

PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION AND VARIANCE

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

WILLIAM S. BALDWIN and
I, or LOUIS F. BALDWIN, legal owners, 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 DR 3.5 zone to an DR 16 zone; ~~and~~ and a Variance from section 1802.2 of Bill 160 - BCC to permit a rear yard set back of 27 feet and a side yard set back of 46 feet instead of the 75 feet required; for the following reasons:

SEE ATTACHED BRIEF

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 professional offices

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, 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.

None
Contract purchaser
Address: 406 Campbell Lane
Townson, Md. 21204

James H. Cook, Petitioner's Attorney
Cook, Mudd, Murray & Howard
Address: Mercantile Trust Building
Townson, Maryland 21204

ORDERED By The Zoning Commissioner of Baltimore County, this 2nd day of February, 1973, 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 Baltimore, Baltimore County, on the 5th day of February, 1973, at 1:30 o'clock P.M.

Zoning Commissioner of Baltimore County.

(over)

James H. Cook, Esq.,
Cook, Mudd, Murray & Howard
Mercantile Trust Building
Townson, Maryland 21204

RE: Petition for Reclassification,
Special Exception and Variance
W/S of Campbell Lane, 200' N of
Chesapeake Avenue -
9th District
William S. Baldwin, et ux -
Petitioners
NO. 72-291-RXA (Item No. 1)

Dear Mr. Cook:

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

Very truly yours,

S. ERIC DINENNA
Zoning Commissioner

cc: Francis N. Iglehart, Esquire
192 W. Pennsylvania Avenue
Townson, Maryland 21204

Mr. Dwight Caskey
408 W. Joppa Road
Townson, Maryland 21204

COOK, MUDD, MURRAY & HOWARD

MERCANTILE TRUST BUILDING
408 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

TELEPHONE 823-4111
AREA CODE 301

May 3, 1973

Mr. John A. Slowik
Chairman, County Board of Appeals
County Office Building
Townson, Maryland 21204

Re: Baldwin Zoning Hearing -
Campbell Lane

Dear John:

I am enclosing herewith a list of the various properties that we had marked on the plat introduced in evidence Tuesday, and have forwarded a copy of this list of Ike Iglehart and Bill Baldwin.

Very truly yours,

James H. Cook

JHC:rm

Enc.

Francis N. Iglehart, Esq.
William S. Baldwin, Esq.

H - Baldwin Home
Y - YMCA
C - Chesapeake Building
H - Hampshire property - next to Baldwin
H-1 - Hampshire property - next to Masonic Home
C - Presbyterian Church property
NCH - New Court House
OCH - Old Court House
COB - County Office Building
PH - Presbyterian Home
CAS - Children's Aid Society
JB - Jefferson Building
EB - Equitable Building
MB - Mercantile Building
CB - Campbell Building
NB - Nottingham Building
CPG - County Parking Garage
APG - Allegany Parking Garage
ML - Masonic Lodge
TSC - Towson State Campus

HESSIAN & IGLEHART

101 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204

February 23, 1973

Eric S. Dinenna, Esquire
Zoning Commissioner of Baltimore County
County Office Building
Townson, Maryland 21204

Re: Petition for Reclassification, Special Exception and Variance W/S of Campbell Lane, 200' N of Chesapeake Avenue - 9th District
William S. Baldwin, et ux - Petitioners
NO. 72-291-RXA (Item No. 1)

Dear Mr. Dinenna:

Please note an appeal to the Board of Appeals from your Order in the above case dated January 29, 1973 granting reclassification, a special exception and variance, said appeal being noted by John C. Wallace and Pamela H. Wallace, his wife, 509 Park Avenue, Towson, Maryland 21204, Loren D. Jensen and Mary Ann E. Jensen, his wife, 10 Burnbrae Road, Towson, Maryland 21204, Quentin E. Erlandson and Mary G. Erlandson, his wife, 9 Burnbrae Road, Towson, Maryland 21204, and Richard W. Parsons and Jane A. Parsons, his wife, 412 Woodbine Avenue, Towson, Maryland 21204, residents and protestants.

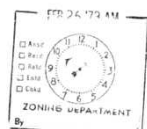
A check payable to Baltimore County, Maryland in the amount of seventy dollars (\$70.00) in payment of the filing fee for this appeal is enclosed.

Very truly yours,

FRANCIS N. IGLEHART

Enclosure
CC:

Mr. and Mrs. John C. Wallace
Dr. and Mrs. Loren D. Jensen
Mr. and Mrs. Quentin E. Erlandson
Mr. and Mrs. Richard W. Parsons
William S. Baldwin, Esquire



BALTIMORE COUNTY ZONING ADVISORY COMMITTEE

COUNTY OFFICE BUILDING
111 N. 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

James H. Cook, Esq.,
Cook, Mudd, Murray & Howard
Mercantile Trust Building
Townson, Maryland 21204

RE: Type of Hearings: Reclass., to D.R. 16; Spec. Ex. for offices; Variance Location: W/S Campbell Lane, 200' N. of Chesapeake Avenue
Petitioners: William S. and Lois K. Baldwin
9th District
Item 1

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 located on the west side of Campbell Lane just north of Chesapeake Avenue. It is currently improved with a 2 1/2 story frame and stone dwelling, in excellent condition. The remainder of the property is well landscaped with several trees and two well established hedges. The property immediately to the west is the Towson YMCA. The remaining properties to the north, south and east of the subject site are all residential and improved with large well maintained homes.

BUREAU OF ENGINEERING:

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

Highways:

This site fronts on Campbell Lane, which is considered private and not County maintained, and terminates in a dead end. Baltimore County bears no responsibility in regard to public use or maintenance of Campbell Lane as a means of ingress and egress.

The entrance locations are subject to approval by the Department of Traffic Engineering, and should be constructed in accordance with Baltimore County Standards.

James H. Cook, Esq.,
Item 1

It shall be the responsibility of the Petitioner's engineer to clarify all rights-of-way within Campbell Lane.

It has been suggested that as a private roadway, Campbell Lane should be widened and improved within a minimum 25-foot right-of-way.

Sediment Control:

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

Storm Drains:

Provisions for accommodating storm water or drainage have not been indicated on the submitted plan.

The Petitioner must provide necessary drainage facilities (temporary or permanent) to prevent creating any nuisances or damage 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.

Waters:

Public water supply is presently serving this residence via a metered connection at Chesapeake Avenue. The Petitioner's engineer must determine the adequacy of this service to serve the proposed use of this property. Further, it appears that an additional fire hydrant may be required.

These factors may require a public water main extension within Campbell Lane.

Sanitary Sewers:

Public sanitary sewerage is available and is serving the residence on this property.

DEPT. OF TRAFFIC ENGINEERING:

All access to the subject site is via existing 15 foot Campbell Lane. This is not sufficient to handle office or commercial traffic.

Very truly yours,
OLIVER L. MYERS, Chairman

JJO:JD

Enc.

Pursuant to the advertisement, posting of property, and public hearing on the above petition and it appearing that by reason of

the above Reclassification should be had; and it further appearing that by reason of

a Special Exception for a should be granted

IT IS ORDERED by the Zoning Commissioner of Baltimore County this

day of 197, that the herein described property or area should be and

the same is hereby reclassified; from a zone to a

zone, and/or a Special Exception for a should be and the same is

granted, from and after the date of this order.

Zoning Commissioner of Baltimore County

Pursuant to the advertisement, posting of property and public hearing on the above petition and it appearing that by reason of

the above re-classification should NOT BE HAD, and/or the Special Exception should NOT BE GRANTED.

IT IS ORDERED by the Zoning Commissioner of Baltimore County, this day

of 197, that the above re-classification be and the same is hereby

DENIED and that the above described property or area be and the same is hereby continued as and

to remain a zone; and/or the Special Exception for

be and the same is hereby DENIED.

Zoning Commissioner of Baltimore County

in cases in equity and in cases involving a petition for a writ of mandamus on one hand, and in statutory appeals from the board to the original court of record on the other.

(c) When the suit is in equity and a declaration nullifying a zoning ordinance for constitutional or other reasons is sought, the allegations by the plaintiff of how he is specially damaged by the zoning ordinance must be definite, and he must meet the burden of showing such special damage by competent evidence. *Richmark Realty Co., Inc. v. Whittell*, 226 Md. 275, 208, 173 A.2d 190 (1961); *Toughborough v. Riverman*, 213 Md. 239, 131 A.2d 461 (1957); *Cassell v. Meyer & C.C. of Baltimore*, 195 Md. 346, 73 A.2d 486 (1950); *Winnichmidt v. Standard Oil Co.*, 153 Md. 647, 139 Atl. 531 (1927).

(b) In a mandamus action the same rule is applicable. *Taylor v. Earl Realty Corp.*, 241 Md. 405, 216 A.2d 729 (1966).

2. In cases involving appeals under the provisions of a zoning ordinance:

(a) It is sufficient if the facts constituting grievance appear in the petition for appeal either by express allegation or by necessary implication. *Town of Somerset v. Montgomery County Board of Appeals*, 245 Md. 52, 225 A.2d 294 (1966).

(b) An adjoining, confronting or nearby property owner is deemed, prima facie, to be specially damaged and, therefore, a person aggrieved. The person challenging the fact of grievance has the burden of denying such damage in his answer to the petition for appeal and of coming forward with evidence to establish that the petitioner is not, in fact, aggrieved. Thus, in *Chatham Corp. v. Beltrina*, 243 Md. 138, 147, 220 A.2d 259 (1966), the party seeking reopening offered expert testimony that there would be no diminution in value of adjoining houses--one of which was owned by the protestant--if the rezoning were about. The trial court found, on conflicting evidence, that the protestant was a person aggrieved, and we held there was no error in that ruling.

(c) A person whose property is far removed from the subject property ordinarily will not be con-

sidered a person aggrieved. *Wilkinson v. Atkinson*, 242 Md. 231, 218 A.2d 503 (1966); *Imbey v. Crane*, supra; *City of Greenbelt v. Mayor*, 237 Md. 496, 203 A.2d 678 (1965); *Marcus v. Montgomery County Council*, 235 Md. 139, 201 A.2d 177 (1964); *Patton v. Corby*, 226 Md. 37, 173 A.2d 399 (1961). But he will be considered a person aggrieved if he meets the burden of alleging and proving by competent evidence--either before the board or in the court--that his standing is challenged--the fact that his personal or property rights are specially and adversely affected by the board's action.

3. A person whose sole reason for objecting to the board's action is to prevent competition with his established business is not a person aggrieved. *Kronsteban v. Remsburg*, 224 Md. 209, 167 A.2d 345 (1961).

4. If any appellant is a person aggrieved, the court will entertain the appeal even if other appellants are not persons aggrieved. See e.g., *Marcus v. Montgomery County Council*, supra.

5. The status of a person to appeal as a 'person aggrieved' is to be distinguished from the result on the merits of the case itself. In determining status to appeal, the question is whether the property owner may reasonably be thought to be specially damaged if the application is approved. Testimony may be taken on the point by the trial court. *Town of Somerset v. Montgomery County Board of Appeals*, supra. If, on the merits, the board acted properly in approving the application, the protesting property owner is not damaged in law, however much he may be damaged in fact. His damage is then *damnum absque injuria*. Because the result on the merits might be adverse, however, does not mean that the protestant would not have status to challenge the board's action. As Judge Oppenheimer stated, for the Court, in *Town of Somerset*:

"When the issue of the standing of an appellant to appeal is raised in the court in which review of the administrative action is asked, we have approved the practice of trial judges in permitting testimony on the point to be taken before them. The question is not one of taking additional testimony on the merits of the substantive issues decided by the

Board. . . but of determining whether the appellants have the requisite standing to have those issues reviewed." (245 Md. at 63, 225 A.2d at 301.)

