

PETITION FOR ZONING RE-CLASSIFICATION

AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, or we, agree to pay expenses of above re-classification and of 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, to use the herein described property, for

Property is to be posted and advertised as prescribed by Zoning Regulations. I, or we, agree to pay expenses of above re-classification and of 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, to use the herein described property, for

See attached description

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

Property is to be posted and advertised as prescribed by Zoning Regulations. I, or we, agree to pay expenses of above re-classification and of 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, to use the herein described property, for

UNIVERSAL HOUSING AND DEVELOPMENT CO.
BY: *[Signature]* Legal Owner
Contract purchase
Address: *[Address]*
Protestant's Attorney
James H. Cook, Esq.
409 Washington Avenue
Address: Towson, Maryland 21204

ORDERED By The Zoning Commissioner of Baltimore County, this 22nd day of February, 1974, 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 28th day of March, 1974, at 10:00 o'clock.

[Signature]
Zoning Commissioner of Baltimore County

(over)

there was sufficient evidence produced by Petitioner and Protestants to make the issues fairly debatable. Nor has there been a showing that the Board abused the discretion vested in it by law. The strongest argument put forth by Petitioner concerns itself with the alleged economic disadvantage of D.R. 5.5 as compared to D.R. 16. The Court feels that even if this were found to be the case, substantial evidence was presented which allowed the Board to decide the way that it did, even if it put a great deal of emphasis on the economic issue. There being no showing of an abuse of discretion, the Court will affirm the Board's decision.

The argument presented by Baltimore County, that the entire matter is res judicata, need not be decided at this time for the above reasons, but the Court is cognizant of the argument and finds it persuasive.

For the above reasons, the Circuit Court for Baltimore County on the 30 day of May, 1974, ORDERS that the Opinion of the County Board of Appeals of Baltimore County be and the same is hereby AFFIRMED.

[Signature]
H. KEMP MacDANIEL
JUDGE

Copy to:
Richard C. Murray, Esq.
James H. Cook, Esq.

John J. Bishop, Jr., Esq.
R. Bruce Alderman, County Solicitor
County Board of Appeals
John W. Hessian, III, Assistant County Solicitor
Eugene Creed, Administrator

PETITION FOR RECLASSIFICATION
FROM D.R. 5.5 TO D.R. 16
W/S of the intersection of
Morven Road and Westmoreland Ave.
9th District, Universal Housing
and Development Company

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
MISC. CASE: 5222
DOCKET : 9
FOLIO : 388

#72-224-R

MEMORANDUM OPINION AND ORDER

Universal Housing and Development Company has filed the above appeal from a decision of the County Board of Appeals dated January 25, 1974, denying its request for a reclassification from D.R. 5.5 to D.R. 16 for the west side of the intersection of Morven Road and Westmoreland Avenue, in the Ninth Election District of Baltimore County. Appeal heard May 7, 1974.

The involved property consists of 10.6 acres, somewhat rectangular in shape, the bulk of which is located on the west side of Perring Parkway to the east of the termination of Berrywood and Briarcliff Roads. The property was bisected by Perring Parkway, with approximately one acre lying to the east of the parkway at the intersection of Morven Road and Westmoreland Avenue. The request for reclassification deals only with the portion of property west of the parkway, approximately 7 acres. Two streams run through the property, one from the east to west towards the southern portion of the parkway, and the other running north to south along the westerly side of the property. Briarcliff and Berrywood Roads are 50 feet right of ways, 30 feet of which is paved, and they dead end at the western boundary of the involved property, with no connection between them.

Petitioner's basis for the appeal covers:

PETITION FOR RECLASSIFICATION
FROM D.R. 5.5 TO D.R. 16
W/S of the intersection of
Morven Road and Westmoreland
Avenue, 9th District
UNIVERSAL HOUSING AND
DEVELOPMENT COMPANY

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
AT LAW
Misc. Docket 9
Folio 388
Case No. 5222

ORDER FOR APPEAL

MR. CLERK:

Please enter an appeal in the above entitled matter on behalf of Universal Housing and Development Company to the Court of Special Appeals of Maryland.

Richard C. Murray
Cook, Radd, Murray & Howard
409 Washington Avenue
Towson, Maryland 21204
823-4111

I HEREBY CERTIFY that on this 24th day of June, 1974, a copy of the foregoing Order was mailed to the County Board of Appeals, County Office Building, Towson, Maryland 21204, and to John W. Hessian, III, Esquire, County Office Building, Towson, Maryland 21204, Attorney for Baltimore County, Maryland and to John J. Bishop, Jr., Esquire, 600 E. Joppa Road, Towson, Maryland 21204, Attorney for Protestants-Appellees.

