

PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, IDA C. KIEFER, legal owner... of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition (1) that the zoning status of the herein described property be re-classified, pursuant to the Zoning Law of Baltimore County, from an MR. S.S. zone to an MR. S.S. zone for the following reasons:

1. There was an error in the original zoning.
2. The character of the neighborhood has changed to such an extent to warrant reclassification

See attached description

(See attached description)
AND VARIANCE 1802.2C to permit rear and side yard setbacks of 50 ft and 65 ft respectively instead of the required 75 feet and (2) for a Special Exception, under the said Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property, for...

Property is to be posted and advertised as prescribed by Zoning Regulations.

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

Contract purchaser Ida C. Kiefer Legal Owner
Address 4214 Kershaw Avenue
Baltimore, Maryland 21215
Petitioner's Attorney Philip O. Tilghman Protestants' Attorney

Address 700 Maryland Trust Building
Baltimore, Maryland 21202
ORDERED By The Zoning Commissioner of Baltimore County, this 8th 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 Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 16th day of March, 1973, at 10:00 o'clock

Philip O. Tilghman
Zoning Commissioner of Baltimore County

(over)

HARRY S. SWARTZWELDER, JR.
ATTORNEY AT LAW
400 TOWMAN BLVD.
#10 E. REDWOOD STREET
BALTIMORE, MARYLAND 21202
727-4829

October 3, 1973

Board of Appeals for Baltimore County
County Office Building
Towson, Maryland 21204

RE: Matter of property of Ida C. Kiefer
No. 72-209-RA
Byron Road and Marriotta Lane

Gentlemen:

I have been advised that Myron J. Ashman, Esquire, is now representing the Protestants in the above case and that he has entered his appearance.

I would therefore appreciate your striking my appearance from the record in this matter.

Thank you for your cooperation.

Very truly yours,

Harry S. Swartzwelder, Jr.
HARRY S. SWARTZWELDER, JR.

HSS/rb

LAW OFFICES
MYRON J. ASHMAN

(201) 550-1708

SUITE 1703 COUNTRY SQUARE BUILDING
200 E. LEXINGTON STREET
BALTIMORE, MARYLAND 21202

September 20, 1973

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

Attention: Mr. John A. Slowik
Chairman

RE: Case No. 72-209-RA
Ida C. Kiefer

Gentlemen:

Thank you for your consideration in postponing the above matter from October 16, 1973, to October 31, 1973.

Confirming my recent telephone conversation with your office, kindly enter my appearance on behalf of LeRoy A. Schwartz and Judith H. Schwartz, his wife, Gary D. Caplan and Dorothy R. Caplan, his wife, protestants.

Harry S. Swartzwelder, Esquire, has indicated to me that he is withdrawing his appearance as counsel for the protestants.

Respectfully yours,

Myron J. Ashman
Myron J. Ashman

MJA/lw

January 10, 1973

Case No. 72-209-PA (Item No. 35) - Ida C. Kiefer

SW/S of Byron Road, 200' S of
Parkfield Road - 2nd District

Petition for Zoning Reclassification and Variance
Brief Accompanying Petition for Zoning Reclassification

Description of Property

Plan to Accompany Rezoning Application

Certificates of Publication

Certificate of Posting (Two (2) Signs)

Baltimore County Planning Board Comments and Accompanying Map

Zoning Advisory Committee Comments

Colored 1000' Scale Location Plan

Tight (8) Page Petition of Protestants' Signatures

Petitioner's Exhibit No. 1 - Amended Plat

Petitioner's Exhibit No. 2 - Photograph

List of Protestants Who Appeared at Zoning Hearing and Cover Letter from Protestants' Attorney, dated March 16, 1972

Petitioner's Memorandum with Colored 1000' Scale Location Plan and Cover Letter from Petitioner's Attorney, dated September 25, 1972

Order of the Zoning Commissioner, dated December 4, 1972

Order of Appeal from Philip O. Tilghman, Esquire, on Behalf of Ida C. Kiefer, Petitioner, received December 11, 1972

Philip O. Tilghman, Esquire
700 Maryland Trust Building
Baltimore, Maryland 21202

Counsel for Petitioner

Harry S. Swartzwelder, Jr., Esquire
210 East Redwood Street
Baltimore, Maryland 21202

Counsel for Protestants

Mr. Max Goodman
2821 West Strathmore Avenue
Baltimore, Maryland 21209

Protestant

DEMPPREY AND BURGAN

THOMAS F. DEMPPREY
JOHN F. BURGAN
JOSEPH V. REAR
BAYLEY J. DANTON
THOMAS J. MOONEY, III
WILLIAM F. COLE, JR.
PHILIP O. TILGHMAN

700 MARYLAND TRUST BUILDING
BALTIMORE, MARYLAND 21202
SARATOGA 7-0882

December 8, 1972

Honorable S. Eric DiNenna
Zoning Commissioner
Baltimore County Office Building
Towson, Maryland 21204

Re: Item 35 - No. 72-209-RA
Petitioner: Ida C. Kiefer, Dist. 2.
4-1/2 acres Marriotta Lane

Dear Mr. DiNenna:

Enclosed herewith is the Notice of Appeal taken by the petitioner, Ida C. Kiefer, in the above matter, together with a check in the amount of \$70.00 for the filing costs of the Appeal.

Sincerely yours,

Philip O. Tilghman
Philip O. Tilghman

Pf:rb

Enclosures

cc: Harry Swartzwelder, Esquire
210 E. Redwood Street
Baltimore, Maryland 21202

December 4, 1972

Philip O. Tilghman, Esquire
700 Maryland Trust Building
Baltimore, Maryland 21202

RE: Petition for Reclassification
and Variance
SW/S of Byron Road, 200' S
of Parkfield Road - 2nd District
Ida C. Kiefer - Petitioner
NO. 72-209-RA (Item No. 35)

Dear Mr. Tilghman:

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

SEDrvt:

Attachments

cc: Mr. Max Goodman
2821 West Strathmore Avenue
Baltimore, Maryland 21209

Harry Swartzwelder, Esquire
210 E. Redwood Street
Baltimore, Maryland 21202

HARRY S. SWARTZWELDER, JR.

ATTORNEY AT LAW
400 TOWMAN BLVD.
210 E. REDWOOD STREET
BALTIMORE, MARYLAND 21202
727-4829

March 16, 1972

The Honorable Eric DiNenna
Zoning Commissioner
County Office Building
Towson, Maryland 21204

RE: Kiefer Property
Case No. 72-209 RA

Dear Eric:

Enclosed herewith is a copy of the protestants who appeared at the above captioned hearing.

Very truly yours,

Harry S. Swartzwelder, Jr.
Harry S. Swartzwelder, Jr.

HSS/rb
enclos.

Case 72-209-RA

Name	Address	Phone
Barrell, Brian	4730 Byron Rd	655-5712
Snyder, D. Kildan	7994 Byron Rd.	655-4124
Anna, Thomas	1763 Byrd Rd.	655-4371
Wright, Dan	4131 Byrd Rd.	655-5743
Martha, Begg	4725 Byron Rd.	655-6113
Michael, Thomas	5 Quaker Ct.	655-3376
Harlene, Thomas	3703 Parkfield Rd.	655-6086
Angela, Handberg	3704 Parkfield Rd.	655-4616
Louise, Bona	3706 Parkfield Rd.	655-1820
Laura, Knight	476 Byron Rd.	655-3328

MAY 12 1975

RE: PETITION FOR RECLASSIFICATION AND VARIANCE
SW/S of Byron Road, 200' S of Parkfield Road - 2nd District
Ida C. Kiefer - Petitioner
NO. 72-209-RA (Item No. 35)

* BEFORE THE
* ZONING COMMISSIONER
* OF
* BALTIMORE COUNTY

NOTICE OF APPEAL

To the Zoning Commission of Baltimore County:

Please enter an Appeal by the Petitioner, Ida C. Kiefer, from your Order passed in this matter on December 4, 1972.

Philip O. Tilghman
Thomas F. Dempsey & Burgen
Attorneys for Petitioner, Appellant
700 Maryland Trust Building
Baltimore, Maryland 21202
727-0862

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Notice of Appeal was mailed this 11th day of December, 1972, to the attorney for the Protestants, Harry Swartzwelder, Esquire, 210 E. Redwood Street, Baltimore, Maryland 21202.

Philip O. Tilghman
Attorney for Appellant

RE: ITEM 35 October - April Cycle 1971-72

PETITION OF IDA C. KIEFER

SECOND ELECTION DISTRICT - 4.45 Acres

N/W/S of Marriotts Lane, N/E/S extension of Byron Road

REQUESTING RECLASSIFICATION FROM D.R. 5.5 to D.R. 16

HEARING BEFORE ZONING COMMISSIONER ON 3/16/72

PETITIONER'S MEMORANDUM QUESTIONS INVOLVED

Was the classification of the subject property as D.R. 5.5 on the original zoning map error? And should the subject property be reclassified to D.R. 16?

ARGUMENT AND CITATIONS

Both of these questions were answered affirmatively by the following facts which were established at the hearing, viz:

1. The zoning map itself presented uncontradictable evidence of obvious and glaring error. It shows the subject property as a tiny thumb of 4.45 acres plunged in the center of an immense pie of over fifty acres of D.R. 16 and institutional use property. In Zoning Case No. 69-198R, where in 8.5 acres on the northeast side of the subject property was reclassified from R6 to R.A., the opinion of the Board of Appeals stated that "to allow this relatively small parcel (8.5 acres) sandwiched between institutional and apartment used land in an R-6 category is improper, and that the commissioner's giving the other land reclassification and not this, is not facing the realities of the situation."