In the later case of *Wier v. Wainwright Land Co.*, 257 Md. 609, the Court of Appeals, explicating *Brynaracki*, supra, said at 612:

"In the *Brynaracki* case we held that three protestants had established their status, in fact, as 'persons aggrieved' by the proposed development in that case. Their status had been established by testimony in regard to the adverse effect of additional traffic on their properties as contrasted with expected traffic to be generated from the operation of a medical office building; the adverse effect of the proposed upon the general plan, for the physical improvement of the District; and, injury to one's property resulting from the height of the proposed building. In their petition for appeal from the action of the Board, the protestants alleged that they were wrong in the proceeding before the Board (and this is not disputed) and were property owners in the immediate neighborhood of the subject property, taxpayers, and constitute parties aggrieved by the said Order of the Board."

The Court then added at pages 612-13:

"In holding that the motion to dismiss the appeal should be denied and that the protestants had status as 'persons aggrieved,' Judge Jenifer aptly stated:

"At least three of the protestants, namely, Mrs. Wier and Messrs. Critcher and Wagerupp, are in sight distance of the property forming the subject of the petition. The Wier property is located on the northerly side of Bosley Road at the north end of the petitioner's tract of land although it is located approximately 1,100 feet from one of the parcels reclassified by the Board. There was considerable testimony as to increase in traffic and change in the nature of the use of land in the area, which according to the individual testimony of these protestants coupled with that of their

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: S. Eric DiNenna Date: November 1, 1971
ATTN: Oliver L. Myers
FROM: Ellsworth N. Diver, P.E.

SUBJECT: Item #1 (Cycle October 1971 - April 1972)

Property Owner: William S. and Lois K. Baldwin
Location: W/S Campbell Lane, 200' N. of Chesapeake Avenue
Present Zoning: D.R. 3.5
Proposed Zoning: Re-class. to D.R. 16; Spec. Ex. for offices; Variance
District: 9th Sector: Central
No. Acres: 0.898

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 fronts on Campbell Lane which is considered private and not County maintained, and terminates in a dead-end. Baltimore County bears no responsibility in regard to public use or maintenance of Campbell Lane as a means of ingress or egress.

The entrance locations are subject to approval by the Department of Traffic Engineering, and should be constructed in accordance with Baltimore County Standards.

It shall be the responsibility of the Petitioner's engineer to clarify all rights-of-way within Campbell Lane.

It has been suggested that as a private roadway, Campbell Lane should be widened and improved within a minimum 20-foot right-of-way.

Sediment Control:

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

Storm Drainage:

Provisions for accommodating storm water or drainage have not been indicated on the submitted plan.

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 #1 (Cycle October 1971 - April 1972)

Property Owner: William S. and Lois K. Baldwin

Page 2

November 1, 1971

Water:

Public water supply is presently serving this residence via a metered connection at Chesapeake Avenue. The Petitioner's engineer must determine the adequacy of this service to serve the proposed use of this property. Further, it appears that an additional fire hydrant may be required.

These factors may require a public water main extension within Campbell Lane.

Sanitary Sewers:

Public sanitary sewerage is available and is serving the residence on this property.

Ellsworth N. Diver
ELLSWORTH N. DIVER, P.E.
Chief, Bureau of Engineering

END: EAM: PWR:as

N-W Key Sheet
28 & 39 NE 1 Position Sheets
NE 10 A Topo
70-1 Tax Map

BALTIMORE COUNTY, MARYLAND

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

TO: S. Eric DiNenna
ATTN: Oliver L. Myers
FROM: C. Richard Moore
SUBJECT: Item 1 - Cycle Zoning II
Property Owner: William S. & Lois K. Baldwin
Campbell Lane North of Chesapeake Ave.
Reclassification to D.R. 16; Special exception for offices; variance
Date: November 2, 1971

All access to the subject site is via existing 15 foot Campbell Lane. This is not sufficient to handle office or commercial traffic.

C. Richard Moore
C. Richard Moore
Assistant Traffic Engineer

CRM:mr

BALTIMORE COUNTY, MARYLAND

ZONING ADVISORY COMMITTEE REPORT

OF BALTIMORE COUNTY, MARYLAND

Petitioner: William S. & Lois K. Baldwin
Location: W/S Campbell Lane, 200' N. of Chesapeake Ave.
District: 9
Present Zoning: D.R. 3.5
Proposed Zoning: D.R. 16 with var. for offices
No. of Acres: 0.898

Comments: NO READING ON SUBJECT PROPOSITION

real estate expert, Mr. William B. Day, Jr. would be sufficient under the law that their persons or property rights would be specially and adversely affected by the action of the Board. These protestants were either confronting or nearby property owners and are deemed, prima facie, to be specially damaged and, consequently, persons aggrieved. The burden of challenging the fact of aggrievement was then on the petitioner to produce evidence to controvert this fact. The petitioner did produce some evidence to this effect, but such evidence, when considered with that produced by the protestants and their witnesses, presented a conflict. Under such circumstances this Court feels justified in concluding that, apart from the prima facie presumption in their favor, there was sufficient evidence before the Board to establish that the three named protestants were aggrieved persons. If anyone of them fits that category, the Court should entertain the appeal even though the others are not persons aggrieved.

"We adopt this statement of the lower court as correctly stating the relevant facts and applicable law."

This Court gave consideration to the issue of standing to appeal in Durno Civil Action, Prince George's County, 21 Md. App. 76, wherein the questioned property had been visible from the home of appellants. We said at 82:

"Unlike Milkinson v. Atkinson, 242 Md. 291, 218 A.2d 503 (1966), there is no 'broad beltway' acting as a barrier, separating the appellants' properties from that of the applicants'. Nor is there evidence that the appellants' residences were situated on a high hill with a dominant view as in Milkinson v. Atkinson, supra. We think that the record, quite leaving much to be desired, nevertheless establishes the appellants' proximity to the subject properties, and that their proximity results in their being personally and specially affected in a way different from that suffered by the public generally". Bobby v. Green, supra at 115; Ward v. Green, supra at 240-241; 1957-79 A. 2d 777, 170 (1970); Alvey v. Hedin, 243 Md. 334, 339, 281 A.2d 66, 64 (1966), and thus satisfies the second requisite of Bynarski, supra."

So in the subject case, the record includes evidence leading to show, expressly or by necessary implication: (a) that the appellants Wallace are nearby property owners and thereby are deemed prima facie to be specially damaged; (b) that their property may be adversely affected by additional traffic to be generated if the zoning is changed; and (c) that the proposed change adversely may affect the general plan for the physical development of the neighborhood.

The appellees offered no evidence at the Circuit Court hearing upon the issue of standing. They argue, however, that even if the Wallaces are located in such proximity as to give rise, prima facie to a presumption of special damage, the record shows that consideration of the evidence in the light most favorable to them establishes affirmatively that no special damage to them was accomplished by the zoning change, special exception and variance. For the reasons heretofore stated we do not agree.

We stress that the issue here solely relates to the status of persons to appeal as a "person aggrieved." This is to be distinguished from the issue to be presented in any consideration on the merits of the case. We intimate no opinion on the merits.

ORDER DISMISSING APPEAL
REVENUE AND CASE REMANDED
NOW THE MATTER OF THE PETITIONERS
COMES TO BE HEARD BY APPELLEES.

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Mr. S. Eric DiNanno
TO: Zoning Commissioner
FROM: Richard B. Williams
Project Planning Division
SUBJECT: Zoning Advisory Agenda Item #1

Date: November 2, 1971

Baltimore County Reclassification Cycle
For the period of October '71 to April '72
William S. and Lois K. Baldwin
W/S Campbell Lane
200' N. of Chesapeake Ave.

This office has reviewed the subject site plan and often the following comments:

- 1) The access is inadequate to handle the traffic this property could generate with this zoning.

- TO: S. Eric DiNanno, Zoning Commissioner
Attention: Mr. Myers
DATE: 10/26/71
- FROM: Fire Prevention Bureau
Fire Department
- SUBJECT: Property Owners: William S. and Lois K. Baldwin
LOCATION: W/S Campbell Lane, 200' N. of Chesapeake Avenue
- ITEM # 1 Zoning Agenda: The Period of October '71 to April '72
- (x) 1. Fire hydrants on the proposed site (are required and) shall be in accordance with Baltimore County Standards.
The hydrants shall be located at intervals of 400 feet along an approved road.
- () 2. A second means of access is required for the site.
- () 3. The dead-end condition shown at _____ exceeds the minimum allowed by the Fire Department.
- () 4. The site shall be made to comply with all applicable requirements of the National Fire Protection Association Standard No. 101, "The Life Safety Code", 1967 Edition, and the Fire Prevention Code prior to occupancy or commencement of operations.
- (x) 5. The owner shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101, "The Life Safety Code", 1967 Edition, and the Fire Prevention Code when construction plans are submitted for approval.
- () 6. The Fire Department has no comment on the proposed site.

Thomas Bell
Planning Division
Fire Prevention Bureau

Note: Above comments indicated with a check apply.
mb

1 PETITION FOR RECLASSIFICATION * IN THE
2 FROM D.R. 3.5 TO D.R. 16 ZONE CIRCUIT COURT
3 WILLIAM S. BALDWIN, ET UX, * FOR
4 PETITIONERS *
5 ZONING CASE NO. 72-701-RGA BALTIMORE COUNTY
6 RICHARD PARSONS, ET UX, * AT LAW
7 PROTESTANTS * File No. 5243
8 * Docket Misc. No. 9
9 * Folio 39
10 * December 17, 1975
11 *
12 BEFORE: HONORABLE JOHN GRASON TURNBULL, JUDGE
13
14 APPEARANCES:
15 JAMES H. COOK, ESQUIRE
16 On behalf of Petitioners
17 ANNE KAY KRAMER
18 On behalf of Protestants
19
20 OPINION OF COURT
21
22 Reported by:
23 Paul C. Griffin
24 Official Court Reporter
25 Circuit Court for Baltimore County

1 THE COURT: Miscellaneous Number 5243, Petition for
2 Reclassification it says from DR 3.5. It means 5.5, doesn't
3 it?
4 MR. COOK: 3.5, Your Honor.
5 THE COURT: 3.5 to DR 16, with a requested special
6 exception for offices and a variance, the applicant being
7 William S. Baldwin and wife, the Board of Appeals having granted
8 a reclassification, and an appeal, bringing it before this
9 Court.
10 (Counsel made argument to the Court.)
11 THE COURT: Well, as Mrs. Kramer said in her closing
12 remarks, of course the law is controlling, but the law is
13 applied to facts as the facts are developed and appear in the
14 record. My recollection of the record is it shows what I
15 already know, of course, because I am in and out of this particular
16 building every day, and the property we are talking about is
17 just two blocks from this property; and, of course, the
18 property on the west side of Bosley Avenue between Chesapeake
19 and Pennsylvania Avenues is just the width of Bosley Avenue
20 from this Courts Building, and then comes Central Avenue,
21 Highland, and on the south side of Chesapeake Avenue, west of
22 Bosley, you have a nursing home, you have the Children's Aid
23 Society, you have the Chesapeake Building, on the north side
24 there are various -- and I think all this is in the record --
25 various residential buildings occupied as offices by various

1 types of enterprises, and the same thing is true on Pennsylvania
2 Avenue west of Bosley Avenue. And as Mr. Cook has pointed out,
3 the County has reserved certain areas which were available for
4 offices for use by those who had business with the County in
5 the County Office Building and with the Court in the Court House.
6 The Council, which is the governing body of the County, the
7 Executive and the Council between them have eliminated this
8 entire block in which we now sit from any possibility of use
9 by private enterprise for offices; all those things are in the
10 record, and are facts.
11 Now we go to the presumption of correctness of the 1970
12 map. These things which I have just mentioned, according to
13 the evidence, existed or were in process, this building, in
14 process at the time of the adoption of the map were matters
15 which the County Council had to know. The Board held that the
16 County Council was in error as to the Baldwin property.
17 Inferentially it held that the County Council was in error as
18 to the entire two square blocks, at least that, between Chesa-
19 peake and Pennsylvania Avenues and Bosley and Highland Avenues.
20 But over and above all that, one can look at this map and see
21 on the face of the map itself that the Council was in error;
22 and the Board held it was in error. All you have to do is look
23 at the map, and you see that on the west side of Highland Ave-
24 nue the Hampshire property was zoned as DR 16, and that is an
25 isolated piece of property on the west side of Highland Avenue.