Richard C. Murray

- That the action of the County Board of Appeals for Baltimore County was unreasonable, arbitrary and unlawful, in that it was contrary to the evidence and the weight of the evidence;
- That the County Board of Appeals misconstrued and misinterpreted the evidence before it;
- That the decision of the County Board of Appeals was not supported by any substantial evidence in the record;
- That the uncontradicted evidence shows that the property in question cannot be economically developed under the present zoning classification; and
- That the uncontradicted evidence shows that the classification existing with respect to said property is confiscatory in nature.

The original petition was denied by the Zoning Commissioner who was affirmed by the County Board of Appeals after a thorough hearing and review of the evidence. This Court has reviewed the transcript, considered the oral argument and read memorandums submitted in order to reach its conclusion.

The Board in its Opinion states "that there presently exists a serious traffic situation on both Berrywood and Briarcliff Roads, which would be the only access to the property, and that to further magnify these problems by granting the requested zoning would be unconscionable. The Board finds that the County Council did not err in their zoning of this property, and the mere fact that they did not take into account the Petitioner's economic gain to be had by said reclassification does not constitute error. The Board feels that the burden of proof to show error on the part of the County Council has not been met x x x."

This Court has consistently followed the permissible scope of review in zoning appeals established by C.C. Haldeman

RE: PETITION FOR RECLASSIFICATION :
from D.R. 5.5 to D.R. 16 :
W/S of the intersection of :
Morven Road and :
Westmoreland Avenue :
9th District :
Universal Housing and :
Development Company, :
Petitioner :
No. 72-224-R

OPINION

This case comes before the Board from an Order of the Zoning Commissioner, dated March 5, 1973, whereby he denied the reclassification from D.R. 5.5 to D.R. 16 for the west side of the intersection of Morven Road and Westmoreland Avenue, in the Ninth Election District of Baltimore County.

Testimony produced on behalf of the Petitioner indicated that the total area of the property is 10.6 acres and that the bulk of this property is located on the west side of Perring Parkway to the east of the termination of Berrywood and Briarcliff Roads, part of the property being bisected by Perring Parkway, with approximately one acre lying to the east of Perring Parkway at the intersection of Morven Road and Westmoreland Avenue as aforesaid. It was stated that the Petitioner is requesting the reclassification only for the property on the west side of Perring Parkway and that this would result in a net area to be reclassified of approximately seven acres, the remainder to be consumed by the construction of roads, sewer drains, etc.

The Petitioner advanced testimony through a professional engineer, a realtor and real estate appraiser, a professional planner and a traffic expert. The first three experts on behalf of the Petitioner testified at quite some length concerning the economics in developing the property and stated that, in their opinion, it was not economically feasible to develop the property in less than a D.R. 16 classification; such considerations as the topography, developer roads and also the cost of clearing the area to be developed resulting in what they term a prohibitive per lot cost for development under the present classification.

The traffic expert on behalf of the Petitioner was less than convincing in implying that there would be no traffic problems. His testimony further indicated that

V. Board of County Commissioners of Howard County, et al. 253

Md. 298 (1969) where the Court stated:

"We have often repeated the principles here applicable: courts have no power to rezone and may not substitute their judgment for that of the expertise of the zoning authority. Kirkman vs. Montgomery County Council, 251 Md. 273, 247 A.2d 255 (1968); Rowley vs. Hospital for Consumptives, 246 Md. 197, 227 A.2d 746 (1967); Board of County Comm'rs for Prince George's County vs. Farr, 242 Md. 315, 218 A.2d 923 (1966). It has long been settled that the zoning authority's determination is correct if there were such legally sufficient evidence as would make the question fairly debatable. Ark Redi-Mix Concrete Corp. vs. Smith, 251 Md. 1, 246 A.2d 220 (1968); Mayor and City Council of Greenbelt vs. Md. of County Comm'rs for Prince George's County, 247 Md. 670, 234 A.2d 140 (1967); Annesland, Inc. vs. Lucas, 247 Md. 612, 233 A.2d 757 (1967). Further, the one who attacks the determination made by the authority must show that it was arbitrary, unreasonable or capricious. Kirkman vs. Montgomery County Council, supra; Annesland, Inc. vs. Lucas, supra; Rowley vs. Hospital for Consumptives, supra; Mayor & City Council of Balto. vs. Supera, 230 Md. 291, 186 A.2d 884 (1962)."

As has been stated many times before, the decision to be made by this Court on a zoning appeal is whether or not the issues before the County Board of Appeals were fairly debatable issues and whether or not the determinations of the Board were supported by substantial evidence. There is no authority for this Court to substitute its judgment for that of the zoning authority unless one of the above criteria is involved.

