

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 Seldford Road.
13th District - SW Sector
High Hill Realty, Inc.,
Petitioner
IN THE
CIRCUIT COURT
OF
BALTIMORE COUNTY
ZONING APPEAL
Misc. Case No. 5035

Motion For Extension of Time
For Filing Of Record

Appellants Herbert C. Jacober, Roy B. and Carolyn J. Maguire, and Gardner T. Smith, pursuant to Rule 87 of the Maryland Rules, move for an extension of sixty days from September 16, 1973 to November 16, 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 eight 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 June 18, 1973 to September 16, 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 extension of sixty days to November 16, 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

RECEIVED

FROM THE OFFICE OF
GEO. WILLIAM STEPHENS, JR., ASSOCIATES, INC.
ENGINEERS
P.O. BOX 6828, TOWSON, MD. 21204

Description to Accompany Zoning Petition
Reclassification from R6 (D.R. 5.5) to D.R. 16
High Hills

April 12, 1971

Beginning for the same on the west side of Clark Boulevard at a point which is South 36° 11' 20" East 240 feet more or less from the intersection formed by the center line of Cedar Avenue and the center line of Seldford Road and running thence binding on the west side of said Clark Boulevard the six following courses, viz: (1) southerly along a curve to the right with a radius of 1862.50 feet a distance of 152.32 feet, said curve being subtended by a chord bearing South 23° 04' 39" East 152.28 feet, (2) South 20° 44' 04" East 556.10 feet, (3) southerly along a curve to the left with a radius of 464.54 feet a distance of 207.15 feet, said curve being subtended by a chord bearing South 33° 30' 33" East 205.44 feet, (4) leaving said Clark Boulevard South 21° 49' 04" East 117.60 feet, (5) North 68° 10' 17" East 84.25 feet, to said Clark Boulevard, thence binding on said Clark Boulevard and (6) southerly along a curve to the left with a radius of 575.56 feet a distance of 134.82 feet, said curve being subtended by a chord bearing South 76° 55' 27" East 134.51 feet to the north side of the Baltimore and Ohio Railroad, running thence binding on said north side of said railroad the nine following courses, viz: (7) South 66° 00' 00" West 132.90 feet, (8) South 35° 32' 16" West 68.82 feet, (9) South 73° 39' 50" West 60.44 feet, (10) South 67° 18' 01" West 248.77 feet, (11) South 60° 37' 33" West 95.52 feet, (12) South 68° 54' 28" West 150.00 feet, (13) South 64° 10' 35" West 294.14 feet, (14) South 81° 56' 56" West 40.98 feet, (15) South 70° 05' 05" West 264.88 feet to the east end of a drainage easement, thence binding on the said east end of said easement the four following courses, viz: (16) North 8° 57' 34" East 182.32 feet, (17) North 2° 04' 30" East 276.18 feet, (18) North 7° 27' 53"

I HEREBY CERTIFY that a copy of the foregoing Motion was mailed this 4th day of September, 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

Item #3 (April - October Cycle 1971)
Property Owner: High Hill Realty, Inc.
Page 3
May 12, 1971

Sanitary Sewer (Cont'd)

Improvements to the public system may be required for adequate service.

The Petitioner is entirely responsible for the construction of all additional sewerage required to serve the proposed development. Such additional sewerage is to be constructed on a lot, that is, not within any public road, right-of-way, or easement, except for connection to public sanitary sewerage located therein. All private and/or public 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.

Edmund N. Dier
Edmund N. Dier, P.E.
Chief, Bureau of Engineering

END:SAN/OK:iss
cc: File (3)

Key Sheet: C-W
Position Sheet: 25 S4 16
Topic: S4 7 D & S
Tax Map: 106

RE: PETITION FOR RECLASSIFICATION
from D.R. 5.5 to D.R. 16
W/S of Clarke Blvd. 250' from
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13th District - SW Sector
High Hill Realty, Inc.,
Petitioner
IN THE
CIRCUIT COURT
OF
BALTIMORE COUNTY
ZONING APPEAL
Misc. Case No. 5035

ORDER

ORDERED this 1st 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 September, 16, 1973 to November, 16, 1973.

Barrett
Judge

2024 46573 - 152 pm

ERROR IN ZONING

The County Council erred in reversing the decision made by the Baltimore County Planning Board from DR 16 to DR 5.5. Some of the reasons making this property undesirable for Cottage type development are as follows:

1. Property over looks the Segrams-Calvert Distillery and is subject to the odor.
2. The property over looks U.S. Pipe Company's storage yard.
3. Property is immediately adjacent to the Main Line of the B & O/C & O Railroad.
4. Portions of the property has been taken for construction of Metropolitan Boulevard which has right-of-way from 300 to 400 feet wide.

Even more of an Error, is the limitation of DR 5.5 Classification when Multi-family dwellings are contemplated. The reduced number of units prohibits a private developer from undertaking the construction of such a project because it is inherently uneconomical from the standpoint of land wasted in costly-to-maintain open space of crooked land and the higher and unmarketable rent levels occasioned thereby. Private enterprise in order to provide moderate rentals for middle income families can accomplish this much-desired objective only if it is able to achieve the cost-reducing efficiencies which are only possible with moderate-density land development.

Aside from the traffic nuisance on the major highway it does, however, serve as an adequate buffer between the subject site and Relay-St. Dennis.

The property will be physically buffered off from the north by a new bridge approach carrying Cedar Avenue over Metropolitan Boulevard which is now under construction by State Roads Commission. This road will be approximately 15 feet above subject site, and contract is now underway by State Roads.

New sanitary sewer trunk lines has recently been completed in the area and were redesigned by the owner in keeping with the proposed apartment layout of this property.

In conclusion, we feel that the Planning Board recommendation for this property was just and correct and all of the DR 16 sites recommended in this area, this was probably the most reasonable because of its isolated location and proximity to existing heavy industrial area.

Description to Accompany Zoning Petition
Reclassification from R6 (D.R. 5.5) to D.R. 16
High Hills

April 12, 1971
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West 421.08 feet, and (19) North 2° 34' 56" West 207.45 feet, thence (20) North 61° 06' 09" East 254.43 feet, (21) South 2° 33' 51" East 20.00 feet, (22) North 87° 58' 54" East 304.38 feet, (23) North 24° 11' 50" East 84.59 feet, and (24) North 23° 10' 57" East 149.18 feet to the place of beginning.
Containing 22.18 Acres of land, more or less.



CERTIFICATE OF PUBLICATION

TOWSON, MD. September 9, 1971.

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., on one time, before the 30th day of September, 1971, the next publication appearing on the 9th day of September, 1971.

THE JEFFERSONIAN
L. L. Lusk, Jr., Manager

Cost of Advertisement, \$

BALTIMORE COUNTY, MARYLAND

OFFICE OF FINANCE - REVENUE DIVISION

MISCELLANEOUS CASH RECEIPT

DATE October 18, 1971 ACCOUNT 01-662

AMOUNT \$137.00

WHITE - CASHIER
Carl & Edward Jullio
10 Parks Ave.
Cockeysville, Md. 21030

Advancing and posting of property for High Hill Realty #72-92-R

RE: PETITION FOR RECLASSIFICATION : BEFORE
from D.R. 5.5 to D.R. 16 : COUNTY BOARD OF APPEALS
W/S of Clarke Blvd. 250' from : OF
intersection formed by center :
line of Cedar Avenue and center : BALTIMORE COUNTY
line of Seltford Road, :
13th District - SW Sector :
High Hill Realty, Inc., :
Petitioner : 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 27.18 acres. The property is located on the west side of Clarke Boulevard, 250 feet from the centerline of Cedar Avenue and Seltford 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

2.