1 If the Council was correct in that classification, then the
2 Council had to be in error not only as to the Baldwin property,
3 but -- it is not before me -- but in my opinion as to the
4 adjoining properties on the west side of Highland Avenue,
5 because if Hampshire is correct the others are wrong. Particu-
6 larly is the Baldwin property wrong at DR 3.5 instead of DR 16,
7 because it borders this large institutional property, which
8 the evidence shows has had considerable increase in use and
9 considerable increase in traffic and considerable detrimental
10 influence prior to the adoption of the map, since the time
11 that Mr. and Mrs. Baldwin bought the property. The map itself
12 shows that the Council was acting in an arbitrary, capricious
13 and illegal way, and that if they had not classified Hampshire
14 as they did, it could be arguable that they were correct as to
15 their zoning west of Highland Avenue. But once the County
16 crossed Highland Avenue, and started the DR zoning on the
17 Hampshire property, then, in the Board's opinion, it is not
18 arguable that the Council was in error. In my opinion, the
19 Board had ample evidence before it, not only oral evidence
20 but documentary evidence, to persuade the Board that the
21 Council was in error in its zoning of the Baldwin property.
22 The Board did not grant a reclassification which would permit
23 the erection of a high rise office building, it made its
24 order contingent on the restrictions that the present structure
25 be used for offices, and that a site plan be approved by Public

Services and the Office of Planning and Zoning.

The Court of Appeals in numerous cases has gone into the balancing of presumption of correctness; that is, the presumption of correctness of the original comprehensive zoning, the presumption of correctness of the action of the administrative body, which is presumed to be composed of experts, and it comes out, as I read the opinions, not quite a dead heat, almost, but not quite a dead heat. There is a little more weight given to the comprehensive plan than to the decision of the Administrative Board. But no matter what the presumptions are, when the record shows clearly on its face, and is supported by ample oral testimony by experts, that the County Council was in error as to this particular property at the time it adopted the comprehensive map, then it is the duty of the zoning authorities to correct the error; and it is the duty of the Court, if there is substantial evidence before the Board to indicate such error, to affirm the judgment of the Board. That is what the Court will do, and I will sign an Order to that effect. Will you prepare the Order, Mr. Cook, and submit it to Mrs. Kramer for approval as to form, and let me have it as promptly as possible, and I will sign it?

Baldwin property, facing on the west side of Highland Avenue going north from Chesapeake Avenue, is a large residence owned by the Presbyterian Church. Adjacent to that on the north is the property of Paul Hampshire; adjacent to that on the north is the property of a Mrs. Emig; to the north of which is the property of Raymond Seitz which runs from Highland Avenue westward to the YMCA property and borders the entire north property line of Baldwin. The one remaining property on Highland Avenue to the north of Mr. Seitz is that of Cynthia Herriott. From the intersection of Highland Avenue and Allegheny running in a westerly direction extending well beyond the western boundary of the YMCA property are approximately fifteen (15) single family cottages. All of the aforementioned property on the north side of Chesapeake Avenue, west side of Highland and south side of Allegheny are in either D.R. 3.5 or D.R. 5.5 classification, with the exception of the Hampshire property immediately to the east of Baldwin which is zoned D.R. 16. None of the owners or occupants of any of the aforementioned properties which are contiguous to the Baldwin tract are parties to this case.

In order to make a determination of the question presented in this case it is necessary to review the testimony given by each of the Protestant Appellants at the hearings that were held. At the hearings held in front of the Board of Appeals on May 1, June 7 and September 27, 1973, certain testimony was given by three of the Protestants, namely, Loren Jensen, Pamela Wallace, and Richard Parsons. Before the Board of Appeals Mr. Jensen testified that from his house he could not at any time of the year see the Baldwin property, and further testified

PETITION FOR RECLASSIFICATION
from D.R. 3.5 to D.R. 16 Zone
SPECIAL EXCEPTION FOR OFFICES
VARIANCE from Section 1802.2C
of the Baltimore County Zoning
Regulations
W/S of Campbell Lane 100 feet
North of Chesapeake Avenue
9th District

WILLIAM S. BALDWIN, et ux
Petitioners

Zoning Case No. 72-01 RXA

RICHARD PARSONS, et ux
LOREN D. JENSEN, et ux
JOHN C. WALLACE, et ux
QUENTON E. ERLANDSON, et ux
Protestants

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW

MISC. DOCKET: 9
FOLIO : 395
CASE : 5243

OPINION

and

ORDER OF COURT

STATEMENT OF THE CASE

This case arises out of a Petition for Reclassification, a Special Exception and Variance for a parcel of property in Baltimore County belonging to William S. Baldwin, et ux, situated in the 9th Election District of Baltimore County. A hearing was held by the Deputy Zoning Commissioner for Baltimore County on January 29, 1973, at which time the Petitioners were granted a reclassification from D.R. 3.5 zone to a D.R. 16 zone, together with a special exception for professional offices and a variance to permit a rear yard setback of twenty-seven (27) feet and a side yard setback of forty (40) feet instead of the required seventy-five (75) feet, for the .898 acres of land which is the subject of the petition.

The Board of Appeals of Baltimore County, by its Order dated February 22, 1974, affirmed the action of the Deputy Zoning

Commissioner and again granted the above referred to reclassification, special exception and variance.

On March 22, 1974, the Appellants (Protestants) filed this appeal to the Circuit Court for Baltimore County from the Order of the Board of Appeals.

After several Court Orders granting extensions of time for the filing of the record, the transcript of the record was finally filed on June 19, 1974. A hearing was had by this Court on July 23, 1974 at which time Baltimore County, Maryland had filed a Motion for Leave to appear as Amicus Curiae, with a Show Cause attached. The Petitioners, William S. Baldwin, et ux, had filed a Motion in Opposition to this aforesaid petition. Also, on July 23, 1974, the Petitioners, through their counsel, filed a Motion to Dismiss the appeal in which they basically alleged that the Protestants were not aggrieved parties and therefore requesting the appeal to be dismissed. At that time the Court granted additional time to the Protestants to file an answer to this motion. An answer to this Motion to Dismiss on the basis of aggrieved parties was filed by the Protestants on September 30, 1974. Subsequent to this, the Court granted the right to the Protestants to produce additional testimony on the issue of aggrieved parties only and on December 23, 1974, additional testimony was taken in open court on this issue.

Before proceeding with a determination on the merits of the appeal, it is necessary for the Court to make its determination of the Motion to Dismiss and the answer filed thereto with reference to the issue as to whether or not the Protestants are aggrieved parties as required by law and, therefore, this Opinion will be restricted to that issue.

- 2 -

QUESTION PRESENTED

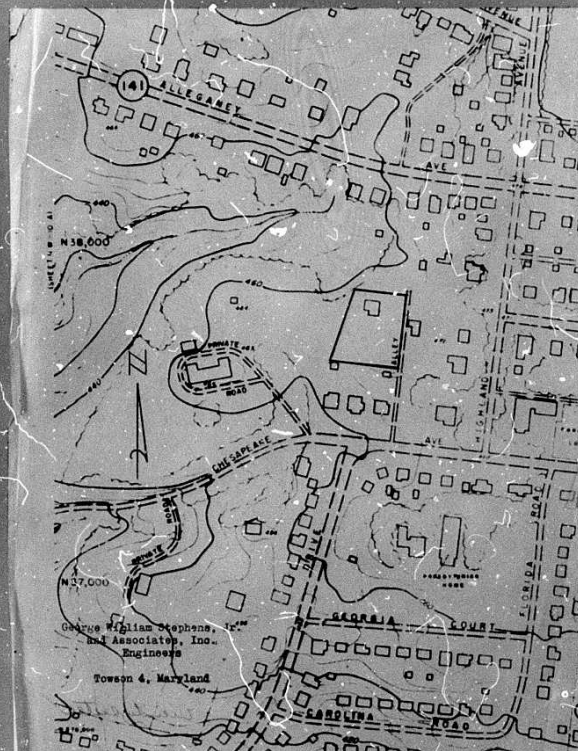
Are the Protestant Appellants in this case, Richard Parsons and Jane A. Parsons, his wife (hereinafter referred to as "Parsons"); Loren D. Jensen and Mary Ann E. Jensen, his wife (hereinafter referred to as "Jensen"); John C. Wallace and Pamela H. Wallace, his wife (hereinafter referred to as "Wallace"); and Quenton E. Erlandson and Mary G. Erlandson, his wife (hereinafter referred to as "Erlandson"), aggrieved parties as defined by the Court of Appeals of Maryland entitled to file this appeal?

STATEMENT OF FACTS

The Baldwin property consists of approximately 9/10th acres of land situated to the north side of Chesapeake Avenue one and one-half depth west of Highland Avenue and immediately adjacent to the east of the Towson YMCA property of approximately 17 acres, as shown on a rough sketch of the immediate area as prepared by this Court based on the testimony in the record. The location of three of the Appellants' homes, namely that of the Parsons, Jensen and Erlandson families, is to the southwest of the 17 acre tract of the YMCA property, all three parcels admittedly not within sight of the Petitioners' property. The fourth Appellant Wallace, as shown on the attached plat, lives on the south side of Park Avenue separated from the subject property of Baldwins by the two homes on Park Lane, a home on the north side of Allegheny Avenue and homes on the south side of Allegheny Avenue and according to the testimony can only see the top of the Baldwin house from his rear windows. Immediately to the south of the Baldwin property are three large homes facing on the north side of Chesapeake Avenue, one of which is and has been for some time used for two apartments. To the east of the

- 3 -

Rec'd 2-11-75
10:30 AM



James L. Cook, Esq.
Carl F. Hodge, Harry S. Hodge
Merritt Trust Building
Towson, Md. 21204

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

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

Your Petition has been received and accepted for filing

this 2nd day of February 1974

ERIC DYKEMA,
Zoning Commissioner

Petitioners: William S. and Lois K. Baldwin
Petitioner's Attorney: James L. Cook Reviewed by: Charles A. Meyer, Jr.
Chairman of Advisory Committee

TELEPHONE 466-2413

INVOICE

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE

Revenue Division
COURT HOUSE
TOWSON, MARYLAND 21204

No. 74055
DATE 5/1/73

To: William S. Baldwin, Esq.
241 E. Pennsylvania Avenue
Towson, Md. 21204

County Board of Appeals
(Zoning)

01.712

Cost of copies of documents from zoning files
6 sheets @ 50¢ per sheet

Cost \$3.00

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

15-60 72-801-RXA

CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 9th Date of Posting: 10/22/73

Posted for: William S. Baldwin

Petitioner: William S. Baldwin

Location of property: W/S of Campbell Lane 100 feet North of Chesapeake Ave.

Location of Signs: 400 Campbell Lane

Remarks:

Posted by: Charles A. Meyer, Jr. Date of return: 11/15/73

45-100 72-801-RXA

CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 9th Date of Posting: 10/22/73

Posted for: William S. Baldwin

Petitioner: William S. Baldwin

Location of property: W/S of Campbell Lane 100 feet North of Chesapeake Ave.

Location of Signs: 400 Campbell Lane

Remarks:

Posted by: Charles A. Meyer, Jr. Date of return: 11/15/73

that the use of the Baldwin home as an office would have no effect on the value of his use and enjoyment of his own property, and that further he would not select the Baldwin property for residential purposes located as it is adjacent to the YMCA parking lot. Mr. Jensen's testimony before this Court on the Motion to Dismiss on December 23, 1974, generally concerned the limited parking facilities on the street in west Towson but did not allege that there would be any diminution in the value of his property should this petition be granted, nor that the granting of this petition would specifically adversely affect him from a traffic standpoint.