It is Appellant's burden to prove to this Court that the actions taken by the Board were contrary to the law and evidence, arbitrary, capricious and unreasonable. A thorough review of the transcript does not reveal to this Court that the Board was arbitrary, capricious or unreasonable, but that

Universal Housing and Development Co. - #72-224-R

under the existing conditions it is difficult for opposing cars to pass on either Briarcliff or Berrywood Roads, one of the opposing cars having to come to a stop in order to allow the other one to proceed. As to his admission that the proposed development would increase the traffic fourfold on these streets and would be an increase in danger to children in the area, this situation was amplified by C. Richard Moore, Baltimore County Traffic Engineer, who testified on behalf of the Protestants, who emphasized the safety considerations regarding the children as well as the automobiles passing one another on the streets in question. Mr. Moore further indicated that under present regulations for new developments, a street thirty feet wide, such as is the case for both Berrywood and Briarcliff, would be restricted to parking on just one side if the daily traffic were in excess of 300 cars per day. The proposed development would be substantially over that amount and as indicated previously, traffic difficulties already exist with passing cars because of the narrowness of the streets which contain parking on both sides.

Both of the streets in question, Briarcliff and Berrywood, are streets thirty feet wide which run parallel to one another one block apart and originate on the west at Oakleigh Road, a major collector road for streets in this area, and terminate at the western edge of the subject property under consideration here. Both of these streets are fully developed with single individual homes with few, if any, driveways for off-street parking. Consequently, the undisputed testimony is that each of the streets in part contains cars parked relatively solid on both sides for their entire length, thereby creating the traffic problems indicated previously. The existing streets under discussion are less in width than the present minimal requirements for Baltimore County so that this problem is amplified by the situation at Oakleigh Road, the collector road into which they empty. It was testified that Oakleigh Road is only twenty-six feet in width and along a great portion thereof, in this area, does not contain any sidewalks or curbs and gutters.

Further testimony on behalf of the Protestants was elicited from Norman E. Gerber, Chief of Community Planning for Baltimore County, who testified that there was inadequate accessibility to the subject property to consider the requested zoning, and as a result the recommendations of the Planning Board were for the classification to remain

JAN 21, 1974

D.R. 5.5. He further stated that there was additional cost to the community to be considered, such as overburdening the facilities other than the roads, and this was expanded somewhat by some of the numerous Protestants who appeared and testified that there were problems existing with sewage backup and water pressure in the area at the present time. Other Protestants testified to their opposition on the basis of decreases in property values, overcrowding of schools and their fears of the traffic congestion and safety problems. One of the Protestants made the point that both of the streets, Berrywood and Briarcliff, are presently extremely difficult to navigate safely in times of snow or ice because of their narrowness and due to the fact that both of the streets are on a downgrade from Oakleigh Road to the subject property, where they now terminate.

In view of all the testimony, it is clear to this Board that there presently exists a serious traffic situation on both Berrywood and Briarcliff Roads, which would be the only access to the property, and that to further magnify these problems by granting the requested zoning would be unconscionable. The Board finds that the County Council did not err in their zoning of this property, and the mere fact that they did not take into account the Petitioner's economic gain to be had by said reclassification does not constitute error. The Board feels that the burden of proof to show error on the part of the County Council has not been met and the reclassification petitioned for is hereby denied.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 25th day of January, 1974, by the County Board of Appeals, ORDERED 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

John A. Slowik, Chairman

John A. Miller

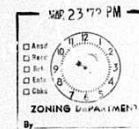
Robert L. Gilland

PETITION FOR RECLASSIFICATION - * BEFORE THE ZONING
WESTSIDE OF THE INTERSECTION * COMMISSIONER
OF MORVEN ROAD AND * OF BALTIMORE COUNTY
WESTMORELAND AVENUE - *
9th DISTRICT *
UNIVERSAL HOUSING DEVELOPMENT *
COMPANY *
NO. 72-224-R *

ORDER FOR APPEAL

MR. COMMISSIONER:

Please enter an appeal in the above entitled matter to the County Board of Appeals on behalf of Universal Housing and Development Co.

Richard C. Murray
Attorney for Petitioner

RE: PETITION FOR RECLASSIFICATION
W/S of the Intersection of
Morven Road and Westmoreland Avenue - 9th District
Universal Housing Development,
Company - Petitioner
NO. 72-224-R (Item No. 10)

BEFORE THE
ZONING COMMISSIONER
OF
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 west side of the intersection of Morven Road and Westmoreland Avenue, in the Ninth District of Baltimore County, containing 10.6 acres of land, more or less.