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 \$85,000 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 Company 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 341, which by 1975 is expected to grow to 7,500 pupils and 700 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

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

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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 hearings 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 severed 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 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

4.

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 some. 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,

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

5.

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.

RE: PETITION FOR RECLASSIFICATION : IN THE
from D.R. 5.5 to D.R. 16 : CIRCUIT COURT
W/S of Clarke Blvd. 250' from :
intersection formed by center : OF
line of Cedar Avenue and center : BALTIMORE COUNTY
line of Seltford Road, :
13th District - SW Sector :
High Hill Realty, Inc. :
Petitioner : ZONING APPEAL
Misc. Case No. 5035

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 June 14, 1973 to September 13, 1973.

Kenneth C. Proctor
Judge

True Copy Test

ELMER H. KAYLOR, JR., Clerk

Deputy Clerk

RE: PETITION FOR RECLASSIFICATION : IN THE
from D.R. 5.5 to D.R. 16 : CIRCUIT COURT
W/S of Clarke Blvd. 250' from :
intersection formed by center : OF
line of Cedar Avenue and center : BALTIMORE COUNTY
line of Seltford Road, :
13th District - SW Sector :
High Hill Realty, Inc. :
Petitioner : ZONING APPEAL
Misc. Case No. 5035

Motion For Extension Of Time For Filing Of Record

Appellants Herbert C. Jacober, Roy B. and Carolyn J. McGuire, and Gardner T. Smith, pursuant to Rule 87 of the Maryland Rules, move for an extension of ninety days from June 18 to September 16, 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 eight 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 June 18, 1973, the date in which the record is due in this Honorable Court, to transcribe those proceedings.
3. The record in this case has been entered into evidence as part of another appeal, Misc. Case No. 5034, pending before this Honorable Court. The hearings in that case extended over a period of six days before the Board of Appeals. Both transcripts are being prepared simultaneously and as quickly as possible.

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

Res. Mrs. Kramer.
Motion filed today -
Judge Proctor signed Order 4/1/73

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, 21206, and Marvin I. Singer, 10 East Eager Street, Baltimore, Maryland, 21202.

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

RECORDED

RE: PETITION FOR RECLASSIFICATION : IN THE
from D.R. 5.5 to D.R. 16 : CIRCUIT COURT
W/S of Clark Blvd. 250' from : OF
intersection formed by center :
line of Cedar Avenue and center :
line of Salford Road, : BALTIMORE COUNTY
13th District - SW Sector :
High Hill Realty, Inc., : ZONING APPEAL
Petitioner : Misc. Case No. 5035

ANSWER TO PETITION FOR APPEAL

Now comes High Hill Realty, Inc., by its 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 over-
whelmingly 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 of said petition are
denied; the Board's statement that there existed "no land zoned
for apartments" in the area being taken completely out of context.
A reading of the Board's Opinion makes it clear that the refer-
ence was to an absence of land zoned D.R. 16, and especially the
observation, contained in the same paragraph, respecting the
recommendations of the Baltimore County Planning Board. If any
lingering doubt persists as to the meaning of the Board's state-
ment, the Concurring Opinion noted agreement with the specific
reference to the fact that "within the subject area... no D.R. 16
exists."

MICROFILMED

Without reviewing the evidence further in detail but
based on all the evidence presented at the hearing, in the opin-
ion of the Zoning Commissioner, the Comprehensive Zoning Map as
adopted on March 24, 1971, was in error in classifying this prop-
erty 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 Metro-
politan Boulevard at the same time, the extension of the water
main from Baltimore City in the bed of Washington Boulevard, which
lies closely to the south, necessitates this property be classi-
fied in a D.R.16 Zone.

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 neces-
sary.

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 prox-
imity to Columbia and Howard County in its continuous development
and expansion, affords very high employment opportunity 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 Inter-
state 95 within a short period of time.

It must be noted that the Baltimore County Planning
Board in its recommendations to the Zoning Commissioner, under
Item No. 53, have indicated the need for the density zoning re-
quested on this subject tract. The Baltimore County Planning
Board states:

3. The allegations of Paragraph 3 of said petition are
denied; the characterization of the Board's finding was wholly
inaccurate and unwarranted. Moreover, the Board referred briefly
to certain major aspects of the testimony proving a need for
higher density zoning, which the subject tract could satisfy in
part, such testimony being in accord with the findings and
recommendation of the Planning Staff and Board.

4. The allegations of Paragraph 4 of said petition are
denied; the action of the Board was proper and required by the
evidence produced throughout lengthy hearings before it, and did
not constitute "spot zoning" as that phrase has been defined by
the Maryland Court of Appeals.

5. The allegations of Paragraph 5 of said petition are
denied; the evidence showed that Metropolitan Boulevard (presently
under construction) borders the western side of the subject tract,
which lies between the interchanges of that major road with
Washington Boulevard (U.S. Route 1) and Interstate 95. Con-
struction for the re-alignment and opening of other streets nearby
was then in process, offering "quick easy access from the subject
tract".

6. The allegations of Paragraph 6 of said petition are
denied; no credible evidence of such claims was presented to the
Board, merely the unsupported and general opinions of residents
expressing opposition to any change from the status quo.

7. The allegations of Paragraph 7 of said petition are
denied; said allegations constitute only speculation and are
without any basis in fact or evidence.

-2-

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

It is therefore recommended that D.R.5.5 zon-
ing for a depth of 150 feet from the centerline of
Clark Boulevard, extending from Cedar Avenue to
the railroad tracks (approximately 2 acres) and
D.R.16 zoning for the remainder of the tract (ap-
proximately 20 acres) be granted."

The Zoning Commissioner cannot agree with the recommen-
dation of the Baltimore County Planning Board in zoning two (2)
acres of the total tract in the D.R.5.5 Zone. This whole tract
should be classified in a D.R.16 Zone.

For the foregoing reasons, IT IS ORDERED by the Zoning
Commissioner of Baltimore County, this 18 day of April,
1972, that the herein describe^d property or area should be and the
same is hereby reclassified from a D.R.5.5 Zone to a D.R.16 Zone,
from and after the date of this Order, subject to the approval of
a site plan by the State Highway Administration, the Bureau of
Public Services and the Office of Planning and Zoning.

[Signature]
Zoning Commissioner of
Baltimore County

RE: PETITION FOR RECLASSIFICATION : BEFORE THE
W/S of Clark Boulevard, 250' : ZONING COMMISSIONER
from the centerline of Cedar :
Avenue and Salford Road - 13th : OF
District : BALTIMORE COUNTY
High Hill Realty, Incorporated :
- Petitioner :
NO. 72-92-R (Item No. 53) :

The Petitioner requests a Reclassification from a
D.R.5.5 Zone to a D.R.16 Zone for a parcel of property located on
the west side of Clark Boulevard, two hundred and fifty feet (250')
from the centerline of Cedar Avenue and Salford Road, in the Thir-
teenth District of Baltimore County, containing 22.18 acres of
land, more or less.