Mr. Richard Parsons in his testimony before the Board of Appeals, who also is out of sight of the Baldwin property, had absolutely nothing to say with respect to any way in which the granting of the within petition would cause him to be adversely affected. Before this Court on the Motion to Dismiss Mr. Parsons again complained of the parking conditions in west Towson, but offered no testimony to indicate that his particular property would be depreciated or that the granting of this petition would in any way adversely affect traffic conditions in the west Towson area. It is clear from Mr. Parsons' testimony that the increase in traffic about which he complains has been generated not only by the development of the Towson area generally, but by the YMCA specifically.

Mrs. Pamela Wallace testified before the Board of Appeals; as indicated heretofore, she and her husband live on the south side of Park Avenue, somewhat removed from the subject property. Her sole complaint before the Board of Appeals is that there are other people living on the border of the YMCA

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who apparently do not object to it and the reclassification of the Baldwin tract threatens the whole neighborhood with a legal basis for change. Her husband, John Wallace, who testified before this Court, submitted as a primary complaint the existing traffic conditions in the general area which make him use various methods to leave his home to get to work, his main complaint being the length of time he has to sit at the corner waiting for traffic to go by before making left turns. With respect to any depreciating effect on his property, he complained that he is not close enough to benefit by any future reclassifications but feels his house may be damaged for residential use by increased traffic and parking, although he admitted that recently, since the within petition has been granted by both the Deputy Zoning Commissioner and the Board of Appeals, three houses on his street in the immediate vicinity have been sold for residential use to young people with children.

Mr. Quenton E. Erlandson who did not testify before the Board of Appeals, in his testimony before this Court indicated a familiarity with the subject property having been friends of the original owner, Richard Campbell, whose name is carried over to the lane leading over to the Baldwin property. He made the bland statement that a change in zoning would have a detrimental effect on his property value as a residential home but submitted not one single fact to support such a conclusion. He showed such a vague knowledge of the activities of the YMCA as to render any statements by him as to the traffic flow in the area questionable at least.

The one expert witness put on by the Protestants, Mr. Philip Iglehart, in his testimony did not state that the

reclassification of the property would depreciate property values in the surrounding neighborhood. The gist of his testimony was that no additional office space should be placed in this section of Towson; that future growth would take care of the necessary needs. It should be noted that nowhere was he able to give any facts or figures to substantiate any of his testimony.

A review of the testimony of all of the Protestants indicates to this Court that only one even mentioned depreciation of value of his home with no facts to substantiate it, and that the general testimony of the witnesses could basically be a fear of future petitions that may be filed that would have an effect on the area and questionable statements in regards to creating traffic problems.

A careful study of the attached drawing of this general area would show that all of these parties, Parsons, Jensen, Wallace, and Erlandson, are not within the immediate neighborhood of the property; that any fears expressed by them are not special to these Protestants alone.

The question of who may be an "aggrieved party" authorized to take an appeal from the Zoning Board's decision has been discussed many times in a series of cases before the Court of Appeals of Maryland and lately before the Court of Special Appeals of Maryland.

Generally speaking, the Courts have stated that the meaning of the words a "person aggrieved" is a person who is aggrieved by the decision of the Board of Zoning Appeals whose personal or property rights are adversely affected by the decision of the Board. The decision must not only affect a

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matter in which the protestant has a specific interest or property, but his interest therein must be such that he is personally and specially affected in a way different from that suffered by the public generally.

In arriving at its final conclusion, the Court has reviewed the following cases: DuBay v. Crane, 240 Md. 180; Pattison v. Corby, 226 Md. 97; Marcus v. Montgomery County, 235 Md. 535; Toomey v. Gomeringer, 235 Md. 456; Greenbelt v. Jaeger, 237 Md. 456; Shore Acres v. Anne Arundel County, 274 Md. 310; Brynaraki v. Montgomery County, 247 Md. 137; Aubinoe v. Lewis, 250 Md. 645; White v. Major Realty, Inc., 251 Md. 63; Largo Civic Association v. Prince George's County, 21 Md. App. 76; and Templeton v. County Council, 21 Md. App. 636.

The DuBay v. Crane case can be examined as determinative of the issues in the present case. As is pointed out in the DuBay case, prior to 1960 in Baltimore County, any aggrieved party or taxpayer could maintain an appeal but it is now necessary to be both a party to the proceeding before the board of appeals and a "person aggrieved" by its decision in order to appeal to the circuit court. It is therefore necessary to show the proximity of one property to the other and adverse effect the changed status of the rezoned property has or could have on the use, enjoyment and value of the property of the protestant in order to establish the status of the appellant as an "aggrieved person."

Applying the law handed down in DuBay v. Crane, it is quite apparent that the Protestants in the present case do not fit the definition of a "party aggrieved." All live substantial distances from the property in question and are not in the

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

No. 3714

DATE June 23, 1972 ACCOUNT 01-662

AMOUNT \$110.00

DISTRIBUTION
WHITE - CASHIER
PINK - AGENCY
YELLOW - CUSTOMER

William S. Baldwin, Esq.
24 W. Penn. Ave.
Towson, Md. 21204
Advertising and posting of property

72-201-RXA 1400CME

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

No. 7076

DATE March 6, 1973 ACCOUNT 01-662

AMOUNT \$70.00

DISTRIBUTION
WHITE - CASHIER
PINK - AGENCY
YELLOW - CUSTOMER

Hession & Iglehart
Cost of appeal on Case # 72-201-RXA
W/S of Campbell Lane, 200' N of Chesapeake
Avenue - 9th District
William S. Baldwin, et ux - Petitioners

7000CME

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

No. 10898

DATE July 10, 1973 ACCOUNT 01-662

AMOUNT \$10.00

DISTRIBUTION
WHITE - CASHIER
PINK - AGENCY
YELLOW - CUSTOMER

Philip M. Iglehart, Esq.
Cost of Posting Property of William S. Baldwin, et ux
for an Appeal Hearing
W/S of Campbell Lane, 200' N of Chesapeake Avenue -
9th District
Case No. 72-201-RXA

1000CME

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

No. 15302

DATE 6/17/74 ACCOUNT 01-712

AMOUNT \$21.00

DISTRIBUTION
WHITE - CASHIER
PINK - AGENCY
YELLOW - CUSTOMER

Cost of certified copies of documents filed in Case #72-201-RXA
William S. Baldwin, et ux, Petitioners

15302CME

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

No. 272

DATE Nov. 3, 1971 ACCOUNT 01-662

AMOUNT \$50.00

DISTRIBUTION
WHITE - CASHIER
PINK - AGENCY
YELLOW - CUSTOMER

William S. Baldwin Esq.
405 Campbell Lane
Towson, Md. 21204
Petition for Reclassification, Special Exception &
Variance

27200CME

As this is being dictated, it is clearly evident to the Court from its westward vista from chambers, that the subject property is two blocks and one lot westward of the new County Courts Building in Towson, as shown on the attached plat.

ORDER OF THE COURT

For the reasons stated herein, it is this Court's determination that the Protestants, Parsons, Jensen, Wallace and Eriandson, are not aggrieved parties as defined by the laws of the Court of Special Appeals of Maryland, and therefore the Motion to Dismiss the appeal filed by the Petitioners on July 23, 1974 is hereby GRANTED.

February 10, 1975

Copy to:
Anne Kay Kramer, Attorney for Protestants
James H. Cook, Esq.
County Board of Appeals ✓
Julius W. Lichter, Assistant County Solicitor

- 9 -

RE: PETITION FOR RECLASSIFICATION :	BEFORE
FROM D.R. 3.5 TO D.R. 16 zone	
SPECIAL EXCEPTION FOR OFFICIALS	COUNTY BOARD OF APPEALS
VARIANCE FROM Section 1902.2C	
of the Baltimore County Zoning	OF
Regulations	
W/S of Campbell Lane 200 feet	BALTIMORE COUNTY
North of Chesapeake Avenue	
9th District	_____
William S. Baldwin, et ux	No. 72-201-RXA
Petitioners	

OPINION

This case arises from an appeal taken by the Protestants from the decision of the Zoning Commissioner granting a reclassification from a D.R. 3.5 zone to a D.R. 16 zone, a Special Exception for professional offices, and a Variance in the rear yard setbacks and side yard setbacks.

The property is located on the west side of Campbell Lane 200 feet north of Chesapeake Avenue, in the 9th District of Baltimore County, containing approximately nine-tenths of an acre of land. The improvements are known as 425 Campbell Lane, and they are presently occupied by Mr. William S. Baldwin, and his wife, who are the Petitioners in this case. Mr. Baldwin is a practicing lawyer in Towson, having offices at 24 West Pennsylvania Avenue, in a not unusual converted old dwelling in Towson. The Baldwins purchased the subject property in 1964 and have lived there ever since. Their present request is to have the property zoned D.R. 16, with a special exception for an office building so that Mr. Baldwin may remodel the interior of the present dwelling for use as his law office, and the family will then reside somewhere else. The testimony was that his plans involve no change in the outside appearance of the structure, but that a portion of the would be paved to be used as a parking lot in connection with the carrying on of his profession.

The property is located immediately next to the large paved parking lot of the Towson YMCA and has a common boundary line of approximately 200 feet running between the two lots. Since 1964 when the Baldwins first occupied their home, the YMCA has greatly expanded to an estimated eight thousand members in 1970, at least a doubling of its membership since 1964, and has increased vastly the size of its parking lot, and has

William S. Baldwin, et ux - No. 72-201-RXA

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constructed additions to its building and otherwise changed the general character of the neighborhood.

The zoning of this property was an issue at the time of the public hearing before the County Council in connection with the adoption of the new zoning maps on March 24, 1971, and the present requested zoning of D.R. 16 had been recommended by the Baltimore County Planning Board, by the Planning Staff, and appeared as such on the recommended zoning map approved by the Baltimore County Planning Board for adoption by the County Council. However, the County Council, at its meeting of March 24, 1971, zoned property contiguous to this particular lot as D.R. 16, including property immediately across Campbell Lane from it, but contrary to the recommendation of the Baltimore County Planning Board, it placed Mr. Baldwin's property in D.R. 3.5, which he now complains is not the proper zoning for this particular property.

There is testimony that a great number of the old homes in the area have been acquired by persons who are using them for offices, either under D.R. 16 zoning, with special exc. permits, or using them as offices under other residential zoning because they live in the same building, which is, of course, permissive under the zoning laws. The nature of the surrounding area was adequately described in the testimony by Mr. Baldwin and corroborated by the testimony of Mrs. Baldwin, and photographs of buildings and uses in the area are in evidence as exhibits. There was testimony that the present expanded use of the YMCA property has greatly affected the privacy of the Baldwin property and made it much less desirable as a residence than it was in 1964. Of course, if Mr. Baldwin cared to use the present building for his law office he is entitled to do so under the Zoning Regulations as long as he lived on the premises. However, this is not practical, as there would not be room for M. Baldwin, his wife and their two children in this small house, together with an extensive law office, which Mr. Baldwin will require.

In addition to the testimony of the Baldwins, testimony was heard from Mr. Hugh Gelston, a qualified realtor and appraiser who has been for a number of years very familiar with this particular area, and was familiar with this particular property even

William S. Baldwin, et ux - No. 72-201-RXA

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before the Baldwin purchased it, and has seen the growth of the YMCA and other construction on Chesapeake Avenue. He described the various land uses in the neighborhood in great detail and arrived at the opinion that if the zoning were granted as requested, together with the special exception, there would be no detriment whatever to the neighborhood and no congestion would be created on Campbell Lane or on Chesapeake Avenue, and that the request for a special exception would meet all of the requirements of Section 502.1 of the zoning Regulations. It was his opinion that the present zoning placed on the map by the County Council on March 24, 1971 was in error.

