

PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, P. T. Lemmon, 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 re-classified, pursuant to the Zoning Law of Baltimore County, from an D-5.1 (or R-6) zone to an B-1 and R-16 (or F.A.) zone; for the following reasons:

Error in Existing Zoning (See attached Supporting Statement)

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 re-classification 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.

14 April 1971

P. T. Lemmon

Contract purchaser

Legal Owner

Address

Address: 1029 Saint Paul Street

Baltimore, Maryland 21202

Petitioner's Attorney

Proteant's Attorney

Address

800 Tower Building

ORDERED By The Zoning Commissioner of Baltimore County, this 17th 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 Commission of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 30th day of September, 1971, at 10:00 o'clock.

1971 at 10:00 o'clock

John H. McGuire

Zoning Commissioner of Baltimore County.

(over)

The Circuit Court for Baltimore County

THIRD JUDICIAL CIRCUIT OF MARYLAND

CHAMBERS OF
JOHN N. MADJURE
JUDGE

TOWSON, MARYLAND 21204

Anne Kay Kramer, Esq.
Wiltonwood Road
Stevenson, Maryland 21153

RE: Kearney et al. vs. Lemmon et al.
Miscellaneous No. 5054

Dear Mrs. Kramer:

Enclosed herewith is a copy of my opinion in the above entitled matter.

Very truly yours,

John H. McGuire

JHM/eg

Enclosure

c.c. Marvin I. Singer, Esq.
County Board of Appeals
Eric DiNenna, Zoning Commissioner
Eugene Creed, Administrative Officer
of Courts

MANDATE

Court of Special Appeals of Maryland

No. 672, September Term, 1974

John L. Kearney et al

Appeal from the Circuit Court for Baltimore County.

Filed: October 1, 1974

March 24, 1975 - Per Curiam filed. Judgment reversed and case remanded for the entry of a judgment in conformity with this opinion. Costs to be paid by appellee.

April 22, 1975 - Motion for Reargument filed by appellee in proper person.

April 24, 1975: Motion for Reargument denied.

STATEMENT OF COSTS:

In Circuit Court:

Record \$30.00
Stenographer's Costs

In Court of Special Appeals:

Filing Record on Appeal \$ 20.00
Printing Brief for Appellant \$236.00
Reply Brief
Portion of Record Extract - Appellant
Appearance Fee - Appellant

Printing Brief for Appellee \$655.46
Portion of Record Extract - Appellee
Appearance Fee - Appellee

STATE OF MARYLAND, ss:

I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Court of Special Appeals.

In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Special Appeals, this twenty-fifth day of April A. D. 1974

Clerk of the Court of Special Appeals of Maryland.

Costs shown on this Mandate are to be settled between counsel and NOT THROUGH THIS OFFICE

CLERK OFFICE
SULLIVAN, WISLAND & SINGER
TEN EAST EASTER
BALTIMORE, MARYLAND 21202

June 19, 1975

Mrs. Edith T. Eisenhart
Administrative Secretary
County Board of Appeals
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Lemmon vs. Kearney

Dear Mrs. Eisenhart:

In accordance with our telephone conversation today, I enclose a copy of the Petition for Writ of Certiorari which has been filed on behalf of Mr. Lemmon in the Court of Appeals, together with a copy of the acknowledgment received from the Court.

Should you need any further information, please do not hesitate to contact me.

Very truly yours,

Marvin I. Singer

MIS/ecg

Enclosure

cc: Mr. P. T. Lemmon

P. T. LEMMON

v.

JOHN L. KEARNEY et al.

IN THE

Court of Appeals of Maryland

Miscellaneous Docket No. 122
September Term, 1975

(No. 672, September Term, 1974
Court of Special Appeals)

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the said petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest. Judge O'Donnell did not participate in the consideration of this petition.

/s/ Robert C. Murphy

Chief Judge

FILED

JUN 27 1975

JAMES A. PETERSON, CLERK
COURT OF APPEALS OF MARYLAND
200 N. E. ST.

Date: June 25, 1975.

Court of Appeals of Maryland MISCELLANEOUS DOCKET

No. 122, September Term, 1975

P. T. Lemmon

v.

John L. Kearney et al.

Marvin I. Singer

Attorney for petitioner

Anne Kay Kramer

Attorney for respondent

Date: May 20, 1975

STATE OF MARYLAND, ss:

Receipt is hereby acknowledged of a petition for writ of certiorari filed in the above entitled case.

You will be notified when action is taken by the Court.

JAMES A. PETERSON, CLERK

Clerk
Court of Appeals of Maryland

RE: Petition for Reclassification from D-5.1 to B-1 and D-16 zones 84 corner Cedar Avenue and Salford Road 13th District, Northeastern Sector
P.T. Lemmon, Petitioner
BALTIMORE OPEN Y
Misc. Docket
File

COURT FOR APPEAL

Please note an appeal to the Circuit Court of Baltimore County, on behalf of Appellants John L. and Carolyn J. Kearney, Charles E. and Ruby Petree, and William H. DeBoy, from an Order of the County Board of Appeals, dated May 3, 1973, in which the subject tract was reclassified from D-5.1 to D-16.

Anne Kay Kramer
June 27 1975
Counsel for Appellants
Wiltonwood Road
Stevenson, Maryland 21153
436-2069

I HEREBY CERTIFY that on this 25th day of June, 1975, a copy of the above Order for Appeal was forwarded to the Board of Appeals of Baltimore County, Maryland, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland 21204.

Anne Kay Kramer
June 27 1975
Counsel for Appellants
Wiltonwood Road
Stevenson, Maryland 21153
436-2069

Rec'd 6/19/75
8:40pm

April 18, 1972

Marvin I. Singer, Esquire
One Charles Center
Baltimore, Maryland 21201

RE: Petition for Reclassification 84/corner of Cedar Avenue and Salford Road - 13th District P. T. Lemmon - Petitioner NO. 72-91-R (It- 30. 48)

Dear Mr. Singer:

I have this date passed my Order in the above captioned matter. Copy of said Order is attached.

Very truly yours,

Eric DiNenna
S. ERIC DI NENNA
Zoning Commissioner

SED/ari

Attachments

cc: Vincent L. Gloriosio, Esquire
Eighth Floor, INA Building
303 East Fayette Street
Baltimore, Maryland 21202

Mrs. Anne Kay Kramer
800 Tower Building
Baltimore, Maryland 21202

Mr. David Walker
7323 Prince George Road
Baltimore, Maryland 21207

Rec'd 8/19/74
11:00am

Rec'd 6-23-75
10:40AM

Rec'd 6-23-75
10:40AM

APR 13 1976

IN THE COURT OF APPEALS OF MARYLAND

P. T. LEMMON, *
Petitioner *
September Term, 1975
vs. *
No.
JOHN L. KEARNEY, et al *
Respondents *

PETITION FOR WRIT OF CERTIORARI

P. T. Lemmon, Petitioner, by his attorneys, Marvin I. Singer and Sullivan, Wiesand & Singer, respectfully petitions this Honorable Court for a Writ of Certiorari, pursuant to Maryland Rule 81(b) and Title 12, Section 12-201 of the Annotated Code of Maryland (Courts and Judicial Proceedings - 1974). Petitioner seeks the issuance of said Writ of Certiorari to the Court of Special Appeals of Maryland in the case entitled Kearney vs. Lemmon, No. 672, September Term, 1974 (per curiam, unreported opinion filed March 24, 1975*), in which the Mandate was filed on April 23, 1975. Petitioner avers that a review of this case is desirable and in the public interest as it involves an incorrect understanding of the province of the Board of Appeals upon review of a comprehensive rezoning, as well as the question of whether the proper standard was applied on judicial review in determining if the Board of Appeals was justified in finding error on the part of the County Council in its adoption of the comprehensive zoning map. In support thereof Petitioner respectfully states:

1. The Opinion of the Court of Special Appeals discloses a view of the function of the Baltimore County Board of

*Participating were Judges Morron, Gilbert and William J. O'Donnell, specially assigned.

that determination fairly debatable. The proposition is by now thoroughly established that where "a reasoning mind could reasonably have reached the result the agency reached upon a fair consideration of the fact picture painted by the entire record", Board v. Oak Hill Farms, 232 Md. 274, 283, 192 A.2d 767, 766, the Court's "only course is to affirm", Bonnie View Club v. Glass, 242 Md. 46, 52, 217 A.2d 647, 651.

The Opinion of the Court of Special Appeals is laced with speculation as to what that particular County Council knew or intended at the time of the adoption of the Comprehensive Zoning Map in March, 1971. It was stated that "the council's approval of the amended ordinance, with the apparent idea in mind of preserving the aesthetic quality of the Relay community, is a legitimate function of the Council so long as the aesthetic end bears some relationship to public health, safety and welfare" (emphasis supplied). However, at the same time the Court recognized the principle that "zoning legislation for solely aesthetic purposes is not within the police powers of the county" (emphasis in text), citing Mayor and City Council of Baltimore v. Mano Swartz, 268 Md. 79, 299 A.2d 828 (1973).

Further reference to the holding herein gives greater perspective to the burden of proof imposed by the Court of Special Appeals upon a petitioner for reclassification.

"... The record in the present case does not sufficiently support a conclusion that the Council, in enacting the amended comprehensive ordinance, after public hearings, did not consider the public health, safety or welfare particularly with respect to traffic and schools. ... We cannot say that the Council was unaware of the ongoing road construction program in the Relay area or, for that matter, the water and sewage construction, since to us it seems manifest that the Council of

Appeals, in considering the adoption of a comprehensive rezoning map by the County Council, that represents a sharp departure from the long established and well recognized procedure in seeking zoning changes, as well as an erroneous concept of the role generally of an administrative agency and judicial review of decisions made at that level.

The Opinion stated:

"It seems to us that we are dealing in this case with the Board's usurping the role of the County Council and establishing itself as a 'super' legislative body. As we read the voluminous testimony, it is readily apparent that there is no 'probative evidence' showing 'that the assumptions or premises relied upon by the Council at the time of the comprehensive rezoning were invalid'. Boyce v. Sembly, supra, nor is there sufficient showing that 'the Council failed to take into account then existing facts, or projects or trends that were reasonably foreseeable of fruition in the future'. Boyce v. Sembly, supra. In our view the Council had a right, in the exercise of its legislative prerogative, to reject, in whole or in part, the recommendation of the Planning Board, and that rejection does not, per se, mean that the Council was mistaken or in error. If, as here, a Board may accept the report of a Planning Board, which report had been previously rejected by the Council, and on the basis of that theretofore rejected report determine that the Council was in error, there seems to be little need within the framework of the law for the Council to enact any zoning legislation, except for the purpose of being a mere conduit to the Board of Appeals."

"The transcripts of both 'High Hill' and the instant case total 1,740 pages."

The "legislative prerogative" of the Council is not unfettered, and the standard by which its action is to be measured was restated by this Court in Ford v. Baltimore County, 268 Md. 172, 300 A.2d 204 (1973), wherein Judge Barnes stated that it was incumbent upon the Council to make its decision "in accordance with the evidence, and it is arbitrary and unlawful to make an essential finding without supporting evidence. This is

necessity would have appropriated some funds for such purposes." (Emphasis supplied.)

Legally sufficient evidence was presented to the Board on the items mentioned above, and a substantial basis of facts existed upon which that body could properly have concluded that error existed, in accordance with applicable law. Kirkman v. Montgomery County Council, 231 Md. 273, 242 A.2d 255, 257-258 (1968) and Eager v. Stone, 253 Md. 533, 253 A.2d 372, 377 (1969). Petitioner presented probative evidence regarding the adequacy of the road system, that his land lay between and was immediately adjacent to two new roads then under construction, Metropolitan Boulevard and Seldford Road. The latter was to extend northward to connect with the UMBC campus, and was acknowledged by Respondents' purported expert to be more than adequate to accommodate the "projected volume" if the zoning were granted. Interstate 95, recognized to be the major road on the East Coast, was opened early in 1971, prior to or near the time of the Council's action on the Map. This important artery is within sight of the subject tract, yet no suggestion was made that County funds were in any way involved in its construction.

Similarly, data was presented from official sources indicating the comparative pupil yields in the schools, leading the Board to conclude that "granting the petition would not create conditions that would tend to overload the schools."

The testimony of Respondents' witnesses before the County Council with respect to water and sewer service was conceded to be misleading; and Petitioner's evidence before the Board, though diametrically opposite in content, was uncontradicted. Before the Council the same engineer who testified

especially true in zoning cases. ... The constitutional limitations upon legislative enactments under the police power had earlier been delineated in Aspen Hill Venture v. Montgomery County Council, 265 Md. 303, 289 A.2d 303, 307 (1972), wherein it was held:

"However, the governmental power to interfere by zoning regulations with the general rights of the landowner by restricting the character of the use of his land is not unlimited, and such restriction cannot be imposed if it does not bear a substantial relation to the public health, safety, morals, or general welfare. Legislative bodies have no authority, under the guise of the police power, to impose unreasonable and unnecessary restrictions on the use of private property in pursuit of useful activities."

Article VI, Sec. 601 et seq of the Baltimore County Charter provides for the establishment, powers and functions of the County Board of Appeals, pursuant to the grant of express powers under Article 25A, Sec. 5 (U) - County Board of Appeals, Annotated Code of Maryland (1973 Replac. Vol.). That sub-section specifically calls for "decision by the board on petition by any interested person. ... on the basis of the record before the board ... under any law, ordinance, or regulation of, or subject to amendment or repeal by, the county council, as shall be specified ... by such local laws enacted under this sub-section: an application for a zoning variation or exception or amendment of a zoning ordinance map. ..."

Thus, it is clear that Petitioner was well within his rights in seeking to promptly establish the presence of error in the Southwestern Sector Map of the Comprehensive Zoning adopted by the County Council in March, 1971, as it applied to the tract of land owned by him. And it is equally clear that the Board of

before the Board told of the long-standing insufficiency of the water supply in the area, stating that "after ten years of complaints and pleas to the County, their only response to us at this time is that we get no improvements but, rather, a proposal through your new zoning maps that would increase the demands on an already meager water supply by about 40%." Six months after the Council's adoption of the map a new water main was opened, which extended from within Baltimore City and was several years under construction, thereby ending any shortage and providing service more than adequate for the proposed development of apartments if the instant rezoning were granted. No evidence of County involvement or appropriation of funds for this project was presented.

In like fashion the Council was advised of no sewer improvements, when in reality the Relay sewer was completed within 90 days of the Council's adoption of the Map, at a cost in excess of \$1,000,000. At that time it served only 230 dwellings, although actually designed for 2,015 dwelling units. Utilization of the sewer, after allowance for the increased density, would only bring it to 39% of its rated capacity.

The Court has effectually distorted what need be proven in order to satisfy the Board of Appeals that error existed, and to make that determination "fairly debatable". That view was stated in the following form, in the words of Boyce v. Sembly, Md. App. , 334 A.2d 137, 143 (March 7, 1975) and restated in the present case:

"It is presumed, as part of the presumption of validity accorded comprehensive zoning, that at the time of the adoption of the map the Council had before it and did, in fact, consider all of the

Appeals was not only acting within the scope of its "role" in the administrative process, but was properly fulfilling its duties under both State and County law with respect to the appeal noted by Respondents from the decision and order of the Zoning Commissioner that found error in the zoning assigned by the Comprehensive Map.

The Court of Special Appeals is wrong in stating that the Board merely accepted the report of the Planning Board, which had been previously rejected by the County Council, and "on the basis of that theretofore rejected report determine[d] that the Council was in error." The Board held extensive hearings and received evidence from numerous witnesses, whose testimony went quite beyond the limits of the Planning Board's report, although in substantial support of its recommendation. Some of Respondents' witnesses were also in agreement on material points.

The exact extent to which the Court was influenced by its finding that the Board acted improperly in "usurping the role of the County Council and establishing itself as a 'super' legislative body" is not readily apparent from the Opinion. Unmistakable however is the fact that such a view was a forceful influence in reversing the decision by the Circuit Court for Baltimore County, which had sustained the Board's finding of error.

2. A major consideration in this case is whether the proper standards of judicial review was exercised and whether there existed the strong evidence before the Board of Appeals necessary to sustain its finding of error in the Comprehensive Zoning Map, as applied to the property in question, and thus make

relevant facts and circumstances then existing. Thus, in order to establish error based upon a failure to take existing facts or events reasonably foreseeable of fruition into account, it is necessary not only to show the facts that existed at the time of the comprehensive zoning but also which, if any, of those facts were not actually considered by the Council. This evidentiary burden can be accomplished by showing that specific physical facts were not readily visible or discernible at the time of the comprehensive zoning, ... by adducing testimony on the part of those preparing the plan that then existing facts were not taken into account, ... or by producing evidence that the Council failed to make any provision to accommodate a project, trend or need which it, itself, recognized as existing at the time of the comprehensive zoning, ...

"Because facts occurring subsequent to a comprehensive zoning were not in existence at the time, and, therefore could not have been considered, there is no necessity to present evidence that such facts were not taken into account by the Council at the time of the comprehensive zoning. Thus, unless there is probative evidence to show that those were then existing facts which the Council, in fact, failed to take into account, or subsequently occurring events which the Council could not have taken into account, the presumption of validity accorded to comprehensive zoning is not overcome and the question of error is not 'fairly debatable.'" (Footnote omitted.) (Emphasis in Boyce v. Sembly.)

There now has been superimposed upon the rule requiring a strong showing of error the requirement of demonstrating not only "the facts that existed at the time of the comprehensive zoning but also which, if any, of those facts were not actually considered by the Council." Further, the language emphasized above expands to an unreasonable degree the proof necessary to establish error or mistake. The ability to prove that the County Council was simply wrong in its assignment of a zoning classification, even though it may have had all the facts before it and no matter how strong the evidence of error may be, now becomes meaningless. The same argument had previously been rejected by the Court of Special Appeals itself, in Quinn v. County

Commissioners of Kent County, 20 Md. App. 413, 316 A.2d 535, 543 (decided March 11, 1974), wherein Judge Manchine, after a comprehensive review of the law, stated:

"... This is a far, far different rule than appellant suggests namely, that an original zoning classification, however unwise, unwarranted, unreasonable and unjust it may be as applied to a particular area, is beyond the reach of legislative correction. We do not so read the Maryland decisions."

The example cited in Quinn was Overton v. County Commissioners, 225 Md. 212, 170 A.2d 172 (1961), in which the factual circumstances were, in several respects, similar to the present case. There, comprehensive zoning for rural residential purposes imposed in 1957 was reclassified by the District Council in 1959 for residential apartment use. The question was only whether the County Commissioners had made a mistake in the original classification of the property. This Court went on to state at page 219 of 225 Md., at page 176 of 170 A.2d:

"It is obvious in the instant case that there was ample evidence before the legislative body from which it could find mistake in the original or comprehensive zoning. The Council could have given weight to the testimony of the real estate experts that difficulties of terrain and drainage made the property unsuitable for detached dwellings and that low density apartments appeared to be the best feasible use. Kracker v. Weinberg, 1951, 197 Md. 339, 79 A.2d 387. The Council may have determined, from all the evidence before it, that the reclassification would bear a substantial relationship to the public health, safety and general welfare, and would be more in harmony with the comprehensive zoning plan than the original classification. Offutt v. Board of Zoning Appeals, 1954, 204 Md. 551, 105 A.2d 219."

The Opinion in Quinn followed the foregoing quotation with the very apt observation:

"It is, of course, instantly apparent that terrain and drainage difficulties applicable to that land necessarily were precisely the same in

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1959 as they had been in 1957. Nonetheless, reclassification was granted because the presumption of the correctness of original zoning had been overcome." (Emphasis in original.)

The result in Overton could not be achieved under the rule enunciated by the Court of Special Appeals in the present case.

The finding of error by the County Board of Appeals in the present proceedings was buttressed by recommendations of the Planning Staff and Planning Board, as well as an earlier similar finding by the Zoning Commissioner. Over 1700 pages of testimony and dozens of exhibits, including numerous photographs, maps and charts were adduced before the Board, as a result of which the Circuit Court found the conclusion of error to be "fairly debatable rather than unreasonable, arbitrary or capricious." In order for the comprehensive rezoning to enjoy the presumption of correctness, it must bear a substantial relationship to the public health, safety and general welfare. In the absence thereof, as is the case here, the presumption of validity is lacking. Montgomery County Council v. Leisner, 268 Md. 621, 303 A.2d 374, 375 (1973).

This Court has stressed the difference, on judicial review, between cases wherein the trial court had sustained the responsible zoning authority and those in which that body had been reversed, stating in Board of County Commissioners v. Veltzer, 239 Md. 144, 210 A.2d 505, 511 (1965):

"There is a marked difference between the changes which will justify a reclassification by the zoning authorities and those which impel one."

Furthermore, the Respondents, being the parties attacking the determination by the Board, have the burden of establishing that its holding was arbitrary or capricious, and not fairly debatable.

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Kirkman v. Montgomery County Council, 251 Md. 273, 247 A.2d 255, 257 (1968).

Moreover, this Court has held in the past that a report of the planning staff recommending approval of an application may alone be sufficient to make the issue fairly debatable. Strataskis v. Beauchamp, 208 Md. 643, 304 A.2d 244, 250-251 (1973) and Montgomery v. Board of County Commissioners, 263 Md. 1, 280 A.2d 901, 905 (1971). In this case, the Planning Board not only recommended increased density to the Council, but reaffirmed that position after further study, in its recommendation to the Zoning Commissioner subsequent to the Council's adoption of the Map.

Even by the standard applied by the Court of Special Appeals, its reversal of the decision herein was erroneous. In Rohde v. County Board of Appeals for Baltimore County, 234 Md. 259, 199 A.2d 216, 221 (1964) this Court held that a failure to provide apartment zoning in the face of a demonstrated need and demand for such accommodations would constitute error, stating:

"The County adopted a comprehensive zoning map in 1955 covering the 9th District in which the Urtel tract lies. This was a comprehensive rezoning which is entitled to the same presumption of correctness as an original comprehensive zoning. To warrant piecemeal rezoning, there must be a showing of error in the comprehensive rezoning when made or a subsequent change of conditions, or both. . . . The applicant produced considerable expert testimony to show that either as a result of lack of anticipation of trends of development in 1955 or as a result of changes in trend which have occurred since then, whether anticipated or not, the existing zoning was in error at the time of the hearing. The trend has been towards apartments and, particularly in areas close to the City of Baltimore, towards high rise apartments. The need and demand for such rental accommodations have increased greatly over the last several years, and the subject property is described as a prime site for apartment development, including high rise apartments. The testimony here is far more explicit and far more localized as to the need

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for such development than it was in Shadybrook Improvement Ass'n v. Melloy, 232 Md. 265, 192 A.2d 502. There was, as already noted, evidence to the effect that this apartment development would serve as a buffer zone to prevent the spread and encroachment of the highly commercialized area at the Taylor Avenue-Lock Raven Boulevard intersection into the residential areas where the protestants have their homes. It was also shown that the sewerage facilities in this area had been materially increased since the 1955 rezoning.