Testimony on behalf of the Petitioner indicated that the
property is to be developed into three hundred and fifty-two (352)
garden type apartment units. It is alleged that the property, as
it is presently classified, could not be economically developed
into apartments.

This property abuts Metropolitan Boulevard to the west,
the Baltimore and Ohio Railroad tracks to the south, and single
family cottages to the north and east. The property sits on a
hill overlooking industrial complexes along Washington Boulevard
to the south.

There are adequate sewer and water facilities available,
as a new water main was installed in the bed of Washington Boul-
vard 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 of Baltimore
County. They supported this contention 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 in-
dustrial complexes along Interstate 95 and those
complexes now being developed in Columbia, and the
employment opportunities accruing therefrom.

MICROFILMED

April 18, 1972

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

RE: Petition for Reclassification
W/S of Clark Boulevard, 250'
from the centerline of Cedar
Avenue and Salford Road - 13th
District
High Hill Realty, Incorporated
- Petitioner
NO. 72-92-R (Item No. 53)

Dear Mr. Singer:

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

Very truly yours,

[Signature]
S. ERIC DI NENNO, Jr.
Zoning Commissioner

SED/srl
Attachments

cc: Vincent L. Glorioso, 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

4. Its appropriate location with relation
to the already developed and proposed road net-
works in this area.

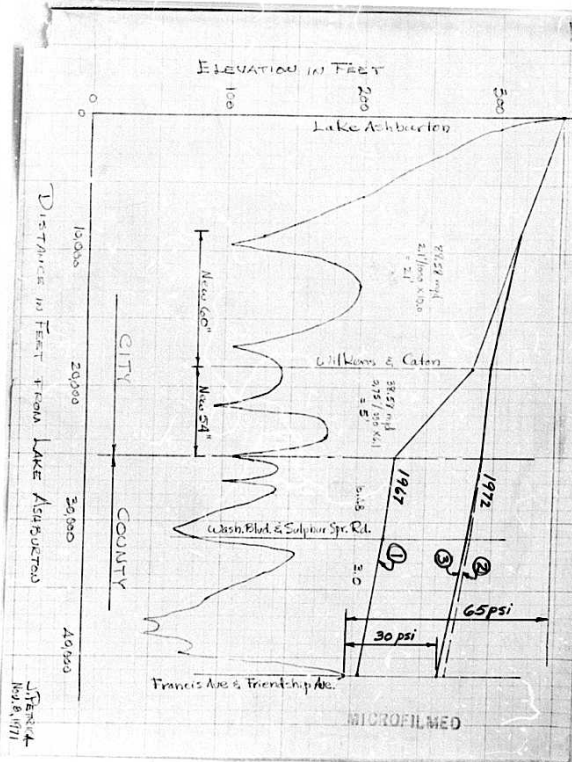
Mr. James S. Spaner, a qualified engineer, testified that
the Capital Improvement Program had been initiated for the con-
struction of Metropolitan Boulevard which, at the present time, is
under construction immediately to the west of the subject property.
This has been planned for many years and was under construction at
the time of the adoption of the present map. The extension of Sel-
ford Road, Metropolitan Boulevard, and Rolling Road indicated to
him 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, in-
dicated that the property should be developed to its highest den-
sity because of its location and employment opportunities.

As stated above, this property or part thereof views the
industrial area along Washington Boulevard.

In claiming error, witnesses for the Petitioner indicat-
ed that the Baltimore County Council did not take into considera-
tion 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 Peti-
tion, 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 the granting of this Petition, along with sev-
eral other Petitions concerning this area which are before the
Zoning Commissioner, would cause undue traffic concentration, over-
burden the school system, and be a detriment to their health, safe-
ty, and general welfare.

- 2 -



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PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, or we, High Hill Realty, Inc., legal owner, of the property situate in Baltimore County and which is described in the description and attached hereto and made a part hereof, hereby petition (1) that the zoning status of the hereto described property be re-classified pursuant to the Zoning Law of Baltimore County, from an D.R. 5.5 (or R-6) zone to an D.R. 16 (or R-6) 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.

High Hill Realty, Inc.
Contract purchaser
Address: 8403 Loch Raven Blvd.
Towson, Maryland 21204
Petitioner's Attorney
Address: 800 Tower Bldg. #102

ORDERED By The Zoning Commissioner of Baltimore County, this 17th day of August, 1977, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 10th day of September, 1977 at 11:00 o'clock.

John P. Hines
Zoning Commissioner of Baltimore County.

RE: Petition for Reclassification
WS of Clark Boulevard 250
feet from the center line of:
Cedar Avenue and Seiford Rd.
13th District
High Hill Realty, Inc.
Petitioner
Case No. 72-92-R
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:

Roy B. & Carolyn J. Maguire, his wife
1803 Clark Boulevard
Baltimore, Maryland 21227

Herbert C. & Mary C. Jacobor, his wife
1802 Clark Boulevard
Baltimore, Maryland 21227

Gardner T. Smith
1803 Clark Boulevard
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

RE: PETITION FOR RECLASSIFICATION
IN THE
County of Baltimore
Case No. 72-92-R
Petitioner
High Hill Realty, Inc.
Appeals
Baltimore County
Case No. 5035

Petition for Appeal

Protestants: Herbert C. Jacobor, Roy B. and Carolyn J. Maguire, and Gardner T. Smith, parties protestant to the proceedings before the Board of Appeals of Baltimore County in the above entitled case, and approved by the Order of the Board, dated April 10, 1973 file the following Petition for Appeal by their Counsel, 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 Board of Appeals in its March, 1971 decision to reclassify the subject tract as D.R. 5.5.
2. The Board erroneously stated in its Order of April 10, 1973 that there was no land zoned for apartments within the area, ignoring the fact that since March 26, 1971, apartments may be constructed on land zoned D.R. 5.5.
3. The Board of Appeals used "bootstraps" argument to rationalize the "need" for high density residential zoning (D.R. 16) on the subject tract by existing such need with proximity to employment opportunities.
4. The reclassification from D.R. 5.5 to D.R. 16 constitutes "spot" zoning, since a particular tract is selected for special designation not accorded similar tracts in the area and not in harmony with the existing surrounding residential development.

5. The Board erroneously cited "quick easy access from the subject tract" to major roads "without using residential streets," contrary to all the evidence presented throughout the lengthy hearings.
6. The reclassification from D.R. 5.5 to D.R. 16 will depreciate the value of adjoining residential property and will seriously impair their quality of life and enjoyment of their properties.
7. 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.
8. And for other reasons to be presented at the time of Hearing

Anne Kay Kramer
Anne Kay Kramer
Baltimore, Maryland 21202
306-2069
Counsel for Protestants/Appellants

I HEREBY CERTIFY, that on this 17th day of May, 1973, a copy of the foregoing Petition for Appeal was forwarded to the County Board of Appeals, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland, 21204, and Marvin I. Singer, Esq., 10 East Eager Street, Baltimore, Maryland 21202.