There was further testimony on behalf of Mr. Baldwin by Mr. Frederick P. Klaus, a qualified realtor and appraiser also thoroughly familiar with the area and the subject property, who concurred with Mr. Baldwin's testimony in toto, and stated that in his opinion the present zoning was a serious error. Among other reasons, he stated that he found great expansion of the YMCA usage since the Baldwins acquired the property; that lines had been drawn between zoning districts through adjoining properties without regard to property lines; and that there had been many changes in the area between 1965 and 1971. For example, many of the private homes were acquired by professional people and others, and have been remodeled for office use, and stated that the Council should have recognized this trend and therefore, among other reasons, was in error in zoning this property D.R. 3.5. He went so far as to say that he was shocked and surprised that the present zoning was placed on the map in such a gerrymandering fashion from Central Avenue to Highland Avenue, and that more logically and uniformly the D.R. 16 should have been extended to the YMCA property line, and thereby included the Baldwin property. He further stated he felt Mr. Baldwin's plans would not be a detriment but an improvement to the surrounding properties and their value. He also pointed out that the Baldwin property was unique in this particular area in that it was the major property which actually abuts and adjoins the parking lot of the YMCA; that the County Council had zoned the property immediately across the street and almost surrounding the Baldwin property as D.R. 16, with the obvious intention that he be used for office building use rather than for the construction of apartment houses.

ORIGINAL

OFFICE OF

 THE TOWSON TIMES

TOWSON, MD. 21204 February 21 - 1972

THIS IS TO CERTIFY, that the annexed advertisement of
S. Eric Dinenna
Zoning Commissioner of Baltimore County
was inserted in THE TOWSON TIMES, a weekly newspaper published
in Baltimore County, Maryland, once a week for one ~~XXXXXX~~
week before the 21 day of February 1972 that is to say, the same
was inserted in the issue of February 17, 1972.

STROMBERG PUBLICATIONS, Inc.

By Ruth Mergen

CERTIFICATE OF PUBLICATION

TOWSON, MD., February 17....., 1972

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~~ times before the 17th day of March, 1972 the ~~first~~ publication appearing on the 17th day of February, 1972.

THE JEFFERSONIAN.

Cost of Advertisement, \$_____

PETITION MAPPING PROGRESS SHEET

FUNCTION	Wall Map		Original		Duplicate		Tracing		200 Series	
	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: 			Revised Plans: Change in outline or description _____ Yes _____ No							
Previous case: _____			Map # _____							

[illegible][illegible]

The above testimony was all confirmed by Mr. Bernard Willemin, a qualified planner who has frequently testified as an expert before this Board, and who was also thoroughly familiar with the area changes, and who had examined all of the zoning cases in the general area, both before and since the adoption of the new maps in 1971. He pointed out that the Planning Board's recommendation prior to the map adoption was for D.R. 16, and obviously with the idea that it would be used for offices. He expressed his opinion that the present zoning of D.R. 3.5 is erroneous, unreasonable, capricious and has no basis in existing land uses in the area, nor on any reasonable principles of proper planning and zoning. He pointed out that the property is only one thousand feet from the new Court House and is in an area properly identified as "office area". He further testified that he felt the Baldwin property was unsuitable for its present use, mainly because of its location at the YMCA, with the concomitant lighting, noise, trash and activities. There is almost private access to the property and no traffic problems exist, nor would they be caused by this proposal. He further stated that the proposed use would have no detrimental effect on anything in the area and that all of the items mentioned in Section 502.1 were satisfactorily met by the Petitioner. He further pointed out that if no variance were granted, it would be necessary to destroy the present building, and since it would not be economically feasible to use a lot that size for apartments, a new office building would be required which would be less attractive than the present stone building, and that it would be an extraordinary hardship to the Baldwins to meet the setback standards because of the present location of the existing building with respect to the property line.

The Protestants presented several residents in the neighborhood, whose testimony in effect confirmed the Petitioner's contention as to the existing uses and character of the neighborhood but who have less exposure to the YMCA. They testified that they feared that granting the petition would have a pyramiding or domino effect on the neighborhood. In addition thereto they presented as a witness Mr. Phillip Iglehart, a realtor associated with W. C. Pinkard & Company, who lives on Valley Road near Greenspring Avenue, and who qualified as an expert in his field, which is commercial and industrial leasing and

selling. He testified that there were approximately 155,000 square feet of office space for rent in the Towson area at present, and he named the buildings in which such space is available, all of which consisted of the fairly new office buildings in the center of Towson, which in the opinion of this Board do not compare with offices in remodeled old homes such as Mr. Baldwin and others in his profession in Towson are used to and prefer to the new buildings. He stated that the Baldwin property did not meet his criteria as to the ingredients necessary for economic feasibility. However, he acknowledged that he made no study of the economic results of other dwelling to office conversions. He further stated that the average annual consumption of office space from 1971 to date in the area amounted to approximately 175,000 square feet per year, and that there were plans under way for additional large buildings in the area of up to 260,000 square feet. In the Board's opinion this only shows the need for office space availability of all kinds in the general area. There were numerous exhibits filed in this case, namely, sixteen on behalf of the Petitioners, and almost as many for the Protestants, which are all in the file in this case, and a large number of photographs and other evidence which are too lengthy to go into at this time. However, on the basis of the entire evidence in the case, an inspection of the property and the testimony before us, the Board feels impelled to agree with the reclassification and granting of the petition made by the Zoning Commissioner of Baltimore County, and his decision will therefore be affirmed.

We agree that the adoption of D.R. 3.5 zoning for this property was an error at the time of the map adoption on March 24, 1971; that it was not in accord with either the recommendations of the Planning Board or in accordance with good planning principles. The Council's granting of the D.R. 16 zoning to all of the contiguous property in the area, or at least almost all of the property, and placing this particular one as D.R. 3.5, could almost be classified as spot zoning, as it was and is the feeling of the Planning staff and Planning Board that all of the properties west of Towson Center should be classified D.R. 16, with intended use as offices all the way to the YMCA property. The Baldwin property

is definitely oriented toward the Towson government center and offices and away from the residential community of Southland Hills.

The Board further finds that the granting of this rezoning would be in the public interest and not detrimental to the health, safety or general welfare of the community, and that all prerequisites of Section 502.1 of the Baltimore County Zoning Regulations with respect to the Special Exception have been met; and further, since it is not the Petitioner's intention to raze the present structure or to erect a new office building, it would be a great hardship were he required to abide by the strict interpretation of the setback rules, and therefore the Variance requested will be granted.

ORDER

For the reasons set forth in the foregoing Opinion, the Board affirms the Order of the Zoning Commissioner dated January 29, 1973, and it is this 22nd day of February, 1974, by the County Board of Appeals ORDERED, that the Reclassification from D.R. 3.5 to D.R. 16 zone petitioned for be and the same is hereby GRANTED; and it is

FURTHER ORDERED, that the Special Exception for professional offices petitioned for be and the same is hereby GRANTED; and it is

FURTHER ORDERED, that the Variance petitioned for to permit a rear yard setback of twenty-seven (27) feet and a side yard setback of forty (40) feet instead of the required seventy-five (75) feet, be and the same is hereby GRANTED, subject to the following restrictions:

1. The present structure be used for offices;
2. A site plan be approved by the Bureau of Public Services and the Office of Planning and Zoning.

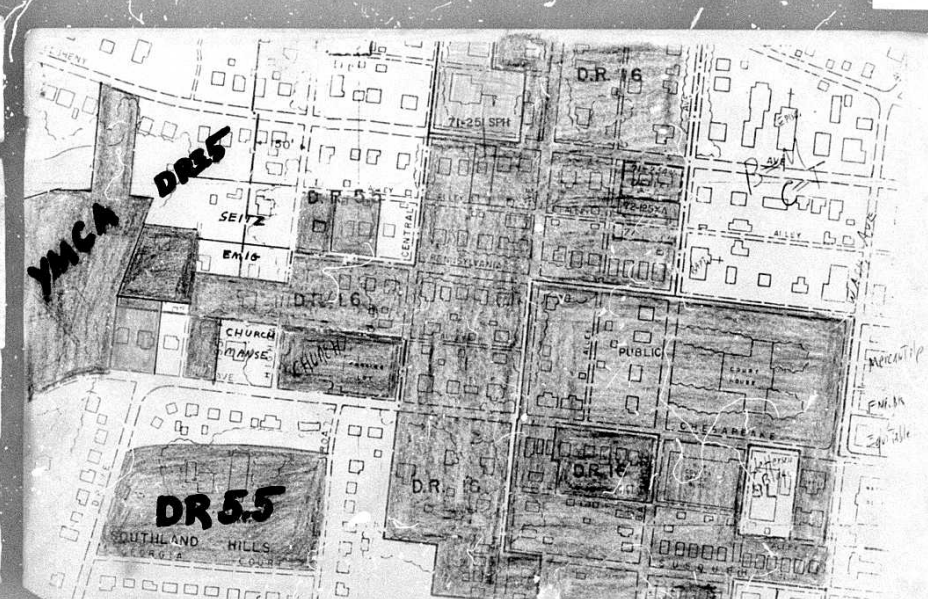
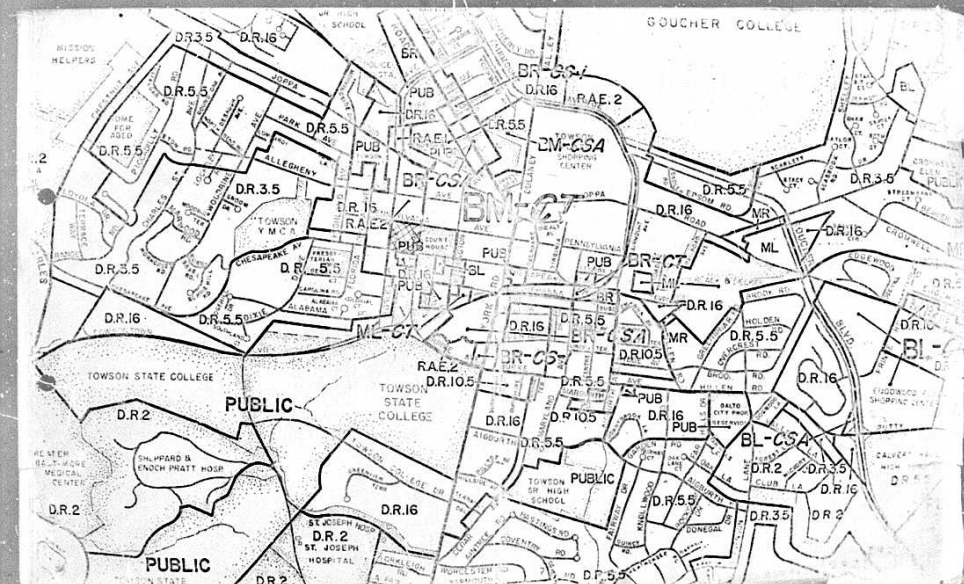
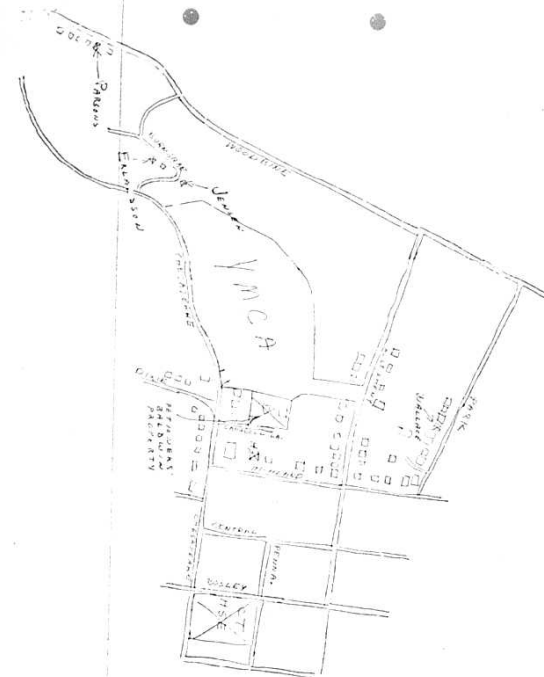
Any appeal from this decision must be in accordance with Chapter 1100, subtitle B of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

John A. Slowik, Chairman

W. Giles Parker

Walter A. Reiter, Jr.



