L.R. use would have little effect on the economy of the area. However, development with other types of permitted B.M. uses would appear to be inappropriate here.

The Department of Traffic Engineering's representative on the Zoning Advisory Committee stated that B.L. zoning as proposed could generate as many as 4,200 trips per day, while the existing M.L.R. zoning would generate 400 trips per day. Further, should the plan develop as shown, the warehouse could generate 400 trips a day and the retail furniture store could generate 500 trips per day. The furniture store and warehouse would not only increase the trip density of the property, and, therefore, would not create serious capacity problems. However, should the property develop commercially, the intersection of West Road and the Baltimore Parkway would be expected to handle the increased trip density, and, at this time, there are no plans for improvement to the above intersection.

The Subject Site Planning Board in recommending M.L.R. zoning here was to allow development of offices or an office complex, as has already happened at the northeast corner of West Road and Kenilworth Drive. Kenilworth Drive should remain a high-quality arterial; commercial-retail stores should not be encouraged at this location.

It is therefore recommended that the subject tract remain as M.L.R.

BALTIMORE COUNTY ZONING ADVISORY COMMITTEE

May 18, 1971

COUNTY OFFICE BUILDING
111 E. Calverton Ave.
Towson, Maryland 21204

MEMBERS

OLIVER L. MYERS, Chairman

MEMBERS

BUREAU OF ENGINEERING

TRAFFIC ENGINEERING

STATE ROADS COMMISSION

BUILDING DEPARTMENT

PLANNING DIVISION

HEALTH DEPARTMENT

PROJECT PLANNING

BUILDING DEPARTMENT

BOARD OF EDUCATION

ZONING ADMINISTRATION

INDUSTRIAL DEVELOPMENT

Mr. George E. Gavrells, Director
Office of Planning & Zoning
301 Jefferson Building
Towson, Maryland 21204

RC: Item 6 (April - October Cycle 1971)
Property Owner: Irvin C. Tillman
Location: N/S Kenilworth Dr., 750' W. of West Road
Present Zoning: M.L.R.
Proposed Zoning: Reclass. to B.M.
District: 9th Sector: Central
No. Acres: 8.43

Dear Sirs:

The Zoning Advisory Committee has reviewed the plans submitted with the above referenced petition and has made an on site field inspection of the property. The following comments are a result of this review and inspection.

The subject property is presently a vacant, wooded tract of land, with the property bounded on the north by the Baltimore County Parkway, the south by Kenilworth Drive, the property to the east is a residential tract of land, vacant - used for recreational purposes. The property to the east is zoned Business Major, and it is the understanding of this office that it will eventually be improved with an automotive, new car agency. The property to the south on the south side of Kenilworth Drive is presently under construction with the Towson Woods Apartments. A large garden type apartment project. Kenilworth Drive in this location is non-urban and will be constructed in conjunction with the Towson Woods Apartment development.

BUREAU OF ENGINEERING

The following comments are furnished in regard to the plan submitted to this office for review by the Zoning Advisory Committee in connection with the subject item.

Highways

Kenilworth Drive is a proposed County road, which shall ultimately be improved to major collector standards. (See

George E. Gavrells, Director
Item 6
Page 2
May 18, 1971

Baltimore County Drawing #68-0570 - 5). This road is to be partially constructed in the near future in conjunction with the development of the Towson Woods Apartments.

Highway improvements to this site, including curb and gutter, sidewalks and entrances in accordance with the standards of the Baltimore County Department of Public Works for a 48-foot closed road section on a 70-foot right-of-way will be required for any grading or building permit application.

Storm Drains

The Petitioner must provide necessary drainage facilities (temporary or permanent) to prevent creating any nuisances or damages to adjacent properties, especially by the concentration of surface waters. Correction of any problem which may result, due to improper grading or improper installation of drainage facilities, would be the full responsibility of the Petitioner.

Public drainage facilities are required for any off site drainage facilities and any on site facilities serving off site areas, in accordance with the standards of the Baltimore County Department of Public Works.