"On the above evidence we cannot say that the action of the Board was arbitrary or unreasonable, or that it involved spot zoning of the odious type. Huff v. Board of Zoning Appeals, supra. The matter was at least within the realm of the fairly debatable, and the action of the Board must, therefore, be upheld. [Citations omitted.] The situation here presented is the reverse of that in the Rense and Rense cases in that here the Board has approved the reclassification, but there it disapproved reclassification. In each case its action was fairly debatable and was therefore upheld. The distinction between the present case and Shadybrook turns upon whether there was or was not enough to bring the question of mistake or change within the realm of the fairly debatable. . . ."

At every level of study and review, the need for higher density residentially zoned land in this area was fully documented, created by the development of large employment centers in the nearby Baltimore-Washington corridor, the construction of the mammoth General Electric plant and related industry not too distant in Columbia, together with the mushrooming Baltimore County campus of the University of Maryland, a short distance to the north of the subject tract. Yet the County Council chose to disregard such important changes which had occurred or were readily foreseeable at the time of the Map's adoption, and made no provision to meet such a need and demand. Even Respondents' real estate witness felt the location was "ideal" for apartment development, and the location met the criteria established by the Baltimore County planners.

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In addition, the Report of the Regional Planning Council which was introduced into evidence established a strong and ever increasing trend toward apartment development in Baltimore County since 1965, achieving 80% of the total number of residential building permits issued. That trend had continued unabated up to the time of hearing before the Board, but had been ignored by the County Council.

In Johar Corp. v. Redners Forge Community Ass'n, 236 Md. 106, 202 A.2d 612 (1964), this Court pointed to testimony that the "County Commissioners erred in failing to take into account the need for additional apartments" in the area, for which the tract there in question was suitable. The decision concluded that the record was not "barren of substantial, supporting facts", that the Board's acceptance of expert testimony to that effect could not be reversed "in the absence of a showing that the acceptance of the opinion was arbitrary and capricious in a legal sense," and that consequently the question of error in the original zoning was fairly debatable.

Assuming arguendo, that the Council had before it all of the information which was necessary and pertinent, and that such information was accurate, the decision to deny D.R. 16 zoning and to perpetuate D.R. 5.5 zoning on the subject property was erroneous. In order to do so, it was required to ignore the vast industrial, commercial and educational development which had occurred in the area, thereby generating significant employment opportunities which would require housing. The startling changes in the area's road pattern were brought to the very doorstep of

1. D.R. 16 is a residential classification with a permitted density of 16 units to the acre, while D.R. 5.5 permits a density of 5 1/2 units to the acre.

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the Lemon tract, since the right-of-way for Metropolitan Boulevard formed its western boundary and Selford Road its eastern boundary. The recent expansion in the water supply system, as well as the construction of the Relay sewer, constituted immense improvements to the public facilities surrounding the tract. It must also be recognized that the capacity of the sewer represented a clear indication by other County agencies that further development in the area was anticipated and provided for, or else this million-dollar-plus facility would lay vastly under-utilized. Thus the over-adequacy of the facilities available to service this site was firmly established. Lastly, the physical characteristics of the tract itself, combined with its location, effectively precluded its development within the zoning assigned to it by the County Council. The testimony was clear and convincing that the cost of construction of single family homes on today's market would necessitate a sale price for such homes well beyond what the market in that area would support.

The rule enunciated in Norbeck Village Joint Venture v. Montgomery County Council, 254 Md. 59, 254 A.2d 700, 705 (1969) is especially appropos to the issue now under discussion.

"If the comprehensive zoning has a substantial relationship to the general welfare of the community in that it can fairly be taken as a reasonable effort to plan for the future within the framework of the County's economic and social life; it is not unconstitutional because under it some persons may suffer loss and others may be benefited."

* * * * *

"... For an individual property owner to escape the binding impact of a comprehensive rezoning he must show that the plan lacks the necessary relationship to the general public interest and welfare that is presumed. . . ." [Emphasis supplied]

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Petitioner earnestly contends that in the massive record produced before the Board, there exists more than ample evidence, fully documented, which demonstrates the lack of a reasonable effort by the County Council "to plan for the future within the framework of the County's economic and social life." The overwhelming weight of the evidence rendered the finding of error to be, at the very least, fairly debatable. The testimony was undisputed with respect to (1) the extent to which the reclassification would merely replace previous existing housing which had been taken for construction of the roads, (2) the basic misrepresentations made to the County Council at its public hearings on the Map, (3) the construction of major highways and the new access provided by the extension of Selford Road, (4) the introduction into the area of an expanded water supply system thereby alleviating long-standing problems, (5) the construction of a large sewer facility which development of the subject property under apartment zoning would still not affect to an appreciable level, (6) the physical characteristics of the land, and (7) the development of considerable employment centers in the area which would require a large increase of housing for those employees and their families, all of which formed a foundation of substantial facts more than adequate to underpin the finding of error by the County Board of Appeals, and its affirmation by the Circuit Court.

Upon the foregoing authorities and for the reasons stated herein, Petitioner respectfully urges that this Court:

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grant a writ of certiorari to the Court of Special Appeals.

Respectfully submitted,

/s/
MARVIN L. SINGER

/s/
SULLIVAN, WISBAND & SINGER
10 East Eager Street
Baltimore, Maryland 21202
752-1122
Attorneys for Petitioner

I HEREBY CERTIFY that on this 19th day of May, 1975, a copy of the foregoing petition was mailed to Anne Kay Kramer, Esq., Stevenson, Maryland 21153, attorney for Respondents.

/s/
MARVIN L. SINGER

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IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 672

September Term, 1974

72-91-R

JOHN L. KEARNEY, et al.

v.

P. T. LEMMON

Horton,
Gilbert,
O'Donnell, William J.
(specially assigned)
Jr.

Per Curiam

Filed: March 24, 1975

one acre D.R. 5.5, "as a buffer strip", and that the remaining eight acres be zoned as D.R. 16.⁶ A number of residents of the community protested the recommendation of the Planning Board. One county councilman proposed an alternate zoning which the Council obviously adopted. Thereafter, within a matter of a few weeks, an application was filed with the County Zoning Commissioner. The Planning Board submitted a proposal that reached the exact conclusions that it had previously submitted to the Council. The report is significant because it contains the basis for the original recommendation to the Council, which, as we have stated, was rejected. The Planning Board said:

"During the preparation of new zoning maps, the Planning Board, studying alternative development proposals for this property and vicinity, determined a need for high density residentially zoned land to provide for the growing housing needs of this potential high employment area. These potentials are largely attributable to the growth of the University of Maryland - Catonsville Community College complex to the north, the Baltimore-Washington Industrial corridor to the south, and the impetus for the development of new industrial complexes along the recently opened section of Interstate 95 linking the Baltimore and Capital Beltways.

In addition, it was felt that a portion of this property would have been an excellent place for a neighborhood shopping center as defined in the 'Neighborhood Develop-

⁶ This case is one of a series of assaults brought upon the comprehensive zoning plan. See *Trainer v. Lipchin*, 269 Md. 667, n. 1, 303 A.2d 471 (1973).

This marathon zoning case required fourteen hearing days before the Baltimore County Board of Appeals.¹ At the conclusion of the matter the Board determined that the County Council had made a mistake in the adoption of its comprehensive rezoning in March, 1971, insofar as the zoning pertained to the instant property. The Board reversed that part of the ruling of the County Zoning Commissioner that had granted rezoning of a portion of the property from D.R. 5.5 (Residential dwelling 5.5 per acre) to B.L. (Business Local), but upheld the Commissioner with respect to the increase in density from D.R. 5.5 to D.R. 16 (sixteen dwellings per acre). The Board, by its order, applied the D.R. 16 zoning to the entire tract of 13.06 acres. Consequently, the D.R. 16 zoning included

¹ Actually the fourteen days of hearing concerned two different, but intervenient appeals. The first eight days of hearing were devoted to a tract of land designated as "High Hill". The Board approved rezoning of "High Hill" from D.R. 5.5 to D.R. 16. An appeal was taken to the Circuit Court, where the matter was dismissed for want of prosecution. We affirmed the dismissal in *Jacobson v. High Hill Realty, Inc.*, 22 Md. App. 115, 321 A.2d 838 (1974).

² There is testimony of the appellee's desire to erect apartments on his property. While we were told on oral argument that apartments could also be erected on D.R. 5.5, patently far fewer apartments could be built.

³ The vote of the Board was two to one. A dissent was filed in which the dissenter observed no mistake on the part of the County Council.

ment Model." Therefore, on November 24, 1970, the Planning Board recommended 4 acres of B.L. zoning, located between proposed Relay Road and Selford Road, north of Cedar Avenue; 1 acre of D.R. 5.5 zoning, as a buffer strip along the northwest side of Cedar Avenue between proposed Relay Road and Selford Road; and D.R. 16 zoning for the remainder of the tract (approximately 8 acres). However, on March 24, 1971, the County Council adopted D.R. 5.5 zoning for the entire property.

Since receiving this request, the development potentials of this property and this vicinity have been reexamined; after careful consideration of Council's decision, of programmed facilities in the recently adopted Capital Budget and 5-Year Capital Program and of public facilities currently under construction, the Planning Board re-affirms its original recommendations."

When the appellee testified before the Board he bemoaned the fact that he was only allowed a five minute presentation before the Council. He said, "The Council did not take into account, as any engineer studying it, and the planners studying it, the individual characteristics of the tract, and I mean the physical characteristics in [sic] again, what they were when I purchased the tract." A question was posed to appellee by a member of the Board suggesting that, at the time of the adoption of D.R. 5.5 for the subject tract, that the Council did not "know about this location, the new highway, the interchange within a mile, and didn't know the need for apartments . . . and if they did know, they paid no attention to them. Is that your theory?" The appellee responded, "Yes, [they held] a plebescite. . . ." He was then asked by his attorney, "You believe there was error on the part of the County Council?"

that portion upon which the applicant had sought B.L. zoning. The protestants, the present appellants, John L. Kearney, et al., entered a timely appeal to the Circuit Court for Baltimore County.

The applicant-appellee did not appeal from the refusal by the Board to grant appellee's requested B.L. zoning. The hearing judge observed that the appellee, "adhered to that ancient Chinese expression that a 'bird in hand is worth two in bush.'"⁵ The Circuit Court affirmed the Board on the ground that the voluminous evidence before that administrative body was "fairly debatable", in that the evidence was such that the Board could have gone either way in its decision. The court held that the Board's action thereon was not "unreasonable, arbitrary or capricious." In so ruling the court misinterpreted the duty of an applicant to demonstrate by strong evidence that there was an error or mistake in the comprehensive rezoning.

This Court recently endeavored to allay the confusion that permeates zoning cases involving the "error-mistake rule." Judge Davidson, speaking for the Court in *Bovee v.*

⁴ In addition to Mr. Kearney, the appellants include Carolyn J. Kearney, Charles E. and Ruby Petree and William M. DeBoy.

⁵ While the expression may be of "ancient Chinese" origin, the concept, nevertheless, seems to have first appeared in the writing of Plutarch (A.D. 46-120) *Moralia of Gracchus*, "he is a fool who leaves things close at hand to follow what is out of reach." The adage was changed in 1546 by John Heywood in *Proverbs*, pt. 1, ch. 11; modified in 1590 by Thomas Lodge in *Wendell*, and, apparently for the first time, reached its present form in 1605 when Cervantes, in *Don Quixote*, pt. 1, bk. IV, ch. 4, penned, "A bird in hand is worth two in the bush."

To this interrogatory appellee replied:

"Gross error, but also they erred, and I will use the word misrepresentation. That is a word that is less than honestly blunt. The testimony before the County Council, as to the lack of water, etc., and that misleading testimony was revealed by our own experts, and was conceded by the very person who testified wrongly, in my opinion, before the County Council, and misled then to believe that Relay was a God-forsaken neck of the woods without any utility or, when right at the time of adoption of the map, and the Council had to know it, they were spending over \$1 million for a sewer system, and there was a water system, the valve was turned on." (Emphasis supplied)."

The Court of Appeals in *Trainer v. Lipchin*, *supra*, n.6, discussed a situation similar to that presently before us. Stating the test for determining error in comprehensive zoning, Judge Levine, speaking for the Court, relied heavily upon *Stratakis v. Beauchamp*, 268 Md. 643, 304 A.2d 244 (1973) wherein the Court said at 652-53:

"While, in recent years, we have had occasion to circumscribe a number of important principles applicable to the law of zoning, perhaps none is more rudimentary than the strong presumption of the correctness of original zoning and of comprehensive rezoning. To sustain a piecemeal change in circumstances such as those present here, strong evidence of mistake in the original zoning or comprehensive rezoning or evidence

⁷ It is difficult to fathom how the Council was misled by the protestants' testimony if the Council knew it was spending "over \$1 million" for a sewer and water system in the area.

Semly, No. 157, September Term, 1974, filed March 7, 1975, said:

" . . . [T]he presumption of validity accorded to a comprehensive zoning is overcome and error or mistake is established when there is probative evidence to show that the assumptions or premises relied upon by the Council at the time of the comprehensive rezoning were invalid. Error can be established by showing the Council failed to take into account then existing facts, or projects or trends which were reasonably foreseeable of fruition in the future, so that the Council's action was premised initially on a misapprehension."

The sole issue raised by this appeal is whether the Council erred in its designation of the appellee's land as D.R. 5.5, when it adopted the comprehensive rezoning of March 24, 1971. Bearing in mind what we said in *Bovee*, *supra*, we shall now proceed with a discussion of the question under consideration.

It is clear from the record that the subject property is located in the area known as "Relay." The appellee's unimproved tract is bounded on the north by Frariss Avenue, on the east by Selford Avenue, on the south by Cedar Avenue and on the west by Metropolitan Boulevard. The appellee's land and that of High Hill Realty, Inc., *see* n.1, *supra*, share a common boundary on Cedar Avenue. The Council, when it was considering the comprehensive rezoning, held public hearings thereon.

The County Planning Board recommended to the Council that four acres of appellee's property be zoned B.L.,

of substantial change in the character of the neighborhood must be produced, *Mayor and Council of Rockville v. Hanley*, 208 Md. 409, 332 A.2d 43 (1973); *Miller v. Prince George's Co.*, 264 Md. 410, 412, 286 A.2d 772 (1972); *Cranwell v. Baltimore Aviation*, 237 Md. 712, 711, 267 A.2d 838 (1970). Since, as we have also said, this burden is onerous, *Cabin John Lda. v. Montgomery Co.*, 259 Md. 661, 277 A.2d 177 (1970); *Cranwell v. Baltimore Aviation*, *supra*; *Wells v. Piermont*, 253 Md. 354, 253 A.2d 749 (1969), this task confronting appellants, whose application followed the comprehensive rezoning by merely four months, is manifestly a difficult one."

In the case presently before us there was evidence presented to the Board that the water and sewage problems, about which the Council had been told, were alleviated within a short time after the passage of the subject ordinance. There was testimony before the Board that the Council did not consider the industrial parks located within a thirty mile area, nor the proximity to appellee's land of the University of Maryland, Baltimore County Campus, or Catonsville Community College, nor the resultant desire and need for apartments in the area, nor the ready access of suitable roads for transportation purposes, nor that the property of the appellee was best suited for increased density in the light of its being economically infeasible to construct single cottage dwellings or limit apartment construction to 5.5 per acre.

Although the original report of the Planning Board to the Council is not contained within the record, we glean from that body's above-quoted report to the County Board of Appeals

that many of the factors that the appellee claims were not known to the Council were, in fact, contained in the report. While it is true that the opponents of the increased-density complained to the Council concerning the lack of water pressure and sewage, which condition was soon thereafter corrected, the relieving of that problem, in our view, is not sufficient to assert successfully that the Council made a mistake in adopting the amended ordinance.

It seems to us that we are dealing in this case with the Board's usurping the role of the County Council and establishing itself as a "super" legislative body. As we read the voluminous testimony, it is readily apparent that there is no "probative evidence" showing "that the assumptions or premises relied upon by the Council at the time of the comprehensive rezoning were invalid." *Boyce v. Sembly*, *supra*, nor is there sufficient showing that "the Council failed to take into account then existing facts, or projects or trends that were reasonably foreseeable of fruition in the future." *Boyce v. Sembly*, *supra*. In our view the Council had a right, in the exercise of its legislative prerogative, to reject, in whole or in part, the recommendation of the Planning Board, and that rejection does not, *per se*, mean that the Council was mistaken or in error. If, as here, a Board may accept the report of a Planning Board, which report had been previously

8 The transcripts of both "High Hill" and the instant case total 1,740 pages.

PETITION FOR RECLASSIFICATION * IN THE
FROM D.R. 5.5 to B.L. AND D.R. 16 ZONES * CIRCUIT COURT
SW CORNER CEDAR AVENUE AND SELFORD ROAD * FOR
15th DISTRICT, SOUTHWESTERN SECTOR * BALTIMORE COUNTY
P.T. LENOIR, PETITIONER * Misc. Docket 9
JOHN L. AND CAROLYN J. KEARNEY * Folio 304
CHARLES E. AND RUDY PETER and *
WILLIAM H. DEBOY * Case No. 5054
PROTESTANTS * CASE NO. 72-91-R

MEMORANDUM OPINION
AND ORDER OF COURT

This appeal comes to us following a decision by the County Board of Appeals wherein they reversed in part and affirmed in part the decision of the Zoning Commissioner of Baltimore County denying the B.L. zoning of 7.14 acres of land and granting the D.R. 16 zoning for 5.92 acres. They, therefore, granted rezoning of the entire tract to D.R. 16 giving the Petitioner 13.06 acres of D.R. 16. The subject property, bordered on the west by Metropolitan Boulevard, to the north by Francis Avenue, to the east by Selford Road and the Relay Elementary School, and to the south by Cedar Avenue, is located in the 15th District, Southwestern Sector, of Baltimore County. The property is approximately twenty-five feet (25') below the grade of Metropolitan Boulevard and is also below the grade of Cedar Avenue.

This appeal is silent as to the reversal by the County Board of Appeals, of the Zoning Commissioner, in denying B.L. zoning. The Appellants in this matter are the Protestants, as the Petitioner obviously recognized the truth and wisdom of the Appeals Board, and took his D.R. 16 zoning without complaint as to his loss of B.L. zoning. He adhered to that ancient Chinese expression that a "bird in hand is worth two in bush."

rejected by the Council, and on the basis of that theretofore rejected report determining that the Council was in error, there seems to be little need within the framework of the law for the Council to enact any zoning legislation, except for the purpose of being a mere conduit to the Board of Appeals.

The Council's approval of the amended ordinance, with the apparent idea in mind of preserving the aesthetic quality of the Relay community, is a legitimate function of the Council so long as the aesthetic end bears some relationship to public health, safety and welfare. I R. Anderson, *American Law of Zoning* § 7.23 (1968). The record in the present case does not sufficiently support a conclusion that the Council, in enacting the amended comprehensive ordinance, after public hearings, did not consider the public health, safety or welfare particularly with respect to traffic and schools. Of course, it has been held that zoning legislation for purely aesthetic purposes is not within the police powers of the county. *Mayor and City Council of Baltimore v. Mano Swartz*, 268 Md. 79, 299 A.2d 828 (1973). We cannot say that the Council was unaware of the ongoing road construction program in the Relay area or, for that matter, the water and sewage construction, since to us it seems manifest that the Council of necessity would have appropriated some funds for such purposes.

In sum, we conclude that the appellee did not present the strong evidence of mistake required by *Stratakis v. Beauchamp*,

Strikingly similar to this matter is that of a tract of land immediately south of the subject tract, known as the High Hill tract. In the latter case, the Zoning Commissioner granted a reclassification from D.R. 5.5 to D.R. 16. The County Board of Appeals upheld this reclassification except "at a buffer strip of 150' deep from the center-line of Clarke Boulevard, from Cedar Avenue to the B.&O. Railroad right-of-way shall remain D.R. 5.5." This decision was appealed to the Circuit Court, by the Protestants, however, it was dismissed by Judge John E. Raine, Jr., for failure to prosecute and his decision was upheld by the Court of Special Appeals.

While the Petitioner indicates that substantial change has occurred in the area thereby mandating the necessity for apartments, error in the zoning maps adopted March 24, 1971, is extremely central to this matter.

The Court of Appeals has reiterated many times the principles to be followed by this Court in reviewing a zoning matter from the County Board of Appeals. Judge Singley, in *G.C. Holdemann vs. Board of County Commissioners of Howard County, et al.*, 234 Md. 298 (1969) said:

"We have often repeated the principles here applicable; 'We have no power to reverse, and may not substitute our judgment for that kind of expertise of the zoning authority.' *Kirkman vs. Montgomery County Council*, 251 Md. 273, 247 A.2d 255 (1969); *Boyle vs. Hospital for Consumptives*, 246 Md. 197, 227 A.2d 740 (1967); *Board of County Commissioners for Prince George's County vs. Prince George's County*, 242 Md. 315, 318 A.2d 923 (1969). It has long been settled that the zoning authorities determination is correct if there were such legally sufficient evidence as would make the question fairly debatable. *Park-Road Min. Concrete Corp. vs. Smith*, 251 Md. 1, 246 A.2d 180 (1967). Further, the one who attacks the determination made by the authority must show that it was arbitrary, unreasonable, or capricious. *Kirkman vs. Montgomery County Council*, *supra*; *Appelans Inc. vs. Board of County Commissioners of Baltimore*, *supra*; *Boyle vs. Hospital for Consumptives*, *supra*; *Boyle vs. Hospital for Consumptives*, 250 Md. 241, 190 A.2d 808 (1967). The Appellants' proof falls short of establishing that the Board abused the discretion vested in it by law."

Trainer v. Linchin and Boyce v. Sembly, all *supra*. We said in *Boyce*:

"It is presumed, as part of the presumption of validity accorded comprehensive zoning, that at the time of the adoption of the map the Council had before it and did, in fact, consider all of the relevant facts and circumstances then existing. Thus, in order to establish error based upon a failure to take existing facts or events reasonably foreseeable of fruition into account, it is necessary not only to show the facts that existed at the time of the comprehensive zoning but also which, if any, of those facts were not actually considered by the Council. This evidentiary burden can be accomplished by showing that specific physical facts were not readily visible or discernible at the time of the comprehensive zoning, *Beane View Club (v. Glass)*, 242 Md. 46, 217 A.2d 677 (1966); (minehaft and subsurface rock formation); by adducing testimony on the part of those preparing the plan that then existing facts were not taken into account, *Overton (v. County Commissioners)*, 225 Md. 212, 170 A.2d 172 (1961); (topography); or by producing evidence that the Council failed to take any provision to accommodate a project, trend or need which it, itself, recognized as existing at the time of the comprehensive zoning, *Johns Corn. (v. Rodgers Forge Community Ass'n)*, 236 Md. 106, 208 A.2d 612 (1964); (need for apartments). See *Rehbe (v. County Board of Appeals)*, 234 Md. 259, 199 A.2d 216 (1964)."

Because facts occurring subsequent to a comprehensive zoning were not in existence at the time, and therefore could not have been considered, there is no necessity to present evidence that such facts were not taken into account by the Council at the time of the comprehensive zoning. Thus, unless there is probative evidence to show that there were then existing facts which the Council, in fact, failed to take

In a recent case, *Trainer et al. vs. Linchin et al.*, 249 Md. 667, the Court of Appeals, while not specifically quoting the *Holdemann* case, *supra*, reaffirmed, citing *Stratakis vs. Beauchamp*, 268 Md. 543. The Court noted many cases in applying the test that:

"... where a legislative body, or a board of county officials, pursuant to authority conferred upon it, has granted a rezoning of property, the question on judicial review is whether or not such action is arbitrary and discriminatory or fairly debatable. *Montgomery County vs. Pleasanton*, 266 Md. 492, 295 A.2d 216 (1972); *Himmelsheer vs. Larnock*, 250 Md. 636, 267 A.2d 179 (1970); *Chovy Chase Village vs. Montgomery County*, 258 Md. 27, 264 A.2d 851 (1970); *Smith vs. County Commissioners of Howard County*, 252 Md. 200, 249 A.2d 768 (1969). We shall follow that test in considering this appeal."