Evidence on behalf of the Petitioner indicated that the bulk of the subject property lies to the west of the Perring Parkway, a four (4) lane dual highway, which bisects the property. The Petitioner's main contention was that the property could not be economically developed into single family dwellings or into apartments in any density residential (D.R.) zone other than D.R. 16 because of the topography and also a swall running through the property. It was indicated that a culvert would have to be constructed over a stream to the existing road networks and this, being an expensive proposition, would necessitate a higher density for the development of the property to be economically feasible.

Further testimony indicated that both Briarcliff Road and Berrywood Road would be the main means of ingress and egress to the subject property from Oakleigh Road, which is a main collector street in this general vicinity.

Mr. John Erdman, a traffic expert testifying on behalf of the Petitioner, indicated that both of these roads are presently four (4) feet under the minimum standards of Baltimore County today.

The Petitioner plans to develop one hundred and eight (108) garden type apartment units on the subject property. This takes into consideration the density calculation of Perring Parkway and the small parcel of property to the east of Perring Parkway, which is also the subject of this Petition.

Without reviewing the evidence further in detail but based on all the

ORIGINAL RECEIVED FOR FILING

DATE 2-25-74

BY [Signature]

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 by the Baltimore County Council, is not in error in classifying the subject property D.R. 5.5 zoning. The only basic contention held by the Petitioner is the economic feasibility of developing this property in a lesser density other than D.R. 16 zoning. This alone cannot sustain the burden of proving error on the Comprehensive Zoning Map as adopted. The main aspect of this entire matter lies in the increased traffic along Briarcliff Road and Berrywood Road.

It was testified to by residents of the area, in protest of the subject Petition, that many children reside on Briarcliff Road and Berrywood Road and they felt that any increased traffic at this time would be detrimental to their health, safety and general welfare.

The Comprehensive Zoning Map, as adopted by the Baltimore County Council, is presumed to be correct and the burden of proving error is borne by the Petitioner. In this instance, this burden has not been met.

Therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 5th day of March, 1973, that the above reclassification be and the same is hereby DENIED and that the above described property or area be and the same is hereby continued as and to remain a D.R. 5.5 Zone.

Zoning Commissioner of
Baltimore CountyMEMORANDUM IN SUPPORT OF RECLASSIFICATION
FILED BY UNIVERSAL HOUSING AND DEVELOPMENT
CO. AS REQUIRED BY BILL 72, SECTION 22-22(b).

Now comes Universal Housing and Development Co., a body corporate, legal owner of the within described property, by James H. Cook, its attorney, and in accordance with the provisions of Bill 72, Section 22-22(b) states that the reclassification requested should be granted, and for reasons says:

1. That the Baltimore County Council committed error in placing the subject property in a D.R. 5.5 classification at the time of the adoption of the Land Use Map.
2. That the Baltimore County Council failed to provide sufficient D.R. 16 land in this immediate neighborhood to take care of the needs of the community; and that the subject tract of land, with its topographic features, and lying contiguous to existing D.R. 16 land is a suitable site to meet such need.
3. That the topography of the subject tract is such that it does not permit of orderly development of any type within the zoning classification presently imposed on this land.
4. That public drainage and utility easements through this tract of land divide it in such a manner as to make it impractical to develop it in the zoning classification in which it presently exists.

James H. Cook
Attorney for Property Owner

FROM THE OFFICE OF
GEORGE W. STEPHENS, JR. AND ASSOCIATES, INC.
ENGINEERS
P.O. BOX #6822, TOWSON, MD. 21204

Description to Accompany Zoning Petition
Reclassification from D.R. 5.5 to D.R. 16 Zone.
Universal Housing and Development Co.

September 21, 1971

Beginning for the same at the Intersection formed by the south side of Oakcliff Road 40 feet wide and the east side of Westmoreland Avenue 40 feet wide, as shown on a plat of "Section B, Oakleigh Hills" and recorded among the Land Records of Baltimore County in Plat Book C.L.B. 17 folio 62, said point of beginning being also the southwest corner of the outline of "Perring Village Apartments" and recorded among the Land Records of Baltimore County in Plat Book R.A.G. 30 folio 106 and running thence binding on the outlines of the fourth parcel of land described in a deed dated June 15, 1956 from Guarantee Title Holding Corporation to Missouri Realty, Inc. and recorded among the Land Records of Baltimore County in Liber G.L.B. 2951 folio 122 the sixteen following courses, viz: (1) North 02° 42' 27" West 494.03 feet, (2) North 02° 42' 27" West 179.81 feet, (3) South 87° 26' 21" West 600.00 feet, (4) South 10° 45' 21" West 43.92 feet, (5) South 01° 23' 39" East 31.00 feet, (6) South 20° 30' 39" East 86.00 feet, (7) South 02° 58' 21" West 4.30 feet, (8) South 51° 20' 21" West 102.50 feet, (9) South 18° 48' 39" East 58.00 feet, (10) South 17° 19' 21" West 67.27 feet, (11) South 07° 11' 20" West 60.25 feet, (12) South 46° 11' 21" West 143.90 feet, (13) South 21° 12' 39" East 60.71 feet, (14) South 48° 06' 21" West 77.60 feet, (15) South 25° 44' 16" West 40.58 feet, and (16) North 87° 26' 21" East 857.80 feet to the place of beginning.