Anne Kay Kramer
Anne Kay Kramer
Baltimore, Maryland 21202
306-2069
Counsel for Protestants/Appellants

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BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Zoning
FROM: Jack Dietrich - Plans Review
SUBJECT: High Hill Realty, Inc.
S.W. Cor. Seiford Ave.
& Cedar Avenue
District 13

Date: April 30, 1971

Petitioner to comply with all applicable requirements of the Baltimore County Building Code and regulations, when plans are submitted. Also, see Parking Lots "Section 109.10B".

Jack Dietrich
Jack Dietrich - Plans Review

BALTIMORE COUNTY BOARD OF EDUCATION

ZONING ADVISORY COMMITTEE MEETING OF APRIL 27, 1973 (EXCISE ZONING)

Petitioner: High Hill Realty, Inc.
Location: the S.W. Cor. Seiford Ave. & Cedar Ave.
District: 13
Present Zoning: D.R. 5.5
Proposed Zoning: D.R. 16
No. of Acres: 0.418

Comments: THE EXISTING ZONING COULD YIELD APPROX. 40 ELEM. SCHOOLS WHICH A CHANGE TO THE PROPOSED 2 BEDROOM GARDEN APTS. COULD YIELD APPROX. 100 ELEM. SCHOOLS, 25 JR. HI. SCHOOLS, & 15 SR. HI. SCHOOLS.

SECT. 20, 1973	CAPACITY	ENROLL.	%
RELAY ELEM.	375	260	-80
ANGLIA JR.	1260	1575	+125
LANSDOWNE JR.	1520	1740	+115
FUTURE CAPACITY			
	STATUS	CAPACITY	EST. TO 2000
LANSDOWNE JR.	UNDERWAY	1,100	4171
LANSDOWNE SR. ADD-ON	SUGGESTED	400	71-72
PROGRAMMED CAPACITY			
	CAPACITY	YEAR PROGRAMMED	EST. TO 2000
RELAY ELEM. JR.	ADDED AT 1970	1970-73	1975-74
NEW LANSDOWNE JR.			

BALTIMORE COUNTY ZONING ADVISORY COMMITTEE

May 18, 1971

COUNTY OFFICE BLDG.
111 W. Chesapeake Ave.
Towson, Maryland 21204

OLIVER L. MYERS
Chairman

MEMBERS
BUREAU OF ENGINEERING
DEPARTMENT OF TRAFFIC ENGINEERING
STATE ROADS COMMISSION
BUREAU OF FIRE PREVENTION
HEALTH DEPARTMENT
PROJECT PLANNING
BUILDING DEPARTMENT
BOARD OF EDUCATION
ZONING ADMINISTRATION
INDUSTRIAL DEVELOPMENT

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

RE: Item #53 (April - October Cycle 1971)
Property Owners: High Hill Realty, Inc.
Location: S.W. Cor. Seiford Road and Cedar Ave.
Present Zoning: D.R. 5.5
Proposed Zoning: Reclass. to D.R. 16
District: 13C1 Sector: Southwestern
No. Acres: 2218

Dear Sirs:

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

The subject property is presently a vacant tract of land, with the property to the north and east improved with dwellings, 10 to 20 years of age, in excellent repair. The property to the west is bounded by the new Metropolitan Blvd. The property to the south is bounded by the 250 Railroad, Clark Blvd. is not improved insofar as concrete curb and gutter are concerned. However, portions of Cedar Avenue and Seiford Road are.

BUREAU OF ENGINEERING:

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

Highways:

This site has frontage on Clark Boulevard and Cedar Avenue.

Clark Boulevard 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.

Item #53
Page 2
May 18, 1971

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 35-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.

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.

This property is 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.

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

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

Sediment Control:

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

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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 made available to benefit this property.

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

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

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

Sanitary Sewer:

Public sanitary sewer facilities can be made available to benefit this property.

Improvements to the public system may be required for adequate service.

The petitioner is entirely responsible for the construction of all additional sewerage required to serve the proposed development. Such additional sewerage is to be constructed on site, that is, not within any public road, right-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 preliminary or final plat for recordation.

BOARD OF EDUCATION:

The existing zoning could yield approx. 45 elem. pupils, while a change to the proposed 2 bedroom garden apt. could yield approx. 106 elem. pupils, 25 Jr. Hs. pupils, & 18 Sr. Hs. pupils.

Sept. 22, 1970	Capacity	Enroll.	+/-
Relay Elem.	395	360	+35
Arbutus Jr.	1260	1375	-375
Lansdowne Sr.	1530	1742	-212

Future Const.	Status	Capacity	Est. to Open
Lansdowne Jr.	Underway	1120	9/71
Lansdowne Sr. Add-Alt.	Budgeted	400	71-72

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

HEALTH DEPARTMENT:

Public water and sewer are available to the site.

Air Pollution Comment: 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.

FIRE PREVENTION BUREAU:

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

A second means of access is required for the site.

Minimum width to the roads through site shall be 30 ft. 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.



STATE OF MARYLAND STATE ROADS COMMISSION 300 WEST PRESTON STREET BALTIMORE, MD. 21201

May 3, 1971

Mr. Edward O. Hardesty
Zoning Commissioner
County Office Bldg.
Towson, Md. 21204
Attn: Mr. D. L. Myers

Re: ITEM 53,
Z.A.C. Meeting 4/27/71
Property Owner: High Hill Realty
Location: S/W Cor. Selford
Ave. & Cedar Ave.
Present Zoning: Reclass to D.R. 16
District: 13th Sector: S/W
No. Acres: 22.18
METROPOLITAN BLVD.

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 E. Meyer, Jr.
Asst. Development Engineer

CLJ:ENB

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REPORTED IN THE COURT OF SPECIAL APPEALS OF MARYLAND

No. 794

September Term, 1973

72-92-R

HERBERT C. JACOB, et al,

v.

HIGH HILL REALTY, INC., et al

Orth, C.J.
Thompson
Menchine,

JJ.

Opinion by Thompson, J.

Filed: July 15, 1974

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Herbert C. Jacob, et al, appellants, appeal from the order dated October 16, 1973, of Judge John E. Raine, Jr., granting a motion to dismiss their appeal from the decision of the County Board of Zoning Appeals to the Circuit Court for Baltimore County.

The question presented is:

Did the trial judge err in dismissing the appeal for failure to file the record within the period of time prescribed in Md. Rule B?7

FACTS

The recitation of facts necessarily emphasizes chronology, which shall determine the question before us. On April 10, 1973, the County Board of Zoning Appeals, finding "error" in the comprehensive map, reclassified property held by the appellees to a more intensive high density residential use. On the last day for timely filing appeal, May 10, 1973, appellants, by their attorney, filed in the Circuit Court for Baltimore County an Order for Appeal from the Board's decision. The appellants next filed, on May 18, 1973, a Petition for Appeal which named Herbert C. Jacob, Roy B. & Carolyn J. McGuire, and Gardner T. Smith to be protestants to the proceedings before the Board. The aforementioned pleadings were timely filed.

The Board had considered two cases involving different properties held by the same parties. The hearings entailed a significant amount of testimony which was to be transcribed by the Court Reporter, C. Leonard Perkins. With firsthand knowledge of the logistical problems the court reporter faced in preparing such voluminous transcripts, counsel for appellants, for reasons not explained in the record, waited a full 21 days from the date the order for appeal was filed before ordering that the testimony be transcribed. On June 1, 1973,

appellants sent to Mr. Perkins a written instruction to commence the transcription in the High Hill case.