Don't Use
DR 16
Public, institutional use or parking lot
Zoned DR 3.5 or DR 3.5 but in existing apt use
Subject property

RE: PETITION FOR RECLASSIFICATION, SPECIAL EXCEPTION AND VARIANCE
W/S of Campbell Lane, 200' N of Chesapeake Avenue - 9th District
William S. Baldwin, et ux - Petitioners
NO. 72-201-RXA (Item No. 1)

BEFORE THE
ZONING COMMISSIONER
OF
BALTIMORE COUNTY

The Petitioners request a Reclassification from a D, R, 3, 5 Zone to a D, R, 16 Zone, a Special Exception for professional offices and a Variance from Section 1802.2c of the Baltimore County Zoning Regulations to permit a rear yard setback of forty (40) feet instead of the required seventy-five (75) feet, said property being located on the west side of Campbell Lane, two hundred (200) feet north of Chesapeake Avenue, in the Ninth District of Baltimore County, containing 0.898 acres of land, more or less.

Evidence on behalf of the Petitioners indicated that the Petitioners reside on the premises. It was also indicated that the property is bordered on the west by the YMCA property, on the east by houses and on the south by houses and/or residential uses, and on the north by open spaces. It was further indicated that there have been no houses sold for residential purposes in the immediate area from Baltimore Avenue to Holland Avenue, and Allegheny Avenue to Chesapeake Avenue, within the last fifteen (15) years. Most houses in this geographic area have been converted to offices.

Mr. Bernard Willemain, a qualified land planner, indicated that the Baltimore County Planning Board had recommended that D, R, 16 zoning be extended west from the Towson Center to the YMCA property. The Baltimore County Council reduced this proposal and office uses near the Towson Center. Mr. Willemain felt that the Comprehensive Zoning Map, as adopted on March 24, 1971, was in error in placing the subject property in D, R, 3, 5 zoning. He stated that its contiguous nature to the YMCA property and its large parking

lot, the expansion of the YMCA site in the last ten (10) years, the expanded office uses from the Towson Center in a westerly direction and, the lack of sales in the area for residential purposes, necessitates that the property be classified D, R, 16 zoning with a Special Exception for office uses.

Further testimony, pertaining to the Special Exception request, indicated that its use would not be detrimental to the health, safety and general welfare of the community and also that it would not overburden the roads with excessive traffic. The Petitioners stated that they were requesting the Variance because they (Petitioners) intended to use the existing structure for professional offices. Should strict enforcement of the Baltimore County Zoning Regulations be adhered to, this would be a practical hardship and unreasonable difficulty thereupon.

Residents of the area in protest of the subject Petition indicated that they were apprehensive of the encroachment of office uses from the Towson Center in a westerly direction towards their residential homes. The residents were also concerned with the traffic increase that could result due to the granting of this Petition. They stated that the YMCA is not detrimental to them nor is it to the Petitioners.

Without reviewing the evidence further in detail but based on all the evidence presented at the hearing, in the judgment of the Zoning Commissioner, the Comprehensive Zoning Map, as adopted by the Baltimore County Council on March 24, 1971, was in error in classifying the subject property D, R, 3, 5 zoning. It is obvious that the Baltimore County Planning Board had recommended that the Baltimore County Council that all property from the west of the Towson Center to the YMCA property be classified D, R, 16 zoning with the intention that these properties be converted to office uses.

The Baltimore County Planning Board's recommendations to the Zoning Commissioner, under Item No. 1, stated that 'in view of the Council's decision

and more particularly the apparent intent underlying it, the Planning Board feels that D, R, 3, 5 Zone is correct. Further any expansion of D, R, 16 Zone from Towson Center ought to be comprehensively. This indicates to the Zoning Commissioner that the Baltimore County Planning Staff and Planning Board still feel that all the properties west of the Towson Center should be classified D, R, 16 zoning with intended usage as offices. The Baltimore County Planning Board also stated that this ought to be done comprehensively and inasmuch as the review of the Comprehensive Zoning Map is not to take place until 1976. Should the Petitioners be denied the right to use this property, as stated, it would be confiscatory in nature. Furthermore, it is not the Petitioners' intention to raze the present structure or erect a new office building.

In the opinion of the Zoning Commissioner, the character of this area would not change if this were not to be accomplished for a period of time. Also, the granting of the Special Exception would not be detrimental to the health, safety and general welfare of the community and it is obvious that should the Baltimore County Zoning Regulations be strictly adhered to, as for the setback requirements, this would be a practical hardship and unreasonable difficulty upon the Petitioner. The prerequisites of Section 502.1 of the Baltimore County Zoning Regulations have been met.

Therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 29th day of January, 1973, that the herein described property or area should be and the same is hereby Reclassified from D, R, 3, 5 Zone to a D, R, 16 Zone; the Special Exception for professional offices be GRANTED and the Variance to permit a rear yard setback of twenty-seven (27) feet and a side yard of forty (40) feet instead of the required seventy-five (75)

feet should be and the same is hereby GRANTED from and after the date of this Order subject to:

1. The present structure being used for offices and that a new structure not be constructed for a period of five (5) years from the date of this Order.
2. A site plan being approved by the Bureau of Public Services and the Office of Planning and Zoning.

Zoning Commissioner of
Baltimore County

ORDER RECEIVED FOR FILING

DATE January 29, 1973

BY [Signature]

ORDER RECEIVED FOR FILING

DATE January 29, 1973

BY [Signature]

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DATE January 29, 1973

BY [Signature]

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DATE January 29, 1973

BY [Signature]

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

Description to Accompany Zoning Petition
Reclassification from D, R, 3, 5 to D, R, 16
with Special Exception for Offices and
Variance for Side Yard
4066 Campbell Lane
0.898 Acres ±

October 12, 1973

Beginning for the same on the west side of Campbell Lane, 200 feet more or less from the north side of Chesapeake Avenue, said point being on the existing zoning line between D, R, 3, 5 and D, R, 5, 5 and running thence parallel to the north side of Chesapeake Avenue and binding on the existing zoning line between D, R, 3, 5 and D, R, 5, 5 North 77° 21' West 203.75 feet; thence North 24° 54' East 222.32 feet; thence South 77° 30' East 156.00 feet; thence binding on the west side of Campbell Lane South 12° 30' West 217.69 feet to the point of beginning.

Containing 0.898 acres of land, more or less.



10/16/73
THE DAILY RECORD, BALTIMORE, TUESDAY

Court of Appeals of Maryland

No. 16 September Term, 1972 — Filed October 2, 1973

FRANK TRAINER, JR. et al.

vs.

PAUL LIPINSKY, JR. et al.

Appeal from the Circuit Court for Baltimore County. John S. Martin, Judge.

Appeal from the Circuit Court for Baltimore County. John S. Martin, Judge.

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Appeal from the Circuit Court for Baltimore County. John S. Martin, Judge.

JOHN C. WALLACE, et ux
Appellants
vs.
WILLIAM S. BALDWIN, et ux
Appellees

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
Case No. 9/399/5243 539

ORDER

For the reasons assigned in the orally dictated Opinion at the conclusion of the hearing held here on December 17, 1975, it is, this 24th day of December, 1975, ORDERED that the Order of the County Board of Appeals entered on February 22, 1974 be, and it is hereby, affirmed.

JUDGE

RICHARD W. PARSONS, et al
Appellant
vs.
WILLIAM S. BALDWIN, et ux
Appellee

IN THE
COURT OF SPECIAL APPEALS
OF MARYLAND
No. 94
September Term - 1976

ORDER

Upon consideration of the Motion filed in the above entitled appeal and pursuant to Maryland Rule 1035 b (8), IT IS, ORDERED AND DECREED that this appeal be and is hereby dismissed this 14th day of December, 1976 by the Court of Special Appeals. *Transcript to be furnished.*

Chief Judge Richard P. Gilbert

Judge

Judge

MANDATE
Court of Special Appeals of Maryland

No. 94, September Term, 1976

Richard Parsons et al.
v.
William S. Baldwin et ux.

Appeal from the Circuit Court for Baltimore County
Filed: March 24, 1976
December 8, 1976: Motion to Dismiss Appeal filed by counsel for appellees.
December 16, 1976: Motion granted. Mandate to issue forthwith.
December 17, 1976: Motion to Motion to Dismiss filed by counsel for appellants.
December 17, 1976: Chief Judge Gilbert endorsed on Answer to Motion to Dismiss "Motion per order of 12/16/76."
December 17, 1976: Mandate issued.

STATEMENT OF COSTS:

In Circuit Court:

Record
Stenographer's Costs

In Court of Special Appeals:

Filing Record on Appeal 20.00
Printing Brief for Appellant 787.00
Reply Brief
Portion of Record Extract - Appellant
Printing Brief for Cross-Appellee

Printing Brief for Appellee N
Portion of Record Extract - Appellee O
Printing Brief for Cross-Appellant N

STATE OF MARYLAND, Sec:

I do hereby certify that the foregoing is truly taken from the records as 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 seventeenth day of December, A.D. 1976.

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.

FILED DEC 21 1976

Court of Special Appeals
of Maryland

No. 94, SEPTEMBER TERM, 1976

Richard Parsons et al.
vs.
William S. Baldwin et ux.

DISPOSITION OF APPEAL IN COURT OF SPECIAL APPEALS:

December 16, 1976: Order by Court of Special Appeals dismissing appeal pursuant to Maryland Rule 1035 b (8).

TRANSCRIPT

RETURNED TO Dr. Elmer H. Kahline, Jr., Clerk, Circuit Court for

Baltimore County, Towson, Maryland 21204 Date December 17, 1976

BY First Class Mail

REMARKS:

FILED DEC 21 1976

THE DAILY RECORD

Court of Appeals of Maryland

No. 98, September Term, 1975 - 7008 May 11, 1975

JAMES A. STANLEY ET AL.

J. LYNE BEAUFORT ET AL.

Appeal from the Circuit Court for Baltimore County, Kenneth

Stanton, Judge, in and to the Court of Special Appeals of Maryland

James A. Stanley et al., Appellants, v. J. Lyne Beaufort et al.,

Appellees. Before DANIEL S. SMITH, Chief Judge, and

DAVID E. JONES, Jr., Associate Judges.

Appellants were made by record of small tract of land in change

of ownership from the appellants to the appellees. The appellees

contested the change of ownership. The appellees contended that the

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AND for such other reasons that may be assigned at the time of the hearing on this property.

1. That the existing building on the property is situated as shown on the plats filed with this Petition and is 27 feet from the north property line and 40 feet from the west property line and to require the Petitioner to demolish the existing structure would be an unreasonable hardship on the Petitioner.


JAMES H. COOK
Attorney for Petitioner

IN THE
COURT OF SPECIAL APPEALS
OF MARYLAND
No. 94
September Term - 1976

5. That all issues on appeal are moot since the use of the Baldwin property is now controlled by the 1976 Comprehensive

3. Such other relief as this cause may require.

James H. Cook
409 Washington Avenue
Towson, Maryland 21204
Phone: 823-4111
Attorney for Appellee

Lake Falls Association v. Board of Zoning Appeals, 209 Md. 561 (1956).

I HEREBY CERTIFY that copy of the foregoing Motion to Dismiss was mailed this 7th day of December, 1976 to Anne Kay Kramer, Attorney for Appellant, Wilton Wood Road, Stevenson, Maryland 21153.

James H. Cook

JULIUS A. ROMANO, CLERK
COUNTY OF LOS ANGELES, CALIF.

RE: PETITION FOR RECLASSIFICATION * FROM PLOIO 399
SPECIAL EXCEPTION AND VARIANCE
William S. Baldwin, et ux

(14) Mar. 3, 1975 - Appellants' Notice of Appeal to the Court of Special Appeals rec'd and fd.
Mar. 27, 1975 Original papers mailed to the Court of Special Appeals of Maryland.