Containing 10.6 acres of land more or less.

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. Oliver Myers Date October 21, 1971
FROM: Hoyt V. Bonner
SUBJECT: Item 10 - Zoning Advisory Committee Meeting, October 20, 1971.

10. Property Owner: Universal Housing and Dev. Co.
Location: W/S, int. of Morven and Westmoreland Rds.
Present Zoning: D.R. 5.5
Proposed Zoning: Reclass. to D.R. 16
District: 9
Sector: Northeastern
No. Acres: 10.6

Metropolitan sewer is available to the site.
Metropolitan water must be extended to the site before building permit is issued.

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.

Hoyt V. Bonner
Sanitarian II
Water and Sewer Section
BUREAU OF ENVIRONMENTAL HEALTH

HVB/kir

JAN. 21, 1975

UNREPORTED

IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

NO. 421

September Term, 1974

No. 72-224-R

UNIVERSAL HOUSING AND
DEVELOPMENT COMPANY

v.

BARBARA CARTER, ET AL.

Morton,
Davidson,
Lowe,
JJ.

PER CURIAM

Filed: January 7, 1975

PER CURIAM

This appeal comes to us from an order of the Circuit Court for Baltimore County which affirmed an order of the County Board of Appeals. That Board had affirmed the zoning commissioner's denial of appellant's Petition for Zoning Re-Classification of 10.6 acres of land, situate in the Ninth Election District of Baltimore County, from a D.R. 5.5 zone to a D.R. 16 zone. The sole question raised upon appeal is whether "the decision of the County Board of Appeals [was] arbitrary and not supported by the evidence."

We have thoroughly reviewed the record including the transcript of proceedings before the Board, all pleadings and memoranda of law, briefs and all cases cited therein. We find from the brief that the appellant raises for the first time on appeal the issue that the zoning in question was confiscatory. For such succor as appellant may receive from our review, we did not see the evidence upon review to so indicate; however, since that issue was not raised below we decline to meet it on appeal, Md. Rule 1085.

In all other respects we adopt, as our opinion the opinion rendered by Judge H. Kemp MacDaniel for the Circuit Court for Baltimore County on the 30th day of May, 1974, a copy of which is attached. This should come as no surprise to appellant who prefaced his argument by acknowledging the heavy burden necessary to overcome the presumption of correctness of the existing zoning map, quoting from Baldemann v. Comm'rs. of Howard Co.

253 Md. 298, 306-307:

"We have often repeated the principles here applicable: courts have no power to rezone and may not substitute their judgment for that of the expertise of the zoning authority ... It has long been settled that the zoning authority's determination is correct if there were such legally sufficient evidence as would make the question fairly debatable ... Further, the one who attacks the determination made by the authority must show that it was arbitrary, unreasonable or capricious [Citations omitted].

JUDGMENT AFFIRMED
COSTS TO BE PAID BY
APPELLANT.

PETITION FOR RECLASSIFICATION
FROM D.R. 5.5 TO D.R. 16

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

W/S of the Intersection of
Morven Road and Westmoreland Ave.
9th District, Universal Housing
and Development Company

MISC. CASE: 5222
DOCKET : 9
POLIC : 308

MEMORANDUM OPINION AND ORDER

Universal Housing and Development Company has filed the above appeal from a decision of the County Board of Appeals dated January 25, 1974, denying its request for a reclassification from D.R. 5.5 to D.R. 16 for the west side of the Intersection of Morven Road and Westmoreland Avenue, in the Ninth Election District of Baltimore County. Appeal heard May 7, 1974.

The involved property consists of 10.6 acres, somewhat rectangular in shape, the bulk of which is located on the west side of Perring Parkway to the east of the termination of Berrywood and Briarcliff Roads. The property was bisected by Perring Parkway, with approximately one acre lying to the east of the parkway at the intersection of Morven Road and Westmoreland Avenue. The request for reclassification deals only with the portion of property west of the parkway, approximately 7 acres. Two streams run through the property, one from the east to west towards the southern portion of the parkway, and the other running north to south along the westerly side of the property. Briarcliff and Berrywood Roads are 50 feet right of ways, 30 feet of which is paved, and they dead end at the western boundary of the involved property, with no connection between them.