A Motion for a 90 day Extension of Time for Filing of the Record was filed by the appellants. That same day, June 14, 1973, Judge Kenneth C. Proctor signed an *ex parte* order that the period to file the record be extended for a ninety (90) day period from June 14, 1973 until September 13, 1973. (In fact, ninety-one (91) days).

Between mid-July and early August, Mr. Perkins received a phone call from Mrs. Kramer, attorney of appellant. During this conversation, Mrs. Kramer advised Mr. Perkins that settlement negotiations were under way and to "hold off" preparation of the transcript. At this point, 850 pages had been completed but 3 or 4 more weeks of rush work were required in order to finish the transcript. Mr. Perkins stopped work as directed by appellants' counsel.

On August 16, 1973, Mr. Perkins left for a three (3) day vacation in New Hampshire. He was hospitalized there for emergency surgery. The board was contacted in order to advise the people with records pending to seek extensions. Acting upon this information, the appellants moved for a second extension, on September 5, 1973, for a sixty (60) day period. That same day Judge Lester L. Barrett signed an *ex parte* order extending the time for filing the record for a sixty (60) day period from September 16, 1973 to November 16, 1973.

On September 10, 1973, appellees filed a motion to strike or rescind the order for extension of time rendered on September 5th by Judge Barrett, and filed a motion to dismiss the appeal of appellants to the Circuit Court.

(2)

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THERE ARE THREE DEFENDERS IN THIS CASE.

AREA 1:

1. P. L. LUMBER
2. CHESAPEAKE HOMES, INC.
3. HIGH HILL REALTY, INC.

543.26

52.71 AC.

22.18 AC.

TOTAL 1 80.94 AC.

UNDER THE EXISTING ZONING WE SEE A POSSIBLE YIELD OF APPROX. 233 ELEMENTARY PUPILS. A CHANGE TO APARTMENT ZONING COULD YIELD FROM 131 TO 435 OCCUPANTS, FROM 27 TO 109 JR. HS. PUPILS, & FROM 22 TO 23 SR. HS. PUPILS. THE HIGH HILL ASSUMES THAT ALL 3 GARDEN TOWNHOUSES COULD BE BUILT BY THE CHESAPEAKE HOMES FIRM.

Mr. Perkins had returned to Baltimore around September 1st. A subsequent illness required that he spend three days at Greater Baltimore Medical Center. But he was not instructed by appellants to resume transcribing the High Hill record until the last week in September.

On October 16, 1973, Judge John E. Raine, Jr. held a hearing on appellants' motions to strike and to dismiss the appeal. Judge Raine, on October 16th, rescinded the September 5th order for a sixty (60) day extension and further granted the motion to dismiss appellants' appeal. During this hearing, Mr. Perkins, testifying for appellants, stated that he still needed two weeks of work to complete the transcript, which he had resumed transcribing in the last week of September after being told to hold off in mid-July.

Md. Rule Chapter 11, subtitle B prescribes the rules to be followed in appealing from administrative agencies. In accord with subtitle B, we will apply the facts in the instant case to the requirements for timely transmittal of the record, as set out by Rule B?7 a-c.

1. Rule B?7. Record.

2. Time Within Which Required - Content.

Promptly after receipt of a copy of the first petition filed in a case pursuant to section 6 of Rule 12 (How Appeal Taken) and in any event within thirty days after such receipt, unless a different time shall be fixed by order entered pursuant to section 6 of this rule, the agency shall transmit to the clerk of the court the original or a certified copy of the record of its proceedings, including any transcript of testimony and any exhibit filed therein; if the testimony has been recorded but not transcribed prior to the filing of the appeal, the appellant, unless otherwise provided by law, shall, if required by the

(3)

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On April 10, 1973, the Board entered its decision; appellant timely filed his order for appeal on the last day permitted for such under Rule B4 a, on May 10, 1973. Eight days later, on May 18, 1973, appellant filed his petition for appeal within the time frame authorized by Rule B2 c. The petition for appeal, as filed by appellant on May 18, 1973, certified that a copy had been forwarded to the Board the day before. Rule B7 a requires that the record be transmitted promptly and in any event within thirty (30) days after a copy of the petition filed in the Circuit Court is received by the administrative agency, unless a court order pursuant to section b fixes a different time. Section b authorized the court for sufficient cause shown to extend the time for transmittal of the records, but the extension is not to exceed ninety (90) days beyond the date on which the copy of the petition for appeal was received by the agency.

1. Continued
agency, pay the expense of transcription and that expense shall be taxed as costs; provided, that there shall be no such tax if the parties to the appeal shall designate by stipulation, and such stipulation shall be transmitted with the record.

b. Change of Time.
Upon application of any party, including the agency, and for sufficient cause shown, the court may direct that the record be transmitted in such shorter or longer time, not exceeding ninety days after receipt of the first copy of a petition of appeal, as may be ordered, except that the record need not be transmitted until after disposition of a demurrer or similar pleading.

c. Delay.
An appeal shall not be dismissed because the record has not been transmitted within the time prescribed, if it appears to the court that such delay was occasioned by the neglect, omission or inability of the agency or of any party other than the appellant. Provided, however, that such neglect, omission or inability shall not be presumed, but must be shown by the appellant. (Emphasis added.)

(4)

record be prepared promptly, appellant did not order that the testimony be transcribed until 21 days from filing his order for appeal. At a time, between mid-July and early August, when the reporter had only 27% of the testimony left to transcribe, requiring an additional three to four weeks of rush work, appellant told him to "hold off." He thus prevented work for two to three weeks by Mr. Perkins, who left for a brief vacation on August 16, 1973. Though hospitalized in New Hampshire, Mr. Perkins did return to Maryland around September 1. Counsel for appellant waited until he was contacted by Mr. Perkins and around the last week in September he finally authorized Mr. Perkins to resume his transcription of the testimony. Acknowledging the three days that Mr. Perkins was hospitalized while in Maryland, appellant still permitted three weeks to elapse in the month of September.

Faced with the testimony of Mr. Perkins that three to four more weeks of rush work would have been sufficient to complete the transcription of the testimony, when appellant ordered that he "hold off" in late July or early August, Judge Raine found that the delay in transmitting the record was solely attributable to the appellant. In reaching this result, Judge Raine limited the time span under consideration to a period prior to the day when Mr. Perkins left for his vacation (August 16, 1973). Consequently, any delay during this period was not due to the reporter's subsequent illness. Depending upon when the hold off order was actually given, appellants' delay spanned from five to seven weeks, including the delay in ordering the transcript. This evidence is clearly adequate to sustain the court's

(5)

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In the instant case, under the terms of sections a and b, an extension of the "time prescribed" for transmitting the record could not extend beyond August 16, 1973. To transmit the record after mid-August would be to act without the "time prescribed" in sections a and b, thereby requiring appellant to resort to section c for such authority. This section requires that the appeal not be dismissed for failure to transmit the record within the time prescribed, if the appellant can show to the satisfaction of the court that "such delay" was occasioned by the "neglect, omission or inability" of someone other than the appellant. By necessary inference, the motion to dismiss must be granted, however, if the appellant fails to sustain his burden of proof.