On site drainage facilities serving only areas within the site do not require construction under a County contract. Such facilities are considered private and therefore must conform to the County Plumbing and Building Codes.

Sediment Controls

Development of this property through striping, grading and stabilization could result in a sediment pollution problem, damaging private and public holdings below this property, and sediment control is required by State law. A grading permit is, therefore, necessary for all grading, including the striping of top soil.

Grading studies and sediment control drawings will be necessary to be reviewed and approved prior to the issuance of any grading and building permits.

Waters

Public water facilities will be available to benefit this property.

Supplementary fire hydrants and improvements to the public system may be required for adequate protection.

George E. Gavrells
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Service within the site from the public system must be in accordance with the Baltimore County Building, Plumbing and Fire Prevention Codes. The service connection to the meter shall be in accordance with the standards of the Baltimore County Department of Public Works.

Sanitary Sewer

Public sanitary sewer facilities are available to benefit this property.

The Petitioner is entirely responsible for the construction of his on site sanitary sewerage, which must conform with the Baltimore County Plumbing Code.

PROJECT PLANNING

This plan has been reviewed and there are no site planning factors requiring comment.

INDUSTRIAL DEVELOPMENT

The Industrial Development Commission has reviewed the subject petition. Development of the site as proposed (Single User) versus development of the site for M.L.R. use would have little effect on the economy of the area. However, development with a variety of permitted B.M. uses would appear to be inappropriate in this area.

DEPARTMENT OF TRAFFIC ENGINEERING

The subject petition is requesting a change from PLR to B.M. As B.M., the subject petition can be expected to generate 800 trips per day, while as B.L. 4200 trips per day could be anticipated.

Should the plan develop as shown, the warehouse could generate 400 trips per day and the retail furniture store could generate 500 trips per day. The furniture store and warehouse do not greatly increase the trip density of the subject property and, therefore, could not create serious capacity problems. However, should the property develop commercially, the intersection of West Road and the Baltimore Parkway cannot be expected to handle the increased trip density, and at this time, there are no plans for improvements to the above intersection.

DEPT. OF HEALTH

Public water and sewer are available to the site.

Air Pollution Comments: The building or buildings on this site may be subject to registration and compliance with the Maryland State

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Mr. George E. Gavrells
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May 18, 1971

Health Air Pollution Control Regulations. Additional information may be obtained from the Division of Air Pollution, Baltimore County Department of Health.

FIRE PREVENTION BUREAU

Fire hydrants for the proposed site are required and shall be in accordance with Baltimore County Standards. The hydrants shall be located at 300 ft. spacings.

The owner shall be required to comply with all applicable requirements of the 101 Life Safety Code, 1967 edition, and the Fire Prevention Code when construction plans are submitted for approval.

BUILDING ENGINEER'S OFFICE

Petitioner to comply with all applicable requirements of the Baltimore County Building Code and regulations when plans are submitted. Also, see Parking Lots, "Section 409.10M".

STATE ROADS COMMISSION

The subject plan indicates that there should be no adverse effects to the State Highway.

ZONING ADMINISTRATION DIVISION

Per the comments by the Department of Traffic Engineering with regard to the increased traffic. If the Kenilworth Drive project is completed in the '71 to '72 year as anticipated, there appears to traffic problem will be anticipated if the subject tract is developed as proposed. However, if the property is zoned Business Major and several Business Major uses are developed on the site, traffic capacity at the intersection of West Road and the Baltimore Parkway is believed to be very congested no improvements to this intersection are proposed at the present time.

Very truly yours,

OLIVER L. MYERS, Chairman

DLH:JO

cc: Edward D. Hardesty

W. Leo Thomas, Esq.,
E. Harrison Stony, Esq.,
102 W. Penns. Avenue (21204)

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Edward Hardesty
ATTN: Oliver L. Myers
FROM: Ellsworth N. Dyer, P.E.