Petitioner's basis for the appeal covers:

- (1) That the action of the County Board of Appeals for Baltimore County was unreasonable, arbitrary and unlawful, in that it was contrary to the evidence and the weight of the evidence;
- (2) That the County Board of Appeals misconstrued and misinterpreted the evidence before it;
- (3) That the decision of the County Board of Appeals was not supported by any substantial evidence in the record;
- (4) That the uncontradicted evidence shows that the property in question cannot be economically developed under the present zoning classification; and
- (5) That the uncontradicted evidence shows that the classification existing with respect to said property is confiscatory in nature.

The original petition was denied by the Zoning Commissioner who was affirmed by the County Board of Appeals after a thorough hearing and review of the evidence. This Court has reviewed the transcript, considered the oral argument and read memoranda submitted in order to reach its conclusion.

The Board in its opinion states "that there presently exists a zoning restriction on both Berrywood and Briarcliff Roads, which would be a barrier to the development of the property, and that to further remedy these problems by granting the reclassification to D.R. 16 is in the public interest." The Board finds that the County Council did not err in its zoning of this property, and the mere fact that they did not take into account the petitioner's economic gain to be had by said reclassification does not constitute error. The Board feels that the burden of proof to show error on the part of the County Council has not been met x x x."

This Court has consistently followed the permissible scope of review in zoning appeals established by C. C. Baldemann

v. Board of County Commissioners of Howard County, et al, 253 Md. 298 (1969) where the Court stated:

"We have often repeated the principles here applicable: courts have no power to rezone and may not substitute their judgment for that of the expertise of the zoning authority. Kirkman vs. Montgomery County Council, 251 Md. 273, 247 A.2d 225 (1969); Hosley vs. Hospital for Consumptives, 246 Md. 197, 227 A.2d 746 (1967); Board of County Commissioners for Prince George's County v. Farr, 242 Md. 319, 215 A.2d 923 (1966). It has long been settled that the zoning authority's determination is correct if there were such legally sufficient evidence as would make the question fairly debatable. Ark Radi-Mix Concrete Corp. vs. Smith, 231 Md. 1, 246 A.2d 229 (1968); Mayor and City Council of Greenbelt vs. Bd. of County Commissioners for Prince George's County, 247 Md. 670, 234 A.2d 180 (1967); Appelbaum, Inc. vs. Lucas, 247 Md. 612, 233 A.2d 757 (1967). Further, the one who attacks the determination made by the authority must show that it was arbitrary, unreasonable or capricious. Kilman vs. Montgomery County Council, supra; Appelbaum, Inc. vs. Lucas, supra; Hosley vs. Hospital for Consumptives, supra; Mayor & City Council of Balto. vs. Saper, 230 Md. 291, 190 A.2d 824 (1962).

As has been stated many times before, the question made by this Court on a zoning appeal is whether or not the issues before the County Board of Appeals were fairly debatable issues and whether or not the determinations of the Board were supported by substantial evidence. There is no authority for this Court to substitute its judgment for that of the zoning authority unless one of the above criteria is involved.

It is Appellant's burden to prove to this Court that the actions taken by the Board were contrary to the law and evidence, arbitrary, capricious and unreasonable. A thorough review of the transcript does not reveal to this Court that the Board was arbitrary, capricious or unreasonable, but that

there was sufficient evidence produced by Petitioner and Protestants to make the issues fairly debatable. Nor has there been a showing that the Board abused the discretion vested in it by law. The strongest argument put forth by Petitioner concerns itself with the alleged economic disadvantage of D.R. 5.5 as compared to D.R. 16. The Court feels that even if this were found to be the case, substantial evidence was presented which allowed the Board to decide the way that it did, even if it put a great deal of emphasis on the economic issue. There being no showing of an abuse of discretion, the Court will affirm the Board's decision.

The argument presented by Baltimore County, that the entire matter is res judicata, need not be decided at this time for the above reasons, but the Court is cognizant of the argument and finds it persuasive.

For the above reasons, the Circuit Court for Baltimore County on the 30 day of May, 1974, ORDERS that the Opinion of the County Board of Appeals of Baltimore County be and the same is hereby AFFIRMED.

H. Kemp MacDaniel
JUDGE

BALTIMORE COUNTY ZONING ADVISORY COMMITTEE

November 8, 1971

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

RE: Property Owner: Universal Housing and Dev. Co.
Location: W/S Int. of Harven and Westmoreland Rds.
Present Zoning: D.R. 5.5
Proposed Zoning: Recl. to D.R. 16
District: 9th Sector Northeastern
No. Acres: 10.6
Item 10

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

The subject property is located what is now the end of Berrywood Road and Briarcliff Road. It is an unimproved, wooded lot that lies adjacent to the Perring Parkway on the east, vacant residential to the south, and an existing residential neighborhood in the west and north. There are no capital improvements on the location of this property at this time.