"While, in recent years, we have had the occasion to enunciate a number of important principles applicable to the law of zoning, perhaps none is more rudimentary than the strong presumption of the correctness of original zoning and of comprehensive rezoning. To sustain a piecemeal change in circumstances such as those present here, strong evidence of mistake in the original zoning or comprehensive rezoning or evidence of substantial change in the character of the neighborhood must be produced. *Rockville vs. Hoxley*, 258 Md. 409, 302 A.2d 45 (1973); *Miller vs. Prince George's County*, 264 Md. 410, 412, 286 A.2d 772 (1972); *Greenwell vs. Baltimore Aviation*, 257 Md. 712, 244 A.2d 820 (1971). Since as we have also said, this burden is onerous, *Cabin John Ltd. vs. Montgomery County*, 259 Md. 661, 271 A.2d 171 (1970); *Greenwell vs. Baltimore Aviation*, *supra*; *Wilde vs. Pleasanton*, 253 Md. 554, 253 A.2d 749 (1969), the task confronting Appellants (Appellees) whose application followed the comprehensive rezoning by merely four months is manifestly a difficult one." 258 Md. at 652-53 (emphasis in original).

Error in original zoning or comprehensive rezoning, and substantial change in the character of the neighborhood provide the only basis for granting rezoning. These are the guidelines to be used in determining whether the determination made by the authority is arbitrary, capricious or unreasonable, or fairly debatable. Judge Barnes in *Just vs. Stone*, 253 Md. 533, 253 A.2d 372, at page 377 (1969) said:

Into account, or subsequently occurring events which the Council could not have taken into account, the presumption of validity accorded to comprehensive zoning is not overcome and the question of error is not fairly debatable." (Footnote omitted). (Emphasis supplied).

The evidence presented before the Board in the instant case was not sufficient to make the question of mistake, on the part of the Council, fairly debatable.

JUDGMENT REVERSED IN CASE
REASONING THAT THE COURT OF A
JUDGMENT IN CONFLICT WITH
THIS OPINION. COURT TO BE
PAID BY THE APPELLANT.

"We have made it quite clear that if the issue before this administrative body is 'fairly debatable', that is, that its determination involved testimony from which a reasonable man could come to different conclusions, the courts will not substitute their judgment for that of the administrative body. In the absence of an unconstitutional taking of private property for public use without the payment of just compensation, *Greenwell vs. Baltimore Aviation*, *supra*, 249 Md. 606, 241 A.2d 464 (1968); *Creative Country, Inc. vs. Montgomery County Board of Appeals*, 242 Md. 592, 219 A.2d 769 (1966); *County Council for Montgomery County vs. Gendelman*, 227 Md. 491, 177 A.2d 657 (1962).

"This rule will be adhered to even if we were of the opinion that the administrative body came to a conclusion we probably would not have reached on the evidence. In the instant case, but for the rule, we might well have reached the conclusion reached by the learned lower court, but in enforcing the rule we are obliged to say that reasonable persons could have reached a different conclusion on the evidence so that issues were fairly debatable, and hence, the decision of the Board must be sustained."

The Courts have consistently held that to speak of "substantial changes in the character of the neighborhood", is to mean that "changes" must occur in that immediate neighborhood of such a nature as to have affected its character." *Pattay et al. vs. Board of County Commissioners for Worcester County, et al.*, 271 Md. 352, *Clayman vs. Prince George's County*, 260 Md. 409, 242 A.2d 489 (1972). "Changes" may even occur where new or expanded sewer facilities are shown. *Montgomery vs. Board of County Commissioners*, 263 Md. 1, 280 A.2d 901 (1971); *Pinney vs. Hille*, 241 Md. 224, 216 A.2d 530 (1966).

To say that this Court has been given the opportunity to review the testimony of this matter from the administrative level is indeed an understatement to the 10th degree. The transcript, and all corresponding exhibits are equalled in magnitude only by the Archives of the Congressional Record. Were the Hollywood Producers and reviewers to make a sequel to *Anna and the King of Siam* in parody

form, a "hit tune" would undoubtedly be "Parade of the Export Witness."

On a more serious note, both the Petitioner and the Protestants have presented many witnesses, expert and otherwise. The Petitioner has presented witnesses who testified to the present availability of roads to support any increased traffic and that the roads now under construction were planned projects at the time the County Council adopted the comprehensive maps in 1971, their knowledge to the contrary notwithstanding. The testimony of Mr. Hocheder, an engineer, substantiated this.

New facilities have recently been built, both sewer and water. Testimony was offered to show that the additional apartment units would contribute, only fractionally, to the total capacity the improvements in the system were designed to handle.

The Protestants counter with testimony that D.R. 16 zoning will overtax the roads and that access to this tract will require 2.6 miles travel to and from U.S. Route 1. Furthermore, they note the desirability of a school being located in a low traffic area. The residents of the Relay area seem less concerned with the sewer system than they do with the present water situation.

Residents of the Relay community testified they chose the area in which to live because they wanted to "get out of the city" into a residential area; and that neighborhood is friendly and that they enjoy safety and a sense of quality in their living.

It is apparent that the testimony in this case, as in many others, is extremely slanted, each to their own side. From the evidence presented, therefore, either position could be maintained depending on the inclination of the administrative authority hearing.

-5-

this matter. Both the Zoning Commissioner and the County Board of Appeals chose to weigh more heavily the evidence presented by the Petitioner. This Court's opinion is that these decisions were fairly debatable rather than unreasonable, arbitrary or capricious.

It is therefore this 10th day of August, 1974, by the Circuit Court for Baltimore County ORDERED that the Order of the County Board of Appeals is AFFIRMED.

JOHN N. MAGUIRE
Judge

-6-

health or general welfare of the community, that the planned construction will not overcrowd the neighborhood schools."

8. The Board again resorted to "bootstrap" arguments when it rezoned the D.R. 5.5 portion of the tract to D.R. 16 because of "a continuing and increasing need for higher density residentially zoned land in this immediate area," apparently ignoring the testimony that there are numerous tracts in this immediate area zoned D.R. 16 still undeveloped.

9. The reclassification from D.R. 5.5 to D.R. 16 will depreciate the value of adjoining residential property owners and will seriously impair their quality of life and enjoyment of their properties.

10. The Order of the Board of Appeals will provide the impetus for other vacant tract owners to seek reclassification of their properties from the present moderate D.R. 5.5 classification to more intensive uses.

11. And for other reasons to be presented at the time of hearing.

Anne Kay Kramer
Counsel for Appellants
Wiltonwood Road
Stevenson, Maryland 21153
486-2069

I HEREBY CERTIFY, that on this 8th day of June, 1973, a copy of the foregoing Petition for Appeal was forwarded to the County Board of Appeals, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland, 21204, and Marvin I. Singer, Esq., 10 East Eager Street, Baltimore, Maryland 21207.

Anne Kay Kramer
Counsel for Appellants
Wiltonwood Road
Stevenson, Maryland 21153
486-2069

RE: PETITION FOR RECLASSIFICATION
from D.R. 5.5 to B.L. and D.R. 16 zones
SW corner Cedar Avenue and Selford Road
13th District, Southwestern Sector
P.T. Lemmon, Petitioner
IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
Misc. Docket 9
Folio 305
File 5054

Motion For Extension Of Time
For Filing Of Record

Appellants John L. and Carolyn J. Kearney, Charles E. and Ruby Petree, and William M. DeBoy, pursuant to Rule 87 of the Maryland Rules of Procedure, move for an extension of sixty days from October 6, 1973 to December 5, 1973 in order to file the Record in the above captioned case. The grounds of the motion are as follows:

1. The case before the Board of Appeals was heard over a period of six days resulting in a voluminous record.
2. On advice of the Reporter, C. Leonard Perkins, Counsel for Appellants requested a ninety day extension for filing the Record, from July 8, 1973 to October 6, 1973, which extension was granted by this Honorable Court.
3. Counsel has just been advised by the Reporter that he has undergone emergency surgery in a Concord, New Hampshire Hospital, and has requested that Counsel for Appellants seek an additional sixty-day extension to December 5, 1973 in order for said record to be filed with this Honorable Court.

Anne Kay Kramer
Counsel for Appellants
Wiltonwood Road
Stevenson, Maryland 21153
486-2069

RE: Petition for Reclassification
from D.R. 5.5 to B.L. and D.R. 16 zones
SW corner Cedar Avenue and Selford Road
13th District, Southwestern Sector
P.T. Lemmon, Petitioner
IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
Misc. Docket 9
Folio 305
File 5054

Petition for Appeal

Appellants John L. and Carolyn J. Kearney, Charles E. and Ruby Petree, and William M. DeBoy, parties to the proceedings before the Board of Appeals of Baltimore County in the above entitled case, and aggrieved by the Order of the Board, dated May 8, 1973, file the following Petition for Appeal by their Attorney, Anne Kay Kramer, for the following reasons:

1. The action of the Board of Appeals in reclassifying the subject tract from D.R. 5.5 to D.R. 16 was arbitrary, capricious and illegal since the evidence before the Board was insufficient in law to sustain a finding of "error" by the County Council in its March, 1971 comprehensive map designation of the subject tract as D.R. 5.5.
2. The Board committed error when it concluded that the tract was topographically and geographically unsuited for "single cottage development at current prices", despite the evidence that the tract is completely surrounded by single cottage development on tracts of similar topographical character, that a strong market exists for this type housing at "current" prices and further, that numerous housing types, including apartments are permitted under the D.R. 5.5 classification.

Rec'd 8-13
3/74

I HEREBY CERTIFY that a copy of the foregoing Motion was mailed this 8th day of September, 1973 to the Board of Appeals of Baltimore County, 111 East Chesapeake Avenue, Towson, Maryland 21204, and Marvin I. Singer, 10 East Eager Street, Baltimore, Maryland 21202.

Anne Kay Kramer
Counsel for Appellants
Wiltonwood Road
Stevenson, Maryland 21153
486-2069

RE: PETITION FOR RECLASSIFICATION
from D.R. 5.5 to B.L. and D.R. 16 zones
SW corner Cedar Avenue and Selford Road
13th District, Southwestern Sector
P.T. Lemmon, Petitioner
IN THE
CIRCUIT COURT
OF
BALTIMORE COUNTY
Misc. Docket 9
Folio 305
File 5054

ORDER

ORDERED this 8th day of September, 1973, that the time for filing the Record in the above entitled case is hereby extended for a period of sixty days, from October 6, 1973 to December 5, 1973.

Judge

Rec'd 9/13/73-1:55pm

RE: PETITION FOR RECLASSIFICATION * IN THE
from D.R. 5.5 to B.L. and D.R. 16 zones * CIRCUIT COURT
SW corner Cedar Avenue and * FOR
Selford Road * BALTIMORE COUNTY
13th District - SW Sector * Misc. Docket 9
P. T. Lemmon - Petitioner * Folio 305
* File 5054

ANSWER TO PETITION FOR APPEAL

Now comes P. T. Lemmon, by his attorney, Marvin I. Singer, and answers herewith the Petition for Appeal heretofore filed in these proceedings, and in connection therewith states:

1. The allegations of Paragraph 1 of said Petition are denied; the evidence adduced before the Board of Appeals overwhelmingly demonstrated error on the part of the County Council with respect to the subject tract, at the time of adoption of the zoning map on March 24, 1971.

2. The allegations of Paragraph 2 are denied. The decision of the Board of Appeals was founded upon substantial and probative evidence, and its conclusion that the tract is "topographically and geographically unsuited for single cottage development at current prices" finds much support from the testimony in the case. It was demonstrated also that apartment construction, to the extent allowed by the present zoning category, would be impaired by the set-back restrictions, geography and necessary road pattern to such an extent as to prevent any practical utilization of the land in such manner. The prior development in the area all occurred before installation of the new sewer and water facilities, as well as the construction of the new and improved road pattern.

3. The allegations of Paragraph 3 are denied; such

allegations being totally without reference to the facts adduced before the Board. It was graphically demonstrated that I-95 lies a short distance to the north of the subject property, while Washington Boulevard (U.S. Route 1) lies just to the south. Bordering the western boundary of the tract in question Metropolitan Boulevard was then, and is now, under construction, with major intersections connecting with Washington Boulevard, I-95 and the University of Maryland Baltimore County Campus. On the east of the subject property lies Selford Road, which admittedly is the newest and best local road in the area; the extension of which was under construction to connect it with the UMBC access road and also to link it directly with Metropolitan Boulevard at a point approximately 2 1/2 miles from the property, and thence to I-95.

4. The allegations of Paragraph 4 are denied, in that such allegations isolate one facet of the Board's opinion, about which there was testimony, to the exclusion of other evidence pertaining to the same factors. In pointing to the recommendation of the Baltimore County Planning Board for D.R. 16 zoning of the subject tract, and the Planning Board's reasoning "that there was a continuing and increasing need for higher density residentially zoned land in this immediate area," the Board of Appeals also recognized other forces in the planning process, stating:

"This potential, said the Planning Board, is largely attributable to the growth of the University of Maryland, Baltimore County; Catonsville Community College; the Baltimore-Washington Industrial Corridor to the south; and the industrial complexes along the recently opened section of Interstate 95 linking the Baltimore and Capital Beltways."

Thereafter, a proper and cogent reference was made to increasing

industrial use of areas in the neighborhood of Columbia which would add to the demand and need for this type of development.

5. The allegations of Paragraph 5 are denied. Specific evidence was presented to the Board concerning the need for such higher density residential zoning, the desirability and the demand for such housing in proximity to large scale employment opportunities. Testimony also demonstrated the distance and driving times to such employment centers, as well as the existence of the newly emerging and vastly improved pattern of roads.

6. The allegations of Paragraph 6 are denied, and the action of the Board of Appeals in no way amounted to "spot zoning," as that term has been defined in Maryland zoning law. The test to be applied is not whether the zoning in question lies within a larger area of different use, but rather whether it accomplishes a benefit for the general welfare of the community and fulfills a public need.

7. The allegations of Paragraph 7 are denied, in that the Board's findings were amply supported by testimony from many of the witnesses who appeared at the lengthy hearings. The Planning Staff, Planning Board and the Zoning Commissioner all agreed as to a more intensive use with respect to this tract.

8. The allegations of Paragraph 8 are denied, and are in conflict with the finding of the Board that no land zoned for apartments existed in the surrounding area. The claim that "numerous tracts in this immediate area zoned D.R. 16" are still undeveloped is not supported by the record. Evidence did demonstrate the existence of a tract of land immediately to the south of the subject property, which was earlier rezoned to D.R. 16 by the Board of Appeals over the opposition of those now against the

instant reclassification (known as the High Hill tract. The decision referred to above presently on appeal to this Court). The third vacant tract in the area, known as the Chesapeake Homes property, is larger and would accommodate approximately the same number of units, under zoning agreeable to the opposition in the instant case, as could be developed on both the High Hill and Lemmon tracts under the D.R. 16 category granted by the Board of Appeals.

9. The allegations of Paragraph 9 of said petition are denied; no credible evidence of such claims was presented to the Board, merely the unsupported and general opinions of a handful of residents expressing opposition to any change from the status quo.

10. The allegations of Paragraph 10 of said petition are denied; said allegations constitute only speculation and are without any basis in fact or evidence.

11. And further answering said petition, the record before the Board of Appeals demonstrated, without contradiction, that earlier testimony by and on behalf of the protestants before the County Council, at its public hearings on the adoption of the zoning map, was entirely inaccurate and misleading with respect to the crucial issue of utilities; that the County Council erred in its zoning of the subject property because it ignored the profound changes which had then occurred in the area through "recent and ongoing road construction" as well as the development of large industrial complexes and large scale employers, including the creation of the University of Maryland Baltimore County Campus. The County Council was in error, also, in ignoring the underlying conditions and developments which supported the recommendations of the Planning Board with respect

-2-

to the subject property.

12. And for such other and further reasons as may be presented at the hearing on said appeal.

MARVIN I. SINGER
Ten East Eager Street
Baltimore, Maryland 21202
732-1122
Attorney for P. T. Lemmon

I HEREBY CERTIFY that on this 14th day of June, 1973, a copy of the foregoing Answer to Petition for Appeal was mailed to Anne Kay Kramer, Esquire, Wiltonwood Road, Stevenson, Maryland 21153, attorney for Protestant-Appellants, and to the County Board of Appeals, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland 21204.

MARVIN I. SINGER

RE: PETITION FOR RECLASSIFICATION : IN THE
from D.R. 5.5 to B.L. and D.R. 16 zones : CIRCUIT COURT
SW corner Cedar Avenue and Selford Road : FOR
13th District, Southwestern Sector : BALTIMORE COUNTY
P. T. Lemmon, Petitioner : Misc. Docket 9
: Folio 305
: File 5054

ORDER

ORDERED this 14th day of June, 1973, that the time for filing the record in the above entitled case is hereby extended for a period of ninety days, from July 8, 1973 to October 7, 1973.

Kenneth C. Pactor
Judge

True Copy Test
ELMER H. KAHUNE, JR., Clerk
Per J. A. Cady
Deputy Clerk

RE: PETITION FOR RECLASSIFICATION : IN THE
from D.R. 5.5 to B.L. and D.R. 16 zones : CIRCUIT COURT
SW corner Cedar Avenue and Selford Road : FOR
13th District, Southwestern Sector : BALTIMORE COUNTY
P. T. Lemmon, Petitioner : Misc. Docket 9
: Folio 305
: File 5054

Motion For Extension Of Time
For Filing Of Record

Appellants John L. and Carolyn J. Kearney, Charles E. and Ruby Petree, and William M. DeBoy, pursuant to Rule 37 of the Maryland Rules of Procedure, move for an extension of ninety days from July 8 to October 6, 1973, in order to file the record in the above captioned case. The grounds of the motion are as follows:

1. The case before the Board of Appeals was heard over a period of six days resulting in a voluminous record.
2. The reporter has advised Counsel for Appellants that it will take him at least an additional ninety days from July 8, 1973, the date in which the record is due in this Honorable Court, to transcribe those proceedings.
3. More than one-half of the total record in this case includes eight days of testimony in Misc. Case No. 5035 now pending before this Honorable Court, which will not be completed until mid-September, 1973.
4. Counsel will not be able to prepare for the Hearing before this Honorable Court in the instant case until both records are transcribed by the reporter.

Per Mrs. Kramer -
Motion filed today -
Judge Pactor To sign
Order on 6/18/73

Anne Kay Kramer
Counsel for Appellants
Wiltonwood Road
Stevenson, Maryland 21153
486-2069

I HEREBY CERTIFY that a copy of the foregoing Motion was mailed this 14th day of June, 1973, to the Board of Appeals of Baltimore County, 111 West Chesapeake Avenue, Towson, Maryland, 21204, and Marvin I. Singer, 10 East Eager Street, Baltimore, Maryland 21202.

Anne Kay Kramer
Counsel for Appellants
Wiltonwood Road
Stevenson, Maryland 21153
486-2069

PETITION FOR RECLASSIFICATION : BEFORE THE
SW corner of Cedar Avenue and : BOARD OF APPEALS
Salford Road - 19th District : OF
P. T. Lemmon - Petitioner :
No. 72-91-R (Item No. 48) : BALTIMORE COUNTY

MEMORANDUM OF LAW

There is one overall issue in this case: whether the County Council erred in March, 1971 by classifying the subject tract D.R. 5.5. The answer, based on all the evidence brought before the Zoning Board of Appeals, must be a resounding no. The legal reasons for Protestant-Appellant's position follows.

It is well settled in Maryland "that there is a strong presumption of the correctness of original zoning and that to sustain a piecemeal change therefrom there must be produced strong evidence of mistake in the original zoning or else evidence of a change in conditions resulting in a substantial change in the character of the neighborhood." *Wells v. Pierpont*, 253 Md. 554, 253 A. 2d 749 (1969). "The burden of proof, of course, is quite onerous and it rests squarely on the one seeking the reclassification." *Agnesclaire, Inc. v. Lucas*, 247 Md. 612, 618, 223 A. 2d 757 (1967). Judge Hammond in *Board v. Oak Hill Farms, Inc.* 232 Md. 224, 283; 192 A. 2d 761, 766 (1963) wrote:
".....whether a reasoning mind could reasonably have reached the result the agency reached upon a fair consideration of the fact picture painted by the entire record", and "....although the law in Maryland regarding the issues of change and mistake, as presented to a zoning body, may be grounded to the test of what is 'fairly debatable' yet, on the issues of compatibility of use, public welfare and desamercation lines, the Court should adopt the test of whether the Petitioner's version is supported by the clear weight of the evidence."

A close look at the evidence will show that Petitioner-Appellee has not even come close to such a requirement. Petitioner-Appellee's case rests on frail testimony and glossy photographs. Hard substantive facts sufficient to find error are not present. Petitioner, in his testimony, attempted to equate "need" for apartments and business zoning with accessibility to major highways and major employment areas, and with availability of adequate utilities and educational facilities. All factors cited by Petitioner were in existence and from Protestant-Appellant's testimony it may be presumed, known as well to the County Councilmen, either directly or indirectly. On the other hand, narrow internal streets, orderly, progressive, low-density development of the area over a period of many years, the continuing need and desirability for individual low-density residential living units within the area, in addition to ample shopping facilities nearby, were facts also known to the Councilmen. In addition to these facts, the Council had the benefit of the Planning Board's recommendation of B.L. zoning on 7.14 acres and D.R. 16 zoning on 5.92 acres of the subject tract which the Council chose, in its wisdom, to ignore. In *Kramer v. Board*, the Maryland Court of Appeals stated that "an adverse report by a Planning Commission (alone) may be sufficient to make the issue before the legislative body fairly debatable." All the above having been available to the Council, then, the issue was fairly debatable and the Council exercised its legislative authority correctly and fairly in applying a zoning designation of D.R. 5.5 to the entire tract.

Directing our attention to the requested reclassification of 7.14 acres to the B.L. reclassification, anyone familiar with the tract's orientation to Salford Road could immediately comprehend the impact and unsuitability of such a use, sufficient to constitute spot zoning, if granted.

Rathkopf, in his treatise on zoning (Arden H. Rathkopf,

The Law of Planning and Zoning, third edition) defines "spot zoning" as "the practice whereby a single lot or area is granted privileges which are not granted to other land in the vicinity in the same use district." (Chapter 26-1) In *Eskes v. Board of Zoning Appeals of Baltimore County*, 1956, 209 Md. 432, 121 A. 2d 269, the court labeled spot zoning as "a zoning classification of reality that can be considered as improper spot zoning only when it fails to bear a substantial relation to the public health, safety, morals and general welfare, and is out of harmony and in conflict with the comprehensive zoning ordinance." And still again, "it is not the proposed treatment of a particular tract within the broad territory encompassed by the original zoning plan which governs; the impingement of the proposed rezoning upon the general plan is the criterion." *MacDonald v. Board of County Commissioners for Prince George's County*, 236 Md. 549, 210 A. 2d 325.