Date: May 3, 1971

SUBJECT: Item #6 (April - October 1971)
Property Owner: Irvin C. Tillman
Location: N/S Kenilworth Dr., 750' W. of West Road
Present Zoning: M.L.R.
Proposed Zoning: Reclass. to B.M.
District: 9th Sector: Central
No. Acres: 8.43

The following comments are furnished in regard to the plan submitted to this office for review by the Zoning Advisory Committee in connection with the subject item.

Highways

Kenilworth Drive is a proposed County Road, which shall ultimately be improved to major collector standards. (See Baltimore County Drawing #68-0570 - 5). This road is to be partially constructed in the near future in conjunction with the development of the Towson Woods Apartments.

Highway improvements to this site, including curb and gutter, sidewalks and entrances in accordance with the standards of the Baltimore County Department of Public Works for a 48-foot closed road section on a 70-foot right-of-way will be required for any grading or building permit application.

Storm Drains

The Petitioner must provide necessary drainage facilities (temporary or permanent) to prevent creating any nuisances or damages to adjacent properties, especially by the concentration of surface waters. Correction of any problem which may result, due to improper grading or improper installation of drainage facilities, would be the full responsibility of the Petitioner.

Public drainage facilities are required for any offsite drainage facilities and any onsite facilities serving offsite areas, in accordance with the standards of the Baltimore County Department of Public Works.

Onsite drainage facilities serving only areas within the site do not require construction under a County contract. Such facilities are considered private and therefore must conform to the County Plumbing and Building Codes.

Sediment Controls

Development of this property through striping, grading and stabilization could result in a sediment pollution problem, damaging private and public holdings below this property, and sediment control is required by State law. A grading permit is, therefore, necessary for all grading, including the striping of top soil.

Item #6 (April - October 1971)
Property Owner: Irvin C. Tillman
Page 2
May 3, 1971

Sediment Controls (Cont'd)

Grading studies and sediment control drawings will be necessary to be reviewed and approved prior to the issuance of any grading and building permits.

Waters

Public water facilities will be available to benefit this property.

Supplementary fire hydrants and improvements to the public system may be required for adequate protection.

Service within the site from the public system must be in accordance with the Baltimore County Building, Plumbing and Fire Prevention Codes. The service connection to the meter shall be in accordance with the standards of the Baltimore County Department of Public Works.

Sanitary Sewer

Public sanitary sewer facilities are available to benefit this property.

The Petitioner is entirely responsible for the construction of his onsite private sanitary sewerage, which must conform with the Baltimore County Plumbing Code.

Ellsworth N. Dyer, P.E.
Chief, Bureau of Engineering

END:RAM:OWK:es

cc: File (3)

3rd Sheet: S-SH
Revision Sheet: 11 NW and 12 NW 1
Topic: NW 11 A
Text: 59

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Mr. Edward D. Hardesty
TO: Zoning Commissioner
Date: May 10, 1971

FROM: Project Planning Division

SUBJECT: Zoning Advisory Agenda Item #6

April 27, 1971
Irvin C. Tillman
N/S Kenilworth Drive
750' W. of West Road

This plan has been reviewed and there are no site-planning factors requiring comment.

BALTIMORE COUNTY ZONING ADVISORY COMMITTEE

May 18, 1971

Mr. George E. Gavrellis, Director
Office of Planning & Zoning
301 Jefferson Building
Towson, Maryland 21204

RE: Item 6 (April - October Cycle 1971)
Property Owner: Irvin C. Tillman
Location: N/S Kenilworth Dr., 750' W. of West Road
Present Zoning: M.L.R.
Proposed Zoning: ReClass. to B.M.
District: 9th Sector: Central
No. Acres: 8.43

Dear Sirs:

The Zoning Advisory Committee has reviewed the plans submitted with the above referenced petition and has made an on site field inspection of the property. The following comments are a result of this review and inspection.