The petitioner's plat does not indicate the proper breakdown by density units as required under B111 No. 100. It also does not indicate all setbacks from each building to the various property lines. Should this reclassification be granted, it would be required to meet all those requirements as laid down by B111 No. 100 and the Comprehensive Design Manual.

Very truly yours,

Oliver L. Myers
OLIVER L. MYERS, Chairman

JJDjr:td

BALTIMORE COUNTY ZONING ADVISORY COMMITTEE

James H. Cook, Esq.,
609 Washington Avenue
Towson, Maryland 21204

RE: Type of Hearings: Recl. to D.P. 16
Locations: W/S Int. of Harven and Westmoreland Rds.
Petitioner: Universal Housing and Dev. Co.
9th District
Item 10

Dear Sir:

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 what is now the end of Berrywood Road and Briarcliff Road. It is an unimproved, wooded lot that lies adjacent to the Perring Parkway on the east, vacant residential to the south, and an existing residential neighborhood in the west and north. There are no capital improvements on the location of this property at this time.

BUREAU OF ENGINEERING

The subject property constitutes the same property previously reviewed by the Zoning Advisory Committee and known as Item #24 (1969-1970) Zoning Order #71-170-2. The comments furnished by this office in connection with Item #24 remain valid and in effect. We are enclosing herewith a xerox copy of these comments which are applicable to the current petition.

PROJECT PLANNING DIVISION

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

The density figures need to be revised to comply with B111 No. 100. The layout should be altered to eliminate the front and back parking that exists for 36 of the proposed units.

James H. Cook, Esq.,
Item 10
Page 2

HEALTH DEPARTMENT

Metropolitan sewer is available to the site.
Metropolitan water must be extended to the site before building permit is issued.

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.

STATE HIGHWAY ADMINISTRATION

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

DEPT. OF TRAFFIC ENGINEERING

The subject petition was reviewed as Zoning Petition 71-170 and the following comment remains valid.

The subject petitioner is requesting a change from R6 to RA of 7 acres. This proposal should increase the trip density from 250 trips to 850 trips per day. Briarcliff Road, which will provide access to the subject site, is a low density residential street and was not designed to handle an apartment development.

BOARD OF EDUCATION

The Oakleigh Elementary School services this area and is currently 111 pupils over-capacity (based on the Sept. 9, 1971 enrollment). The land, as it is now zoned, would yield approximately 14 elementary pupils when fully developed. If a change to the proposed 1 and 2 bedroom apartment development could yield approximately 3 elementary pupils.

ZONING ADMINISTRATION DIVISION

The petitioner's plat does not indicate the proper breakdown by density units as required under B111 No. 100. It also does not indicate all setbacks from each building to the various property lines. Should this reclassification be granted, it would be required to meet all those requirements as laid down by B111 No. 100 and the Comprehensive Design Manual.

This petition is accepted for filing on the date of the enclosed filing certificate. Notice of the hearing date and time, which will be

James H. Cook, Esq.,
Item 10
Page 3

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
OLIVER L. MYERS, Chairman

JJD:JS
Enc.

TO: S. Eric DiNenna, Zoning Commissioner
Attention: Mr. Myers

DATE: October 26, 1971

FROM: Fire Prevention Bureau
Fire Department

SUBJECT: Property Owner:

Universal Housing and Dev. Co.

LOCATION: W/S Int. of Harven and Westmoreland Rds.

ITEM # 10 zoning Agenda: Cycle for October '71

- () 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 _____ 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.
- () 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.

H. Kelly
Planning Division
Fire Prevention Bureau

Note: Above comments indicated with a check apply.

nb

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: S. Eric DiNenna
Attn: Oliver L. Myers

Date: October 22, 1971

FROM: Ellsworth H. Myers, Esq.

SUBJECT: Item #10 (Cycle October 1971 - April 1972)
Property Owner: Universal Housing and Dev. Co.
Location: W/S Int. of Harven and Westmoreland Rds.
Present Zoning: D.R. 5.5
Proposed Zoning: Recl. to D.P. 16
District: 9th Sector Northeastern
No. Acres: 10.6

The subject property constitutes the same property previously reviewed by the Zoning Advisory Committee and known as Item #24 (1969-1970) Zoning Order #71-170-2. The comments furnished by this office in connection with Item #24 remain valid and in effect. We are enclosing herewith a xerox copy of these comments which are applicable to the current petition.