This tract lies across the street from a school where traffic is now heavy during certain daytime periods. The proposed shopping center constitutes a physical and moral hazard. There was testimony that the reason for the establishment of a recreational facility on school property was for the express purpose of providing wholesome recreational activities to replace the "hang-out" in shopping centers frequented by young people. The most damaging testimony, however, came from the Petitioner himself who stated under oath that there was "no need for additional shopping" facilities unless D.R. 16 zoning was granted to other vacant parcels in the area, thereby creating the demand necessary for the success of his Petition. The need for apartment zoning on 5.92 acres was justified because the property has a low spot, characterized by Petitioner as a "hole." Testimony showed it to have the same grade as abutting developed residential property. No testimony of inability to develop the land under the Council's designation of D.R. 5.5 was offered. On the one hand, Petitioner tried to equate Metropolitan Boulevard

with the undesirability of low-density residential development, while at the same time that the existence of Metropolitan Boulevard somehow makes the property desirable for high-density over-crowding and misuse. What Petitioner really tried to accomplish was a showing that he could realize greater profitability from D.R. 16 and B.L. reclassification. The impact to be considered apparently, first and foremost, is that on his pocketbook. We respectfully submit that the surrounding community collectively has a greater investment, both present and future, than Petitioner has in the area. The Maryland Court of Appeals has stated in many cases that profitability alone is insufficient reason for reclassification. (See also *Montgomery County Council v. Kaur* 253 Md. 220, 202 A. 2d 834; and *Baltimore v. Dorinsky* 239 Md. 611, 212 A. 2d 568). All the above adds up to a question clearly weighted in support of the Council's recent comprehensive reclassification which included the subject tract. We believe the County Zoning Commissioner erred, and his action was arbitrary, capricious and illegal when he granted Petitioner D.R. 16 and B.L. zoning on the subject tract, without sufficient and lawful reason therefor, just one year after the Council adopted a comprehensive land-use map. In view of the reasoning outlined above, this Board has no recourse but to nullify the action of the Zoning Commissioner by Order of April 18, 1972, and reinstate the D.R. 5.5 classification adopted for the entire tract on March 24, 1971.

Respectfully submitted,

Anna Kay Kramer
Anna Kay Kramer
Attorney for Protestant-Appellants
Altamood Road
Stevenson, Maryland 21153
486-2069

RE: PETITION FOR RECLASSIFICATION : IN THE
from D.R. 5.5 to B.L. and D.R. 16 : CIRCUIT COURT
SW corner Cedar Avenue :
and Salford Road : FOR
19th District - SW Sector : BALTIMORE COUNTY
P. T. Lemmon, :
Petitioner : AT LAW
Zoning File No. 72-91-R : Misc. Docket No. 9
John I. Kearney, et al : Folio No. 304
Protestants-Appellants : File No. 5054

AMENDED ANSWER

TO THE HONORABLE, THE JUDGE OF SAID COURT:

In the Answer filed by the Board of Appeals on December 4, 1973, in the above entitled matter, Board of Appeals Exhibit #1 states:

"Transcript of the entire record of the High Hill Realty, Inc. case #72-92-R, which transcript was filed at that time. This Exhibit should have included the copies of certified documents and exhibits entered into evidence in zoning case #72-92-R. We are, therefore, filing these documents and exhibits."

Dec. 10, 1973 Additional record of proceedings (certified copies of documents and exhibits in High Hill Realty, Inc. case #72-92-R - exhibits listed on attached sheet) filed in the Circuit Court for Baltimore County.

Respectfully submitted

Edith T. Eisenhart
Edith T. Eisenhart, Administrative Secretary
County Board of Appeals of Baltimore County

EXHIBITS ENTERED IN ZONING CASE #72-92-R, HIGH HILL REALTY, INC.

Petitioner's Exhibit No. 1 - Aerial photo of subject property
" " " 2 - 200' scale - composite - topo
" " " 3 - Copy of SRC map showing Metropolitan Blvd. to Friendship
" " " 4 - Site Plan of subject property, 9/20/71
" " " 5 - Log of issues to County Council from Planning Board - used at public hearing
" " " 6 - Page 62 - new zoning book to County Council - from Planning Board, 11/24/70
" " " 7 - Page 110 & 111, 1st Cycle - Item #53 - April to October 1971
" " " 8 - Zoning file subject case #72-92-R except letter of Mary King, including large photos
" " " 9 - Chart by Petrico on water - map
" " " 10 - Chart profile " " "
" " " 11 - 3 page report - rental figures - by Reinhardt
" " " 12 - Brown envelope of exhibits (from P.T. Lemmon file #72-91-R)
" " " 13 - 9/2/71 - *Aratus Times* adv. - CE
" " " 14 - Housing Production 1971 by Regional Planning Council, 1/72
" " " 15 - Letter from SHA - Woodford to P. T. Lemmon, 8/3/72
" " " 16 - Photo by P.T. Lemmon - RR tracks & bridge at Metropolitan Blvd.
" " " 17 - Photo by P.T. Lemmon - Cedar Ave. bridge over Metropolitan Blvd.
" " " 18 - Figures on school population - from Baltimore

Maguire, et al vs. High Hill Realty, Inc. - 9/25/5035

Petitioner's Exhibit No. 19 - Chart on Industrial Parks
" " " 20 - Letter from Howell, Planning & Zoning, 10/2/72
" " " 21 - Letter from Moore, Dept. of Public Works, 9/28/72
" " " 22 - Letter from Kallenbach, Director of Public Works, 10/18/72
" " " 23 - Letter from A. Auerbach, Principal, Relay Elementary School
" " " 24 - Letter from P. L. Grimm, Board of Education, 10/2/72
" " " 25 - Letter from T.W. Smith, Regional Planning Council, 10/11/72
" " " 26 - Aerial photo - subject property and end of Rolling Road
" " " 27 - Letter from T.D. Farrell, HUD, to Julie Relean application, 3/22/72
" " " 28 - Study considering value reducing effect of highway with photos and plots
" " " 29 - Booklet of 6 photos of Relay neighborhood by Mr. Lemmon
" " " 30 - Transcript 1/19/71 & 3/16/71
" " " 31 - Zoning Commissioner's Order of 5/15/72 on case #71-46-R - gas station and BL at Clark Boulevard
" " " 32 - Letter of 5/15/72 to J.H. Cook from Zoning Commissioner re #71-46-R
" " " 33 - Letter from H.R. Pitt to George E. Gavrelis, 10/13/70
" " " 34 - Photo by P.T. Lemmon - re Pitt plan
" " " 35 - Letter from Ellis Cohen re Westland Gardens
" " " 36 - Photo of Colony Hill Apts., 10/8/71 (a, b & c) Photos of Colony Hill Apts. with Gordon Gilbert, 11/17/71
Protestants Exhibit A - SHA General Highway Map of Baltimore County, 1961 - 1/1/65
" " " B - Map - existing and proposed roads etc. by Pitt, 10/72
" " " C - Plot by Pitt - tentative layout of subject property in DR 5.5, 10/19/72

Maguire, et al vs. High Hill Realty, Inc. - 9/25/5035

Protestants' Exhibit D - Traffic Impact Study by H.R. Pitt
" " " E - Comparison of rents - economic - 10/72
" " " F - Photogrammetric Map of Baltimore County showing tentative extent of Salford Road
" " " G - Affidavit - Relay Improvement Association - 9/15/72
" " " H - Letter of position, Relay Improvement Association, 9/15/72
" " " I - Poster of photos of subject property, etc. 7/71 by Mrs. V. Stromberg (in Board's office)
" " " J - Poster of photos of Woodford by Mrs. V. Stromberg (Board's office)
" " " K - Poster of photos of general area of subject property (Board's office)
" " " L - Poster of photos of general area of subject property (Board's office)
" " " M - List of apartments in the area, 10/16/72
" " " N - Plot of Friendship area with photos of Allwood
" " " O - Location map for list of apartments (Exhibit M)
" " " P - Minutes by Mrs. Maguire (6) 5/72

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

Please file, &c.

cc: Marvin I. Singer, Esq.
Mrs. Anne Kay Kramer
Judge Proctor

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come John A. Slank, W. Giles Parker and Walter A. Reiter, Jr., 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

May	14, 1971	Comments of Assistant Traffic Engineer filed
"	18	Comments of Baltimore County Zoning Advisory Committee filed
		Planning Board Recommendation filed
Aug.	17	Petition of P. T. Lammson for reclassification from D.R. 5.5 to B.U. and D.R. 16 on property located on the southwest corner of Cedar Avenue and Salford Road, 13th District - filed
"	17	Order of Zoning Commission: directing advertisement and posting of property - date of hearing set for September 30, 1971 at 10:00 a.m.
Sept.	9	Certificate of Publication in newspaper - filed
"	24	Certificate of Posting of property - filed
"	30	At 10:00 a.m., hearing held on petition by Zoning Commissioner - case held sub curie
April	18, 1972	Order of the Zoning Commission granting re classification
May	17	Order for Appeal to County Board of Appeals from Order of Zoning Commission filed by Mrs. Anna Kay Kramer, attorney for protesters, John L. Kozlowski, et al

Dec.	13, 1972	Hearing on appeal before County Board of Appeals
"	20	"
"	27	"
Mar.	5, 1973	"
"	6	"
"	26	" - case held sub curia
May	8	Order of County Board of Appeals granting reallocation of Parcel A from D.R. 5.5 to D.R. 16 in lieu of the requested S.L., and granting reallocation of Parcel 9 from D.R. 5.5 to D.R. 16
"	8	Dissenting Opinion filed by Walter A. Belter, Jr.
June	1	Order for Appeal filed in the Circuit Court for Baltimore County by Mrs. Anne Kay Kramer, attorney for plaintiffs, John L. Kearney, et al
"	5	Certificate of Notice sent to all interested parties
"	8	Petition to Accompany Order for Appeal filed in the Circuit Court for Baltimore County
"	14	Motion for Extension of Time for Filing of Record and Order of Judge Kenneth C. Procter extending time to October 7, 1973 - filed
Sept.	6	Order of Judge Procter extending time for filing record to Dec. 5, 1973 Transcript of testimony filed
Dec.	4	Board of Appeals' Exhibit No. 1 - Transcript of the entire record of the High Hill Battle - see page P22-52

Petitioner's Exhibit No. 1	Revised Plat of subject property
" " " 2a	9/30/71 - G. W. Stephens, Jr., Photo, shopping center at Francis and Auburne - testified to by C. Garden Gilbert
" " " 2b	Photo, entrance to shopping center at Francis and Auburne - testified to by C. Garden Gilbert
" " " 3	Comments of Planning Board to Zoning Commissioners for subject property - April-October 1971 cycle, Item 48, Pages 100-101
" " " 4	File #72-91-8 - of subject case
" " " 5	Marked plat of subject property with grades by Hochstadter
" " " 6	Plat of subject property marked with transition zones for 10.5, etc.
" " " 7	Aerial Photo of subject property by P. T. Lemmon, 12/7/72
" " " 8	Final SHA plat of subject property showing tanks including Francis Ave., 3/14/69
" " " 9	Cover photo of subject property at eastbound corner, 9/1/72

Patitioner's Exhibit No.	10 -	Color photo of subject property looking up from patitioner's property, 9/7/72
"	"	"
"	11a -	Photo looking south showing s/w Metropolis Blvd., 11/26/71
"	11b -	Photo looking north showing s/w Metropolis Blvd. and Francis Ave., 1/3/72
"	"	"
"	12 -	Letter: 1/19/64, Agnew to Lennan
"	13 -	Zoning Map 2-A, 3/24/71, actual copy with red markings
"	"	"
"	14 -	Aerial photo, Glenmount Town, at
"	15 -	Zoning Map of Glenmount area, 3-C
"	"	"
"	16 -	Aerial photo, Fellowship Forest and 2 apartment projects
"	"	"
"	17 -	Aerial photo, Roland Park Shopping Center
"	"	"
"	18 -	Aerial photo, Arbuthus Shopping Center, Avondale Choice and Westland
"	"	"
"	19 -	Aerial photo, Westmore Elementary, etc
"	"	"
"	20 -	Color photo, 1 unit at Avondale Choice apartment development
"	"	"
"	21 -	4 brochures of Industrial Park Inc. including plot, Kohler, Hallsborough Center, Food Center and Millage Chart with map photo (7 places)
"	"	"
"	22 -	Plot of subject property showing all DR 16, Stephens & Assoc., 6/3/72
"	"	"
"	23 -	Arbuthus Times - letter by Jean M. Zawitzki and editorial by Martin
"	"	"
"	24 -	Photo of Jean Zawitzki's house - 816 Francis Avenue

Protestants' Exhibit A	
" B	- Affidavit to speak on behalf of Abotus Community Association, Inc.
" C	- Resolution of Abotus Community Assn.
" D	- List of faculty contacted (8 pages)
" E	- List of five question in survey
" F	- Summary results of survey
" G	- Map showing road pattern and development and subject property by Piltz (pages 1-10)
" H	- Traffic Impact Study by Piltz, 2/73
" I	- Affidavit - Relay Improvement Assn. - Piltz, 9/15/72
" J	- Resolution - Relay Improvement Assn. - Piltz, 9/15/72
" K	- Brochure by P. T. Lemmon, 10/69 - Salford Road corridor

Dec. 4, 1973 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 Salt Lake County, as are also the use district maps, and your Respondents respectively 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, at this hearing on this petition or whenever directed to do so by this Court.

Respectfully submitted,

Edith T. Eisenhart, Administrative Secretary
County Board of Appeals of Baltimore County

RE: Petition for Reclassification
SW corner of Cedar Avenue and
Selford Road
13 District
P.T. Lemmon, Petitioner
Case No. 72-91-R

Before the County Board of
Appeals
Baltimore County, Maryland

APPEAL

Please note an appeal to the County Board of Appeals in the above entitled case, from an order of the Zoning Commissioner for Baltimore County, dated April 18, 1972, on behalf of:

John L. & Carolyn J. Kearney, his wife
917 Francis Avenue
Baltimore, Maryland 21227

Charles E. & Ruby Petree, his wife
919 Francis Avenue
Baltimore, Maryland 21227

William M. DeBoy
5007 Cedar Avenue
Baltimore, Maryland 21227

Protestants.

Anne Kay Kramer
Counsel for Protestants
305 Tower Building
Baltimore, Maryland 21202
358-1771

I hereby certify that a copy of the foregoing Appeal notice was mailed to: Marvin I. Singer, Esq.
One Charles Center
Baltimore, Maryland 21201

Anne Kay Kramer

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO Mr. Oliver Myers Date May 14, 1971
FROM Ian J. Forrest
SUBJECT Item 48

48. Property Owner: P. T. Lemmon
Location: S/W Cor. Selford Ave. & Cedar Ave.
Present Zoning: D.R. 5.5
Proposed Zoning: Reclass to D.R. 16 & B.L.
District: 13th Sector: Southwestern
No. Acres: 12.17

Public water and sewers 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.

TO: Mr. Edward D. Hardeasy, zoning
Attn: Mr. Peera

FROM: Planning Division
Fire Prevention & Code

SUBJECT: Property Control
P.T. Lemmon

Location: S/W Cor. Selford Ave. & Cedar Ave.

Source: *U.S. Census Bureau*.

Fire hydrants for the proposed site are required and shall be in accordance with Baltimore County Standards. The hydrants shall be located at intervals of 500 feet for apartments and 300 feet for B.L. along an approved road.

A second means of access is required for the site.

Minimum width to the roads through site shall be 30 feet to assure passage of Fire Department equipment.

A. When pull-in parking is designed for both sides of a roadway, the minimum distance from curb to curb of the parking area shall be 64 feet.

B. Pull-in parking on one side only, the distance from curb to curb shall be 44 feet.

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.

Chief
Water and Sewer Section
BUREAU OF ENVIRONMENTAL HEALTH

LJF/sam

4/14/75
Amend
Boag

IN THE COURT OF SPECIAL APPEALS

JOHN L. KEMMER, et al.

OF MARYLAND

No. 672

v.

September Term, 1974

P. T. LEMMON

NOTION FOR RE-ARGUMENT

The Court of Special Appeals of Maryland is most respectfully petitioned by P. T. Lemmon, as Proper Person, to grant this notion for re-argument of this case because of the following reasons why I feel the Court erred in its Per Curiam opinion filed, March 24, 1975.

First--Nowhere in the opinion or in the oral questions of the Court, at the hearing held February 18, 1975, is there any evidence of comprehension of HILL No. 100, Baltimore County Zoning Law, enacted August 5, 1970. This Hill is attached hereto. Hill 100 for the first time established Density Residential Zones in Baltimore County. You are respectfully referred to Section 1, Article 1 E of this Hill to consider the establishment of a residential transition area in all Density Residential (D.R.) Zones, excepting D. R. 10. This is clearly the controlling factor in the original recommendation of the Planning Board of D. R. 16 Zoning for the subject tract of land--a long narrow tract of land bisected by a wide storm drainage swale in the center. The use of any other D. R. Zone would require the sacrifice of the two "fillets" of solid land at both ends of the swale to the role of transition areas reduced to an unproductive use of a very valuable resource needed, as shown by the Record, as sites for desperately required housing.

FILED

APR 22 1975

JULIUS A. FIDAMANO, CLERK
COURT OF SPECIAL APPEALS
OF MARYLAND

RE: PETITION FOR RECLASSIFICATION

from D.R. 5.5 to B.L. and D.R. 16 zones
SW corner Cedar Avenue and Selford Road
13th District, Southwestern Sector

P. T. Lemmon
Petitioner

BEFORE

COUNTY BOARD OF APPEALS

OF

BALTIMORE COUNTY

No. 72-91-R

OPINION

This case involves a tract of about thirteen acres of ground bounded by the newly constructed Metropolitan Boulevard, Cedar Avenue, Selford Road, and a line on the north thereof approximately 225 feet south of Francis Avenue, all in the 13th Election District of Baltimore County, in what is known as the community of Relay.

The Board feels that this is in all respects a companion case to the petition of High Hill Realty, Inc. (Case No. 72-92-R), in which this Board granted D.R. 16 zoning to a tract of approximately 22 acres adjoining the subject property on the south, being separated from it only by Cedar Avenue. The Board feels that the two tracts could almost be considered as one contiguous area with respect to zoning, and almost all of the factors applying to the High Hill Realty case apply to the present case. Counsel for both petitioners and protestants were the same in both cases, and it was stipulated by all parties that the Board could consider the entire record in the High Hill case in its determination of the within case, and the entire file in the previous case was admitted as Petitioner's Exhibit No. 1, and has been considered by the Board in making its decision in this matter.

The Board spent eight days in taking testimony in the High Hill case, and six days in taking testimony in the within case. Needless to say, the record is voluminous and in many degrees repetitious. Many expert witnesses testified on both sides. In the High Hill case the petition was for rezoning of the entire tract from D.R. 5.5 to D.R. 16. In the present case the petition was for rezoning to D.R. 16 for a portion of the tract, and B.L. zoning for another parcel thereof. The B.L. zoning would have been located across Selford Road from the presently existing Relay Elementary School. The entire petition was granted by the Zoning Commissioner allowing the requested D.R. 16 and B.L. zoning,

Second--That the Honorable Court was completely "taken in" by the oral arguments of opposing Counsel is evidenced by the words of its opinion beginning on Line 2, Page 4: "A number of residents of the community protested the recommendation of the Planning Board, One County Councilman proposed an alternate zoning which the council obviously adopted. Thereafter, within a matter of a few weeks, an application was filed with the County Zoning Commissioner."

No effort was made by the Court to ascertain the substance or lack of substance behind this statement. It is vital that we examine each of these three sentences.

(a) A number of residents of the community did, indeed, protest the recommendation of the Planning Board--a petition of protest signed by 1350 persons when not more than a couple dozen at the very most could by any stretch of the imagination possibly be legally approved. This was a blatant case of organized opposition--organized by a small group who later offered to "sell out" (I have the signed letter) for a substantial cash "donation".

(b) One County Councilman (Eoselle), a member of the Dale Anderson ticket, just seated for the first time four months previous to his vote, was the Pied Piper in the Anderson-dominated Council. He, Eoselle, the Record clearly shows, was openly and publicly thanked, by two leaders in the aforementioned community organization, for the retention of the existing zoning--even before any possible deliberation of the "input" recorded at the legally-required public hearings. Indeed: A Felt Account!! The rest of the Dale Anderson County Council followed Pied Piper Eoselle in a unanimous lock-step. The pattern prevailed--therefore causing an avalanche of protesting petitions.

(c) The Honorable Court's opinion in the third sentence heretofore referred to, PLUS foot-note 6 at the bottom of Page 4 clearly indicates

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P. T. Lemmon - No. 72-91-R

2.

and it is from this decision that the appeal was taken.

The Board feels, for the reasons stated in its Opinion and findings of fact in the High Hill Realty case (No. 72-92-R), that it would be unfair or inappropriate to treat the subject property on a separate basis; however, the testimony has convinced the Board that the application for B.L. zoning is at best premature, and such was admitted by the principal in the case, Mr. P. T. Lemmon, in the course of his testimony.

The evidence and the exhibits in the within case, as well as the testimony of expert engineers and persons in the field of real estate, have convinced the Board unequivocally that this particular property is topographically and geographically unsuited for single cottage development at current prices. The utilities are more than adequate, and we agree with the Zoning Commissioner that the County Council was in error in its classification of D.R. 5.5 for this entire area at the time of the adoption of the zoning maps in March, 1971. We are not convinced, however, that the petition with relation to the B.L. zoning should be granted, at least at this time. We will, therefore, reverse that portion of the Zoning Commissioner's Order which allows the business local zoning, and grant rezoning of the entire tract to D.R. 16. The Board further finds as a fact that such reclassification will not be adverse to the health or general welfare of the community, that the planned construction will not overcrowd the neighborhood schools, and that the construction now in progress of the road patterns in the community will be sufficient to handle all traffic generated over the time which will be required for the construction of any substantial number of apartment units on this tract.

We may point out that the Baltimore County Planning Board had recommended the D.R. 16 zoning classification, both at the time of the adoption of the new maps and at the time of the consideration of the petition by the Zoning Commissioner, and indeed felt that there was a continuing and increasing need for higher density residentially zoned land in this immediate area. This potential, said the Planning Board, is largely attributable to the growth of the University of Maryland, Baltimore County; Catonsville Community College; the Baltimore-Washington Industrial Corridor to the south; and the industrial complexes

the submission of the Court to the oral contention of opposing Counsel, made February 18, 1975--that such a move by the Appellee in this case was, indeed, somehow reprehensible. If one sees a previous error being committed is he to stand quietly aside for an unstated period of time for it to somehow righten. The law says otherwise. I respectfully refer the Court to Baltimore County Hill 72, enacted June 6, 1969, and to Hill 42, enacted May 13, 1970--they prescribe the timing and the path to be taken for relief.

I need not prolong this argument except to note that the 1700-page Record represented the High Hills tract and the subject tract and above all took many steps to meet the legal requirement of "Strong Evidence of Mistake" as enunciated by the Court on Page 6 of its opinion--Judge Levine's statement in Stratton v. Jeuchamp, 268 Md. 643, 304 A.2d 244 (1973).