The same is true of the County Council's action in reversing the Planning Board's recommendation to zone the subject property on the new map D.R. 16, and classifying it D.R. 5.5. The principles and logic enunciated by the Board of Appeals are just as valid after the adoption of the new

even though the quoted case, being before map as before the new map, does not constitute a change in the neighborhood.

2. Baltimore County's requirements for roads and utilities for the development of the subject property are the larger and more costly ones. Designed for D.R. 16 and institutional land, such as that which virtually surrounds the subject property, and not for D.R. 5.5 land. For example, the width of the paving on Byron Road is to be 36 feet and on Rolling Road, 42 ft; whereas the paving width of roads in D.R. 5.5 subdivisions is 24 to 26 feet; and the water main is 16 inches instead of 10 inches. These larger roads and utility lines are needed for the large tract of D.R. 16 land surrounding the subject property. This again proves error - for what else could it be but error - to impose on a sliver of land, within a tract of D.R. 16 land, the same higher road and utility standards and costs required for D.R. 16 use, and then restrict the sliver to D.R. 5.5 use.

3. Zoning the subject property D.R. 5.5 deprived the Petitioner of all reasonable use of the property, and thus is error. It is also unconstitutional, and while it may not be within the Zoning Commissioner's province to decide on constitutional points, nevertheless, he can rule on the error shown by the fact that D.R. 5.5 zoning permits the Petitioner no reasonable use of the property.

It was shown that because of the transition area requirements of Bill 100, the subject property, as zoned D.R. 5.5, could only be used for individual houses on individual lots; and not for townhouses or apartments as normally permitted in D.R. 5.5 zones. (For the same reason no different use of the land could be made if it had been classified D.R. 10.5). The prohibitive costs for individual lot development, as shown by the engineer, coupled with the real estate expert's opinion that the land was not suitable for development into individual lots (comparable to the old R6) because of the

-2-

shape of the land, and because the location on a major traffic road, Rolling Road, and the apartments around them would restrict their sale and prevent their sale for a price which would justify the excessive development costs. Thus the land cannot be reasonably used under the D.R. 5.5 zoning.

4. The D.R. 16 land on three sides of the subject property was zoned D.R. 16 on the new map without Rolling Road being physically completed, and it is being paved as the apartments are being built on said land; so there is no justification for, or logic in, denying D.R. 16 zoning for the subject property on the ground that Rolling Road is not paved in front of it; especially since it is the developer's responsibility to pay for the road and no developer would put in the road until the land was zoned feasible for development.

Moreover projects, such as roads, that are "reasonably probable of fruition in the foreseeable future" should be considered. Jobar vs. Rodgers Forge, 236 Md. 106, 202 A 2d. 612; and Rohke vs. County Board of Appeals, 234 Md. 259, 199 A 2d. 216.

CONCLUSION

For the reasons above stated the subject property should be reclassified D.R. 16.

Respectfully submitted,

Philip O. Tilghman
Attorney for Petitioner

BALTIMORE COUNTY ZONING ADVISORY COMMITTEE

Philip O. Tilghman
Thomas F. Dempsey
700 Maryland Trust Building
Baltimore, Md. 21202

RE: Type of Hearing: Reclass. to D.R. 16;
Variance from 1802.2C - front and side yards
Location: W/E/S Byron Rd., 200' S/E of Parkfield Rd.
Petitioner: Ida C. Kiefer
2nd District
Item 35

Dear Sirs:

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

The subject petition is located at the end of Byron Road within the Court Haven subdivision on the north and future Rolling Road on the south. It is currently a large wooded, undeveloped tract of land, with the exception of one dwelling and garage on Rolling Road side; this is an old frame dwelling. The Court Haven subdivision is relatively new and the homes are in excellent condition. There are existing dwellings on the south side of the future Rolling Road, which is now known as Marriotts Lane. These dwellings are wood frame and are in the 30 to 40 year age bracket.

BUREAU OF ENGINEERING:

The subject property constitutes the same property reviewed by the Zoning Advisory Committee and known as Item #204 (1969-1970), Zoning Order #71-162-R.

The comments furnished by this office in connection with Item #204 remain valid and in effect. We are enclosing herewith a xerox copy of those comments which are applicable to the current zoning petition, plus the following additional comments:

Highway lines have been prepared for Rolling Road north and south of this site. The highway plans for this site must meet the previously prepared alignments.

Additional Water Comments:

In addition to previously stated responsibilities, this Developer will be responsible for cost participation in the construction of a 16-inch public water main in Rolling Road.

Philip O. Tilghman
Thomas F. Dempsey
Item 35
Page 2

DEPARTMENT OF TRAFFIC ENGINEERING:

The subject petition was reviewed as Item #71-162, at which time it was pointed out that Rolling Road does not exist and Marriotts Lane and Byron Road are not sufficient to handle apartment density.

FIRE PREVENTION BUREAU:

Fire hydrants for the proposed site (are required and) shall be in accordance with Baltimore County Standards.

The hydrants shall be located at intervals of 500 feet along an approved road.

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.

HEALTH DEPARTMENT

Metropolitan water and sewer must be extended to the site before building permit can be approved.

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

BOARD OF EDUCATION:

The yield from this area at currently zoned would be comparable to the yield produced by a change to apartment zoning.

ZONING ADMINISTRATION DIVISION:

The plat as submitted indicates a continuation of Byron Road to the proposed future Rolling Road. It also indicates a 25 foot setback between the ends of the apartment groups. This would be in violation of Bill No. 100, unless there were no windows at the ends of these groups. There must be a minimum setback of 75 feet from the apartment houses to the tract boundary line. This also was the subject of an earlier petition, #71-162R, which was denied 4/1/71. It was also the subject of a County Council and Planning Board issues on the pre-map adoption process.

This petition is accepted for filing on the date of the enclosed filing certificate. Notice of the hearing date and time, which will be held not less than 30, nor more than 90 days after the date on the filing certificate, will be forwarded to you in the near future.

Very truly yours,
Oliver L. Myers, Chairman

JJD,jr:rw
Enc:

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Edward Nordberg

Date: April 13, 1970

FROM: Elizabeth R. River, P.E.

SUBJECT: Item #204 (1969-1970)
Property Owner: Ida C. Kiefer
Location: S/E Byron Road, 200' S. of Int. Parkfield Road
Present Zoning: R-6
Proposed Zoning: Reclassification to R-16
District: 2nd
No. Acres: 4.45 acres

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.

REMARKS:

Rolling Road, formerly Marriotts Lane, is proposed to be improved in conjunction with development in this area as a 16-foot closed roadway within a 60-foot right-of-way. Byron Road, along the frontage of this property, is proposed to be improved as a 36-foot closed roadway within a 60-foot right-of-way. The proposed alignment of Rolling Road along the southeastern corner of this property must be revised to coincide with the alignment of Rolling Road as shown on Baltimore County Bureau of Engineering drawings 100-501 (5) and 100-502 (5). Right-of-way and easements will be required in connection with any subsequent development of this property.

Storm Drainage

Storm drainage facilities and/or easements will be required in connection with the development of this property.

The petitioner must provide necessary drainage facilities (stormwater or pondage) to prevent existing or future flooding or adjacent properties, especially by the concentration of runoff waters. Connection of any present or future stormwater to the stormwater system or to the public sewer system, including the design of the facilities, shall be the responsibility of the petitioner.

Drainage Control:

Development of this property through subdividing, grading, and other activities could result in a significant increase in runoff volume and peak discharge rate. The petitioner must provide adequate drainage facilities to prevent flooding of adjacent properties, including the design of the facilities.

Further, the petitioner must provide adequate drainage facilities to prevent flooding of adjacent properties, including the design of the facilities.

Item #204 (1969-1970)
Property Owner: Ida C. Kiefer
Page 2
April 13, 1970

Sanitary Sewers

Public sanitary sewers can be made available to serve this property by extending the existing 8-inch sanitary sewer located in Byron Road near the northeastern corner of this property. (See Baltimore County Bureau of Engineering drawing 100-501, 100-502, 100-503). The proposed sanitary sewer must be extended in a manner so as to provide service to the properties located on the southeast side of proposed Rolling Road.

Water

Public water supply can be made available to serve this property by extending the existing 16-inch water main located in Byron Road near the northeastern corner of this property. (See Baltimore County Bureau of Engineering drawing 100-501, 100-502, 100-503). The proposed water main must be extended in a manner so as to provide service to the properties located on the southeast side of proposed Rolling Road.

Elizabeth R. River, P.E.
Chief, Bureau of Engineering

REMARKS:

See S.P. New York
25 N.Y. 20 Hudson Street
N.Y. 6 and 7 C 2009 State Town

IN THE MATTER OF THE
PETITION FOR RECLASSIFICATION
FROM D.R. 5.5 TO D.R. 16, AND
VARIANCE FROM SECTION 1802, 2C
OF THE ZONING REGULATIONS
SW/S BYRON ROAD, 200'
S. PARKFIELD ROAD
2nd DISTRICT

HARRY K. LOTT, PERSONAL REPRESENTATIVE*
OF THE ESTATE OF
IDA C. KIEFER, PETITIONER

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
Miscellaneous Case: 5347

ZONING FILE #72-209-RA

OPINION

This is an Appeal by the personal representative of the deceased property owner of a parcel of land located in the Second Election District on the southwest side of Byron Road, approximately 200 feet south of Parkhill Road, the property being an area of 4.45 acres, from an order of the County Board of Appeals of Baltimore County, dated June 28, 1974, which denied the requested reclassification of the property from a D.R. 5.5 (Density Residential, 5.5 dwelling units per acre) to a D.R. 16 (Density Residential, 16 dwelling units per acre) zone.