The subject property is presently a vacant, wooded tract of land, with the property bounded on the north by the Baltimore County Beltway, the south by Kenilworth Drive. The property to the west is a residential tract of land, vacant - used for recreational purposes. The property to the east is zoned Business Major, and it is the understanding of this office that it will eventually be improved with an automotive, new car agency. The property to the south on the south side of Kenilworth Drive is presently under construction with the Towson Woods Apartments. A large garden type apartment project. Kenilworth Drive in this location is nonexistent and will be constructed in conjunction with the Towson Woods Apartment development.

BUREAU OF ENGINEERING:

The following comments are furnished in regard to the plat submitted to this office for review by the Zoning Advisory Committee in connection with the subject item.

Highways:

Kenilworth Drive is a proposed County road, which shall ultimately be improved to major collector standards. (See

George E. Gavrellis, Director
Item 6
Page 2
May 18, 1971

Baltimore County Drawing #68-0570 - 5). This road is to be partially constructed in the near future in conjunction with the development of the Towson Woods Apartments.

Highway improvements to this site, including curb and gutter, sidewalks and entrances in accordance with the standards of the Baltimore County Department of Public Works for a 48-foot closed road section on a 70-foot right-of-way will be required for any grading or building permit application.

Storm Drains:

The Petitioner must provide necessary drainage facilities (temporary or permanent) to prevent creating any nuisances or damages to adjacent properties, especially by the concentration of surface waters. Correction of any problem which may result, due to improper grading or improper installation of drainage facilities, would be the full responsibility of the Petitioner.

Public drainage facilities are required for any off site drainage facilities and any on site facilities serving off site areas, in accordance with the standards of the Baltimore County Department of Public Works.

On site drainage facilities serving only areas within the site do not require construction under a County contract. Such facilities are considered private and therefore must conform to the County Plumbing and Building Codes.

Sediment Controls:

Development of this property through striping, grading and stabilization could result in a sediment pollution problem, damaging private and public holdings below this property, and sediment control is required by State law. A grading permit is, therefore, necessary for all grading, including the striping of top soil.

Grading studies and sediment control drawings will be necessary to be reviewed and approved prior to the issuance of any grading and building permits.

Water:

Public water facilities will be available to benefit this property.

Supplementary fire hydrants and improvements to the public system may be required for adequate protection.

George E. Gavrellis
Item 6
Page 3
May 18, 1971

Service within the site from the public system must be in accordance with the Baltimore County Building, Plumbing and Fire Prevention Codes. The service connection to the meter shall be in accordance with the standards of the Baltimore County Department of Public Works.

Sanitary Sewer:

Public sanitary sewer facilities are available to benefit this property.

The Petitioner is entirely responsible for the construction of his on site private sanitary sewerage, which must conform with the Baltimore County Plumbing Code.

PROJECT PLANNING:

This plan has been reviewed and there are no site planning factors requiring comment.

INDUSTRIAL DEVELOPMENT:

The Industrial Development Commission has reviewed the subject petition. Development of the site as proposed (Single User) versus development of the site for M.L.R. use would have little effect on the economy of the area. However, development with a variety of permitted B.M. uses would appear to be inappropriate in this area.

DEPARTMENT OF TRAFFIC ENGINEERING:

The subject petition is requesting a change from M.L.R. to B.M. At M.L.R. the subject petition can be expected to generate 840 trips per day. While as B.M. 4200 trips per day could be anticipated.

Should the plan develop as shown, the warehouse could generate 400 trips per day and the retail furniture store could generate 500 trips per day. The furniture store and warehouse do not greatly increase the trip density of the subject property and, therefore, would not create serious capacity problems. However, should the property develop commercially, the intersection of West Road and the Beltway cannot be expected to handle the increased trip density, and at this time, there are no plans for improvements to the above intersection.

DEPT. OF HEALTH:

Public water and sewer are available to the site.