The public interest is not served by the Court's opinion in this case. The opinion upsets the considered judgment of (1) The Planning Board; (2) The Zoning Commissioner; (3) The Board of Appeals and (4) The Circuit Court--all of Baltimore County. The opinion upholds a Freshman County Councilman's action who was elected as a member of the Dale Anderson Ticket. He dared not stand for re-election in 1974.

There are a number of other complementary reasons why I feel the Court erred in its opinion. They will be brought to the attention of the Court if given the opportunity to present them orally. I have submitted above two (2) substantial issues for the Court's consideration of this notion--submitted in the face of advice that doing so is an exercise in futility but submitted, fully confident, that the Court will, itself, want to rectify an injustice it has been led to perpetrate.

Respectfully submitted,

P. T. Lemmon
P. T. LEMMON
Proper Person

22 April 1975

1029 Saint Paul Street
Baltimore, Maryland 21202

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P. T. Lemmon - No. 72-91-R

3.

along the recently opened section of Interstate 95 linking the Baltimore and Capital Beltrays.

There was also testimony that the increasing industrial use of areas in the neighborhood of Columbia in Howard County would add to the demand and need for this type of development.

The reasons presented by the protestants for opposition to this were in all respects the same as those presented in the High Hill case, and in addition thereto there was substantial opposition to the granting of B.L. zoning for a neighborhood shopping center, with which opposition the Board is in agreement.

To conclude with one last reference to the Opinion and findings of fact of this Board in the High Hill case (No. 72-92-R), and adopting the same by reference as a part of this Opinion (copy of which is attached hereto), the Board has determined that there was error in the designation of this property as D.R. 5.5 under the new maps of 1971, and will deny the Petitioner's application for the B.L. zoning requested, but will grant reclassification of D.R. 16 zoning for the entire tract.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 8th day of May, 1975, by the County Board of Appeals ORDERED, that the reclassification of Parcel A from D.R. 5.5 to D.R. 16 is hereby GRANTED in lieu of the requested B.L. zoning; and it is

FURTHER ORDERED, that the reclassification of Parcel B from D.R. 5.5 to D.R. 16 is hereby GRANTED, subject to the approval of the site plan by the State Highway Administration, the Bureau of Public Services and the Office of Planning and Zoning.

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. Slowik
John A. Slowik, Chairman
W. Giles Parker
W. Giles Parker

I certify that I did this 22nd day of April, 1975 mail a copy of this notion to:

Mrs. Anne K. Kruser
Stevenson,
Maryland 21153

and

Mr. Harvin I. Singer
10 East Eager Street
Baltimore, Maryland 21202

P. T. Lemmon
P. T. LEMMON
Proper Person

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

To: Zoning Date: April 30, 1975
FROM: Jack Dietrich - Plans Review
SUBJECT: #48 P. T. Lemmon
D.R. 5.5, Selford Avenue
& Cedar Avenue
District: 13

Petitioner to comply with all applicable requirements of Baltimore County Building Code and regulations. See multiple occupancies Section 100.3 and Business Occupancies Section 104.

Jack Dietrich
Plans Review - Jack Dietrich

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RE: Petition for Reclassification *
SW corner of Cedar Avenue and *
Selford Road *
13 District *
P. T. Lemmon, Petitioner *
Case No. 72-91-R *
* * * * *
* * * * *

BEFORE
COUNTY BOARD OF APPEALS

MEMORANDUM ON BEHALF OF PETITIONER

The central question to be decided in this case is whether the County Council erred in assigning to the tract of land in question D.R. 5.5 zoning, at the time of the adoption of the Comprehensive Zoning Map in March, 1971. The standard by which the Council's action is to be measured was recently restated by the Court of Appeals in the case of Ford v. Baltimore County, Md., 300 A.2d 204 (Feb. 9, 1973), wherein Judge Barnes stated that it was incumbent upon the Council to make its decision "in accordance with the evidence, and it is arbitrary and unlawful to make an essential finding without supporting evidence. This is especially true in zoning cases. . . ." Nowhere in the extensive record produced before this Board may be found any evidential support for the Council's action in perpetuating zoning which has been applied to the subject tract, in comparable earlier zoning categories, since 1945.

Because of its proximity to the High Hill tract, the subject of an earlier extensive hearing before this Board, this Petition for Reclassification contains many of the same factual aspects as existed there; and for this reason, the Board adopted the record in the High Hill case into the present case, to the extent that the earlier evidence was pertinent.

Prior to the adoption of the Comprehensive Zoning Map, the Planning Board had recommended to the County Council zoning for the subject property which was substantially in accordance

with the present Petition for Reclassification. These recommendations were made after a long period of study by the Planning Board, and after public hearings on the maps proposed to be sent to the County Council. In assigning D.R. 5.5 zoning to the Lemmon tract, the Council rejected the Planning Board's recommendation, and in doing so, ignored the extensive and profound changes which had occurred in the area. After the adoption of the Map, and in connection with the April, 1971 zoning cycle of petitions before the Zoning Commissioner, of which the present case was one, the Planning Board reviewed its earlier recommendation, in light of the Council's action, and in its report adopted July 15, 1971, stated at page 100:

"During the preparation of new zoning maps, the Planning Board, studying alternative development proposals for this property and vicinity, determined a need for high-density residentially zoned land to provide for the growing housing needs of this potential high-employment area. These potentials are largely attributable to the growth of the University of Maryland - Calonsville Community College complex to the north, the Baltimore-Washington Industrial corridor to the south, and the impetus for the development of new industrial complexes along the recently opened section of Interstate 95 linking the Baltimore and Capitol Belts.

"In addition, it was felt that a portion of this property would have been an excellent place for a neighborhood shopping center as defined in the 'Neighborhood Development Model.' Therefore, on November 24, 1970, the Planning Board recommended 4 acres of B.L. zoning, located between proposed Relay Road and Selford Road, north of Cedar Avenue; 1 acre of D.R. 5.5 zoning, as a buffer strip along the northwest corner of Cedar Avenue between proposed Relay Road and Selford Road; and D.R. 16 zoning for the remainder of the tract (approximately 8 acres). However, on March 24, 1971, the County Council adopted D.R. 5.5 zoning for the entire property.

"Since receiving this request, the development potentials of this property and this vicinity have been reexamined; after careful consideration of Council's decision, of programmed facilities in the recently adopted Capital Budget and 5-year Capital Program and of public facilities currently under construction, the Planning Board re-affirms its original recommendations."

At no time during the present hearing was there

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substantial increase in population, in an area where, "for the last ten years, the people have suffered from severe lack of water and sewer facilities and traffic facilities." Yet, the uncontradicted testimony of James Petrica, an acknowledged expert, revealed that the opening of water mains extending from Baltimore City, several years in construction, occurred some six months after the Council's action in adopting the Map, and would end the shortage which had previously existed in Relay. Moreover, the supply would be more than adequate to service the proposed new development of apartments, if the pending applications for rezoning were granted. In an effort to soft-peddle such evidence, the Protestants offered to stipulate before this Board as to the accuracy of Mr. Petrica's testimony; but failed to recognize that the County Council had already been misled by their very own testimony before it.

Throughout the case, Protestants attempted to make much of the fact that the area or neighborhood around the Lemmon tract was residential, consisting of single family homes, some of which had been converted to apartment use. The underlying, and obvious, reason for such a pattern of development was the absence of a sewer in the Relay area which could properly service the existing homes plus any type of increased density in new residential development. Through documentary evidence from the appropriate officials of Baltimore County, it was shown that within ninety days of the Council's adoption of the Comprehensive Map, that the Relay sewer was completed at a cost in excess of \$1,000,000.00. The number of homes and people presently serviced by the sewer is only a fraction of its total capacity for which it was developed, a capacity which will remain largely unused if the present petitions for medium-density residential zoning

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are denied. Even if both the High Hill and Lemmon tract were fully developed for apartment use, the sewer would not approach its rated capacity. Despite the major projects for the improvement of facilities in the area, even then under construction, as well as the improved and unique road pattern also then under construction, no mention of these facts was made by the residents of Relay before the Council at the time they complained of a shortage of these very same facilities.

The compatibility of the proposed development of the Lemmon tract with its surroundings was vividly depicted in photographs of comparable situations, namely that of Fellowship Forest (apartments near expensive single-family homes), Roland Park, (commercial facilities near apartments and single-family residential homes), Arbutus Plaza (commercial facilities near apartments and single-family residential homes), and Westowne Elementary School (commercial facilities near a school and apartments). It should be noted that the zoning of the Fellowship Forest area is the less dense D.R. 2 zoning category, and yet the reclassification for the nearby Glenmont Apartment Development was ultimately approved by the Court of Appeals. Many of the witnesses for the Protestants chorused their fears that apartment or commercial development, if allowed by the present petition, would have a depreciating effect upon the neighborhood and would threaten its quality of life. No facts whatever were produced to support such a contention by the Protestants; to the contrary, Petitioner specifically cited the case of Fellowship Forest where property values had maintained their high level. It was further demonstrated that the turn-of-the-century development in Roland Park, as mentioned above, has withstood the test of time, and the property values there have stabilized at a high level. In more

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presented any evidence to indicate that the Planning Board was incorrect in its recommendation, or that the County Council had any factual basis to support its decision. Extensive and detailed evidence was presented by Gordon Gilbert, an acknowledged expert in real estate, and by the Petitioner, P. T. Lemmon, himself well qualified as an expert real estate consultant and appraiser, detailing the employment centers in the Baltimore - Washington corridor, as well as the mammoth GE Plant and related industry in Columbia, together with the mushrooming UMBC Campus, a short distance to the north of the subject tract. The employment created by these industrial centers, and the resulting need for high density residentially zoned land, was fully documented; yet the Council chose to disregard such important changes and took no steps to meet such a demand, even in the face of the ever increasing trend toward apartment development which has occurred in Baltimore County since 1965, achieving 80% of the total number of building permits issued.

Through the testimony of Mr. Jablow, a wholly objective witness who was a reporter for the Sunpapers, as well as that of Mrs. Hicks, who appeared on behalf of the Protestants, it was demonstrated that people tend to choose to live near their places of employment. Development of the subject site for apartment use would, in part, provide the means for the employees, both present and prospective, of the industrial and educational centers mentioned, to be located in the vicinity of their employment.

Through a wide array of photographs and exhibits, as well as testimony from witnesses for both sides, the emerging road pattern in the immediate vicinity of the Lemmon tract was fully established. The new Metropolitan Boulevard, dual lane limited

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recent times, the planning and development of nearby Columbia embodies some of the same concepts advanced by the Planning Board, and applied by it to the Lemmon tract.

Many of the witnesses on behalf of the Protestants contradicted each other with respect to most of the major reasons assigned in opposition to the proposed reclassification. In response to questioning, the Protestants were unable to cite one instance of land zoned under the D.R. 5.5 category in Baltimore County which had been developed for apartments. Viewed as a whole, the entire record before this Board demonstrates nothing more than the typical desire of residents to maintain their area in the status quo, even in the face of housing needs created by an enormously expanding population as well as the introduction and expansion of large employment centers within a ten minute drive of the site by automobile.

The testimony of Mr. Hocheder, Mr. Gilbert and Mr. Lemmon furnished cogent reasons to support the contention that the land is economically unsuitable for development in the classification assigned to it by the County Council in 1971. Arrayed against these witnesses was the testimony of Mr. Gilman, a builder of scant experience and qualifications, who gave his cost and sales figures for potential residential development on this site, yet qualified his testimony by stating that before he would actually invest in such a project he felt the need for more detailed engineering studies, studies that had already been performed by Mr. Hocheder and were the basis of his testimony. Furthermore, Mr. Gilman, who had never actually marketed individual houses of the price range under discussion, gave estimates of development costs and sales prices which were substantially in excess of those testified to by Mr. Hocheder and Mr. Carter. The

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access highway presently under construction, forms the western boundary of the property, which is located between the interchanges of that Boulevard with Washington Boulevard (U.S. Route No. 1) and the relatively new Interstate 95, located a short distance to the north. Moreover, the easy accessibility from the site was enhanced by the improvement, and present construction northward, of Selford Road, which borders the tract on the east. Selford Road is the newest and best local road in the area, having a width of 40 feet from curb to curb, and will provide a link to the Metropolitan Boulevard, as well as other roads and the University of Maryland Campus to the north, through a soon to be constructed interchange just north of I-95. This road, and the access which it will produce, did not heretofore exist, as Selford Road previously terminated at Francis Avenue, a short distance north of the Lemmon property.

From the testimony of witnesses for the Protestants who appeared in person before the County Council at its public hearings on January 15, 1971 and March 16, 1971, as well as the certified copy of excerpts from the Minutes of those meetings, it was proven that the Protestants in this case gave testimony which was wholly incorrect, either deliberately or by reckless failure to determine the true situation with respect to water, sewer and traffic facilities. Mr. Plitt, President of the Relay Improvement Association, brandished petitions with 1350 signatures in opposition to the requested zoning in the Selford Road corridor; admitting however in this hearing that many of the names came from people living several miles away. By contrast, the Relay sewer services only 233 homes in the more immediate area. He further testified before the Council that the requested apartment zoning along Selford Road and Francis Avenue would permit a

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conclusion from their testimony, even at their lower figures, was that such homes could not successfully be marketed at this location, in this neighborhood. It is simply impractical, and unrealistic to assign to the subject property a zoning category of less than D.R. 16, and the Council should have recognized that fact.

The physical disadvantages of the site itself severely inhibit its development under the D.R. 5.5 zoning category assigned by the County Council and are important factors in the unanimity of expert opinion that it is economically unsuitable for development as such. The site is narrow for the restricted width between Metropolitan Boulevard and Selford Road; it falls away to the south and also west from Selford Road; it is below the grade of the roadways on all four sides and immediately adjacent to the upward grade of the northbound lane of Metropolitan Boulevard on its western border. The topography of the southwest corner of the site, in particular, was aggravated by the elevations of Cedar Avenue and Metropolitan Boulevard, and was characterized by Mr. Hocheder as a "big hole." Two of the photographs admitted into evidence clearly portray this particular aspect of the land. These characteristics are combined with the interior road (Relay Road proposed) intersecting the site from Cedar Avenue on the south to Selford Road on the east, at a point above the Relay Elementary School, together with the right of way for the storm drain depicted on the development plat and the necessity of looping the water from the lines on Francis Avenue and Cedar Avenue. There is no main in Selford Road. The other physical characteristics, as well as that of adjacent property, are amply depicted in several of the photographs admitted into evidence, both ground level and aerial ones. These

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RE: RECLASSIFICATION from D.R. 5.5 to B.L. and D.R. 16 zones
SW corner Cedar Ave. and Selford Rd. 13th District - Southwestern Sector

P. T. Lemmon
Petitioner

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. 72-91-R

DISSENTING OPINION

This member of the Board does not agree with the conclusion and Order of the majority of the Board in the subject case. Considering the fourteen days of evidence and testimony presented - eight days in the High Hill case and six days in the subject case - one can readily understand that the Board heard many pros and cons concerning the requested classifications. The Petitioner himself stated that the B.L. request was premature. With this all agreed, and frankly, I wondered why the Petitioner, after admitting to the premature nature of this request, continued to pursue same throughout the entire case. Of course, the thoughts of some sort of a compromise could have been his motivation. In any event, all do agree that the B.L. petition should be denied.

Hence, my dissent is to the reclassification of the entire subject property D.R. 16. In my judgment, it is vital that one concentrate on the sole question to be answered by this Board; i.e. whether or not the County Council erred when zoning the subject property D.R. 5.5. The majority opinion sees no real differences between the subject property and the High Hill tract, and states that to treat these two parcels "on a separate basis would be unfair and inappropriate". With this I disagree. Frankly, in my mind, there are differences between these two tracts.

First, I would like to call to mind my concurring opinion in the High Hill case (#72-92-R), which is adopted by reference into the majority opinion (copy of which is attached hereto). In this opinion I spoke of the "island-like" area bound by the Washington Boulevard, Southwestern Boulevard, I-95 and Metropolitan Boulevard. In my opinion this area represents the neighborhood which might be affected by these requests for higher residential density within this community.

There is no doubt that there exists a certain need for greater density residential use, and that some of this need can be fulfilled with the above described area. The

P.T. Lemmon - No. 72-91-R (Dissenting Opinion)

new sewer extensions make same possible. However, in recognizing this need, this member of the Board sees no reason to expect that this small "island-like" area should be called upon to handle all such need. As previously stated in my concurring opinion in the High Hill case, I see that tract as the better location for the higher density use. Same is bound by the Baltimore & Ohio Railroad tracts across from the Calvert Distillery plant situated in a corner of the area described herein. The subject property is more toward the center of this area rather than the fringe, and is directly across the street from the Relay Elementary School. The subject property is smaller, and by the Petitioner's own admission difficult to develop for any use. Such a situation could result in a "less than desired" end product. The traffic patterns of the two sites are different; the topography is different; the landowner has been forced to sell, or has sold, pieces of the subject property on three sides of same to condemning authorities, including a part which is now across Selford Road and used as a County playground next to the elementary school. Without going into further detail, I feel that the record reflects quite a few differences between this High Hill site and the subject property.

In summary, and reflecting upon the sole question of whether or not the County Council erred, this member of the Board would be hard pressed to so find. As a matter of fact, in distinguishing between the two parcels, either the location of the elementary school directly across from the subject property or the traffic pattern to and from same, as this traffic would pass the subject property, could have in itself been sufficient reason for keeping the density at D.R. 5.5. This member of the Board sees no error in the actions of the County Council when on March 24, 1971 the County Council classified the subject property D.R. 5.5. In my judgment, the petition (in toto) should be denied.

Dated: May 8, 1973

Walter A. Reiter, Jr.

High Hill Realty, Inc. - #72-92-R

additional D.R. 16 can be judged." However, and of great importance, they hastened to qualify this statement in the same report by saying, "Of course, geographic distribution at times may not be quite adequate to the locality need." Again, in the 1980 Guideplan they stated, "Rezoning in some degree will nevertheless be necessary since not all of these existing development potentials will be in the right place at the right time." Specifically citing the subject property in the cycle zoning report on page 110, Item #53 (Petitioner's Exhibit #7), they stated that they determined there is a need for high density residentially zoned land to provide for the growing housing needs of this potential high employment area. They then reaffirmed their original recommendation, previously made to the County Council prior to adoption of the zoning map, that the subject tract, except for a 150 foot buffer strip of D.R. 5.5, should be zoned D.R. 16.

There was testimony, supported by a copy of the transcript which was accepted into evidence as Petitioner's Exhibit #30, that at the County Council's public hearing preceding the adoption of the comprehensive zoning map the Protestants told the Councilmen that they had suffered for ten years from a lack of adequate water service; that they were in the second water zone which had been under a development restriction for some time, and that they had no knowledge of any improvements that would alter that situation. They also stated that portions of the subject property are to be sewered to the Herbert Run sanitary system, on which system a moratorium restriction for development was in effect. However, in contradiction to these statements, testimony in the instant case revealed that in fact water and sewer improvements were planned or under construction at the time, and that the subject is not served by the Herbert Run system. Protestants now stipulate that water service, and testified that sewer service, are no longer problems.

There was convincing testimony that developing the site in apartments would produce less pupil yield than if the site were developed in town houses, and that granting the petition would not create conditions that would tend to overload the schools.

Protestants also claimed that granting the petition will result in traffic congestion on the local streets, and that the value of their houses would be depreciated.

High Hill Realty, Inc. - #72-92-R

Petitioner's witnesses testified that traffic objections will be overcome by new roads, either planned or recently constructed. There will be quick easy access from the subject to Metropolitan Boulevard without using neighborhood residential streets. They also cited several areas around the County showing the compatibility of apartments within close proximity of expensive houses without adverse effects on the latter.

In summation, the Petitioner claims that the County Council was grossly misled by Protestants' testimony at the public hearings regarding sewer and water facilities; that it erred in not following the Planning Board's recommendation to zone the subject D.R. 16 on the comprehensive zoning map, and that it did not recognize the unique need for apartments in the subject area.

The Board is convinced that the Petitioner has proven his case in this lengthy hearing and has met the burden of showing error in comprehensive rezoning. The Board is not convinced, however, that the buffer strip of D.R. 5.5 recommended by the Planning Board should be eliminated. Therefore, for these reasons and from all the testimony and evidence presented, the Board hereby reclassifies the subject property from D.R. 5.5 to D.R. 16, except that a buffer strip on the subject property, 150 feet deep from the centerline of Clarke Boulevard and extending from Cedar Avenue to the Baltimore and Ohio Railroad right-of-way, shall remain D.R. 5.5. (Majority Opinion - John A. Slowik and W. Giles Parker)

CONCURRING OPINION

This member of the Board agrees in the findings and conclusions of the majority of the Board in this case. I am especially impressed with the area growth and future growth potential of same. The majority opinion cites that there is need for additional density units in this immediate area and notes that within the subject area bounded by I-95, Metropolitan Boulevard, the Baltimore and Ohio Railroad and the Washington Boulevard, no D.R. 16 exists. With this I agree, however, I do seriously question the overall number of density units that might constitute good land use within the above described area. Two factors which must limit the number of density units within the area are the location of the elementary school and the activity incident thereto,

RE: PETITION FOR RECLASSIFICATION from D.R. 5.5 to D.R. 16 W/S of Clarke Blvd. 250' from intersection formed by center line of Cedar Avenue and center line of Selford Road, 13th District - SW Sector High Hill Realty, Inc., Petitioner

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. 72-92-R

OPINION

This case comes before this Board on an appeal by the Protestants from an Order of the Zoning Commissioner, dated April 18, 1972, granting the requested petition. The Petitioner requests reclassification from D.R. 5.5 to D.R. 16 zoning on a vacant tract consisting of 22.18 acres. The property is located on the west side of Clarke Boulevard 250 feet from the centerline of Cedar Avenue and Selford Road in the community of Relay, in the southwest section, Thirteenth Election District, Baltimore County, Maryland.

If successful in his petition, the Petitioner plans to construct 352 apartments on the site. To sustain the Zoning Commissioner's Order, the Petitioner has the burden in this proceeding to show that the County Council erred in classifying the property D.R. 5.5 when it adopted the comprehensive zoning map for the area on March 24, 1971, (Zoning Map 2-A). In pursuing this objective, the Petitioner presented very lengthy and thorough testimony. Likewise, the Protestants were very lengthy and thorough with their cross-examination and testimony. In all, the case consumed six hearing days before the Board and fifty-three exhibits were accepted into evidence.

Testimony presented to the Board revealed that the property, which had been partially excavated by the owner, is situated below grade of the bounding streets and of the Baltimore and Ohio Railroad. The property is the northeast quadrant of the intersection formed by the newly constructed Metropolitan Boulevard and the Baltimore and Ohio Railroad, which it abuts. It is effectively separated from the cottages in the St. Denis community, which lie to the west, by Metropolitan Boulevard, and from the industrial properties to the south by the Baltimore and Ohio Railroad. Open land and a few cottages exist contiguous to the north of the subject and there are numerous cottages in the Wynnewood development across Clarke Boulevard, east of the subject. Typical

High Hill Realty, Inc. - #72-92-R

and the hazardous intersection of Clarke Boulevard with Washington Boulevard. Specifically, as to potential land use of the subject property, it is important to note that the subject site is bounded by the Baltimore and Ohio Railroad and immediately across from the Calvert Distillery plant and a large concrete pipe plant. Considering the entire "island like" area described above, it is this member's opinion that the subject property is the best location for high density development and, therefore, I concur with the findings of the majority of this Board. I also concur with the retention of a 150 foot D.R. 5.5 strip which will buffer existing development along Clarke Boulevard. (Walter A. Reiter, Jr.)