This property has a zoning history. Prior to the new comprehensive zoning maps adopted in Baltimore County on March 24, 1971, the subject property was zoned R.6. The Planning Staff and Planning Board made recommendations that the subject property be zoned D.R.16 to the County Council. The Council did not follow this recommendation and in adopting the comprehensive zoning map of March, 1971, placed on this property the present D.R. 5.5 zoning.

On February 8, 1972, the present Petition was filed for reclassification. The Planning Board reversed its previous position and recommended that the existing zoning D.R. 5.5 be maintained on the subject property. The Zoning Commissioner of Baltimore County, in an order dated December 4, 1972, denied the requested zoning. The Petitioner appealed and the County Board of Appeals

Page 2.

held a two day hearing on the Petition and by its order denied the requested reclassification which is the subject of this Appeal.

The thrust of the Petitioner's argument on appeal to this court is the refusal of the Board to recognize an error made in the classification of the subject property on the comprehensive map adopted by the County Council on March 24, 1971. The Petitioner craves his argument on a three prong attack, first, that the Board's decision was not supported by substantial or sufficient evidence to make the issue fairly debatable; second, that the zoning of the subject property to D.R. 5.5, constituted an unconstitutional taking, and third, that the zoning of the subject property was invalid reverse spot zoning, but the central issue which permeates not only the record but extensive memoranda filed by Petitioner is that the classification of the subject property D.R.5.5 was economically detrimental to the property owner.

It is important to set the stage by showing the location of the subject property and its surrounding area. The property in question is sited on its eastern corner by D.R.16. This property is known as and will be referred to as the Marriotts Square Apartments. On the southern side of the property, there is additional D.R. 16, which property is known as and will be referred to as the Twin Lakes Apartments. On the southeastern portion of the subject property is located a tract of D.R. 5.5., and to the north and northwestern sides of the property is a large residential development zoned D.R. 5.5. To get a clearer picture of the situation as it appeared before and at the time of the adoption of the comprehensive map of March 24, 1971, please see the map appended to this opinion.

This Court finds the case of *Stratakis v. Beauchamp* 268 Md. 643 to be most helpful and persuasive on this Appeal. This Baltimore County zoning case

Page 3.

dealt with a Petition for reclassification from D.R.3.5 to D.R. 16 on property located just outside of the Beltway on C. omwell Bridge Road. Although the geographical barrier created by the Beltway was influential in the Court of Appeals sustaining the original zoning, Judge Levin also addressed a major portion of the Courts opinion to the burdens of proving mistake in original zoning and confiscatory zoning. Discussing the burdens upon a Petition in a reclassification case, the Court at page 652 stated:

"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 rezoning. To sustain a piecemeal change in circumstances such as those present here, strong evidence of mistake in the original zoning or comprehensive rezoning or evidence of substantial change in the character of the neighborhood must be produced."

The Petitioner in the case at bar alleges that the present zoning due to the topography will only allow the development of eleven (11) individual residences, whereas if the requested zoning were granted, this would enable the property owner to build sixty-four (64) apartment units on the subject property.

Further, Petitioner argues that his property is sited on the south and east portions by two tracts, one tract the Marriott Square Apartments, and the other, Twin Lakes Apartments, which are presently zoned D.R.16. This Court is persuaded this element of the Petitioner's argument falls short because both of these tracts were zoned by petition (piecemeal) prior to the adoption of the comprehensive map, and substantial portions of the D.R.16 tracts had been in development stages at the time the comprehensive maps for Baltimore County were adopted in 1971.

Page 4.

The County Council was cognizant at the time of adoption of the maps in 1971 that the subject property was bordered on two sides by property which was zoned D.R. 16. This fact weighs heavily against the petitioner's contention that the Council erred in zoning the subject property D. R. 5.5 because of the D.R. 16 butting the properties. For as stated in *Coppolino v. County Board of Appeals* 23 Md. App. 358, at page 372:

"The term error, as it is used in zoning law, does include the failure to take into account projects or trends reasonably foreseeable of fruition in the future. But in order to establish error there must be evidence to show that such developments were not, in fact, or could not have been, taken into account so that the Council's action was premised on a misapprehension." (Citation omitted)

Further, Petitioner argues strongly that the Planning Board and Planning Staff had recommended to the Council that the subject property be zoned D.R. 16 in the comprehensive zoning maps of 1971, and that the failure of the Council to follow this recommendation is indicative of error. In Maryland zoning cases, the weight given to planning agency recommendations has never been afforded substantial probative value on judicial appeal. The recommendations of the agencies are advisory only and can be accepted, rejected or modified by the legislative body in exercising its plenary zoning power. In *Coppolino* (supra), the Court stated at page 374:

"The Court of Appeals and this Court have recognized that the recommendations of a planning body with respect to a comprehensive rezoning are not binding upon the legislative body."

The Court in *Stratakis*, supra, stated the rule which this Court believes is the law in this case:

Page 5.

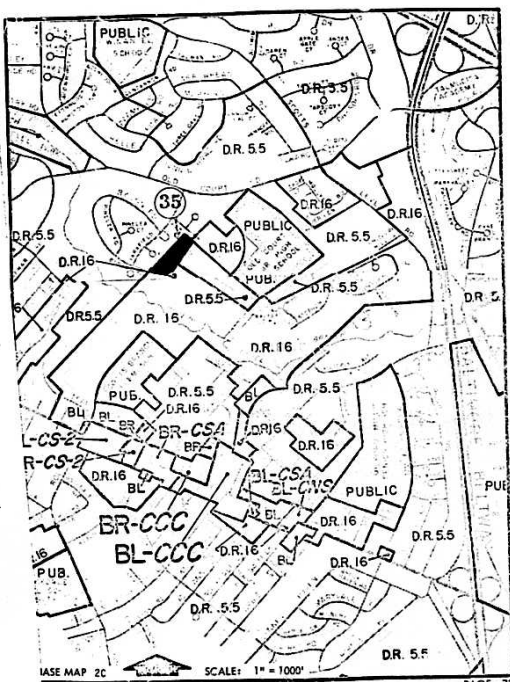
"In order to obtain a rezoning on the basis of an unconstitutional confiscation, an applicant must show that he has been deprived of all reasonable use of his property and that it cannot be used for any of the permitted uses in the existing zone. The testimony presented on this issue consists of the same generalizations of economic infeasibility that are required upon to support the 'mistake' argument. It is well recognized that such general claims are insufficient to establish that there is no reasonable issue for property under a particular zoning classification." (at page 654 - Citations omitted)

As to the Petitioner's final argument that the zoning of the subject property constitutes invalid reverse spot zoning, this Court believes that an examination of the photographs and plats in evidence before the Board refute this allegation on its face. The subject property is bordered on its northwestern property line entirely by D.R.3.5 property and on the southeast by a small but conspicuous tract of 5.5.

Having examined the record of the proceedings and the arguments and briefs of counsel, this Court can only come to the conclusion that the issues before the Board were fairly debatable, not arbitrary and capricious and the Petitioner failed to show error, therefore, this Court has no option other than to affirm the order of the County Board of Appeals of Baltimore County.

For the above reasons, The Circuit Court for Baltimore County on the 11th day of March, 1975, ORDERS that the Opinion of the County Board of Appeals of Baltimore County be and the same is hereby AFFIRMED.

Frank E. Clione
The Honorable Frank E. Clione



Denotes Subject Property.

IN THE MATTER OF THE
PETITION FOR RECLASSIFICATION
FROM D.R. 5.5 TO D.R. 16, AND
VARIANCE FROM SECTION 1802, 2C
OF THE Zoning Regulations
SW/S Byron Road, 200'
S. Parkfield Road,
2nd District

IDA C. KIEFER, Petitioner

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. 72-209-RA

ORDER FOR APPEAL BY HARRY K. LOTT, PERSONAL REPRESENTATIVE OF THE ESTATE OF IDA C. KIEFER, DECEASED, SUBSTITUTED PARTY PETITIONER.

MR. CLERK:

Please enter an appeal on behalf of Harry K. Lott, Personal Representative of the Estate of Ida C. Kiefer, deceased, applicant, from the Order of the Board of Appeals of Baltimore County passed on June 28, 1974 in the above case.

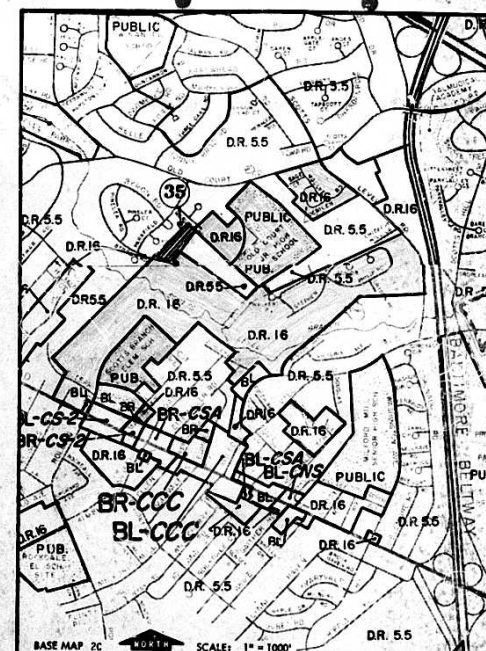
Philip O. Tilghman

John F. Borgan
Dempsey and Borgan
Attorneys for Applicant
700 Maryland Trust Building,
Baltimore, Maryland 21202
727-0862

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of July, 1974, a copy of the foregoing Order for Appeal was mailed, postage prepaid, to the County Board of Appeals of Baltimore County, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland 21204.