Air Pollution Comments: The building or buildings on this site may be subject to registration and compliance with the Maryland State

Mr. George E. Gavrellis
Item 6
Page 4
May 18, 1971

Health Air Pollution Control Regulations. Additional information may be obtained from the Division of Air Pollution, Baltimore County Department of Health.

FIRE PREVENTION BUREAU:

Fire hydrants for the proposed site are required and shall be in accordance with Baltimore County Standards. The hydrants shall be located at 300 ft. spacings.

The owner shall be required to comply with all applicable requirements of the 101 Life Safety Code, 1967 edition, and the Fire Prevention Code when construction plans are submitted for approval.

BUILDINGS ENGINEER'S OFFICE:

Petitioner to comply with all applicable requirements of the Baltimore County Building Code and regulations when plans are submitted. Also, see Parking Lots, "Section 409.10M".

STATE ROADS COMMISSION:

The subject plan indicates that there should be no adverse effects to the State Highway.

ZONING ADMINISTRATION DIVISION:

Per the comments by the Department of Traffic Engineering with regard to the increased traffic. If the Kenilworth Drive project is completed in the '71 to '72 year as anticipated, there appears to traffic problem will be anticipated if the subject tract is developed as proposed. However, if the property is zoned Business Major and several Business Major uses are developed on the site, traffic capacity at the intersection of West Road and the Beltway is believed to be very congested no improvements to this intersection are proposed at the present time.

Very truly yours,

Oliver L. Myers
OLIVER L. MYERS, Chairman

OLM:JD

cc: Edward D. Hardesty

W. Lee Thomas, Esq.,
E. Harrison Stone, Esq.
102 W. Penna. Avenue (21204)

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Mr. Edward D. Hardesty, Zoning Commissioner
TO: Mr. Oliver L. Myers Date: May 10, 1971
FROM: Office of Zoning Commissioner
FROM: H. B. Staab - Industrial Development Commission
SUBJECT: Item No. 6; Owner: Irvin C. Tillman
Location: N/S Kenilworth Dr., 750' W. of West Road
Present Zoning: M.L.R.
Proposed Zoning: ReClass. to B.M.
District: 9th Sector: Central
No. Acres: 8.43

The Industrial Development Commission has reviewed the subject petition. Development of the site as proposed (Single User) versus development of the site for M.L.R. use would have little effect on the economy of the area. However, development with a variety of permitted B.M. uses would appear to be inappropriate in this area.

H. B. Staab
H. B. STAAB
Director

BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF TRAFFIC ENGINEERING
JEFFERSON BUILDING
TOWSON, MARYLAND 21204
INTER-OFFICE CORRESPONDENCE

TO: Edward D. Hardesty
ATTN: Oliver L. Myers Date: May 11, 1971
FROM: C. Richard Moore
SUBJECT: Item 6 - Cycle Zoning
Property Owner: Irvin C. Tillman
Kenilworth Drive west of West Road
Reclassification to B.M.

The subject petition is requesting a change from M.L.R. to B.M. As M.L.R. the subject petition can be expected to generate 840 trips per day. While as B.M. 4200 trips per day could be anticipated.

Should the plan develop as shown, the warehouse could generate 400 trips per day and the retail furniture store could generate 500 trips per day. The furniture store and warehouse do not greatly increase the trip density of the subject property and therefore, would not create serious capacity problems. However, should the property develop commercially, the intersection of West Road and the Beltway cannot be expected to handle the increased trip density, and at this time, there are no plans for improvements to the above intersection.

C. Richard Moore
C. Richard Moore
Assistant Traffic Engineer

CRM:mf

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. Oliver Myers Date: May 13, 1971
FROM: Ian J. Forrest
SUBJECT: Item 6

6. Property Owner: Irvin C. Tillman
Location: N/S Kenilworth Dr., 750' W. of West Rd.
Present Zoning: M.L.R.
Proposed Zoning: ReClass. to B.M.
District: 9th Sector: Central
No. Acres: 8.43

Public water and sewer are available to the site.