ORDER

For the reasons set forth in the foregoing Opinion, it is this 10th day of April, 1973, by the County Board of Appeals, ORDERED that the reclassification petitioned for from D.R. 5.5 to D.R. 16 be and the same is hereby GRANTED.

EXCEPT that a buffer strip on the subject property, 150 feet deep from the centerline of Clarke Boulevard and extending from Cedar Avenue to the Baltimore and Ohio Railroad right-of-way, shall remain D.R. 5.5.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

John A. Slowik, Chairman

W. Giles Parker

Walter A. Reiter, Jr.

High Hill Realty, Inc. - #72-92-R

average houses in St. Denis are valued in the \$15,000-\$25,000 price range. Many are forty to fifty years old. Typical houses in the Wynnewood development are valued in the \$26,000-\$33,000 price range, and are about ten years old. Along Francis Avenue and north thereof are houses valued up to \$35,000 on large lots.

The area has been spectacularly affected by the impact of recent and ongoing road construction, and by the extension and reinforcement of public utilities. The Baltimore-Washington Industrial corridor, which extends contiguously to the south, has many large scale employers. In close proximity to the subject are the Canton County Industrial Park, the Elkridge Industrial Park, Westinghouse, Friendship Airport and the proposed Greater Baltimore Consolidated Wholesale Food Market. The General Electric Company, near Columbia, approximately eight miles distance to the west, now has 2,300,000 square feet of floor space which is projected to be enlarged to 7,000,000 square feet by 1977, with an anticipated steady annual growth in employment from the present twenty-five hundred to a projected ten to twelve thousand employees by 1977.

The University of Maryland-Baltimore County campus lies one and one quarter miles north of the subject. It presently has an enrollment of 4,500 pupils and a faculty/staff of 541, which by 1975 is expected to grow to 7,500 pupils and 903 faculty/staff members.

The phenomenal and rapid growth experienced here, it is claimed, has created a need for apartments in the area which the subject proposed use can help satisfy. There presently is no land zoned for apartments in the area bounded by I-95 on the north, Metropolitan Boulevard on the west, the Baltimore and Ohio Railroad on the south and Washington Boulevard on the east. The Petitioner contends that these and other facts were known to the Baltimore County planners which prompted them to recommend D.R. 16 zoning on the subject tract. In this respect, the members of the Baltimore County Planning Board, guided by their professional staff planners, stated in the 1980 Guideplan and the First Cycle Zoning Recommendations that there is in all of Baltimore County as a whole sufficient land presently zoned D.R. 16 to accommodate requirements until 1980. They went on to say in the cycle zoning report, "It is clear that 'need' is not one of the factors on which requests for

STATE OF MARYLAND
STATE ROADS COMMISSION
300 WEST PACE STREET
BALTIMORE, MD. 21201
May 3, 1973

Mr. Edward D. Hardesty
Zoning Commissioner
County Office Bldg.
Towson, Maryland 21204

Re: Item 48
2nd C. Meeting April 27, 1973
Property Owner: P. T. Lemmon
Location: S.W. Cor. Selford Ave.
S Cedar Ave.
Present Zoning: D.R. 5.5
Proposed Zoning: Re-class to D.R.
16 & B.L.
District: 13th District Southwestern
Nearest 1200

Dear Mr. Hardesty:

The subject plan and an inspection at the site indicates that no adverse effects to the state highway are anticipated.

Very truly yours,
Charles Lee, Chief
Development Engineering
Section

By: John C. Meyers
Asst. Development Engineer

CL-JEM:bk

FE: PETITION FOR RECLASSIFICATION :
S.W. corner of Cedar Avenue and
Selford Road - 13th District : ZONING COMMISSIONER
P. T. Lemmon - Petitioner : OF
NO. 72-91-R (Item No. 48) :
BALTIMORE COUNTY

The Petitioner requests a Reclassification from a D.R.5.5 Zone to L.L. and D.R.16 Zones, the request for the B.L. Zone, known herein as Parcel A, containing 7.14 acres of land, more or less, and the request for the D.R.16 Zone, known herein as Parcel B, containing 5.92 acres of land, more or less, said total property being located on the southwest corner of Cedar Avenue and Selford Road, in the Thirteenth District of Baltimore County.

Evidence on behalf of the Petitioner indicated that Parcel B is to be developed into garden type apartments, numbering eighty-four (84) units and that the remainder of the tract, Parcel A, is to be developed into a neighborhood shopping center. Under its present classification, the Petitioner would be allowed seventy-one (71) apartment units on the overall tract, and his request is to add thirteen (13) units.

The property is bordered on the southwest by the presently under construction Metropolitan Boulevard, to the north by Francis Avenue, to the northeast by Relay Elementary School, and to the south by Cedar Avenue. The property is roughly twenty-five feet (25') below the grade of the new Metropolitan Boulevard, and, for this reason, it was alleged that it could not be economically developed into single family cottage units in its present classification.

There are adequate sewer and water facilities, as a new main was installed in the bed of Washington Boulevard during the process of the hearing on this Petition.

Expert witnesses on behalf of the Petitioner indicated that there is a demand for apartments in this area. Furthermore,

because of the demand for the apartments, a shopping area is necessary. This contention was supported with the following:

1. The growth of the University of Maryland Baltimore County and the Catonsville Community College.
2. The industrial complexes along the Baltimore-Washington corridor to the south.
3. The impetus of the development of new industrial complexes along Interstate 95 and those complexes now being developed in Columbia, and the employment opportunities accruing therefrom.
4. Its appropriate location with relation to the already developed and proposed road networks in this area.

It was testified to that Metropolitan Boulevard has been planned for many years and was under construction at the time of the adoption of the Comprehensive Zoning Map on March 24, 1971. Furthermore, it was alleged by the Petitioner that the Baltimore County Council should have known that there was sufficient sewer and water facilities in the area, namely the extension of the water main from Baltimore City in the bed of Washington Boulevard, which lies approximately three hundred feet (300') to the south, necessitating the reclassification of this property.

It was also indicated that this property has been classified in a residential zone since the inception of zoning in Baltimore County in 1945. Further, the Baltimore County Council, in the adoption of the recent Comprehensive Zoning Map, did not take into consideration the potential growth and the actual growth of this area in again reclassifying this property in a D.R.5.5 Zone.

Testimony further indicated that the Capital Improvement Program had been initiated for the construction of Metropolitan Boulevard. The extension of Selford Road, Metropolitan Boulevard, and Rolling Road indicated that the access to the property was very good. Furthermore, its accessibility to Interstate 95 and the industrial corridor, plus the University of Maryland Baltimore

County and Columbia, indicated that the property should be developed in its highest density, along with a commercial use, because of its location and employment opportunities.

In claiming error, witnesses for the Petitioner indicated that the Baltimore County Council did not take into consideration the aforementioned road networks and employment opportunities of the area, and, therefore, was mistaken in their classification of D.R.5.5 for this property.

Residents of the area, in protest of the subject Petition, indicated that the Relay area is a triangular shaped area bordered on the north by Interstate 95, on the west by the new Metropolitan Boulevard, on the south by Washington Boulevard, and on the east by Southwestern Boulevard. They indicated that there were no apartment type developments within this area and that all development is of a single family cottage type. Furthermore, it was indicated that there is no need for a local or community shopping center for the area. It was also indicated by the Protestants that the granting of this Petition, along with several other Petitions concerning this area which are before the Zoning Commissioner, would cause undue traffic concentration, overburden the school system, and be a detriment to the health, safety, and general welfare of the community.

Without reviewing the evidence further in detail but based on all the evidence presented at the hearing, in the opinion of the Zoning Commissioner, the Comprehensive Zoning Map as adopted on March 24, 1971, was in error in classifying this property in a D.R.5.5 Zone. The burden of proving error is borne by the Petitioner, and this burden has been met.

The development of Interstate 95 which was present and in use during the deliberation by the Baltimore County Council in the adoption of the map, the planned and under construction Metropolitan Boulevard at the same time, the extension of the water main from Baltimore City in the bed of Washington Boulevard, necessitates this property being reclassified.

It must be noted that during the hearing it was stated that the enrollment of the local public school, Relay Elementary School, has decreased in the lower grades. Furthermore, there is to be constructed an elementary school in Halethorpe, and there is more room at the Relay Elementary School for expansion when necessary.

There seems to be a growing housing need in this area due to the potentially high employment opportunities to be offered by the University of Maryland Baltimore County, the Catonsville Community College, and the industrial corridor to the south along the Baltimore-Washington Expressway; furthermore, its close proximity to Columbia and Howard County and its continuous development and expansion, affords very high employment opportunities and a need for housing.

The new road systems in the area have been planned for many years, and Metropolitan Boulevard will be completed to Interstate 95 within a short period of time.

Also, with the granting of this Petition and several other Petitions for Reclassifications in the immediate area, there seems to be a need for a neighborhood shopping area for the convenience of not only residents who will occupy these subject tracts but other residents in the area. The topography of the property necessitates this Reclassification.

It must also be noted that the Baltimore County Planning Board in its recommendation to the Zoning Commissioner, under Item No. 48, has indicated the need for the density zoning as requested and for the community shopping area. The Baltimore County Planning Board states:

"During the preparation of new zoning maps, the Planning Board, studying alternative development proposals for this property and vicinity, determined a need for high-density residentially zoned land to provide for the growing housing needs of this potential high-employment area. These potentials are largely attributable to the growth of the University of Maryland - Catonsville Community College complex to the north, the Baltimore-Washington industrial corridor to the south, and the impetus for the development of new

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Edward Hardisty Date: Mar. 12, 1971
ATTN: Oliver L. Myers
FROM: William N. Myers, P.E.

SUBJECT: Item #48 (April - October Cycle 1971)
Property Owner: P. T. Lemmon
Location: S.W. cor. Selford Rd. & Cedar Ave.
Present Zoning: D.R. 5.5
Proposed Zoning: Reclass. to D.R. 16 & B.L.
District: 1301 Sector: Southwestern
No. Acres: 12.17

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:

This site has frontage on Selford Road and Cedar Avenue.

Selford Road is an existing County Road, which shall ultimately be improved to local collector standards. 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 40-foot closed road section on a 60-foot right-of-way will be required for any grading or building permit application.

Cedar Avenue is an existing County Road, which shall ultimately be improved to local collector standards. 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 30-foot closed road section on a 40-foot right-of-way will be required for any grading or building permit application.

Streets required within this property must be improved in accordance with the standards of the Department of Public Works for a local collector.

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.

Item #48 (April - October Cycle 1971)
Property Owner: P. T. Lemmon
Page 2
May 12, 1971

Storm Drains: (Cont'd)

Public drainage facilities are required for any offsite drainage facilities at 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.

This property lies adjacent to a stream which constitutes waters of the State. No change can be authorized for the course or cross-section of the stream without a permit from the State Department of Water Resources. The owner is responsible for an engineering study to determine the area of this site which would be inundated by a 50-year storm and to provide all justification of public benefit necessary to, and to obtain the required State permit for any change in course or cross-section proposed. Public rights-of-way will be required for the 50-year flood plain including 1 foot free board.

Sediment Control:

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

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

Water:

Public water facilities can be extended to benefit this property.

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

The proposed private improvement must be reviewed by the Baltimore City, Water Division for adequacy of water supply.

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 water shall be in accordance with the standards of the Baltimore County Department of Public Works.

Sanitary Sewer:

Public sanitary sewer facilities are required to serve this property.

Item #48 (April - October Cycle 1971)
Property Owner: P. T. Lemmon
Page 3
May 12, 1971

Sanitary Sewer: (Cont'd)

The Petitioner is entirely responsible for the construction of all additional sewerage required to serve the proposed commercial development and apartment complex. Such additional sewerage is to be constructed onsite, that is, not within any public right-of-way, or easement, except for connection to public sanitary sewerage located therein. All private and/or onsite sewerage must conform with the Baltimore County Plumbing Code and/or the Joint Interim Policy of the Baltimore County Department of Public Works and the Baltimore County Plumbing Code, as applicable.

The plan for development of this property is subject to approval of the State Department of Health prior to acceptance of a preliminary or final plat for recordation.

Edward Hardisty
Chief, Bureau of Engineering

END:SANSEOK:iss

cc: File (3)

Key Sheet: C-4W
Position Sheet: 25 SH 5
Topic: SH 7 D and 7 R
Tax Map: 108

handicaps are compounded by the 300' setback requirements for D.R. 5.5 under Bill 100, as testified to by Mr. Hocneder and illustrated by him on a copy of the site plan, appropriately marked, and admitted into evidence.

Also to be remembered is the fact that 4 1/2 acres of the tract were taken for the construction of Metropolitan Boulevard, and included in this was the loss of access to Francis Avenue on the north. Mr. Lemmon also lost the use of 10.5 acres as a result of his sale to the County of land across Selford Road, north of the Relay Elementary School, presently being used for park and recreational purposes by Baltimore County.

Two site plans were introduced into evidence on behalf of the Petitioner. The first, the one accompanying the formal Petition for Reclassification, included an improvement of the layout from that recommended by the Planning Board, in that the commercial zone was removed from that portion along Selford Road closest to the school, and placed at the western edge of the tract along the right of way of Metropolitan Boulevard. This enabled the layout to provide for open space directly across from the school, and the apartments and Relay Road intervening between the proposed commercial activity. The other site plan was one which had been presented to and discussed with the Relay Improvement Association and the residents of the area, at a time when effort was made to reconcile certain of the objections by some members of the community. Under questioning by the Board, Mr. Plitt admitted that such a development, if allowed, would generate substantially less traffic than development of the site under the B.L. and D.R. 16 category.

Under cross-examination it was brought out from the witnesses for Protestants that the Relay Improvement Association,

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including witnesses in this case, had agreed in principle to development of the Chesapeake Homes site, a short distance from the Lemmon tract, for 545 units. Despite their acquiescence to this density, and while professing their opposition to greater density in the area because of the resulting traffic problems, congestion, etc., these parties have steadfastly opposed the rezoning of the Lemmon tract, as well as the High Hill tract, when together they would not produce more residential units than the Chesapeake site alone, even assuming that the Lemmon tract were developed solely under D.R. 16. This obvious inconsistency was never satisfactorily explained, nor was the allusion to the covenant said to be binding upon the Chesapeake tract, which, of course, is not a valid or substantial factor that may be considered in determining the propriety of the zoning classifications involved. With particular regard to the question of density, the evidence was uncontradicted that 140 homes had been removed from the inventory of housing in the neighborhood by virtue of the construction of I-95 and Metropolitan Boulevard. The encroachment of land by Mr. Lemmon had been reduced from 28 acres to the present 13 acres, due to the taking for the highway and the sale of the park land as mentioned above. The sale of the park land in 1966 was initially encouraged by the Relay Improvement Association. As has previously been pointed out, when these factors are considered and without any consideration of the land taken for highway use in recent years on which no homes existed, only 21 additional units would be added if both the Lemmon and High Hill tracts were rezoned as requested, over and above that number of units which could presently be constructed under the present zoning category. The commercial portion of the Lemmon tract would, of course, not add to the residential density of the

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neighborhood. The County Council not only failed to provide for the increasing housing needs of the area, but even failed to replace existing and potential development in Relay which was permanently removed from any possible construction for residential purposes. Most of the immense industrial development that has been shown to have occurred in the area was under way, or readily foreseeable, at the time of the adoption of the Map by the County Council. The same is true of the complex of roads through the neighborhood and along both sides of this tract. All of these factors were recognized by the Zoning Commissioner in granting both aspects of this Petition for Reclassification, when he stated in his Order of April 18, 1972:

"There seems to be a growing housing need in this area due to the potentially high employment opportunities to be offered by the University of Maryland Baltimore County, the Catonsville Community College, and the industrial corridor to the south along the Baltimore-Washington Expressway; furthermore, its close proximity to Columbia and Howard County and its continuous development and expansion, affords very high employment opportunities and a need for housing.

"The new road systems in the area have been planned for many years, and Metropolitan Boulevard will be completed to Interstate 95 within a short period of time.

"Also, with the granting of this Petition and several other Petitions for Reclassifications in the immediate area, there seems to be a need for a neighborhood shopping area for the convenience of not only residents who will occupy these subject tracts but other residents in the area. The topography of the property necessitates this Reclassification."

Perhaps the most significant evidence adduced by the Protestants came toward the conclusion of this case. Mrs. Zawitoski testified that the construction of Metropolitan Boulevard had "destroyed" the area and passed through the backbone of the Relay community. She also said that Selford Road served an area from Washington Boulevard on the south to Sulphur Spring Road on the north, and that the road network acted as a connecting link to all the properties under discussion.

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In so doing, by its findings that R-10 zoning would provide the best possible use of the property, stabilize the area and make for better land use, lessened, if it did not nullify, the force of the staff's adherence to its own proposed master plan, under incomplete standards.

"In addition, the proponents of the rezoning to R-10 met the challenge of the staff's report that the burden was upon them to prove that the requested reclassification would be in the public interest to a greater extent than the existing classification which the staff sought to perpetuate. The testimony of the experts in behalf of the applicants for change, to which no answer was given by the objectors, left no real doubt that the public interests, as well as the interests of the owners of the land on which the apartments would be built, would best be served by the rezoning. There was nothing left in the record to support the District Council's action." (Emphasis supplied)

More recently, in Aspen Hill Venture v. Montgomery County Council, 265 Md. 303, 289 A.2d 303, 307 (1972), it was stated:

"... It becomes a question of legislative policy. We think the requirement that such a legislative policy should bear a substantial relation to the public welfare finds support in our decision in Creative School v. Board, 242 Md. 532, 219 A.2d 789 (1966), wherein Judge Barnes, for the Court, defined the constitutional limitations upon legislative enactments under the police power, stating:

"... As our predecessors stated in City of Baltimore v. Cohn, 204 Md. 523, 530, 105 A.2d 482, 486 (1954) citing with approval and following the decision of the Supreme Court of the United States in Nezette v. Cambridge, 277 U.S. 183, 48 S.Ct. 447, 72 L.Ed. 842 (1928):

"However, the governmental power to 'interfere by zoning regulations with the general rights of the landowner by restricting the character of the use of his land is not unlimited, and such restriction cannot be imposed if it does not bear a substantial relation to the public health, safety, morals, or general welfare. Legislative bodies have no authority, under the guise of the police power, to impose unreasonable and unnecessary restrictions on the use of private property in pursuit of useful activities'" 242 Md. 566, 567, 219 A.2d 796.

Of similar import is our decision in Furnace Branch Land Co. v. Board, supra, 232 Md. at 539, 194 A.2d at 642 wherein we stated that, " * * * Even as in original zoning, rezoning must be in the general public interest for the promotion of health, safety and welfare of the community, as well as in the individual interests of the landowner. Code (1957), Art. 66B, Sec. 21; Wakefield v. Kraft, 202 Md. 136, 96 A.2d 27; Huff v. Board of Zoning Appeals, 214 Md. 48, 153 A.2d 83, 11"

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Most importantly, under cross examination this witness admitted that between the two public hearings of the County Council, she, Mrs. Vivian Stromberg and other opponents of this petition met with Councilman Francis X. Bossle to present their views. At that time she "interjected" her appraisal of the situation; that several tracts of land in the area totaling some 106 acres might be combined for Planned Unit Development which would allow construction of approximately 2000 units, even though the land was owned by several different parties.

Since the hearings before this Board have demonstrated the inaccuracy and recklessness of the statements by the opponents at the public hearings, it is frightening to contemplate the charges and allegations made to Mr. Bossle without the constraint of the setting of a public, recorded hearing.

Mrs. Zawitoski further conceded that the County Council adopted Mr. Bossle's recommendations for the subject tract, but professed no knowledge that the meeting in question had any bearing upon that recommendation. The short answer to that claim, as well as the true effect upon the councilman, may be found in the certified copy of the excerpts of the Council's public meeting of March 16, 1971, at which time both Mrs. Zawitoski (Pages 12-14) and Mrs. Stromberg (Pages 103-104) thanked Councilman Bossle for his action in acceding to their demands with respect to the Selford Road corridor properties, of which the Lemmon tract was one. A reading of the excerpts from the Council's public hearing indicates the protestants recognized the retention of the existing zoning as a fait accompli at that time, and all that followed was a mere ritualistic adherence to the proscribed form of the hearings. The public hearings before the County Council reveal no accurate factual basis to support its action in

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retaining the zoning on the subject tract, so that the conclusion is inescapable that the decision was founded either on the inaccurate allegations there made or as a result of the information supplied privately to Councilman Bossle. For either, or both reasons, the Council was in error.

The sole thread of consistency throughout the testimony on behalf of the Protestants was the opposition based on the fact that any further development, as requested here, would change the area, and lessen the enjoyment of their homes, or as one witness expressed it, "change the quality of life." Such reasoning, while understandable, is legally untenable in the face of many expressions on the subject by the Court of Appeals. While the principles of law may be axiomatic, nevertheless they are clearly applicable to the contentions of those opposing the present Petition for Reclassification. Despite the influence that the petition signatures may have had upon the elected Council members, and the stubborn opposition to any change in the zoning, such considerations enjoy no place in the legislative process of rezoning. As stated in Ford v. Baltimore County, at page 211 of 300 A.2d:

"... As our predecessors have cautioned, the exercise of the police power in zoning regulations cannot be governed 'by a plea of the neighbors or for their benefit.' Memor v. Tribble, 190 Md. 6, 20, 57 A.2d 346, 353 (1948)." (Emphasis supplied)

In the case of Wakefield v. Kraft, 202 Md. 136, 96 A.2d 27, 30 (1953), the Court stated:

"If there was a mistake in the original zoning ordinance, or if the character of the neighborhood has changed, so that an amending ordinance is otherwise permissible and proper, the fact that neighboring owners have built in reliance on the original zoning gives them no vested right which will successfully support a complaint about the amendment. Passage of a zoning ordinance is legislation, not the entering into of a contract. A property owner has no vested right to the continuance of the zoning status of a neighboring area. Yokley, Zoning Law and Practice, work cited, Sec. 77; age

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v. City of Portland, supra; Chayt v. Maryland Jockey Club, supra; Reichelderfer v. Quinn, 287 U.S. 315, 53 S.Ct. 177, 77 L.Ed. 331; Engel v. Zemenberg, 239 Wis. 213, 1 N.W.2d 84, 138 A.2d 495. He is entitled to rely on the rule that a classification made by ordinance will not be changed unless the change is required for the public good and is not made merely to accommodate private interests which are detrimental to the welfare of the other property owners of the same neighborhood. Page v. City of Portland, supra, Kennedy v. City of Evanston, 348 Ill. 426, 181 N.E. 312."

Compare also the decision in Norbeck Village Joint Venture v. Montgomery County Council, 254 Md. 59, 254 A.2d 700, 705 (1969), wherein it was again said:

"A property owner has no vested right to the continuance of the zoning status of his or neighboring property, merely the right to rely on the rule that a change will not be made unless it is required for the public good."