Philip O. Tilghman
Attorney for Applicant



RED = D.R. 16
BLUE = INSTITUTION
(35) = SUBJECT PROPERTY (KIEFER)

Rec'd 3-13-75
11 AM

Rec'd 7-22-74
2 PM

RE: PETITION FOR RECLASSIFICATION : BEFORE
from D.R. 5.5 to D.R. 16, and :
VARIANCE from Section 1802.2C : COUNTY BOARD OF APPEALS
of the Zoning Regulations : OF
SW/4 Byron Road, 200' :
S. Parkfield Road, : BALTIMORE COUNTY
2nd District :
Ida C. Kiefer, Petitioner : No. 72-209-RA

OPINION

This petition comes before the Board on appeal by the Petitioner from an Order of the Zoning Commissioner which denied the requested reclassification of certain lands from D.R. 5.5 to D.R. 16. The subject property is located in the Second Election District on the southwest side of Byron Road, approximately 200 feet south of Parkfield Road. The subject property contains a gross area of 4.45 acres. This land is now zoned D.R. 5.5 and the Petitioner seeks a reclassification to D.R. 16 in order to build approximately sixty-four apartment units. This small tract is south of Old Court Road and will eventually border on the proposed new Rolling Road, which will connect Old Court Road to Liberty Road. The Old Court Junior High School is but a short distance to the northeast of the subject property. The Petitioner presented a series of expert witnesses, including Richard Smith, an engineer associated with M.C.A., Hugh Gelston, a real estate expert, and Bernard Willemoir, a land planner. Each of these three professional witnesses described to the Board their reasoning pursuant to the granting of the requested reclassification to D.R. 16.

A series of neighbors, mostly from the Kimberly subdivision, testified in opposition to the granting of this reclassification. Norman Gerber of the Planning Staff also testified in opposition to the granting of this reclassification. Mr. Gerber told the Board that the subject property had been an issue on the maps and that at that time both the Planning Staff and Board had recommended D.R. 16 to the Council, however, the Council chose to classify the property D.R. 5.5 when they adopted the comprehensive zoning maps in 1971. In considering this petition as now presented to this Board, the Planning Staff and the Planning Board concur at this time with the findings of the Council and recommend that the subject property remain in its D.R. 5.5 classification, and that this request for reclassification be denied.

Planning Board's recommendations to the Zoning Commissioner under Item No. 35. The subject property has been before the Baltimore County Council and was obviously studied by the Baltimore County Council during its deliberation prior to the adoption of the Comprehensive Zoning Map on March 24, 1971.

Residents of the area in protest of the subject Petition indicated that they felt that there was no further need for apartments in this area. They also indicated that the access or means of egress or ingress to the subject property would be through the residential, single family development and this would have a detrimental effect upon their (area residents) health, safety and general welfare.

Without reviewing the evidence further in detail but based on all the evidence presented at the hearing, in the judgment of the Zoning Commissioner of Baltimore County, the Comprehensive Zoning Map, as adopted on March 24, 1971, the placing of this property in a D.R. 5.5 Zone was not in error.

It is obvious that the subject property was studied carefully by the Baltimore County Council. The subject property was also the subject of a previous Petition No. 71-162-R, which was denied by the then Zoning Commissioner, Edward D. Hardesty, on April 1, 1971. The main issue before the Zoning Commissioner at this time is the accessibility of traffic and the means of egress and ingress from the subject property. The granting of this Petition would in essence create a spot zone of D.R. 5.5 property lying to the southeast of the subject property. Furthermore, there seems to be no need for apartments in the area inasmuch as a large development of apartment complexes are being developed to the south and southwest of the subject property.

The Comprehensive Zoning Map, as adopted on March 24, 1971, is presumed to be correct and the burden of proving error is born by the Petitioner. This burden has not been met.

Ida C. Kiefer - 72-209-RA

Richard Moore of the Baltimore County Department of Traffic also testified in opposition to the granting of this petition. He described to the Board serious traffic conditions in the general area, and stated that he was opposed to any reclassifications that would increase the density in this general Reisterstown-Liberty Road corridor.

The question to be decided by this Board is whether or not the Council erred at the time of the adoption of the comprehensive zoning maps, or whether there has been substantial change in the character of the neighborhood to warrant the requested reclassification. As to the argument of change, the Board finds no change of a substantial character that would warrant the granting of the reclassification. Any change that has physically taken place in the neighborhood seemingly was within the knowledge, or at least could have reasonably been within the knowledge, of the Council at the time of the adoption of the comprehensive map. Other physical changes which have indeed taken place in the neighborhood, in the opinion of this Board, are not of a substantial character to warrant the granting of the reclassification.

As to the question of error by the Council, the Board is not impressed by the arguments of the Petitioner and will, in fact, find that the Council did not err when they classified the subject property D.R. 5.5. The Petitioner must show strong evidence of mistake in the original zoning. This burden is an onerous one and, in the opinion of the Board, has not been met in this instance. The traffic situation alone, as described by Richard Moore, the Baltimore County traffic expert, could have been sufficient reason for the Council not to allow any further increase in density in this specific neighborhood. The subject property is bounded on two sides by the large Twin Lakes apartment development, and also is but a stone's throw from the Marriot Square apartment complex, which is near Old Court Junior High School. These developments were not before the Council and, in fact, were facts accomplished at the time the Council adopted the comprehensive map; hence, with this high density in a relatively small area, or proposing to be developed in a relatively small area, could have been another reason that the Council did not wish to go any further with high density development. It must draw the line somewhere and using the new Rolling Road as a boundary, particularly as it nears Old Court Road, to separate the D.R.

Therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 4th day of December, 1972, that the above reclassification be and the same is hereby DENIED and the above described property remain D.R. 5.5 Zone and that the request for the Variance is hereby DISMISSED.

Zoning Commissioner of
Baltimore County

Ida C. Kiefer - 72-209-RA

5.5 from the D.R. 16 seems to be a reasonable approach to the land use classifications in this specific area. The Board is cognizant of the fact that parts of the Twin Lakes development lie on the northwest side of the new Rolling Road, however, this is one large integrated community and as such, the land use can more easily cross this artery than might be the case in the subject instance.

Carefully considering the strong presumption of correctness of the comprehensive rezoning by the County Council in March of 1971, the Board does not feel that the Petitioner has overcome this burden. The Board is impressed with the testimony concerning the traffic in the subject area, and in this instance agrees with the findings of the Planning Staff and the Planning Board as same refer to this reclassification. Without further detailing the testimony and evidence presented to this Board, it is the Judgment of this Board that this petition shall be denied. The Order of the Zoning Commissioner will be affirmed.

ORDER

For the reasons set forth in the foregoing Opinion, the Board affirms the Order of the Zoning Commissioner, dated December 4, 1972, and ORDERS this 28th day of June, 1974, that the reclassification petitioned for, be and the same is hereby DENIED.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Walter A. Kiefer, Jr., Chairman

W. Giles Parker

Robert L. Gland

BRIEF ACCOMPANYING PETITION FOR ZONING RE-CLASSIFICATION
OF
IDA C. KIEFER, (LEGAL OWNER), PETITIONER

I. LOCATION OF PROPERTY

The Kiefer Property is a tract of land containing 4.45 acres approximately, on the southwest side of Byron Road, two hundred feet south of the intersection of Parkfield Road and binding on the northwest side of Marriotti Lane (which will be the future extension of the major thoroughfare of Rolling Road) south of Old Court Road. It is in the second election district of Baltimore County.

II. PRESENT ZONING AND USE

The property is presently zoned D.R. 5.5., and is improved only by an old frame residence and a garage, both of which will be removed when the property is subsequently developed.

III. ZONING RE-CLASSIFICATION REQUESTED

The Petitioner respectfully requests that the entire tract of approximately 4.45 acres be zoned D.R. 16

IV. FACTS AND REASONS FOR RE-CLASSIFICATION

1. There was an error in the original zoning map, where-by the Kiefer Property was zoned D.R.5.5 instead of D.R.16. Prior to the adoption of the new zoning map the Planning Board recommended that the Kiefer Property, of 4.45 acres, be zoned on the new map as D.R.16, which recommendation was consistent with the D.R.16 zoning of the adjacent property, with the sound concepts of good planning, with the logical use of the Kiefer Property, and with the history of zoning in the immediate area of the subject property.

RE: PETITION FOR RECLASSIFICATION AND VARIANCE : BEFORE THE
SW/4 Byron Road, 200' : ZONING COMMISSIONER
S. Parkfield Road - 2nd District : OF
Ida C. Kiefer - Petitioner :
NO. 72-209-RA (Item No. 35) : BALTIMORE COUNTY

The Petitioner requests a Reclassification from a D. R. 5.5 Zone to a D.R. 16 Zone for a parcel of property located on the southwest side of Byron Road, two hundred (200) feet south of Parkfield Road, in the Second District of Baltimore County, containing 4.45 acres of land, more or less.

The Petitioner withdrew the request for the Variance that was to be heard at this time.

Evidence on behalf of the Petitioner indicated that it was anticipated that the subject property would be developed into garden type apartments containing approximately sixty-four (64) units. Apartment developments exist and are being constructed to the south and to the southeast of the subject property. The means of egress and ingress to the subject property would be by way of Parkfield and Byron Roads, which is a single family dwelling development. There was testimony as to the proposed Marriotti Lane, which at this time is still a dirt road with no access or means of egress and ingress.