On June 14, 1973, Judge Proctor ordered that the time for filing the record be extended for a ninety (90) day period purportedly under Rule B7 to September 13, 1973, which is almost a month beyond the ninety (90) day time limitation prescribed by subsection b. On September 5, 1973, which likewise is beyond the period of time prescribed by subsection b for extension, Judge Barrett ordered a further sixty (60) day extension to November 16, 1973. The legal effect of these two *ex parte* rulings comprises our threshold question.

This question has not been considered under Rule B7 b, however, it has been considered in cases interpreting Rule B25 b, substantially identical in terms to B7 b which permits lower courts' extensions of

2. Rule B25. Record - Time for Transmittal.

b. Lower Court May Shorten or Extend Time.

Upon application of any party and for sufficient cause shown, or

(5)

determination that appellant did not meet his burden of proving "neglect, omission or inability" of someone other than himself, as required by Rule B7 c. Consequently, it follows the judgment must be affirmed.

The Court of Appeals has repeatedly dismissed administrative appeals which fail to comply with the various time requirements set forth in the subtitle B provisions of Chapter 1100.

In *Salisbury Board of Zoning Appeals v. Rounds*, 240 Md. 547, 553, 214 A.2d 810 (1965), the Court of Appeals dismissed an administrative appeal, under the mandate of Rule B5, for failure to timely file a petition for appeal as required by Rule B2 c. The mandatory nature of this dismissal is indicated by the court:

"... Rules B2 c and B5 do not require any showing of prejudice to the adverse party and Rule B5 plainly states that the trial court, in the absence of cause to the contrary, shall dismiss the appeal for non-compliance with Rule B2 c.

"[W]e think it was reversible error for the trial court to deny the motion to dismiss the appeal..."

The *Rounds* mandatory dismissal requirement, for failure to timely comply with subtitle B to Ch. 1100 of the Md. Rules, was followed in *Marbeck v. Bradley Club, Inc.*, 242 Md. 394, 396, 219 A.2d 12 (1966) in which a petition for appeal was filed four days late, and *Volk v. Pugatch*, 262 Md. 80, 82, 277 A.2d 17 (1971). In *Volk*, the Court affirmed the trial court's dismissal for failure of appellants to timely file the petition for appeal or to timely transmit the record, Rule B7 a. Dismissal was also required in *Glant Food, Inc. v. Hatcher*, 256 Md. 239, 241, 260 A.2d 79 (1969) for failure to transmit the

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time for transmittal of records to the Court of Appeals. Though perhaps not controlling, we find the cases interpreting Rule B25 b to state the proper interpretation to be applied to Rule B7 b. The order may not extend the period for transmittal of the record one day beyond the ninety (90) day period of time prescribed in Rule B25 b. *Goldman v. Tauber*, 258 Md. 174, 176, 265 A.2d 225 (1970), *accord*, *Rosen v. Cohen v. Kovak*, 259 Md. 504, 509, 270 A.2d 465 (1970). In *Viner v. Manor Country Club*, 258 Md. 299, 303, 265 A.2d 857 (1970), the Court of Appeals held a second extension order, which authorized transmittal beyond the prescribed period, to be a nullity:

"When a showing by appellant that the delay in transmitting the record was caused by the neglect, omission or inability of the clerk of the lower court, the court stenographer or appellant, as specified in Rule B25 d, this Court has no authority to extend the period for the time for transmitting the record has expired." *Goldman v. Tauber*, 258 Md. 174, 265 A.2d 225 (1970). In the present case there was no showing the delay was due to any of the enumerated reasons constituting an excusable delay set forth in Rule B25 d. *Goldman v. Tauber*, *supra*; *Presstman v. Fine*, 162 Md. 133, 159 A. 265 (1932). The order of this Court dated May 6, 1969 extending the time to June 5, 1969 would be a nullity.

Consequently this appeal must be dismissed."

See also Committee Note to Rule B25 b; A. Scanlon, *Effective Appellate Advocacy*, 29 Md. L. Rev. 126, 128 (1969).

2 continued

upon its own motion, the lower court may, by order, shorten or extend the time for transmitting the record, if its order is made before the expiration of the period for transmitting the record as originally prescribed or as extended by a previous order; but the lower court shall not extend the time to a day more than ninety days from the date after the first order for appeal is filed or a writ of certiorari is granted."

This section is the same as Rule 1025 b, which governs appeals to the Court of Special Appeals.

(6)

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record as required by Rule B7, albeit the delay was very great.

We glean further authority for mandatory dismissal from cases interpreting terms in Rule B25 d that are substantially identical to the terms of our Rule B7 c. The cases require that the appeal be dismissed absent proof by the appellant that delay was due to neglect, omission or inability of specified officials. *Rosen v. Kovak*, 259 Md. at 509; *Viner v. Manor Country Club*, 258 Md. at 303; *Goldman v. Tauber*, 258 Md. at 176; *Doughnut Corporation v. Channan*, 182 Md. 493, 496, 35 A.2d 114 (1943); *Lomax v. J. R. Watkins Co.*, 176 Md. 691, 3 A.2d 718 (1939); *Presstman v. Fine*, 162 Md. 133, 137, 159 A. 265 (1932); *Price v. State*, 160 Md. 676, 673, 154 A. 556 (1931); *Wilner v. Halner*, 148 Md. 387, 389, 129 A. 347 (1925); *Horreman v. Forbush*, 124 Md. 581, 585, 93 A. 149 (1915) (record mailed one day before the last day for filing but received one day after the last day for filing, appeal dismissed); *Horeey v. Woodward*, 124 Md. 361, 363, 93 A. 9 (1914). See *Scanlon*, *supra* at 129.

3. Rule B25. Record - Time for Transmittal.

d. Delay in Transmittal Due to Mistake.

An appeal shall not be dismissed because the record has not been transmitted within the time prescribed, if it appears to this Court that such delay was occasioned by the neglect, omission or inability of the clerk of the lower court, the court stenographer, or appellant; provided, however, that such neglect, omission or inability shall not be presumed but must be shown by the appellant."

This Section is the same as Rule 1025 d, which governs appeals to the Court of Special Appeals.

(10)

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Applying the rationale of the aforementioned authority to the express terms of subsection b of Rule B7, we agree with the trial Judge below that both orders extending time for filing the record were invalid to the extent not authorized by the Rules. Consequently, appellant's transmittal of the record from the administrative agency was dehors the "time prescribed" in subsections a and b of Rule B7. To avoid mandatory dismissal of his appeal, the appellant had to sustain his burden of proof under Rule B7 c, that the delay was due to the neglect, omission or inability of someone other than himself.

We will now proceed to analyze the principal question before us, whether the trial court was clearly erroneous in finding as fact that the appellant did not sustain his burden of showing that the delay in transmitting the record was due to the neglect, omission or inability of persons other than himself.

In reaching our determination of whether under all the facts and circumstances the trial court was clearly erroneous in its evidentiary determination of fact, under Rule 1086 we must assume the truth of all the evidence and of all the favorable inferences fairly deducible therefrom tending to support the factual conclusion of the trial court. *Carling Brewing Co. v. Palmer*, 35 Md. App. 406, 412, 291 A.2d 175 (1972). See *Colburn v. Colburn*, 35 Md. App. 503, 513, 292 A.2d 121 (1972).