Air Pollution Comments: The building or buildings on this site may be subject to registration and compliance with the Maryland State Health Air Pollution Control Regulations. Additional information may be obtained from the Division of Air Pollution, Baltimore County Department of Health.

I. J. Forrest
Chief
Water and Sewer Section
BUREAU OF ENVIRONMENTAL HEALTH

IJJ/ca

TO: Mr. Edward D. Hardesty, Zoning Commissioner DATE: 5/11/71
ATTN: Mr. Myers

FROM: Planning Division
Fire Prevention Bureau

SUBJECT: Property Owner:
Irvin C. Tillman

Location: N/S Kenilworth Drive, 750' W. of West Road

Item # 6

Zoning Agency

Fire hydrants for the proposed site are required and shall be in accordance with Baltimore County Standards. The hydrants shall be located at 300 ft. spacings.

The owner shall be required to comply with all applicable requirements of the 101 Life Safety Code, 1967 edition, and the Fire Prevention Code when construction plans are submitted for approval.

Respectfully,
H. Thomas Kelly
H. Thomas Kelly
Planning Division
Fire Prevention Bureau

INTER-OFFICE CORRESPONDENCE

Date April 29, 1971

Petitioner to comply with all applicable requirements of the Baltimore County Building Code and regulations, when plans are submitted. Also, see Parking Lots, "Section 409.10 F".

Jack Dietrich - Plans Review



April 28, 1971

COMMISSION MEMBERS

DAVID H. FISHER
CHAIRMAN OF COMMERCE
AND DIRECTOR OF HIGHWAYS

W. WALTER MOLEY, JR.
MARLEY P. BRINSFIELD
WALTER DUCHEN
LESLIE S. EVANS
ARTHUR M. PRICE, JR.
FRANK THOL P.
WILLIAM G. JACKSON

WALTER E. WOODFORD, JR.
CHIEF ENGINEER
DEPUTY CHIEF ENGINEER

PLANNING & SAFETY
HUGH G. DOWNS
ENGINEERING DEVELOPMENT
LESLIE E. MCCALL

April 28, 1971

Mr. Edw. A. Hardesty
Zoning Commissioner
County Office Bldg.
Towson, Maryland 21204

Re: ITEM 6
A.Z.C. Meeting 4/21/71
Owner: Irvin C. Tillman
Location: N/S Kenilworth Dr.
750' W. of West Road
Present Zoning: M.L.W.
Proposed Zoning: Reclass to B.M.
District: 9th section: Central
No. Acres: 8.43
Baltimore Beltway

Dear Mr. Hardesty:

The subject plan indicates that there should be no adverse effects to the State Highway.

Jery truly yours,
Charles Lee, Chief
Development Engineering Section
John E. Meyers
by: John E. Meyers
Asst. Development Engineer

CL:JEN:bk

**PETITION FOR
RECLASSIFICATION
IN DISTRICT
CENTRAL SEC. 30**
200 S.W. From M.L.N. to
B.N. Zone.
LOCATION: North side of
Hwy. 100, 1/2 mile East, corner of
1st St. West Road.
**DATE & TIME: FRIDAY,
SEPTEMBER 17th, 1971 at 11:00**

[illegible]

OFFICE OF

THE OWSON TIMES

IN MD 21204 August 30, 1971

I hereby CERTIFY, that the annexed advertisement of
The Zoning Commissioner of Baltimore
was inserted in THE TOWSON TIMES, a weekly newspaper published
in Baltimore County, Maryland, once a week for One ~~SIXTEEN~~
weeks before the 30th day of Aug., 1971 that is to say, the same
was inserted in the issues of August 26, 1971.

STROMBERG PUBLICATIONS, inc.

By Ruth Morgan

PETITION FOR RECLASSIFICATION
9th DISTRICT—CENTRAL SECTION

[illegible]

TOWSON, MD, August 26, 1971

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., on one time successive weeks before the 17th day of September, 1971, the first publication appearing on the 26th day of August, 1971.