Mr. Hugh Gelston, qualified real estate broker and appraiser, testified that the development of this property into apartments would act as a buffer from the Old Court Junior High School to the east and the single family dwellings to the west. He also stated that the development of this property would have no detrimental effect upon the value of the homes in the area, but in fact would increase their value. He indicated that the Baltimore County Planning Board had recommended to the Baltimore County Council, prior to the adoption of the Comprehensive Zoning Map, that the subject property be classified D.R. 16 zoning. This is also indicated in the Baltimore County

All of the prior zoning cases involving the adjacent and surrounding property showed the need and intention and the fact of zoning the area surrounding the Kiefer Property for apartment use, that is as D.R.16. These demonstrated and proved the facts and the realities of the situation on which the classification of the Kiefer Property on the new map should have been based; and which lead to the only logical conclusion - that the Kiefer Property of 4.45 acres should have been zoned D.R.16, as the Planning Board recommended. In Zoning Case No. 69-198R 8.5 acres of land immediately adjoining the northeast side of the Kiefer Property was zoned for apartments, for 134 units, and said zoning was retained on the new map as D.R.16. In this case the Board of Appeals found as a fact that classifying this 8.5 acres for apartment use would not congest the traffic nor overcrowd the schools; and that to allow that small parcel of 8.5 acres, sandwiched between institutional and apartment-used land, to remain as R-6 (now D.R.5.5) was not facing the realities of the situation. A tract of land containing 32 acres and zoned for 499 apartment units is located along the entire southwest side of the Kiefer Property and approximately half of the southeast side of the Kiefer Property. This was zoned for apartments in Zoning Case No. 66A-180R. In this case the Board of Appeals and also the Circuit Court of Baltimore County found that there was error in the original map and sufficient change in the area to require apartment type zoning. This was based on the fact that much of the adjacent and surrounding area of that property was already zoned for apartment use. Other tracts immediately to the east, southeast and south of the Kiefer Property were zoned for apartment use and have retained their classification

- 3 -

5. The classification of the Kiefer Property as D.R.5.5 is not in accordance with sound planning concepts. The Kiefer Property is a small peninsula jutting forth between land that is classified D.R.16 and bordered on what will be a major thoroughfare. Proper planning would provide for this land to be used for apartment's so as to provide a buffer strip of apartments between the major traffic artery and the residential houses in the Court Haven Development to the west thereof. Proper planning would also require that a tiny piece of D.R.5.5 property should not be injected between longer tracts of D.R.16 zoned land, particularly where the major traffic artery would go through all of said properties.

- 4 -

Thomas F. Dempsey
Thomas F. Dempsey
Attorneys for Petitioner
700 Maryland Trust Building
Baltimore, Maryland 21202
727-0862

Containing 4.15 acres more or less and being all of the land described in the deed from Charles R. Stinchcomb, to Harry Miller and Ruth F. Stinchcomb, dated June 10, 1925 and recorded among the Land Records of Balto. Co. in Liber No. 619 folio 34 etc...



Robert C. Morrell, Jr., Surveyor

Ida C. Klefer - 9/451/5347

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

cc: Philip O. Tilghman, Esquire
Myron J. Ashman, Esquire

Ger.	31	"	"	"	"	"	"
Apr.	10, 1974	"	"	"	"	"	" - case held sub curio

" " F - Resolution Kimberleigh Dev. Assn.

MAY 12 1975

RE: PETITION FOR RECLASSIFICATION * IN THE
from D.R. 5.5 to D.R. 16, and * CIRCUIT COURT
VARIANCE from Section 1802.2C *
of the Zoning Regulations *
SW/8 Byron Road, 200' *
S. Parkfield Road *
2nd District *
Ida C. Kiefer, Petitioner *
Harry K. Lott, Personal *
Representative of the Estate *
of Ida C. Kiefer, deceased, *
Appellant *
Folio No. 451 *
Zoning File No. 72-209-RA * File No. 5347

APPELLANT'S MOTION TO EXTEND TIME
FOR FILING THE RECORD

The Appellant, Harry K. Lott, Personal Representative of the Estate of Ida C. Kiefer, deceased, by Philip O. Tilghman, his attorney, moves that this Court, pursuant to Maryland Rule 37, extend the time for the filing of the record of the proceedings before the County Board of Appeals of Baltimore County, and for cause says:

1. That the Appellant's Petition in this appeal was filed on July 29, 1974 and that the record is required by the Maryland Rules to be filed within thirty days thereafter.
2. The court reporter has notified the attorney for the Appellant that he will not be able to furnish the transcript of the testimony taken within thirty days after the petition was filed, and that he will need an additional thirty days to do so.

Philip O. Tilghman
Attorney for Appellant

ORDER
Upon the foregoing Motion, it is by the Circuit Court for Baltimore County, this day of August, 1974:
ORDERED that the time for the filing of the record in these proceedings be and is hereby extended to the first day of October, 1974.

Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 13th day of August, 1974, a copy of the foregoing Motion to Extend Time and Order thereon was mailed, postage prepaid, to the County Board of Appeals of Baltimore County, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland 21204.

Philip O. Tilghman
Attorney for Appellant

RE: PETITION FOR RECLASSIFICATION * IN THE
from D.R. 5.5 to D.R. 16, and * CIRCUIT COURT
VARIANCE from Section 1802.2C *
of the Zoning Regulations *
SW/8 Byron Road, 200' *
S. Parkfield Road *
2nd District *
Ida C. Kiefer, Petitioner *
Harry K. Lott, Personal *
Representative of the Estate of *
Ida C. Kiefer, deceased, *
Appellant *
Folio No. 451 *
Zoning File No. 72-209-RA * File No. 5347

PETITION OF APPELLANT

The Appellant, Harry K. Lott, Personal Representative of the Estate of Ida C. Kiefer, deceased, by Philip O. Tilghman and John F. Burgen, his attorneys, respectfully says:

1. The action appealed from in the above captioned case is the Opinion and Order of the County Board of Appeals of Baltimore County in Case No. 72-209-RA, dated June 26, 1974, denying the reclassification petition for the subject property from D.R. 5.5 to D.R. 16.

2. That the error committed by the County Board of Appeals of Baltimore County was the error of law and of fact in denying the requested reclassification of the above captioned property for the following reasons:

- a. Said Order was arbitrary, illegal, unreasonable and capricious.
- b. Said Order was contrary to the evidence and to the weight of the evidence.
- c. The County Board of Appeals had before it substantial evidence from which it was compelled to grant the request for reclassification.

- d. The County Board of Appeals of Baltimore County misconstrued and misinterpreted the evidence before it.
 - e. That the decision of the County Board of Appeals of Baltimore County was not supported by any substantial evidence in the record.
 - f. That the County Board of Appeals of Baltimore County erred in interpreting the law.
 - g. That the said Order and decision was in direct contradiction of the evidence and the testimony.
 - h. That the uncontradicted evidence showed that the subject property was not suitable for D.R. 5.5 zoning classification, that the proper classification for the subject property is D.R. 16, and that the refusal to grant such reclassification is confiscatory.
 - i. That the County Board of Appeals of Baltimore County failed to recognize the error of the County Council in placing the subject property in D.R. 5.5 classification.
- WHEREFORE, the Appellant prays that this Honorable Court, by its Order,
- a. Reverse the action of the County Board of Appeals denying the requested reclassification to D.R. 16.
 - b. Issue an affirmative Order granting said request for reclassification to D.R. 16.
 - c. And for such other and further relief as the nature of this cause may require.

John F. Burgen

Philip O. Tilghman
Attorney for Appellant
700 Maryland Trust Bldg. 21202
727-0852

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 21st day of July, 1974, a copy of the foregoing Petition of Appellant was mailed, postage prepaid, to the County Board of Appeals of Baltimore County, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland 21204.

Philip O. Tilghman
Attorney for Appellant

RE: PETITION FOR RECLASSIFICATION * IN THE
from D.R. 5.5 to D.R. 16, and * CIRCUIT COURT
VARIANCE from Section 1802.2C *
of the Zoning Regulations *
SW/8 Byron Road, 200' *
S. Parkfield Road *
2nd District *
Ida C. Kiefer, Petitioner *
Harry K. Lott, Personal *
Representative of the Estate of *
Ida C. Kiefer, deceased, *
Appellant *
Folio No. 451 *
Zoning File No. 72-209-RA * File No. 5347

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule 1101-3 (4) of the Maryland Rules of Procedure, Walter A. Reiter, Jr., W. Giles Parker and Robert L. Gilland, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the Appeal to the representative of every party to the proceeding before it, namely, Philip O. Tilghman, Esquire, 700 Maryland Trust Building, Baltimore, Maryland 21202, Attorney for the Petitioner, and Myron J. Ashman, Esquire, 1710 Court Square Building, Baltimore, Maryland 21202, Attorney for the Protestants, and Mr. Max Goodman, 2821 West Strathmore Avenue, Baltimore, Maryland 21209, Protestants, and Mr. Samuel Grodnitzky, 4714 Old Court Road, Baltimore, Maryland 21208, a copy of which notice is attached hereto and prayed that it may be made a part thereof.

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

I hereby certify that a copy of the foregoing Certificate of Notice has been mailed to Philip O. Tilghman, Esquire, 700 Maryland Trust Building, Baltimore, Maryland 21202, Attorney for the Petitioner, and Myron J. Ashman, Esquire, 1710 Court Square Building, Baltimore, Maryland 21202, Attorney for the Protestants, and Mr. Max Goodman, 2821 West Strathmore Avenue, Baltimore, Maryland 21209, Protestants, and Mr. Samuel Grodnitzky, 4714 Old Court Road, Baltimore, Maryland 21208, on this 23rd day of July, 1974.