Appellant described the testimony to be transcribed as voluminous; in his brief, he states, "The case before the Board was complex and replete with a multitude of exhibits; and lengthy, consuming a total of eight days hearing time." Though Rule B7 encourages that the

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Interpreting a progenitor rule to "Rule B25, the Court of Appeals in *Worburton v. Robinson*, 113 Md. 24, 27 A. 127 (1916), discussed appellant's burden of proof:

"This provision of the Code imposes upon the appellant the burden of showing that the failure to forward the record within three months after the entry of the appeal was not the result of his own neglect, but was due to the default of the clerk or appellee. ..."

"In the absence of proof that the clerk or appellee was delinquent the presumption is that the appellant was responsible for the delay, and he must satisfy the Court that by proper diligence the record could not have been prepared and transmitted in time."

In *Steiner v. Harding*, 88 Md. 343, 345, 41 A. 799 (1896), the Court of Appeals, dismissing an untimely appeal, succinctly explicated the mandatory dismissal requirements:

"Indeed, whenever such a delay occurs the appellant must, to save the appeal from being dismissed, affirmatively show that the delay was occasioned by the neglect, omission or inability of the clerk. The prima facie evidence requiring the Court under its rules to dismiss an appeal is furnished when the fact appears that more than three months have elapsed between the date of entry of the appeal and the date of the transmission of the record; and this prima facie evidence must be rebutted and overcome by the appellant. He can overcome its effect by showing that the delay was due (first) to the neglect of the clerk, or (second) to the omission, or (third) to the inability of the clerk. If he fails to do so, there is no discretion given this Court to entertain the appeal; and the appellant's right to have it dismissed, secured as it is by the positive terms of the rule, becomes fixed and ineluctable. The rule is obligatory on this Court. We have no power to relax it, or to disregard it, so long as it remains unrevoked. Cases falling under it are not within the domain of a judicial discretion, but they are governed by its imperative provisions."

Applying the rationale of *Worburton* and *Steiner* to our present interpretation of Rule B7 c as applied to facts of the instant case, requires that we affirm the trial court's order dismissing the appeal for failure to timely transmit the record from the administrative agency.

(11)

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8. And further answering said petition, it is apparent that the appeal was not properly noted in that the order for appeal fails to identify the parties purporting to enter such appeal, said appellants only being identified for the first time in the said petition. Such action is contrary to Maryland Rules B2 and B3.

9. 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 to the subject property.

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

MARVIN I. SINGER
Ten East Essex Street
Baltimore, Maryland 21202
752-1122
Attorney for High Hill Realty, Inc.

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I HEREBY CERTIFY that on this 6th day of June, 1973, a copy of the foregoing Answer to Petition for Appeal was mailed to Anne Kay Kramer, Esq., Wiltomwood 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

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Appellants argue the judgment was invalid because the hearing was held before Judge Haine instead of Judge Barrett. No such question was presented below and we decline to consider it under Md. Rule 1085. In addition, appellants at oral argument contended settlement negotiations were responsible for the delay. We decline to consider the argument as it was not presented in the brief. Md. Rule 1031 d 4; Reid v. State, 10 Md. App. 6, 11, 267 A.2d 332 (1970). We might add that both contentions appear to be completely without merit. Appellants also argue the lack of prejudice. This is of no importance under the Md. Rules. Forder v. Groome, 267 Md. 100, 105, 297 A.2d 81 (1972).

JUDGMENT AFFIRMED.
APPELLANTS TO PAY COSTS.

(12)

TELEPHONE 484-2413	INVOICE BALTIMORE COUNTY, MARYLAND OFFICE OF FINANCE Revenue Division COUNT HOUSE TOWSON, MARYLAND 21204	No. 74075 DATE 12/10/73
TO: Mrs. Angela Wynn, Trans. Sales Improvement Ass'n. 1014 Friends Avenue Baltimore, Md. 21227	Courtesy Board of Appeals (Zoning)	
REPORT TO ACCOUNT NO. 01-712	RETURN THIS PORTION WITH YOUR REMITTANCE DETACH ALONG PERFORATION AND KEEP THIS PORTION FOR YOUR RECORDS	TOTAL AMOUNT \$ 20.00
Cost of certified copies of documents filed in case 72-92-2		\$ 20.00
High Hill Realty, Inc. W/S Clark Blvd. 287 from information furnished by construction of Cedar Ave. and construction of Solihull Road 28th District Southwestern Sector		
MICROFILMED		
IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND OFFICE OF FINANCE, REVENUE DIVISION MAIL TO COURTHOUSE, TOWSON, MARYLAND 21204		

TELEPHONE 484-2413	INVOICE BALTIMORE COUNTY, MARYLAND OFFICE OF FINANCE Revenue Division COUNT HOUSE TOWSON, MARYLAND 21204	No. 78647 DATE April 15, 1974
TO: Carl and Edward Jelle 10 Parks Ave. Cockeysville, Md. 21030	Zoning Dept. of Baltimore County	
REPORT TO ACCOUNT NO. 01-422	RETURN THIS PORTION WITH YOUR REMITTANCE DETACH ALONG PERFORATION AND KEEP THIS PORTION FOR YOUR RECORDS	TOTAL AMOUNT \$20.00
Petition for Reclassification for High Hill Realty, Inc.		\$20.00
MICROFILMED		
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. 3637
DATE May 18, 1972	ACCOUNT 01-662
AMOUNT \$70.00	
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER	
No. 72-92-R - Appeal Costs - Property of High Hill Realty - W/S Clark Blvd. 13th Dist. Zoning Fund, Vivian A. Stromberg, Wec 5616 Friendship Road	
70.00	

LOCATION: West side of Clark Boulder and 250 feet, more or less, from the intersection formed by the center line of Cedar Avenue and the center line of Selford Road.

DATE & TIME: THURSDAY, SEPTEMBER 30, 1971 at 11:00

CERTIFICATE OF PUBLICATION

BALTIMORE COUNTY, MD. Sept. 15, 1971

THIS IS TO CERTIFY. That the annexed advertisement was published in THE TIMES, a weekly newspaper printed and published in Baltimore County, Md., once in each of one successive weeks before the 30th day of Sept., 1971 the first publication appearing on the 9th day of Sept., 1971.

THE TIMES.

John M. Marten
Manager.