"... If the comprehensive zoning has a substantial relationship to the general welfare of the community in that it can fairly be taken as a reasonable effort to plan for the future within the framework of the County's economic and social life; it is not unconstitutional because under it some persons may suffer loss and others may be benefited."

"... For an individual property owner to escape the binding impact of a comprehensive rezoning he must show that the plan lacks the necessary relationships to the general public interest and welfare that is presumed."

The applicable rules were again applied in Board of County Commissioners v. Oak Hill Farms, Inc., 232 Md. 633, 192 A.2d 761, 766-767 (1963), wherein it was said:

"Bringing the applicable theory of law to bear on the facts of the case before us, we think the whole record compels the conclusion that Judge Loveless was right in holding that the action of the District Council was unsupported by competent, material and substantial evidence and, therefore, was arbitrary and capricious. The only such evidence which possibly could support the refusal to rezone the property was the report of the technical staff and, then, only 'when viewed in isolation,' without regard to proof to the contrary."

"The staff's concept of a comprehensive zoning plan overlooked an important element. We said in Huff v. Board of Zoning Appeals, 214 Md. 48, 58, 59, 153 A.2d 83, that a comprehensive plan should seek to accomplish, as far as possible, the most appropriate uses of land consistent not only with the public interest but also with the safeguarding of the interests of the individual property owner. The Planning Commission, in recognition of all the elements of a proper comprehensive plan, rejected the staff's recommendation and,

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Petitioner respectfully submits that he has furnished abundant proof of the failure of the County Council to consider the general public and economic welfare, as opposed to the parochial interests of the neighbors in Relay, and that upon the foregoing authorities and the extensive evidence and testimony before this Board, the Petition for Reclassification should be granted.

Respectfully Submitted,

Marvin I. Singer
Attorney for Petitioner

I HEREBY CERTIFY that on this 20th day of March, 1973, a copy of the foregoing Memorandum on Behalf of Petitioner was mailed to Anne Kay Kramer, 300 Tower Building, Baltimore, Maryland 21202, attorney for Protestants.

MARVIN I. SINGER

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BALTIMORE COUNTY ZONING ADVISORY COMMITTEE

May 18, 1971

COUNTY OFFICE, PLANNING
111 E. Lexington Ave.
Towson, Maryland 21204OLIVER L. MYERS
Chairman

MEMBERS

BUREAU OF
ENGINEERING
DEPARTMENT OF
TRAFFIC ENGINEERING
STATE FLOOD COMMISSIONBUREAU OF
FIRE PREVENTION
HEALTH DEPARTMENT
PROJECT PLANNING
BUILDING DEPARTMENT
BOARD OF EDUCATION
ZONING COMMISSION
INDUSTRIAL
DEVELOPMENTMr. George E. Cavrellis, Director
Office of Planning & Zoning
301 Jefferson Building
Towson, Maryland 21204RE: Item #48 (April - October Cycle 1971)
Property Owners: P.T. Lemon
Location: S/N Cor. Selford Rd. & Cedar Ave.
Present Zoning: DR 5.5
Proposed Zoning: ReClass. to DR 16 & B.L.
District: 13C1 Sectors Southwestern
No. Acres: 12.17

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 an unimproved tract of land, with the property to the north a public land site used as a park and elementary school. The property to the west is improved with residences; the property to the east improved with residences. These residences are 10 to 30 years of age, in good repair. The property to the south is bounded by the Metropolitan Blvd. Selford Road is presently improved insofar as concrete curb and gutter are concerned. Cedar Avenue is a very narrow macadamized road, partially improved with curb and gutter.

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:

This site has frontage on Selford Road and Cedar Avenue.

Selford Road is an existing County Road, which shall ultimately be improved to local collector standards. Highway improvements to this site, including curb and gutter,

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sidewalks and entrances in accordance with the standards of the Baltimore County Department of Public Works for a 40-foot closed road section on a 60-foot right-of-way will be required for any grading or building permit application.

Cedar Avenue is an existing County Road, which shall ultimately be improved to local collector standards. 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 36-foot closed road section on a 60-foot right-of-way will be required for any grading or building permit application.

Streets required within this property must be improved in accordance with the standards of the Department of Public Works for a local collector.

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.

This property lies adjacent to a stream which constitutes waters of the State. No change can be authorized for the course or cross-section of the stream without a permit from the State Department of Water Resources. The owner is responsible for an engineering study to determine the area of this site which would be inundated by a 50-year storm and to provide all justification of public benefit necessary to, and to obtain the required State permit for any change in course or cross-section proposed. Public rights-of-way will be required for the 50-year flood plain including 1 foot free board.

Sediment Control:

Development of this property through stripping, grading and stabilization could result in a sediment pollution problem, damaging

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private and public holdings below this property. Sediment control is required by State law. A grading permit is, therefore, necessary for all grading, including the stripping of top soil.

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

Water:

Public water facilities can be extended to benefit this property.

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

The proposed private improvement must be reviewed by the Baltimore City, Water Division for adequacy of water supply.

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 required to serve this property.

The Petitioner is entirely responsible for the construction of all additional sewerage required to serve the proposed commercial development and apartment complex. Such additional sewerage is to be constructed on site, that is, not within any public road, rights-of-way, or easement, except for connection to public sanitary sewerage located therein. All private and/or on site sewerage must conform with the Baltimore County Plumbing Code and/or the Joint Interim Policy of the Baltimore County Department of Public Works and the Baltimore County Plumbing Code, as applicable.

The plan for development of this property is subject to approval of the State Department of Health prior to acceptance of a pre-liminary or final plat for recordation.

BUREAU OF ENVIRONMENTAL HEALTH:

Public water and sewers 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

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May 18, 1971

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 located at intervals of 500 feet for apartments and 300 feet for B.L. along an approved road.

A second means of access is required for the site.

Minimum width to the roads through site shall be 30 feet to assure passage of Fire Department equipment.

A. When pull-in parking is designed for both sides of a roadway, the minimum distance from curb to curb of the parking area shall be 64 feet.

B. Pull-in parking on one side only, the distance from curb to curb shall be 44 feet.

The owner shall be required to comply with all applicable requirements of the 101 Life Safety Code, 1957 edition, and the Fire Prevention Code when construction plans are submitted for approval.

STATE ROADS COMMISSION:

The subject plan and an inspection at the site indicates that no adverse effects to the State Highway are anticipated.

BOARD OF EDUCATION:

The existing zoning could yield approx. 24 elem. pupils, while a change to 2 Bdrn. garden apts. could yield approx. 28 elem. pupils.

Sect. 22, 1970	Capacity	Enroll	%
Relay Elem.	395	360	-91
Arbutus Jr.	1265	1576	+125
Lansdowne Sr.	1930	1742	-90
Future Const.			
	Status	Capacity	Est. to Open
Lansdowne Jr.	Underway	1,120	9/71
Lansdowne Sr. Add. Apts.	Budgeted	400	71-72

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May 18, 1971

Programmed Const.	Capacity	Year Programmed	Est. to Open
Relay Elem. Add'n. or New Halethorpe Elem.	Add'n. or 400	1972-73	1973-74

There are three petitions for rezoning in this general area:

1. P.T. Lemon, 6.92 Ac.
2. Chesapeake Homes, Inc., 12.71 Ac.
3. High Hill Realty, Inc., 22.18 Ac.

Totals: 41.81 Ac.

Under the existing zoning we see a possible yield of approx. 283 elementary pupils. A change to apartment zoning could yield from 131 to 501 elem. pupils, from 27 to 109 Jr. H.S. pupils, from 22 to 174 Sr. H.S. pupils. The high range assumes that all 3 bedroom townhouses will be built by the Chesapeake Homes Firm.

Also, granting the subject rezoning for a "convenience center" would create serious traffic and safety problems at the Relay Elem. School which is situated directly across from the property in question.

Furthermore, if such a "convenience center" is allowed it could provide a place for students to congregate, thereby creating additional problems for the Administrative Staff of Relay Elementary.

DEPARTMENT OF TRAFFIC ENGINEERING:

Since the three items listed above are contiguous, it would not be proper to discuss each site individually.

The three petitions consist of 84 acres of DR 5.5 and 10.5 zoning, which can be expected to generate 4200 trips per day. As proposed, the DR 16 land will generate 9300 trips and the 7 acres of B.L. will generate 3600 trips a day. Of the 9300 trips, 1400 will be commercially oriented, therefore, giving an ultimate trip density of the three parcels of 11,500.

Due to the extremely poor intersection with Clark Boulevard and Washington Boulevard; and with the poor general access to the entire area, that being Selford Road being the only good proposed access, it would seem to be undesirable to increase the density to the extent proposed by these three items.

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Since there are no commercial facilities in the immediate vicinity, it would appear that some commercial would be advantageous to serve the area residents without affecting the capacities of the roads in the vicinity greatly.

BUILDINGS ENGINEER'S OFFICE:

Petitioner to comply with all applicable requirements of Baltimore County Building Code and regulations. See multiple occupancies Section 400.3 and Business Occupancies Section 404.

ZONING ADMINISTRATION DIVISION:

It would appear appropriate at this time to say that there are three petitions that are contiguous to each other which will have a great effect on the entire area, including a large volume of traffic and possibly rendering the existing streets, with the exception of Selford Road, impassable. The amount of traffic that would be put on to these streets would create extremely large overcrowding at the intersection with Clark Blvd. and Washington Blvd. The general access in the entire area is poor, with Selford Road being the only good road to the site. The convenient shopping center as proposed in this item could create a congregating place for children attending the elementary school immediately to the north. The schools in the area are presently overcrowded and that any further high density zoning would tend to compound the already existing problem.

Very truly yours,

Oliver L. Myers
OLIVER L. MYERS, Chairman

DLR:JD

cc: Edward D. Hardesty

Mr. P. T. Lemon
1029 Saint Paul Street
Baltimore, Maryland 21202

BALTIMORE COUNTY, MARYLAND

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

TO: Edward D. Hardesty
Attn: Oliver L. Myers
FROM: C. Richard Moore
SUBJECT: Items 48, 52 & 53 - Cycle Zoning
Property Owners: 48-P.T. Lemon; 52-Chesapeake Homes Inc.; 53-High Hill Realty
Selford Ave. area
48-DR 5.5 to DR 16 & B.L. - 52-DR 10.5 & 5.5 to DR 16 - 53-DR 5.5 to DR 16

Date: May 14, 1971

Since the three items listed above are contiguous, it would not be proper to discuss each site individually.

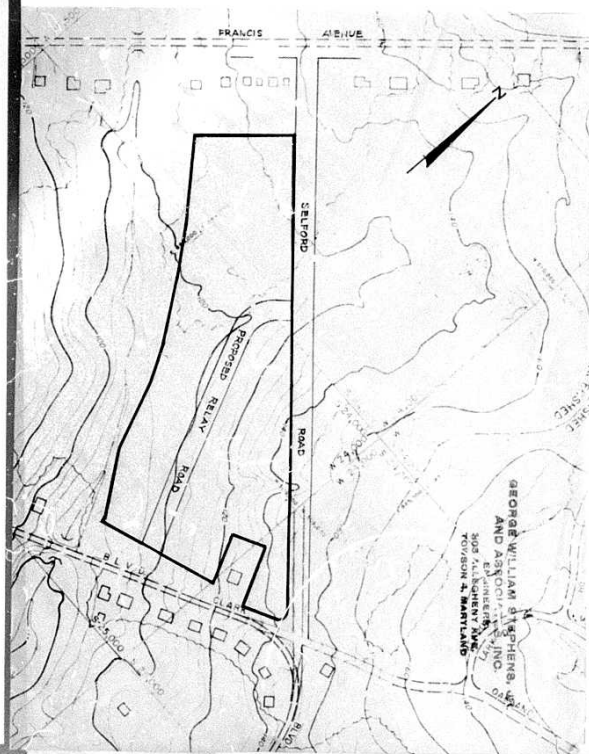
The three petitions consist of 84 acres of DR 5.5 and 10.5 zoning, which can be expected to generate 4200 trips per day. As proposed, the DR 16 land will generate 9300 trips and the 7 acres of B.L. will generate 3600 trips a day. Of the 9300 trips, 1400 will be commercially oriented, therefore giving an ultimate trip density of the three parcels of 11,500.

Due to the extremely poor intersection with Clark Boulevard and Washington Boulevard; and with the poor general access to the entire area, that being Selford Road being the only good proposed access, it would seem to be undesirable to increase the density to the extent proposed by these three items.

Since there are no commercial facilities in the immediate vicinity, it would appear that some commercial would be advantageous to serve the area residents without affecting the capacities of the roads in the vicinity greatly.

C. Richard Moore
C. Richard Moore
Assistant Traffic Engineer

CRM:mr



Description to Accompany Zoning
Petition Reclassification from
R6 (DR5.5) Zone to BL Zone
(P.T. Lemmon; Selford-Relay Tract)

April 14, 1971

Beginning for the same at a point on the southwest side of Selford Road at a point distant 225.06 feet southeasterly from the intersection of the south-east side of Francis Avenue and the southwest side of Selford Road; said point of beginning also being on the existing zoning line between R10 (DR3.5) zone and P6 (DR5.5) zone; thence from said place of beginning, binding on said zoning line South 40° 41' 30" West 302.66 feet to the western-most right of way line of Metropolitan Boulevard, as shown on State Roads Commission Plats Nos. 34577 and 34578, thence binding on said right of way line the seven following courses and distances viz: (1) South 44° 42' 48" East 259.18 feet, (2) South 41° 50' 37" East 160.77 feet, (3) South 37° 28' 07" East 214.33 feet, (4) South 31° 02' 45" East 107.20 feet, (5) South 25° 08' 43" East 213.87 feet, (6) South 38° 49' 35" East 221.07 feet and (7) South 26° 35' 49" East 14.59 feet to the north right-of-way line of Cedar Avenue, as shown on State Roads Commission Plat No. 34579, thence binding on said right-of-way line North 68° 27' 34" East 176.46 feet to the center line of proposed Relay Road, thence binding on said center line of said road the following lines viz: (1) North 28° 47' 46" West 230 feet, (2) by a line curving to the right having a radius of 2403.43 feet for the distance of 80.40 feet, said arc being subtended by a chord bearing North 27° 30' 17" West 80.40 feet, (3) North 26° 32' 46" West 384.85 feet, (4) by a line curving to the right having a radius of 120 feet, for the distance of 140.96 feet, said arc being subtended by a

Description to Accompany Zoning
Petition Reclassification from
R6 (DR5.5) Zone to BL Zone
(P.T. Lemmon; Selford-Relay Tract)

April 14, 1971

-2-

chord bearing North 7° 06' 16" East 132.99 feet and (5) North 40° 45' 20" East 27.16 feet to the southwest side of Selford Road, thence binding on said side of said Road North 49° 14' 40" West 519.50 feet to the place of beginning.

Containing 7.14 Acres of land more or less.

Description to Accompany Zoning
Petition Reclassification from
R6 (D.R.5.5) Zone to D.R. 16 Zone
P.T. Lemmon Selford Relay Tract

April 14, 1971

Beginning for the same on the southwest side of Selford Road at a point distant 744.56 feet southeasterly from the intersection of the south-east side of Francis Avenue and the southwest side of Selford Road, said point of beginning also being the intersection of the southwest side of Selford Road and the center line of proposed Relay Road and running thence binding on the southwest side of Selford Road South 49° 14' 40" East 889.71 feet; thence along a curve to the right with a radius of 25 feet for a distance of 48.23 feet, said curve being subtended by a chord bearing South 5° 58' 28" West 41.10 feet; thence binding on the north side of Cedar Avenue South 61° 15' 24" West 107.94 feet; thence North 29° 05' 50" West 188.96 feet, South 60° 54' 10" West 100.00 feet and South 29° 05' 50" East 159.12 feet to the north right-of-way line of Cedar Avenue as shown on State Roads Commission of Maryland S.R.C. Plat No. 34579; thence binding on said north right-of-way line South 68° 27' 34" West 206.00 feet to the center line of proposed Relay Road; thence binding on said center line the five following courses and distances, viz: first North 28° 27' 45" West 230.00 feet, second along a curve to the right with a radius of 2403.43 feet for a distance of 80.40 feet, said curve being subtended by a chord bearing North 27° 30' 17" West 80.40 feet, third North 26° 32' 46" West 384.85 feet, fourth along a curve to the right with a radius of 120.00 feet for a distance of 140.96 feet, said curve being subtended by a

Description to Accompany Zoning
Petition Reclassification from
R6 (D.R.5.5) Zone to D.R. 16 Zone
P.T. Lemmon Selford Relay Tract

April 14, 1971

-2-

chord bearing North 7° 06' 16" East 132.99 feet and fifth North 40° 45' 20" East 27.16 feet to the place of beginning.

Containing 5.03 Acres of land, more or less.



3 SIGNS 72-91-R

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 13TH Date of Posting: JUNE 3-1972
Posted for: APPEAL
Petitioner: P. T. LEMMON
Location of property: S.W. CORNER CEDAR AVE AND SELFORD RD.
Location of Signs: 1. W/S OF SELFORD RD. 100 FT. N. OF CEDAR AVE.
2. W/S OF SELFORD RD. 75 FT. N. OF CEDAR AVE. 3. W/S OF SELFORD RD. 400 FT. N. OF CEDAR AVE.
Number: 75 FT. N. OF CEDAR AVE.
Posted by: Charles H. Mead Date of return: JUNE 14-1972

3 SIGNS 72-91-R

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 13TH Date of Posting: SEPT. 11-1971
Posted for: RECLASSIFICATION
Petitioner: P. T. LEMMON
Location of property: S.W. COR. OF CEDAR AVE. AND SELFORD RD.
Location of Signs: 1. W/S OF SELFORD RD. 250 FT. S. OF FRANCIS AVE.
2. W/S OF SELFORD RD. 550 FT. S. OF FRANCIS AVE. 3. W/S OF SELFORD RD. 75 FT. N. OF CEDAR AVE.
Number: 75 FT. N. OF CEDAR AVE.
Posted by: Charles H. Mead Date of return: SEPT. 24-1971

PT. Lemmon

FUNCTION	Wall Map		Original		Duplicate		Tracing		200 Sheet	
	done	by	date	by	date	by	date	by	date	by
Descriptions checked and outline plotted on map										
Petition number added to outline										
Denied										
Granted by ZC, BA, CC, CA										
Reviewed by: J. Dyer										
Revised Plans: Change in outline or description										
Previous cases:										

Mr. P. T. Lemmon
1029 Selma Paul Street
Baltimore, Maryland 21202

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 17th day of August 1971

S. ERIC DINENBAUM
Zoning Commissioner

Petitioner: P. T. Lemmon
Petitioner's Attorney: [Signature]
Reviewed by: [Signature]
Chairman of Advisory Committee

TELEPHONE 494-2413 INVOICE No. 74073
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE
Revenue Division
COURT HOUSE
TOWSON, MARYLAND 21204
DATE 12/3/73

To: Mrs. Angela Hine, Trans.
Relay Improvement Auth.
1024 Francis Avenue
Baltimore, Md. 21207

County Board of Appeals
(Zoning)

DEBIT TO ACCOUNT NO.	QUANTITY	RETURN THIS PORTION WITH YOUR REMITTANCE	TOTAL AMOUNT
OUR DUTY			\$ 30.00
Cost of certified copies of documents filed in Case No. 72-91-R			\$ 30.00
P. T. Lemmon SW cor. Cedar Ave. and Selford Road 13th District - SW Sector			

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

TELEPHONE 494-2413 INVOICE No. 84988
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE
Revenue Division
COURT HOUSE
TOWSON, MARYLAND 21204
DATE Sept. 28, 1971

To: P. T. Lemmon
1029 Selma Paul Street
Baltimore, Md. 21202

Zoning Dept. of Baltimore County

DEBIT TO ACCOUNT NO.	QUANTITY	RETURN THIS PORTION WITH YOUR REMITTANCE	TOTAL AMOUNT
OUR DUTY			\$ 100.00
Advertising and posting of property 72-91-R			\$ 100.00

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

TELEPHONE 494-2413 INVOICE No. 78650
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE
Revenue Division
COURT HOUSE
TOWSON, MARYLAND 21204
DATE April 22, 1972

To: P. T. Lemmon
1029 Selma Paul Street
Baltimore, Md. 21202

Zoning Dept. of Baltimore County

DEBIT TO ACCOUNT NO.	QUANTITY	RETURN THIS PORTION WITH YOUR REMITTANCE	TOTAL AMOUNT
OUR DUTY			\$ 50.00
Petition for Reclassification			\$ 50.00

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

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

No. 3676

DATE May 18, 1972 ACCOUNT 01-662

AMOUNT 70.00

WHITE - CASHIER
DISTRIBUTION
TOWNSHIP
YELLOW - CUSTOMER

No. 72-91-R - Appeal costs - Property of P. T. Lemmon
SW cor. Cedar Ave. & Selford Road
13th District Zoning Fund - Vivian A. Stromberg, Sec'y.
5616 Friendship Road

7 J.C. CHOC

For 6-Month Contract

The Board of Education did not ratify the contract, however, on July 1, and would be for a suitable duration in terms of the economic situation at that time.

of Education for a hearing, but was denied.

Mr. England said: "During the ensuing six-months period, we will negotiate for appropriate adjustments in the contract. A new contract might then be implemented to reopen the entire contract."

General Electric Seeks Several Hundred Workers

The General Electric Company's Appliance Park - East (Columbia) is entering another phase of employment build-up, seeking to add several hundred new people to its payroll over the next four months, according to David J. Dillon, Manager of Relations and Utilities for the complex near Columbia.

Included in the positions it is seeking to fill are assemblers, people for general factory jobs, tool and die makers, maintenance mechanics, clerical people and professional openings. The company also continues

to search for candidates for its Apprentice Program, designed to develop skilled craftsmen. Dillon said that people interested in applying for employment at Appliance Park - East should call, write or visit the company's Employment Office located at the plant site just off Route 175. It is not necessary to come to the office to obtain an employment application. Dillon said that applications will be mailed to those who call 730-4000 or who address their requests to the company's Employment Office, P. O. Box 841, Columbia, Md., 21043.

ERROR IN ZONING

The Baltimore County Council erred in retaining the zoning for this tract of land which has been in effect since the original adoption of zoning in 1945. I. e., RD 5-5, successor zone to the original "A" Cottage Zone and, later, to the R-6 Zone. The Council failed to recognize that this tract of land has been so constructed from its original physical aspects as to preclude reasonable PRIVATE utilization.

The Error was a compound Error: The State Roads Commission of Maryland drastically re-shaped the subject tract of land by the taking of some four and one-half acres for the right-of-way for Metropolitan Boulevard and for the proposed highly elevated Cedar Avenue to carry it over Metropolitan Boulevard. Baltimore County failed in its new sewage drainage system to provide for a line in Salford Road, Baltimore County by the construction of a large storm water drain outlet on this tract of land, to dispose of the storm waters from the public school grounds and the public park on the opposite side of Salford Road, has imposed upon the ownership of this land the necessity of a costly storm drain system which bisects the tract in almost the center. Baltimore County by the enactment of HILL 100 has introduced a transitional zone requirement which precludes the development of the two most desirable segments of the tract by apartment dwellings, forcing the abandonment of these two prime portions of the tract to "open spaces" or development with detached dwellings which would, because of uneconomical imposed development costs, be unmarketable except on a lease basis. The center of the tract is precluded from the building of apartment dwellings by reason of the necessary reservation for the storm drain.