Edith Y. Eisenhart, Adm. Secretary
County Board of Appeals of Baltimore County

cc: Zoning, B. Anderson
Planning, R. Wernath

BALTIMORE COUNTY ZONING ADVISORY COMMITTEE

November 8, 1971

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

OLIVER L. MYERS
Chairman

MEMBERS:

BUREAU OF ENGINEERING

DEPARTMENT OF TRAFFIC ENGINEERING

STATE ROADS COMMISSION

BUREAU OF FIRE PREVENTION

HEALTH DEPARTMENT

PROJECT PLANNING

WORKING DEPARTMENT

ZONING ADMINISTRATION

INDUSTRIAL DEVELOPMENT

Mr. George E. Gavelis, Director
Office of Planning and Zoning
Room 300, Jefferson Building
Towson, Maryland 21204

RE: Property Owner: Ida C. Kiefer
Location: NW/8 Byron Rd., 200' S/E of
Parkfield Rd.
Present Zoning: D.R. 5.5
Proposed Zoning: Reclas. to D.R. 16; Variance
from 1802.2C - front and side
yards
2nd District Sector: Northwestern
No. Acres: 4.45
Item No. 35

The following comments were compiled after a field investigation and an in-office review which will provide the Planning Board and/or the petitioner with pertinent information of possible development problems.

The subject petition is located at the end of Byron Road within the Court Haven subdivision on the north and future Rolling Road on the south. It is currently a large wooded, undeveloped tract of land, with the exception of one dwelling and garage on Rolling Road side; this is an old frame dwelling. The Court Haven subdivision is relatively new and the homes are in excellent condition. There are existing dwellings on the south side of the future Rolling Road, which is now known as Marietta Lane. These dwellings are wood frame and are in the 30 to 40 year age bracket.

The plot as submitted indicates a continuation of Byron Road to the proposed future Rolling Road. It also indicates a 25 foot setback between the ends of the "a" and "b" groups. This would be in violation of Bill No. 100, unless there were no windows at the ends of these groups. There must be a minimum setback of 25 feet from the apartment houses to the tract boundary line. This also was the subject of an earlier petition, #71-1628, which was denied 4/1/71. It was also the subject of a County Council and Planning Board issues on the pre-map adoption process.

Very truly yours,

Oliver L. Myers
OLIVER L. MYERS, Chairman

JJDjr:cm

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: S. Eric Williams
ATTN: Oliver L. Myers
FROM: Philip O. Tilghman, Esq.

Date: October 28, 1971

SUBJECT: Item #35 (Case No. 72-209-RA) - April 1972
Property Owner: Ida C. Kiefer
Location: NW/8 Byron Rd., 200' S/E of Parkfield Rd.
Present Zoning: D.R. 5.5
Proposed Zoning: Reclas. to D.R. 16; Variance from 1802.2C
front and side yards
District: 2nd District Sector: Northwestern
No. Acres: 4.45

The subject property constitutes the same property reviewed by the Zoning Advisory Committee and known as Item #204 (1969-1970), Zoning Order #71-1628.

The comments furnished by this office in connection with Item #204 remain valid and in effect. We are enclosing herewith a xerox copy of those comments which are applicable to the current zoning petition, plus the following additional comments:

Additional Highway Comments:

Highway plans have been prepared for Rolling Road north and south of this site. The plans show for this site must meet the previously prepared alignments.

Additional Water Comments:

In addition to previously stated responsibilities, this Developer will be responsible for cost participation in the construction of a 16-inch public water main in Rolling Road.

Edith Y. Eisenhart, Adm. Secretary
COUNTY BOARD OF APPEALS
Chief, Bureau of Engineering

ENCLOSURE

Enclosure

P-58 Key Sheet
25 NW 28 Position Sheet
NW 6 & 7 0 Topo
77 Tax Map

MAY 12 1975

APPEAL OF IDA C. KIEFER, *
PETITIONER, UNDER ITEM 35 * BEFORE THE
OF THE OCTOBER-APRIL 1971-72 * COUNTY BOARD
CYCLE *
2ND DISTRICT, 4.45 ACRES * OF APPEALS
N/W/S MARRIOTT LANE, N/E/S *
EXTENSION OF BYRON ROAD * File No. 72-209-RA

APPELLANT'S (PETITIONER'S) MEMORANDUM

QUESTIONS INVOLVED

Was the classification of the subject property as D.R. 5.5 on the original zoning map error? And should the subject property be reclassified to D.R.16?

ARGUMENT AND CITATIONS

Both of these questions are answered affirmatively by the following facts which were established at the hearing, and the law applicable thereto, viz:

1. The zoning map itself presented uncontradictable evidence of obvious and glaring error. It shows the subject property as a tiny thumb of 4.45 acres plunged in the center of an immense pie of over fifty acres of D.R.16 and institutional use property. In Zoning Case No. 69-198R, wherein 8.5 acres on the northeast side of the subject property was reclassified from R6 to R.A., the opinion of the Board of Appeals stated that "to allow this relatively small parcel (8.5 acres) sandwiched between institutional and apartment used land in an R-6 category is

improper, and that the commissioner's giving the other land reclassification and not this, is not facing the realities of the situation." The same is true of the County Council's action in reversing the Planning Board's recommendation to zone the subject property on the new map D.R.16, and classifying it D.R. 5.5, and clearly indicates that the Council's action was arbitrary and capricious as well as error. The principles and logic enunciated by the Board of Appeals are just as valid after the adoption of the new map as before, even though the quoted case, being before the new map, may not constitute change.

2. Baltimore County's requirements for roads and utilities for the development of the subject property are the larger and more costly ones, designed for D.R. 16 and institutional land, such as that which virtually surrounds the subject property, and not for D.R. 5.5 land. For example, the width of the paving on Byron Road is to be 36 feet and on Rolling Road, 42 feet; whereas the paving width of roads in D.R. 5.5 subdivisions is 24 to 26 feet; and the water main is 16 inches instead of 10 inches. These larger roads and utility lines are needed for the large tract of D.R. 16 land surrounding the subject property. This again proves error - for what else could it be but error and an arbitrary and capricious act on the part of the Council - to impose on a sliver of land, within a tract of D.R. 16 land, the same higher road and utility standards and costs required for D.R. 16 use, and then restrict the sliver to D.R. 5.5 use. Moreover the zoning of this sliver as D.R. 5.5 instead of D.R. 16 as the land surrounding it is zoned, con-

stitutes spot zoning. Spot zoning, being by its very nature arbitrary and capricious, should not be upheld. Cassel vs. Baltimore 195 Md. 348.

3. Zoning the subject property D.R. 5.5 deprived the Petitioner of all reasonable use of the property, and thus is error. Zoning which permanently restricts the use of the property so that it cannot be used for any reasonable purpose, amounts to a taking. N.W. Merchants Terminal vs. O' Burke 191 Md. 171; Hoffman vs. Baltimore 197 Md. 294. Although the ordinance or law may not be invalid per se, any of the provisions of such ordinance when applied to particular premises may be found to be arbitrary and unreasonable. ^{CPWA TR} vs. Cohn 204 Md. 523; Walker vs. C. C. of Talbot City 208 Md. 72.

It was shown that because of the transition area requirements of Bill 100, the subject property, as zoned D.R. 5.5, could only be used for individual houses on individual lots; and not for townhouses or apartments as normally permitted in D.R. 5.5 zones. (For the same reason no different use of the land could be made if it had been classified D.R. 10.5). The prohibitive costs for individual lot development, as shown by the engineer, coupled with the real estate expert's opinion that the land was not suitable for development into individual lots (comparable to the old R6) because of the shape of the land, and because the location on a major traffic road, Rolling Road, and the apartments around them would restrict their salability and prevent their sale for a price which would justify the excessive development costs. Thus the land cannot be reasonably used under the D.R. 5.5 zoning.

4. The D.R. 16 land on three sides of the subject property was zoned D.R. 16 on the new map without Rolling Road being physically completed, and it is being paved as the apartments are being built on said land; so there is no justification for, or logic in, denying D.R. 16 zoning for the subject property on the ground that Rolling Road is not paved in front of it; especially since it is the developer's responsibility to pay for the road and no developer would put in the road until the land was zoned feasible for development. Moreover projects, such as roads, that are "reasonably probable of fruition in the foreseeable future" should be considered. Johar vs. Rodgers Forge, 236 Md. 106, 202 A2d. 612; and Rohde vs. County Board of Appeals, 234 Md. 259, 199 A2d. 216. However this objection, while never valid or logical in the first place, is now really moot as Harriotts Lane (or the new Polling Road) is now paved from Old Court Road westerly to the edge of the Petitioner's property on the one side of the Petitioner's property; and Rolling Road is under construction through the apartment land on the other side of the Petitioner's property and will be partially in front of the Petitioner's property.

5. The record shows that the Planning Board, after several years of study in devising and recommending zoning for the new comprehensive map, determined that the subject property should be zoned D.R. 16. This is better evidence of what the zoning for the subject property should have been on the new map than the Planning Board's statement, in the Board's recommendations in this case of Item No. 35, that since the Council adopted D.R.

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-3-

-4-

5.5 zoning that the Planning Board now recommends it be retained. This is merely acquiescence by the Board in the Council's opinion, nor should any weight be given to the Planning Board's statement that the property was subject of a petition which was denied by the Zoning Commissioner on April 1, 1971; as the decision of the Zoning Commissioner in that case was completely moot since the determination of the zoning on the new map by the County Council rendered any decision by the Zoning Commissioner completely meaningless. ^{CPWA TR} vs. Board of Zoning Appeals of Baltimore County, 210 Md. 19.