John M. Martin

Cost of Advertisement, \$ 36.00

PO J 3567
Req. No. A5689

Being the property of High HCl
Safety, Inc., as shown on a plat plan
filed with the Zoning Department.
Hearing Date: Thursday,
September 20, 1961 at 11:00 A.M.
Public Hearing: Room 106,
County Office Building, 131 W.
Cicero Avenue, Towson, Md.
BY ORDER OF
THE ZONING
COMMISSIONER OF
BALTIMORE COUNTY
Sept. 9

High Hill Realty, Inc.
8400 Loch Raven Blvd.
Towson, Maryland 21204

**Revised Pention
Item 53**

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

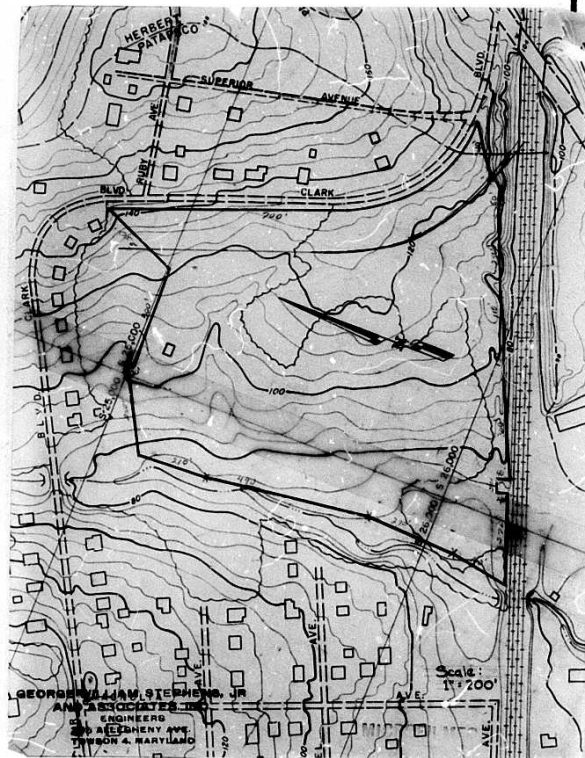
this 17th day of August 1971

Eric D. Henna
S. ERIC DHENNA,
Zoning Commissioner

Petitioner: High Hill Realty, Inc.

Petitioner's Attorney

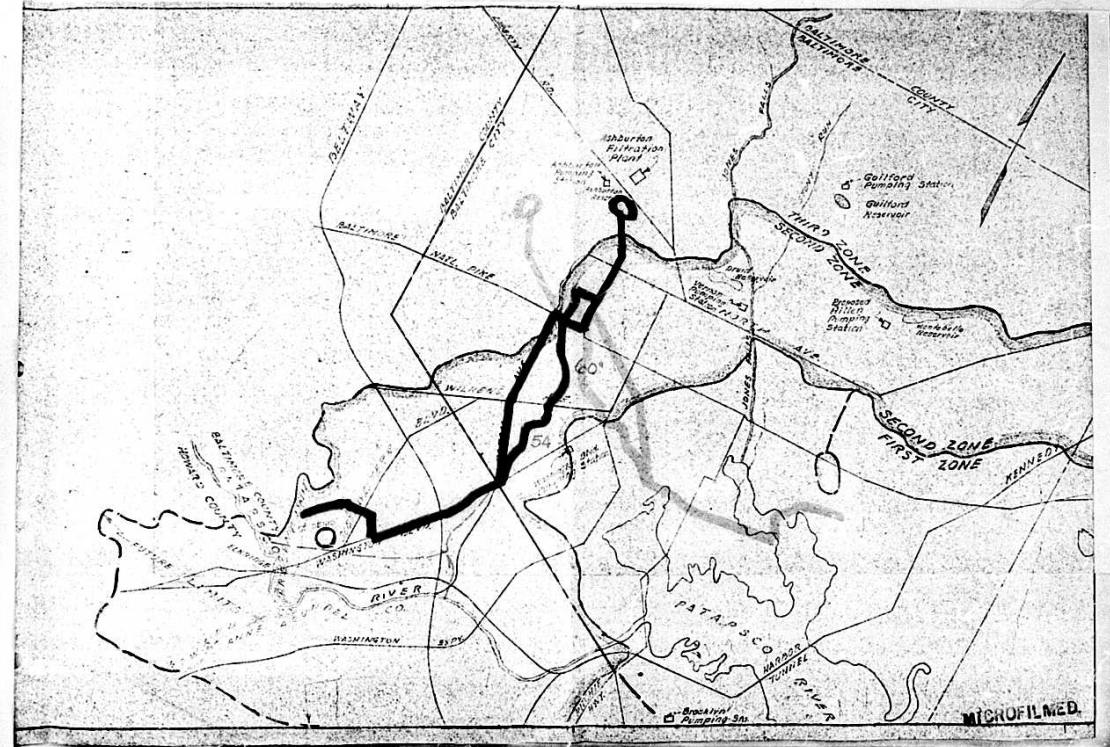
Reviewed by Walter S. Myers Jr.
Chairman of
Advisory Committee



2 SIGNS 72-92-12

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 137th
 Posted for: ATTN:AL
 Date of Posting: 11/13/84
 Petitioner: HIGH HUNG BEAUTY INC.
 Location of property: W/S. OF CLARK BLVD. 230 FT. FROM INTERSEC. TO
BLVD BY CENTER LINE OF CLARK BLVD. AND CENTER LINE OF
230 FT. FROM INTERSEC. TO
 Location of Sign: 24 ft. of CLARK BLVD. 230 FT. S. of Ordway,
34 ft. of CLARK BLVD. 575 FT. S. of Ordway
 Remarks:
 Posted by: Charles M. Hale
 Date of return: JUNE 2, 1976



S S I C N S 72-92-1

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District. 13th
 Posted for: RECLASSIFICATION
 Petitioner: HIGH HILL REALTY INC.
 Location of property: NW 1/4 OF CLARK BLVD. 250 FT. FROM THE
INTERSECTION FORMED BY THE INTERSECTION OF CLARK BLVD.
AND S. O. F. CLARK BLVD. 350 FT. N. OF CLARK AVE.
(2) NW 1/4 OF CLARK BLVD. 435 FT. + S. O. F. CLARK AVE. (2) NW 1/4 OF CLARK BLVD.
E. 1/4 S. O. F. CLARK BLVD.
 Mapped by: Charles H. Neal
 Signature: _____
 Date of return: SEPT. 24, 1971

High Mile Flight

PETITION MAPPING PROGRESS SHEET										
FUNCTION	Web Map		Original		Duplicate		Tracing		200 Sheet	
	date	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: <i>[Signature]</i>					Revised Plans: Change in outline or description _____ Y= # No					
Previous case: _____					Map # _____					



*NOTE: This plat was revised on Sept. 20, 1971 in order to comply with Bill 100.

DENSITY TABULATION	
GROSS AREA	22.18 AC.
OPEN SPACE PROVIDED (18%)	3.99 AC.
NUMBER UNITS PERMITTED (16/AC)	354 (All 2 bedroom units)
NUMBER UNITS SHOWN	352
PARKING REQUIRED (1.25/UNIT)	550
PARKING PROVIDED	542

NOTE: ALL BUILDINGS TO BE LESS THAN 50 FT. HIGH



REVISED *
PLAT TO ACCOMPANY ZONING PETITION
RECLASSIFICATION FROM
R6(DR55) TO DR-16
HIGH HILLS

Balto. Co., Md. Elect. Dist. #13
Scale: 1" = 50'
Revised: April 15, 1971.
Sept. 20, 1971.
GEORGE WILLIAM STEPHENS, JR.
AND ASSOCIATES, INC.
ENGINEERS
303 ALLEGHENY AVE.
TOWSON 4, MARYLAND



REVISED SEPTEMBER 25, 1971
SEWERS ADDED AND
BOULEVARD EAST OF CLARKE
BLVD.

NOT REPRODUCED

CLITAN



PRESENT ZONING
PRESENT USE
RESIDENTIAL



SEE 210