(15) Nov. 24, 1975 Mandate from the Court of Special Appeals of Maryland rec'd & filed.
June 6, 1975 Motion to Restrict Issues & Oral Argument filed by counsel for Appellees.
June 10, 1975 Answer to Appellees' Motion to Restrict Issues & Oral Argument filed by counsel for Appellants.
June 17, 1975 Motion for Correction of the Record filed by counsel for Appellants.
July 22, 1975 Motion granted.
July 22, 1975 Order by District Court, C.J., that second question in Appellants' brief be stricken and argument be limited to the first question.
Oct. 21, 1975 Per Curiam filed. Order dismissing appeal covered and case remanded for decision on the merits. Costs to be paid by Appellees.

Dec. 2, 1975 Hon. John Grason Turnbull. Hearing had. Motion (#25) Denied.

Dec. 17, 1975 Hon. John Grason Turnbull. Hearing had, On Appeal. Order to be signed.

(16) Dec. 29, 1975- Order of Court fd.(JGT)

(17) Jan. 28, 1976-Appellants Order for Appeal to the Court of Special Appeals
rec'd and fd.

(18) Feb. 9, 1976-Opinion of the Court fd.

[illegible]

Please note on arrival to the Court of Social Hygiene
 by Benjamin "Isabel" Warren, et al. from the Criminal and
 Order of Judge John Dawson Burdell in the above captioned
 case, dated December 20, 1977.

Cecile Kay Cramer
Cecile Kay Cramer
Attorney for Defendants
Albuquerque Band
Stevenson, Child
9000 2nd St N.E.

I hereby certify that a copy of the above card
and letter was mailed this 8th day of January, 1896, to
James W. Cook, Esq., 409 Washington Avenue, Toronto, Ontario.

Carrie Kay Kraviec

76 JAN 23 PM 3:08
CLERK
COURT, S.A.U. CO.

December 17, 1976

James H. Cook, Esquire
103 Washington Avenue
Towson, Maryland 21204

Re: Richard Parsons et al. v. William S. Baldwin et ux.
No. 94, September Term, 1976

Dear Mr. Cook:

In reference to your Motion to Dismiss filed in behalf of the Court by Order dated December 16, 1976, advised that the Court by Order dated December 16, 1976, denied the appeal pursuant to Maryland Rule 1035 b (6). A copy of the Order is enclosed. The other function provided by the Court's mandate is to return the case to the Court for reconsideration. The Court's mandate issued this date. The record on appeal is being returned forthwith to the Clerk of the Circuit Court for Baltimore County.

This also acknowledges receipt on this date of the answer to the Motion to Dismiss filed on behalf of the appellants.

Yours very truly,

Howard E. Trifanov
Chief Deputy Clerk

cc: Mr. Elmer H. Mahline, Jr., Clerk
Circuit Court for Baltimore County
One Ray I. Taylor Building with (enclosure)
John W. Hessian, Esquire (with enclosure)

RE: PETITION FOR RECLASSIFICATION, SPECIAL EXCEPTION AND VARIANCE
W/S of Campbell Lane, 200' N
9th District
William S. Baldwin, et ux
Petitioners
No. 72-201-3A1
(Item Nos. 1)

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW

Misc. Docket: 9
Folio: 399
Case No: 5243

NOTICE OF APPEAL

Mr. Clerk:
Please note an appeal to the Court of Special Appeals by Richard Parsons, et ux, Leroy D. Jensen, et ux, John C. Wallace, et ux, and Quentin E. Brundson, et ux, from the Opinion and Order of Court in the above entitled case, dated February 10, 1975.

Anne Key Kramer
Anne Key Kramer
144-2069
Attorney for Appellants

I HEREBY CERTIFY that a copy of the foregoing Notice of Appeal was mailed this 28th day of February, 1975, to James H. Cook, Esq., 409 Washington Avenue, Towson, Maryland 21204 and to John W. Hessian, III, Esq., 111 West Chesapeake Avenue, Towson, Maryland 21204.

Anne Key Kramer
Anne Key Kramer

LAW OFFICES
HESSIAN & BILCHENT
TOWSON, MD. 21204

Rec'd 10/30/73
11/20/74

RE: PETITION FOR RECLASSIFICATION, SPECIAL EXCEPTION AND VARIANCE
W/S of Campbell Lane, 200' N
9th District
William S. Baldwin, et ux
Petitioners
No. 72-201-PXA (Item Nos. 1)

BEFORE THE
BOARD OF APPEALS
OF
BALTIMORE COUNTY

APPELLANTS' MEMORANDUM OF LAW

The Appellants and Protestants in this case hereby respectfully submit their Memorandum of Law pursuant to the letter of the Chairman of the Board, dated October 10, 1973.

STATEMENT OF THE LAW OF THE CASE

Very recently the Court of Appeals has twice dealt with attacks made upon the action of the Baltimore County Council in adopting the comprehensive zoning maps on March 24, 1971, on the basis of error. These two decisions should establish the guidelines for the Board's decision in this case, because the issues were so close to those present in the instant case. We refer first to the decision of the Court of Appeals in *Stratakis v. Beauchamp*, Appeal No. 168, September term, 1972, Daily Record, 6/18/73. In that case application was made by the owners to change the DR-3.5 classification decided upon by the County Council in adopting the comprehensive zoning map to DR-16 with regard to a small parcel of land located at the northwest corner of Providence Road and Cowpens Avenue in Baltimore County. The Board of Appeals decided that the County Council had erred and re-zoned to DR-16, but the Circuit Court reversed the action of the Board of Appeals, and this reversal was sustained by the Court of Appeals. The most salient point in the decision of our highest appellate court was that where the owners contend that circumstances require re-zoning because of un-

constitutional confiscation, the owners must show that they have been deprived of all reasonable use of their property, and that it cannot be used for any other permitted uses in the existing zone. Further, the Court of Appeals held that in considering testimony by experts on the question of mistake in confiscation reasons given by the expert as the basis for his opinion must be substantial and strong enough to support that opinion. It is interesting to note that in this case the former Director of Planning and Zoning, George E. Gavrellis, testified in favor of the reclassification.

The other case that should be decisive in establishing the guidelines for decision in this case is that of *Triner v. Lipchin*, Appeal No. 16, September term, 1973, Daily Record, 10/16/73, concerning 4.16 acres of property designated by the County Council as DR-16 on Ridgely Avenue in Lutherville near the Northern Central railroad tracks, where the Deputy Zoning Commissioner initially heard the zoning application and denied it, but on appeal this Board reversed, in part, and Judge Maguire affirmed the Board's decision, ultimately to be reversed by the Court of Appeals, which re-stated the following basic points with regard to attacks on original zoning by the legislative body:

"While in recent years we have had 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 re-zoning. To sustain a piecemeal change in circumstances, such as those present here, strong evidence of mistake in the original zoning or comprehensive re-zoning or evidence of substantial change in the character of the neighborhood must be produced. . . . the task confronting appellants, whose application followed the comprehensive re-zoning by merely four months, is manifestly a difficult one. . . .

. . . In order to obtain rezoning on the basis of an unconstitutional confiscation, an applicant must show that he has been deprived of all reasonable use of his property, and that it could not be used for any of the permitted uses in the existing zone."

As we will seek to show in the remainder of this Memorandum, the appellants' case is primarily based on the theory of confiscation because of the alleged detrimental effect of the Towson YMCA property and its operation on the residential value, use and enjoyment of the appellants' property.

REVIEW OF TESTIMONY

The applicant, William S. Baldwin, Esquire, testified that he desired to move his office from 24 West Pennsylvania Avenue to his home, the subject property, because of a number of factors. First, he found that his present office location was no longer desirable because of certain uses of the building, such as a bicycle shop in the rear, which no longer made it as desirable for the location of a professional office. He also testified that when he bought the subject property in 1964 the area was a nicer residential neighborhood, the Towson YMCA not having expanded to its present size, having a considerably smaller parking lot, and that with the YMCA expansion to over eight thousand members, the accumulation of trash, beer bottles, lighting on the parking lot at night, nighttime activities, etc. severely affected the use and enjoyment of his own property. He also stressed that the Planning Board had recommended DR-16 zoning for the property before the action of the County Council, apparently being unaware of the recommendation of the Planning staff that it be kept in its present low density zone. Because of the present use of the YMCA property, he preferred to move his offices there. He felt that the unusually

D, BALTIMORE, MONDAY, JUNE 18, 1973

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In the Baltimore County Circuit Court, the Honorable Judge John W. Hessian, Jr., presiding, the case of *Richard Parsons et ux, Leroy D. Jensen et ux, John C. Wallace et ux, and Quentin E. Brundson et ux, vs. William S. Baldwin et ux*, No. 94, September Term, 1976, was heard. The case was argued by James H. Cook, Esquire, for the appellants, and by Anne Key Kramer, Esquire, for the respondents. The court rendered its decision on December 16, 1976, denying the appeal pursuant to Maryland Rule 1035 b (6). The court's decision was based on the fact that the appellants failed to establish that the respondents' zoning was unconstitutional. The court found that the respondents' zoning was a valid exercise of their police power and that the appellants' proposed use was not a reasonable use of their property. The court also found that the appellants failed to establish that the respondents' zoning was a confiscation of their property. The court's decision was affirmed by the Court of Special Appeals on February 10, 1975.

PLAY IT SAFE
Be alert to Cancer's Seven Danger Signals
American Cancer Society
for more information.

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narrow width of Campbell Lane would be no hindrance because of his small clientele. Mr. Baldwin felt that he and his wife had virtually become targets for vandalism on their property, the theft of their personal motor cycles, etc., all of which he related to the expanded YMCA activities.

Mrs. Baldwin seconded her husband's testimony, stressing essentially the same points with regard to the YMCA activity, with additional comment with regard to the YMCA summer camp, which she felt was disturbing to their use and enjoyment of the subject property.

Mr. Hugh Gelston, an experienced appraiser, was then called as the first expert witness for the applicants. After testifying that he could see no adverse effect on property values if the property were re-zoned for office use, which testimony would hardly appear to be relevant, under the guidelines laid down in Trainer v. Lipchik and Stratakis v. Beauchamp, Mr. Gelston, surprisingly, conceded that a great many properties immediately to the east of Highland Avenue, which had been re-zoned by the County Council to DR-16, were still in single family residential use, and explained that there was still a very strong demand for such single family residential properties, even to the east of the subject property, because people wanted to be within walking distance of places of employment, or near the County seat; all of which testimony would appear to be counter to the main thrust of an applicant's case, such as this one.

Next, the applicants called Mr. Frederick P. Klaus as an expert witness. It was his opinion that the DR-16 demarcation line should have been extended westerly by the County Council to coincide with the eastern boundary of the YMCA property; that there was a trend to the use of single family residences for offices

because many lawyers do not like to go into highrise buildings; and that he could see no adverse effect on property values of the desired re-zoning. On cross-examination he contended that all the properties binding on the YMCA property's eastern boundary were adversely affected by its current use, and that he did not agree with Mr. Gelston's concessions on cross-examination that there was a continued strong attraction for single family use, even east of Highland Avenue.

Next, Mr. Bernard Willemain, an expert planner, testified for the applicants, stressing that the DR-3.5 zoning was an error by the County Council, particularly in view of what he claimed was a joint recommendation by the Planning staff and the Planning Board to zone DR-16, a contention that we will subsequently see was erroneous. He felt that the County Council should have given reasons for placing the subject property in a DR-3.5 zone, though there is no legal requirement for the council to do so. He also felt that the subject property was more adversely affected by the YMCA use than any other. In answer to Mr. Barker's question, Mr. Willemain testified that, if the Council had intended to enhance renting of office space in the highrise buildings around the Court House square, these buildings were now completely zoned and there was need for additional space in this area of West Towson, testimony that of which we will see is erroneous, compared with a commercial leasing expert produced by the protestants, namely, Philip C. Iglehart. Mr. Slowik also asked the witness if he considered pure DR-16 use of the subject property, to which Mr. Willemain replied that he did not consider it economically feasible to use such property for apartments.