6. In essence the Protestants' complaint is that they simply do not want this property zoned D.R. 16. They contend that the granting of apartment zoning to the subject property would grossly increase traffic through their neighborhood and adversely affect their health and welfare; which seems rather strange inasmuch as they did not oppose the D.R. 16 zoning for the approximately fourteen hundred apartments surrounding the subject property, which apartment complexes will use the same roads as the subject property. Moreover the Court of Appeals has said numerous times that no one has the right to withhold property rights from another at the pleasure of neighbors; that zoning is not done by a plebiscite; and that property owners in a residential district cannot create a "no man's land" at the border of their property using other's property as a buffer. Benner vs. Tribbitt, 190 Md. 6; Hoffman vs. Baltimore, 197 Md. 294; Brunning Brothers vs. Ba&T, 199 Md. 602; Whittle vs. Board of Zoning Appeals of Baltimore County, 211 Md. 36.

CONCLUSION

For the reasons above stated it is clear that the action of the County Council overruling the Planning Board's original recommendation and zoning the subject property D.R. 5.5 is arbitrary and capricious and constitutes error and the decision of this Board should be that the subject property is granted D.R. 16 zoning classification.

Respectfully submitted,

Philip O. Tilghman
Philip O. Tilghman
Attorney for Appellant (Petitioner)

BALTIMORE COUNTY, MARYLAND

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

TO: S. Eric DiNenna
Attn: Oliver L. Myers
FROM: C. Richard Moore
SUBJECT: Item 35 - Cycle Zoning II
Property Owner: Ida C. Kiefer
Byron Road SE of Parkfield Road
Reclss. to DR 16; Variance from 1802.2C
front and side yards
Date: November 4, 1971

The subject petition was reviewed as Item 71-162, at which time it was pointed out that Rolling Road does not exist and Harriotts Lane and Byron Road are not sufficient to handle apartment density.

C. Richard Moore
C. Richard Moore
Assistant Traffic Engineer

CRM:nc

TO: S. Eric DiNenna, Zoning Commissioner
Attention: Mr. Myers
DATE: October 27, 1971
FROM: Fire Prevention Bureau
Fire Department
SUBJECT: Property Owner: Ida C. Kiefer
LOCATION: N/E/S Byron Road, 200' S/E of Parkfield Road
ITEM # 35 zoning Agenda: Cycle for October '71

- (X) 1. Fire hydrants for the proposed site (are required and) shall be in accordance with Baltimore County Standards.
The hydrants shall be located at intervals of 500 feet along an approved road.
- () 2. A second means of access is required for the site.
- () 3. The dead-end condition shown at _____ exceeds the maximum 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.

W. J. Kelly
Planning Division
Fire Prevention Bureau

Note: Above comments indicated with a check apply.
mb

PETITION MAPPING PROGRESS SHEET										
FUNCTION	Wall Map		Original		Duplicate		Tracing		200 Sheet	
	date	by	date	by	date	by	date	by	date	by
Descriptions checked and outline plotted on map										
Petition number added to outline										
Denied										
Granted by ZC, BA, CC, C2										
Reviewed by: <u>JBB</u>			Revised Plans:				Change in outline or description		Yes	
Previous case:			Map #						No	

Philip O. Tilghman
Thomas F. Dempsey
700 Maryland Trust Building
Baltimore, Md. 21202

Item 35

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 1972

Eric Dymally
Zoning Commissioner

Petitioner: Ida C. Kiefer

Petitioner's Attorney Philip O. Tilghman
Thomas F. Dempsey

Reviewed by Thomas F. Dempsey
Chairman of
Advisory Committee

BALTIMORE COUNTY, MARYLAND No. 5879
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

DATE January 9, 1972 ACCOUNT 01-662

AMOUNT \$70.00

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER
Philip O. Tilghman, Esquire
Cost of Appeal on Case No. 72-209-RA
SW/S of Byron Road, 200' S of Parkfield Road -
2nd District
Ida C. Kiefer - Petitioner 70.00 MSC

BALTIMORE COUNTY, MARYLAND No. 5893
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

DATE January 15, 1972 ACCOUNT 01-662

AMOUNT \$10.00

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER
Philip O. Tilghman, Esquire
Cost of Posting of Property on Case No. 72-209-RA
SW/S of Byron Road, 200' S of Parkfield Road -
2nd District
Ida C. Kiefer - Petitioner 10.00 MSC

BALTIMORE COUNTY, MARYLAND No. 15306
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

DATE 7/29/74 ACCOUNT 01-712

AMOUNT \$22.00

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER
Philip O. Tilghman, Esq.
331 Lord Byron Lane
Cockeysville, Md. 21030
Certified documents - \$22.00
Ida Kiefer - Case #72-209-RA 22.00 MSC

BALTIMORE COUNTY, MARYLAND No. 269
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

DATE Nov. 2, 1971 ACCOUNT 01-662

AMOUNT \$50.00

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER
Thomas F. Dempsey, Esq.
700 Maryland Trust Building
Baltimore, Md. 21202
Petitioner for Reclassification & Variance for Ida Kiefer 50.00 MSC

BALTIMORE COUNTY, MARYLAND No. 1599
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

DATE March 13, 1972 ACCOUNT 01-662

AMOUNT \$146.00

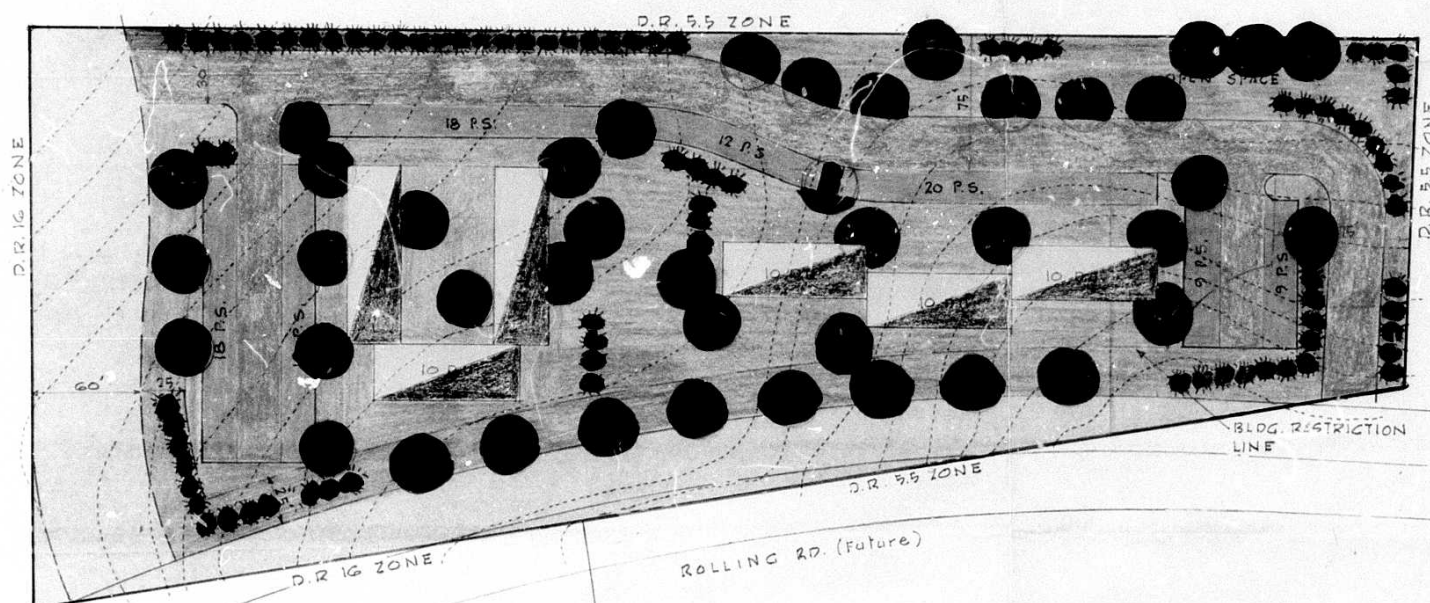
DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER
I. J. Bolton, Inc.
313 Wise Ave.
Dundalk, Md. 21222
Advertising and posting of property for Ida Kiefer
#72-209-RA 146.00 MSC

SUMMARY

EXISTING ZONING	D.R. 5.5
REQUESTED ZONING	D.R. 16
DRIG REQUIREMENTS	PROPOSED
NO. OF DWELLING UNITS	
CROSS AREA	4.45 A.
DENSITY	16 D.U./A.
TOTAL	71 D.U.
PARKING	
1.53 P.S./D.U.	98 P.S.
	104 P.S.