THE JEFFERSONIAN,

Manager

Cost of Advertisement, \$.....

OFFICE OF

THE ROWSON TIMES

THIS IS TO CERTIFY, that the annexed advertisement of
The Zoning Commissioner of Baltimore
 was inserted in THE TOWSON TIMES, a weekly newspaper published
 in Baltimore County, Maryland, once a week for **ONE** ~~SIXTEEN~~
 week before the **30th** day of **Aug.**, 1971 that is to say, the same
 was inserted in the issue of **August 30, 1971.**

STROMBERG PUBLICATIONS, Inc.

By Ruth Morgan

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District 78
 Posted for Agnes
 Petitioner Simon C. Johnson
 Location of property 3 1/2 Homelands Drive 750 ft. from Hart Road
 Location of Signs 3 1/2 Homelands Drive 325 ft. E. of Vol. 1
 Remarks:
 Posted by Charles F. Cook
 Date of return Jan 23 1972

PETITION MAPPING PROGRESS SHEET										
FUNCTION	Wall Map		Original		Duplicate		Tracing		200 Sheet	
	date	by	date	by	date	by	date	by	date	
Descriptions checked and outline plotted on map										
Petition number added to outline										
Denied										
Granted by ZC, BA, CC, CA										

Reviewed by: *[Signature]*

Previous case: _____

Revised Plans:
Change in outline or description _____ Yes
_____ No

Map # _____

\$ 6.50

TELEPHONE
494-2413

INVOICE

**BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE**

Revenue Division
COURT HOUSE
TOWSON, MARYLAND 21204

844

DATE 9/22/72

To: **County Board of Appeals
(Zoning)**

**E. Harrison Stone, Esq.
102 W. Pennsylvania Avenue
Towson, Maryland 21204**

QUANTITY	DEBIT TO ACCOUNT NO. <u>01.712</u>	REMITTANCE TO BALTIMORE COUNTY, MARYLAND DETACH ALONG PERFORATION AND KEEP THIS PORTION FOR YOUR RECORDS	TOTAL AMOUNT \$17.00 COST
1	Cost of certified documents in Case No. 72-63-R	N/S Xenithworth Drive 750' from West Road 9th District, Central Sector Irvin C. Tillman Felt/Gomer	\$17.00 -

4

**IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE, REVENUE DIVISION
COURTHOUSE, TOWSON, MARYLAND 21204**

TELEPHONE 494-2413	INVOICE BALTIMORE COUNTY, MARYLAND OFFICE OF FINANCE Revenue Division COURT HOUSE TOWSON, MARYLAND 21204	No. 84958 DATE 9/17/71
TO: W. Lee Thomas, Esq., 192 West Pennsylvania Avenue Towson, Maryland 21204	BILLED BY: Zoning Office, 115 County Office Bldg., Towson, Maryland 21204	
REPORT TO ACCOUNT NO. 01-562	RETURN THIS PORTION WITH YOUR REMITTANCE DETACH ALONG PERFORATION AND KEEP THIS PORTION FOR YOUR RECORDS	TOTAL AMOUNT \$18.00
QUANTITY	COST	
1	Cost of posting and advertising property of Irvin C. Tillman No. 74-63-R	\$18.00
4		

Hessars, W. Lee Thomas
6 W. Harrison Street
102 W. Pennsylvania Avenue
Towson, Md. 21204

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Your Petition has been received and accepted for filing ;
this _____ 3rd day of August 1978

Irvin C. Tillman
~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~
~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~
Edward E. Hendricks, Jr.
Zoning Commissioner

Irvin C. Tillman

Petitioner: Hessars, W. Lee Thomas &
W. Harrison Stone

Petitioner's Attorney _____ Reviewed by *William L Myers*
Chairman of
Advisory Committee

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

DATE Jan. 12, 1972 ACCOUNT 01-662

AMOUNT \$70.00

WHITE - CASHIER	DISTRIBUTION FIRM - AGENCY	YELLOW - CUSTOMER
No. 72-67-C - Arrears cost - Property of Irvin G. Tillman, N/S Kenilworth Drive 759' from West 90th - E. Harrison Stone, Esq.		