The Baltimore County Council was in error on this tract of land in not accepting the recommendations of the Planning Board and the Planning Staff for a small convenience-type shopping center, even under the existing zoning of the adjacent unimproved land, provision is totally lacking for the shopping facilities required by the absolute certain growth in population. A portion of this tract offers the most suitable location for such a convenience center of any of the scarce acres remaining undeveloped in this area.

The rugged topography, the wooded nature and the location directly opposite the Hilly Elementary School combine to make this specific portion of the tract more desirable for apartments than for the shopping center. This section is petitioned to be re-zoned RD-16. This petition asks that the level unwooded portion of the tract, backing up to the ultimately heavily-travelled Metropolitan Boulevard, and steeply below the high regraded Cedar Avenue be rezoned B-1 for the development of the recommended and badly-needed convenience center.

A study of the entire tract, its shape, its below-grade relationship to the confining streets on the three open sides, its severance by a centered storm drain reservation, its access by a public access only at the lowest point alongside of Metropolitan Boulevard are factors which combine to clearly prove an ERROR in the present RD 5-5 zoning and which said forces fully preclude the development of the land PRIVATELY.

Supporting Statement, as Part of Petition, Dated 14 April 1971, To Rezone Approximately Twelve Acres of Unimproved Land, Lying Between Salford Road and Metropolitan Boulevard and Fronting on Cedar Avenue, Hilly, Baltimore County, Maryland—Submitted by R. T. Lennon, 1029 S. Paul Street, Baltimore, Maryland, 21202.

New Census Trend: Bulging Generation

By JACK ROSENTHAL

WASHINGTON, Nov. 5—Perhaps the most important future implication of the news that the American birth rate is dropping significantly is what might be called population peristalsis. In biology, peristalsis is what happens when a pig is eaten by a python. The bulge moves gradually along the length of the snake until it is fully digested. Lower birth rates, if they continue,

something exactly parallel. And population peristalsis, in turn, could cause extraordinary and considerable changes in American society for the next half century.

The big bulge in this case consists of some 74 million Americans who are now 23 years old at the oldest, or 5 at the youngest. These are the young people born in the postwar baby boom. On a graph of the entire population by age, this group sticks out like the python's dinner.

If birth rates continued high, this baby boom generation, like its predecessors, would be outnumbered or at least equalled by its successors.

Continuing Bulge But now, it appears, the baby boom generation—nearly 40 per cent of the population—will remain a bulge throughout its lifetime.

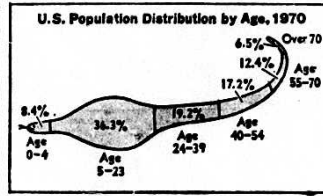
In terms of markets or politics, it may thus exercise a disproportionate influence on national life for years.

Some see this influence already present in the popular attention devoted to the current "youth culture." But that, the argument goes, will inevitably change. Gradually, the emphasis on youth may become an emphasis on young married couples.

In time, as the bulge passes further through the nation's age structure, there may be, in one demographer's words, "a massive lobby for increased Social Security benefits."

Thus—always assuming that birth rates stay low—the dominant social concerns of the nation at any given time could be generally predicted.

"You'd look to see where the



The New York Times/Nov. 6, 1971

bulge was at that time," says Robert Parke Jr., deputy director of the Federal Commission on Population Growth and the American Future.

For the short term future, the outlook is more specific. "The next 15 years is the era of the young married," in the view of George H. Brown, director of the Census Bureau.

The demand of housing is obvious, he says, and this might focus on high-rise and garden apartments. Since if such cases stay low, families will become gradually smaller.

But manufacturers of equipment for babies should not despair, says Ben J. Wattenberg, a Washington businessman or variant. In a new study

"The Birth Death and What It Means," he observes: "Basinets, diaper bags, cribs, strollers—all these purchases for a first baby would soon skyrocket. If fertility goes down in America in the years to come, it will not be because of a lack of first babies."

The outlook in education is also strongly subject to the influence of the baby boom bulge. Elementary schools are already having trouble finding a enrollment in the primary levels. The bulk of the bulge has already moved higher levels.

By 1985, the Census Bureau estimates, the last of the baby boom children will be leaving high school. In that year, the population aged 15 to 19 is expected to total 17.8 million, compared with a present total of 19.1 million.

The education topic illustrates the difficulty of more specific prediction. Once the boom generation passes on to working age, what, for example, will be done with the surplus capacity left in colleges? Might it then be used to support intensified adult education?

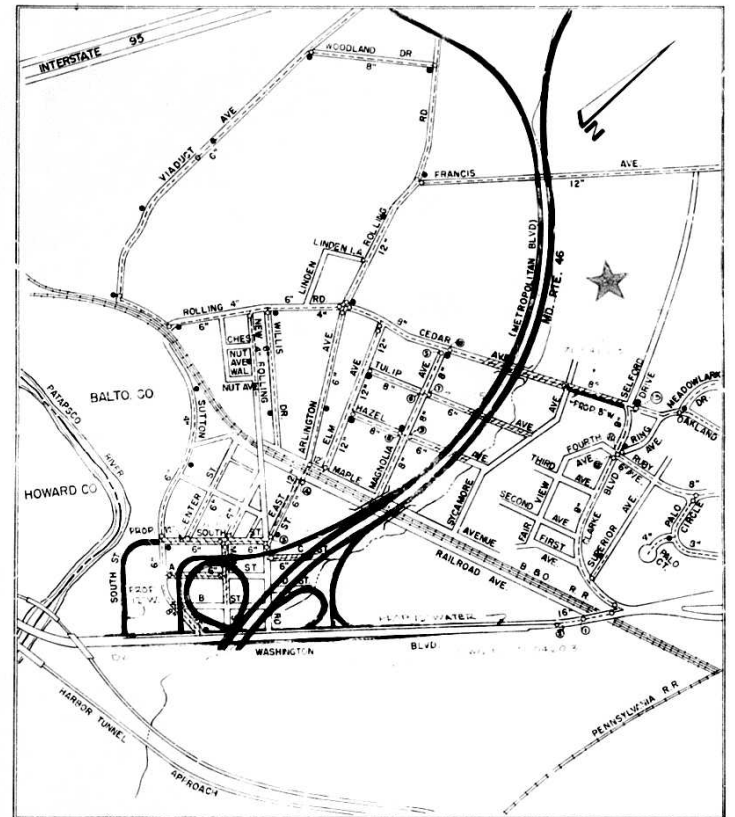
Other Factors Affected A further difficulty of prediction is that even so pronounced a generation bulge itself will be affected by other deep factors operating in society.

One example is the combination of the increasing tendency of wives to work and the rise in apartment living. This could, Mr. Wattenberg speculates, make possible such conveniences as automated mini-groceries in the basements, lined with elaborate coin machines.

He also cites the idea of Ray Wolfe, a Toronto supermarket executive. According to this idea, since every apartment has the capacity to deliver fresh water to each tenant, "why not milk?"

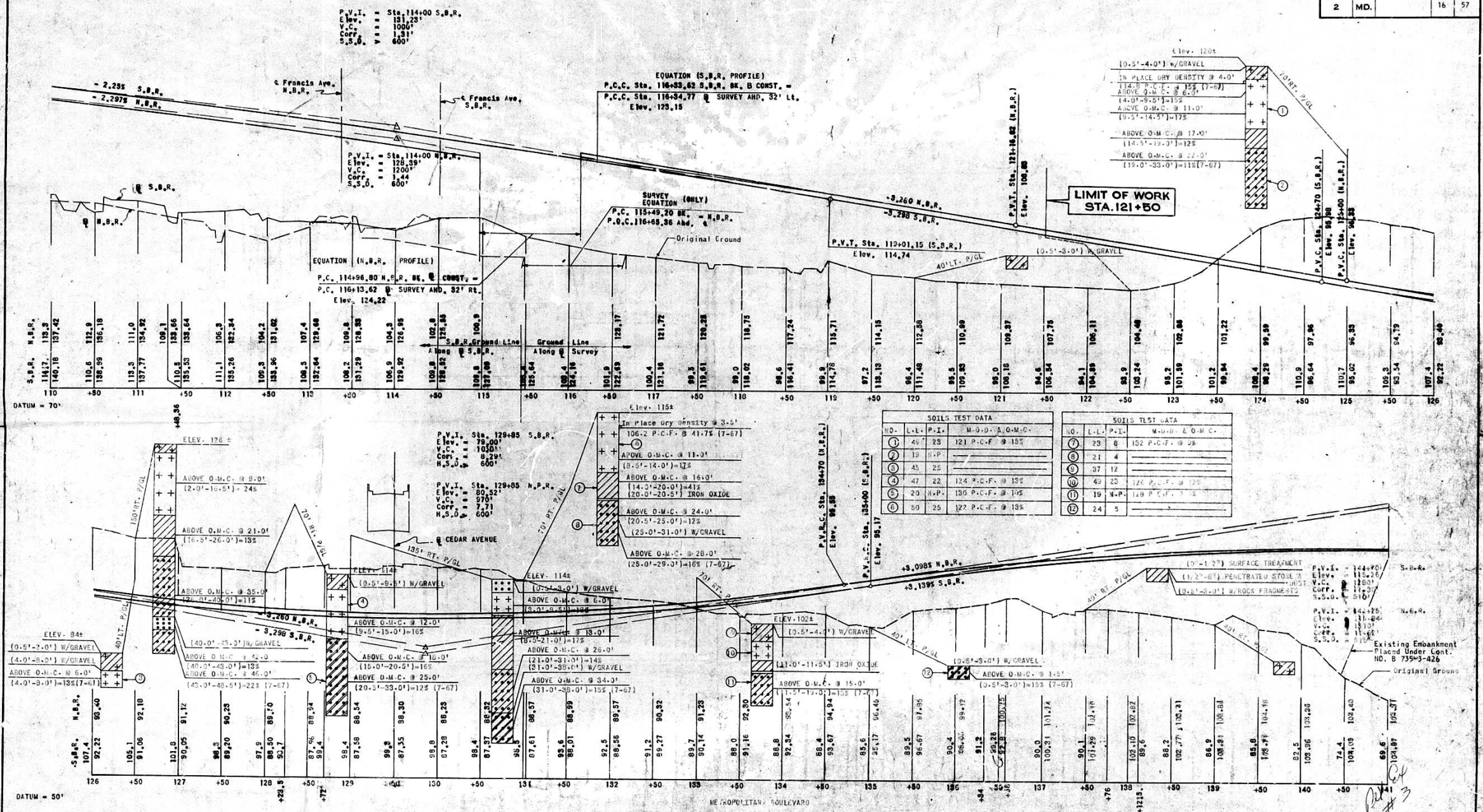
It could be delivered by tank truck to an apartment house and then flow, metered through sanitary piping, to a tap in each apartment. The savings could be immense.

And that would only be one of the smallest changes arising from population peristalsis: a boon to hardware stores for faucets labeled hot, cold, and milk.



LOCATION MAP
SCALE 1"=500'





SCALE PROFILE: 1 IN. = 50 FT. VERT. 1 IN. = 10 FT.

J. E. GREINER COMPANY, INC.
CONSULTING ENGINEERS
BALTIMORE, MARYLAND

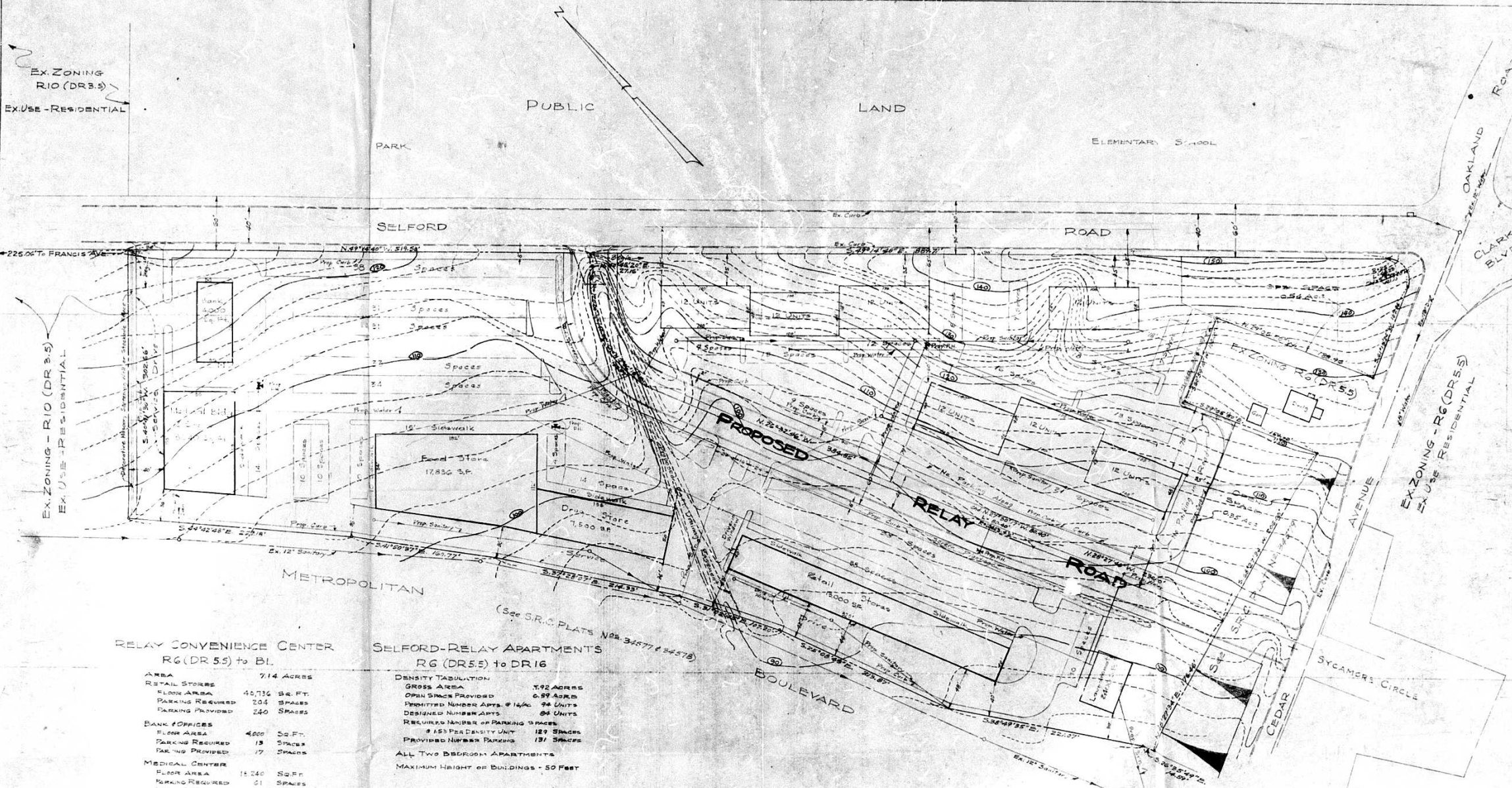
REVISIONS	

STATE OF MARYLAND
STATE ROADS COMMISSION
METROPOLITAN BOULEVARD
1400 FT. OF FRANCIS AVENUE TO 14.5 MILE 11

CONT. NO. 8755-4-426 F.A.P. NO. SHEET NO. 16 OF 57
PREL. TRAC. BY J.C.K. FINAL TRAC. BY T.P.P.







RELAY CONVENIENCE CENTER
R6 (DR 5.5) to BL

AREA	7.14 ACRES
RETAIL STORES	
FLOOR AREA	40,736 SQ. FT.
PARKING REQUIRED	204 SPACES
PARKING PROVIDED	240 SPACES
BANK OFFICES	
FLOOR AREA	4,000 SQ. FT.
PARKING REQUIRED	15 SPACES
PARKING PROVIDED	17 SPACES
MEDICAL CENTER	
FLOOR AREA	15,240 SQ. FT.
PARKING REQUIRED	21 SPACES
PARKING PROVIDED	75 SPACES
TOTAL PARKING REQUIRED	278 SPACES
TOTAL PARKING PROVIDED	332 SPACES

SELFORD-RELAY APARTMENTS
R6 (DR 5.5) to DR 16

DENSITY TABULATION	
GROSS AREA	1.92 ACRES
OPEN SPACE PROVIDED	0.59 ACRES
PERMITTED NUMBER APTS. @ 14/AC	74 UNITS
DESIGNED NUMBER APTS	84 UNITS
REQUIRED NUMBER OF PARKING SPACES	
# 1.55 PER DENSITY UNIT	129 SPACES
PROVIDED NUMBER PARKING	137 SPACES
ALL TWO BEDROOM APARTMENTS	
MAXIMUM HEIGHT OF BUILDINGS - 50 FEET	

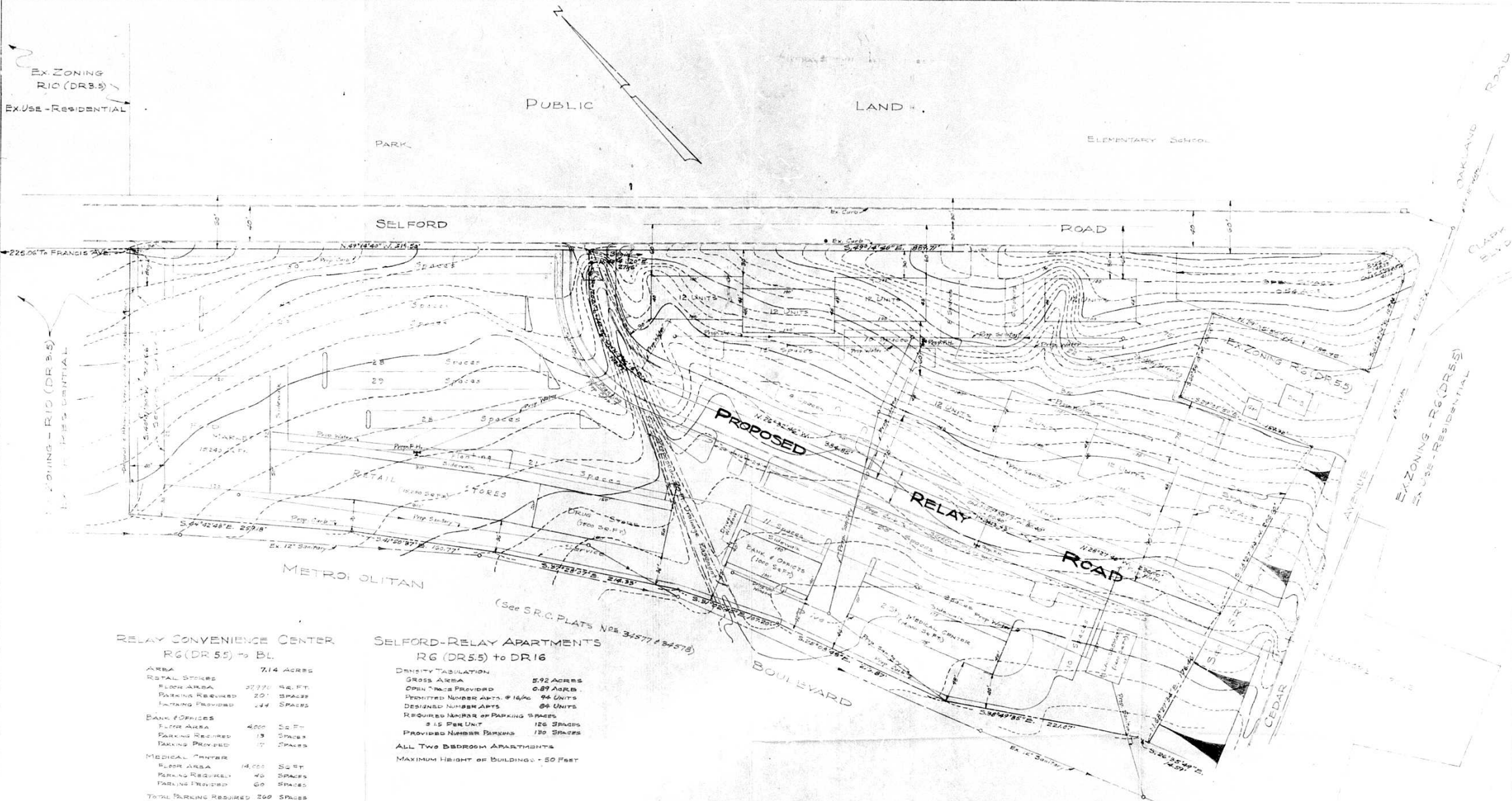
* This Revised plan is identical to the original plan, dated April 16, 1971, filed with the Zoning Petition except for the arrangement of the placement of buildings and their uses in the Selford-Relay Center (B) indicating the placement of an entrance lot, and (C) making certain technical changes to fully comply with Blurb 100 of the Apartment Code.

REVISED*
PLAT TO ACCOMPANY ZONING PETITION
FOR
RECLASSIFICATION FROM EXISTING R6 (DR 5.5)
TO
BL AND DR 16 ZONES

PROPERTY OWNED BY P. L. LEMMON
RELAY, MARYLAND
BALTA CO., MD.
SCALE: 1"=50'
ELECT. DATE: 10/17/71
SEPTEMBER 30, 1971
GEORGE WILLIAM STEPHENS, JR.
AND ASSOCIATES, INC.
ENGINEERS
303 ALLEGHENY AVE.
TOWSON 4, MARYLAND

Plat CK
#2





RELAY CONVENIENCE CENTER R6(DR5.5) to BL

AREA	7.14 ACRES
RETAIL STORES	
FLOOR AREA	37,770 SQ. FT.
PARKING REQUIRED	207 SPACES
PARKING PROVIDED	244 SPACES
BANK OFFICES	
FLOOR AREA	4,000 SQ. FT.
PARKING REQUIRED	13 SPACES
PARKING PROVIDED	17 SPACES
MEDICAL CENTER	
FLOOR AREA	14,000 SQ. FT.
PARKING REQUIRED	40 SPACES
PARKING PROVIDED	60 SPACES
TOTAL PARKING REQUIRED	260 SPACES
TOTAL PARKING PROVIDED	321 SPACES

SELFORD-RELAY APARTMENTS R6(DR5.5) to DR16

DENSITY TABULATION	
GROSS AREA	5.92 ACRES
OPEN SPACE PROVIDED	0.89 ACRES
PERMITTED NUMBER APTS. @ 16/AC	94 UNITS
DESIGNED NUMBER APTS	84 UNITS
REQUIRED NUMBER OF PARKING SPACES	
9.15 PER UNIT	126 SPACES
PROVIDED NUMBER PARKERS	120 SPACES
ALL TWO BEDROOM APARTMENTS	
MAXIMUM HEIGHT OF BUILDINGS - 50 FEET	

PLAT TO ACCOMPANY ZONING PETITION FOR RECLASSIFICATION FROM EXISTING R6(DR3.5) TO BL AND DR16 ZONES

PROPERTY OWNED BY RT. LEMMON
RELAY, MARYLAND
BALTA, MD. ELBERT DRY, JR.
SCALE: 1"=50' APRIL 16, 1971
GEORGE WILLIAM STEPHENS, JR.
AND ASSOCIATES, INC.
ENGINEERS
303 ALLGHEHY AVE.
TOWSON 4, MARYLAND



Map 24
SW 6 DE
1-D, E
4"
1/24/71