BASE MAP 2C
1"=1,000'



SITE PLAN

1"=50'



proposed garden apartments

property of
IDA C. KIEFER

n/w/s mariotts lane, n/e/s of
extension of byron road

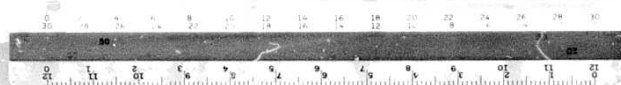
4.45 acres

MCA □ ○ ▷

MATZ CHILDS & ASSOCIATES, INC.
CONSULTING
ENGINEERS

1020 Laramie Bridge Rd. Baltimore, MD

3/10/77 10:00 AM

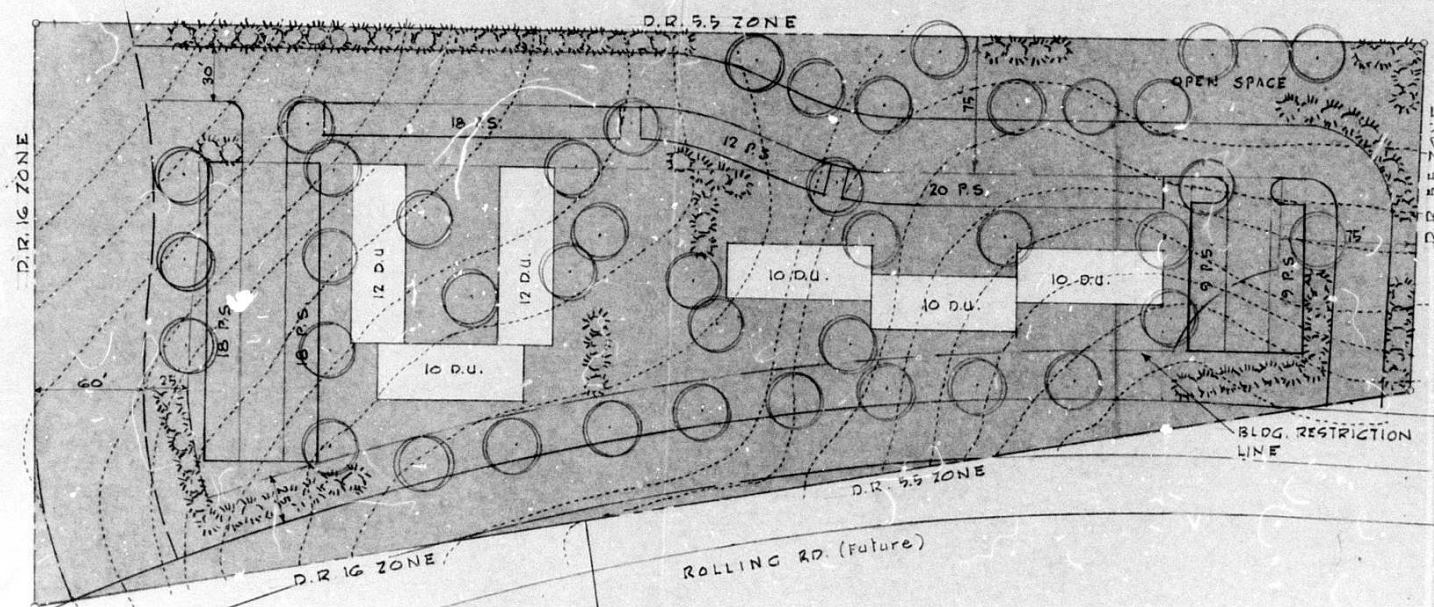


SUMMARY

EXISTING ZONING D.R. 5.5	
REQUESTED ZONING D.R. 16	
D.R. 16 REQUIREMENTS	PROPOSED
NO. OF DWELLING UNITS	
GROSS AREA 4.45 A.	
DENSITY 16 D.U./A.	
TOTAL 71 D.U.	64 D.U.
PARKING	
1.53 P.S./D.U. = 98 P.S.	104 P.S.



BASE MAP 2C
1"=1,000'



proposed garden apartments

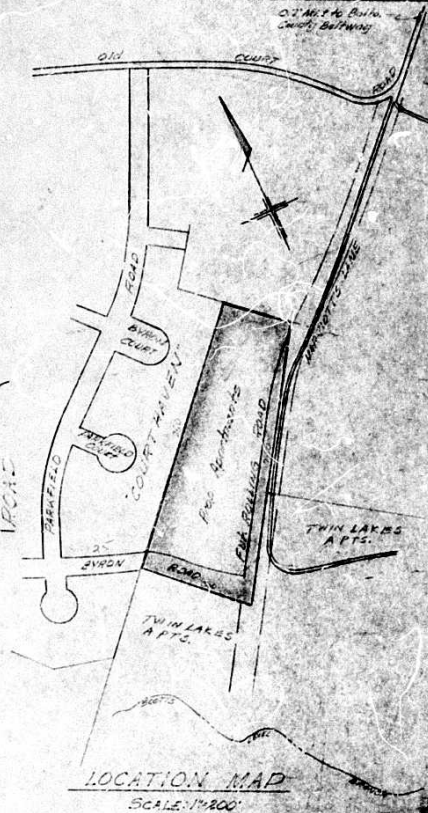
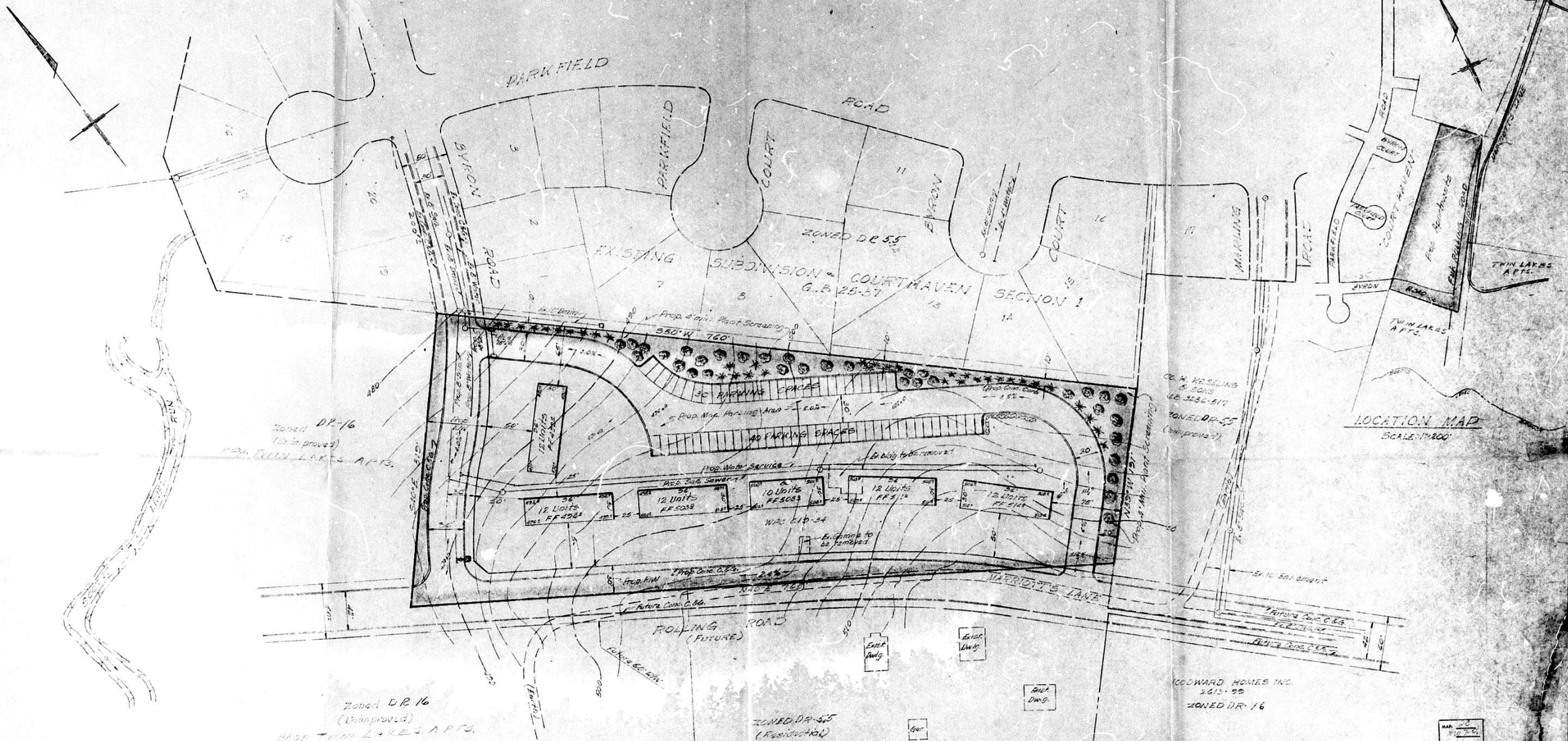
property of
IDA C. KIEFER
n/w/s mariotts lane, n/e/s of
extension of byron road 4.45 acres

MCA ☐ ☐
MATZ CHILDS & ASSOCIATES, INC.
CONSULTING
ENGINEERS

1020 Cromwell Bridge Rd. Baltimore Md.
3/10/72 J.D. 10 20 9T

SITE PLAN
1"=50'





GENERAL NOTES

Proposed zoning: D.R. 16
 Proposed zoning: D.R. 16
 Gross area of tract: 4.48 ac.
 Area prop. for street: 0.13 ac.
 Net area of tract: 4.27 ac.
 Designed Density: 16.5
 Gross 12 D.U. per ac.
 Net 12.3 D.U. per ac.
 Total Units: 63

Proposed Density: D.R. 16
 Total units prop.: 70
 Gross Density: 15.7 D.U. per ac.
 Net Density: 16.4 D.U. per ac.

Parking
 All spaces to be 30' x 60'
 Spaces required: 70
 Spaces provided: 70

Paving
 Bit. Conv. as per B.C.B.S. Standard Details
 Note: All areas disturbed during construction to be fully graded.

PLAN TO ACCOMPANY ZONING APPLICATION FOR
IDA C KIFFER PROPERTY
 200 ELECTION DISTRICT
 SCALE: 1"=50'

BALDWIN COUNTY, ALA.
 MARCH 1970
 EXH. 0012, 1970

Robert C. Turner
 ROBERT C. TURNER & ASSOCIATES
 610 COURT RD. BIRMINGHAM, ALA. 35207