R-041

WITNESSETH, that in consideration of the sum of Five Dollars (\$5.00), and other good and valuable considerations, the receipt whereof is hereby acknowledged, the said party of the first part does grant and convey unto the said BALTIMORE COUNTY, MARYLAND, a municipal corporation, its successors and assigns, in fee simple, all that lot and parcel of ground situate, lying and being in the Ninth Election District of Baltimore County, State of Maryland, and described as follows, that is to say:

Lot 2, a parcel of land of irregular shape and containing of 3.5 acres, more or less, as shown shown on the Baltimore County Bureau of Land Acquisition map of 1914, which is attached hereto and made a part hereof.

That part of the property which by deed dated October 23, 1906, and recorded with the land records of Baltimore County in Liber 1110, New York, 1906, was conveyed to the Institute of Mission, at Baltimore, Maryland, and to the Institute of Mission, at Baltimore, Maryland.

And with the buildings and improvements thereon erected, now existing, and all and every the rights, privileges, ways, waters, public, and appurtenances and advantages to the same hereinafter in anywise appurtenant.

And the said party of the first part hereby covenants and warrants that the same shall and lawfully be conveyed, together with the rights, privileges, appurtenances and advantages to the same hereinafter in anywise appurtenant unto and to the proper use and benefit of the said Baltimore County, Maryland, a municipal corporation, its successors and assigns, in fee simple.

And the said party of the first part hereby covenants that it has not and it covenants to do no act, matter or thing whatsoever, nor consent the property hereby conveyed; that it will warrant specially property conveyed; and that it will execute such further assurances of the same as may be required.

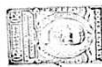
TRANSFER TAX NOT REQUIRED

Notary Public

Notary Public

Notary Public

Notary Public



RECORDING		NOTES	
ACQUIRED FROM	RECORDED	1	2
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NOTE: 1. VERTICAL LETTERING DENOTES EXISTING PROPERTY. 2. SLANT LETTERING DENOTES PROPOSED CHANGE TO PROPERTY. 3. ALL AREAS FOUND BY PLANNING, UNLESS OTHERWISE NOTED.

BALTO. BELTWAY CO.

RECREATION SITE AREA 2.5 AC.

INSTITUTE OF MISSION, BALTIMORE CITY

PROPOSED KENILWORTH DR.

NOTE: SEE MAPS ON BALTO. CO. 1

BALTIMORE COUNTY	DEPARTMENT OF PUBLIC WORKS	BUREAU OF LAND ACQUISITION
PLAN TO ACCOMPANY RIGHT-OF-WAY MAP FOR BALTO. CO. 1		
BUREAU OF LAND ACQUISITION		
APPROVED: <i>W. P. Mason</i>	Mill to: <i>11-11-1915</i>	Receipt No. <i>8</i>
DATE: <i>11-11-1915</i>	CONSTRUCTION PLAN NO.	
DIVISION OF DRAFTING	THIS PLAN IS COMPILED FROM DEEDS AND SURVEYS. THE CORNERS AND DISTANCES SHOWN ON PROPERTIES ADJOINING THE PROPOSED RIGHT-OF-WAY ARE THOSE CONTAINED IN THE DEED REFERRED TO BE LINES AND CORNERS SHOWN AND NOT NECESSARILY REFER TO THE SECTION SHOWN HEREON NOR IS THE LINES A CURRENT SURVEY OF LAND PROPERTIES ONLY DO NOT.	SCALE: 1" = 100'
APPROVED: <i>John F. Ford</i>		AREA TO BE ACQUIRED
DATE: <i>11-11-1915</i>		SLOPE AREA
		EXISTING
		COUNTY R.M.
		DISTRICT: <i>2</i>
		MAP NO. <i>11-11-1915</i>