The first witnesses produced by the protestants were persons owning properties and living on the eastern boundary of the YMCA. Miss Pugsley testified that she and her mother had purchased their property at 513 Allegheny Avenue precisely for its location near the Y, which was considered to be a protection for them; that the YMCA operation had no adverse effect upon their use and enjoyment of their property; and that the YMCA was an asset to them. Mrs. Cynthia Herriott, whose property is immediately to the north of the Baldwins' on the east side of the YMCA, testified that she had lived there since 1948, liked the area, took night walks through the YMCA property, and considered the YMCA to be no detriment to her own property. Mr. Loren Jensen, 10 Burnbrae Road, on the west side of the YMCA testified that, from his viewpoint, the YMCA stabilized a formerly unstable property in his area, and that he had no objection to the uses to which the property was put, the bulk of which, including the use of the ball diamond in summer camp, were on his, that is the west, side of the YMCA, rather than the east side where the applicants live.

On the first day of hearing in this case, the protestants' counsel had sought to produce Mr. Webster C. Dove, a member of the County Council for fourth councilmanic district, as a witness to testify to the factors that he considered in making his recommendation to the County Council as a whole when the subject property was zoned DR-3.5, but the Board sustained an objection to permitting his testimony to be taken, and, by a majority of 2 to 1, further sustained an objection to even having a written proffer of his testimony marked for identification to be made a part of the record of the case for purposes of appeal. When Mr. Richard Parsons, former President of the West Towson Improvement Association, was called

by the protestants to explain the nature of his communications with Councilman Dove, prior to the adoption, another objection to that testimony was sustained. There was further confusion as to Mr. Parsons' testimony concerning whether or not he had supported the Planning Board recommendation for the subject property at the time of testimony before the County Council at one of two hearings held immediately before the map adoption. Confusion may have resulted from the fact that there had been two published maps, one being that containing the recommendations of the Planning staff, dated September 10, 1970, (Ex. No.) showing their recommendation that the property be zoned DR-3.5, and the subsequent recommendation of the Planning Board that it be zoned DR-16, which recommendation was rejected by the County Council. It was Mr. Norman Gerber of the Planning office staff who produced the Planning office recommendations contained in the map exhibited to the public subsequent to September 10, 1970, of which recommendations Mr. Willemain was apparently unaware.

The protestants next called Mr. Philip C. Iglehart, a commercial leasing expert with great familiarity with the office space situation in the central Towson area, as an expert witness. Mr. Iglehart testified that the average consumption of office space in the central Towson area in recent years, immediately prior to the map adoption, including the present year, had been 175,000 sq. ft. per year, and that in the period from March to October, 1971, immediately subsequent to the map adoption, there was available for office leasing a total of roughly 536,000 sq. ft. in such buildings being brought to completion as the Mercantile Building, the Equitable Building, etc., all of which construction was under way prior to the map adoption, and presumably quite obvious and apparent to the members of the County Council. He further testified that

it was his educated opinion that projected office buildings for the next eighteen months, such as the Chesapeake Arcade, the First National Building, and the Maryland National Bank building between Chesapeake and Pennsylvania Avenues, would yield another 260,000 sq. ft., which would amply supply the average annual demand referred to earlier. It was his opinion that the Baldwin property was not fitted for office use from an investor's standpoint, that the highest and best use of the subject property was DR-3.5, with particular relationship to the stability of the Highland Avenue area.

Immediately following Philip C. Iglehart, Mrs. Eleanor Miller, who has resided on Highland Avenue for many years, detailed at great length the stability of the properties on the west side of Highland Avenue, buttressing the concession made by Mr. Gelston that residential demand was still very strong in the immediate area.

Mr. Vernon Sevier, Executive Director of the Towson YMCA, placed the testimony of Mr. and Mrs. Baldwin in clearer perspective with regard to alleged nuisance of the Y operations, explaining that one of the cases of vandalism cited by the Baldwins involved the son of a close neighbor. He also pointed out that no complaints had been received from any other property owners abutting the YMCA on the east side other than Mr. and Mrs. Baldwin, and that, paradoxically, they had negotiated for a vehicular right-of-way into the expanded YMCA parking lot in 1967, which request had been rejected by the YMCA Board--evidence suggestive of earlier thoughts of eventual commercial use of their property.

Mrs. Marion G. Cross, of 501 Groom Drive on the west side of the YMCA who has lived there for twenty years, testified that the Y use was not a detriment to her and her husband and the use and enjoyment of their property, and that there had been a considerable improvement since its use as the Kelso home, because of better control of the children's activity.

Mrs. John C. Wallace, of 509 Park Drive, to the north of the subject property, appeared as President of the West Towson Improvement Association, to testify to their membership of 125 and their organization's to the subject application, because of the great threat to stability of zoning in the area. The photographic exhibits identified by Mrs. Wallace amply demonstrate the totally residential character of the neighborhood immediately surrounding the subject property, and even included many properties to the east of Highland Avenue that have been zoned DR-16, but not put to office use in the years subsequent to the comprehensive re-zoning by the County Council.

SUMMARY

In conclusion we would like to submit the following summary of points made in favor of the application for re-zoning, with the counter testimony which, under the doctrine of the two cases cited, quite clearly eliminated any contention of confiscation zoning of the subject property, and which dispose of other claims of error by the County Council in the comprehensive re-zoning. In order of their apparent importance they are dealt with as follows:

1. Theory of Confiscation - Compare Mr. and Mrs. Baldwin's testimony with that of their neighbors, Miss Pugsley and Mrs. Herriott--also, Mr. Sevier's statement that no complaints had been received from other property owners. Most striking is the absence of any expert testimony that the property would have to be sold at a loss for residential use.
2. The desirability of ivy-covered country lawyers' offices--this theory, expounded by Mr. Klaus, can hardly be considered a basis for claiming error, when the testimony of Philip C. Iglehart clearly shows that an ample supply of office space existed at the time of map adoption and subsequent thereto.
3. Request for variance - No case of hardship was made out, or evidence even presented on this point.
4. Conclusion - The evidence presented by the applicants has not even approached the threshold established by the Stratakis and Trainer cases. Accordingly, it is probably the weakest challenge to the new zoning map yet presented.

Respectfully submitted,

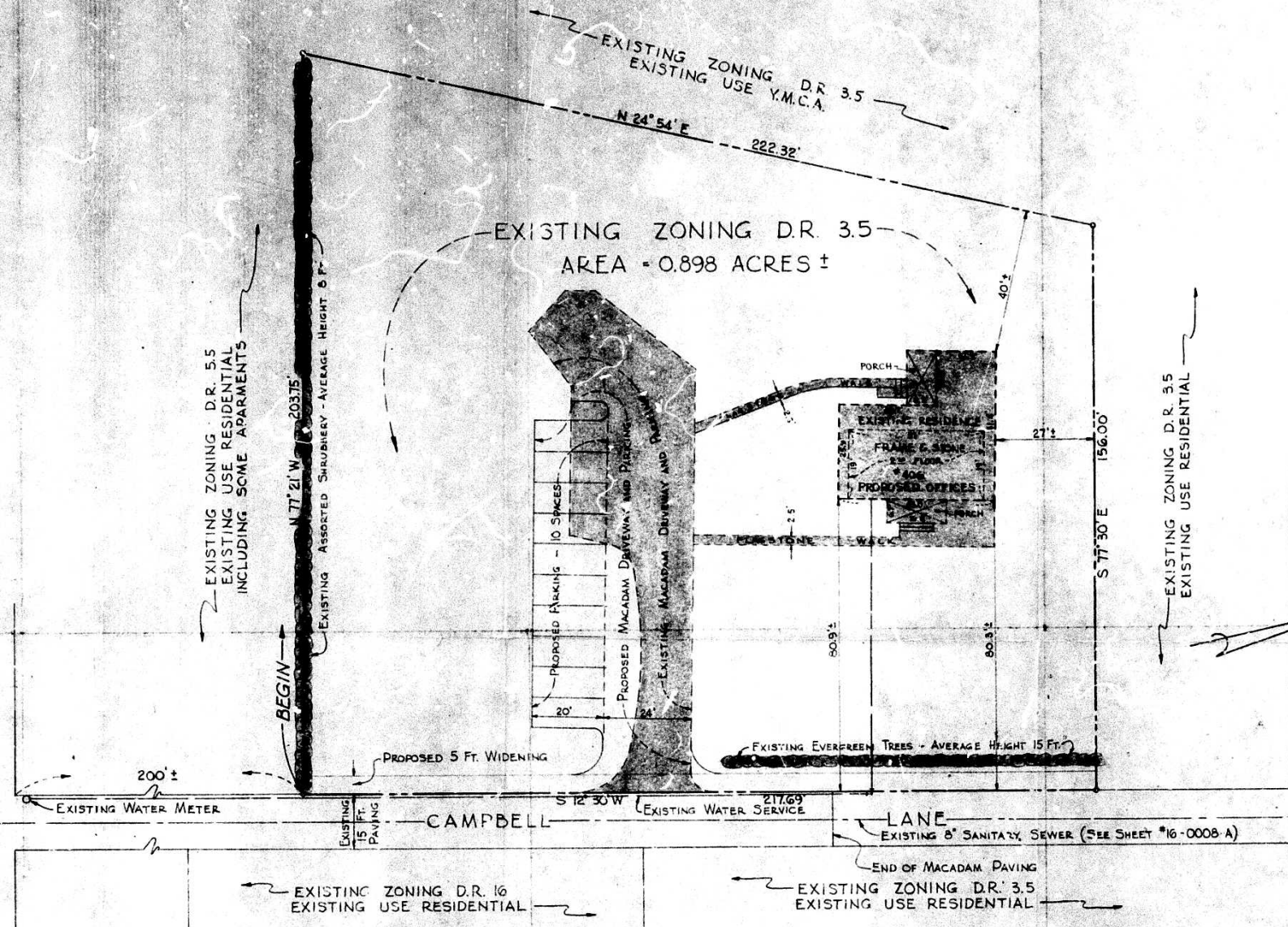
Francis N. Iglehart
Francis N. Iglehart
Suite 603
102 W. Pennsylvania Avenue
Towson, Maryland 21204
825-0711
Attorney for Protestants

MAILING CERTIFICATE

I HEREBY CERTIFY that on this 26th day of October, 1973, a copy of the foregoing Appellants' Memorandum of Law was mailed to James H. Cook, Esquire, 409 Washington Avenue, Towson, Maryland 21204, Attorney for Applicants.

Francis N. Iglehart
Francis N. Iglehart

CHESAPEAKE AVENUE



MAP 3-1
SECTION 16.10-H
DISTRICT 9
DATE 10/9/71
TYPE 16
HEARD BY 2472
FINAL BY RT

PARKING TABULATION:

Parking Required First Floor @ 1 Space per 300 Sq. ft.	5 Spaces
Parking Required Second Floor @ 1 Space per 300 Sq. ft.	3 Spaces
Total Parking Required	8 Spaces
Total Parking Provided	10 Spaces

Note: Above Requirements Based on Section 409.2 of The Baltimore County Zoning Regulations.

Variance Requested to Permit a Rear Yard of 21' ± and a Sideyard of 40' ± instead of the 75 feet required by section 1B02.2C of Bill 100.

PLAT TO ACCOMPANY ZONING PETITION
RECLASSIFICATION FROM D.R. 3.5 TO D.R. 16
WITH SPECIAL EXCEPTION FOR OFFICES
AND VARIANCE FOR SIDE YARD

406 CAMPBELL LANE

BALTIMORE COUNTY, MARYLAND
SCALE: 1" = 20'

ELECTION DIST. NO. 9
OCTOBER 9, 1971

GEORGE WILLIAM STEPHENS, JR.
AND ASSOCIATES, INC.
ENGINEERS
303 ALLEGHENY AVENUE
TOWSON, MARYLAND 21204



GENERAL NOTES:

- Any Lighting to be Directed Away from Residential Buildings.
 - Proposed Parking Facilities For Use Only by Passenger Vehicles, Excluding Buses.
 - No Loading Service, or any use Other Than Parking, Shall be Permitted.
- Above Requirement Based on Section 409.4 of The Baltimore County Zoning Regulations.