Ellsworth H. Myers
Chief, Bureau of Engineering

ENCLOSURE

Enclosure



STATE HIGHWAY ADMINISTRATION

300 WEST PAVEN STREET
BALTIMORE, MD. 21201

(NOTICE: RECORDS OF THE STATE HIGHWAY ADMINISTRATION ARE KEPT IN THE BALTIMORE COUNTY ZONING OFFICE.)

November 2, 1971

Mr. S. Eric DiNenna
Zoning Commissioner
County Office Bldg.
Towson, Maryland 21204

ITEM 10:
Re: Baltimore County Recl. -
ification cycle for the
period of Oct. 71 to April '72.
Northeastern Section
Property Owner: Universal
Housing & Dev. Co.
Locations: W/S Int. of Harven
& Westmoreland Rds.
Perring Parkway
Present Zoning: D.R. 5.5
Proposed Zoning: Recl. to
D. A. 16
District: 9th Sector
Northeastern
No. Acres: 10.6

Dear Mr. DiNenna:

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

Very truly yours,

Charles Lee, Chief
Development Engineering Section
John E. Myers
Asst. Development Engineer

CLJ:EM:nb

BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF TRAFFIC ENGINEERING
JEFFERSON BUILDING
TOWSON, MARYLAND 21204

INTER-OFFICE CORRESPONDENCE

TO: S. Eric DiNenna
Attn: Oliver L. Myers

Date: November 4, 1971

FROM: C. Richard Moore

SUBJECT: Item 10 - Cycle Zoning II
Property Owner: Universal Housing and Dev. Co.
Harven and Westmoreland Roads
Recl. to DA 16

The subject petition was reviewed as Zoning Petition 71-170 and the following comment remains valid.

The subject petitioner is requesting a change from R6 to RA of 7 acres. This proposal should increase the trip density from 250 trips to 850 trips per day. Briarcliff Road, which will provide access to the subject site, is a low density residential street and was not designed to handle an apartment development.

C. Richard Moore
Assistant Traffic Engineer

CRM:nb

Petitioner: Universal Housing & Dev. Co.
Location: W/S of Marven & Westmoreland Rds.
District: 9
Present Zoning: B2-1
Proposed Zoning: B2-1
No. of Acres: 10.6

Comments: The Planning Commission staff believes this area is a property in which a residential development is warranted. The staff is recommending that the area be rezoned from B2-1 to B2-2. The staff is recommending that the area be rezoned from B2-1 to B2-2. The staff is recommending that the area be rezoned from B2-1 to B2-2.

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Mr. S. Eric DiNenna
TO: Zoning Commissioner
DATE: November 2, 1971
FROM: Richard B. Williams
Project Planning Division
SUBJECT: Zoning Advisory Agenda Item #10

Baltimore County Reclassification Cycle for the Period of October '71 to April '72
Universal Housing and Development Company
W/S, Int. of Marven and Westmoreland Rds.

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

The density figures need to be revised to comply with Bill 100. The layout should be altered to eliminate the front and back parking - building relationship that exists for 36 of the proposed units.

THE TOWSON TIMES
TOWSON, MD. 21204 March 13 - 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 week before the 13 day of March 1972 that is to say, the same was inserted in the issue of March 2, 1972.

STROMBERG PUBLICATIONS, Inc.

By: [Signature]

CERTIFICATE OF PUBLICATION

TOWSON, MD. March 2, 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. once a week for one time before the 22nd day of March 1972, the date of publication appearing on the 22nd day of March 1972.

THE JEFFERSONIAN
[Signature]
Manager

Cost of Advertisement: \$

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

#72-224-R

District: 9H
Posted for: Hearing, W/S, March 29, 1972, 8:00 a.m.
Petitioner: Universal Housing & Dev. Co.
Location of property: W/S of the Intersection of Marven and Westmoreland Rds.
Location of signs: 1st End of Burrage Rd. 10.6 Acre Property
Remarks: [Signature]
Posted by: [Signature]
Date of return: 3-16-72

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, CA										
Reviewed by: 			Revised Plans: Change in outline or description				Yes			
Previous case: _____			Map # _____				No			

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

#72-224-R

District: 9H
Posted for: Hearing, W/S, March 29, 1972, 8:00 a.m.
Petitioner: Universal Housing & Dev. Co.
Location of property: W/S of the Intersection of Marven and Westmoreland Rds.
Location of signs: 1st End of Burrage Rd. 10.6 Acre Property
Remarks: [Signature]
Posted by: [Signature]
Date of return: 4-24-72

Attest: [Signature]
Towson, Maryland 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 22nd day of February 1972
[Signature]
Zoning Commissioner

Petitioner: Universal Housing & Dev. Co.
Petitioner's Attorney: James H. Cook
Reviewed by: [Signature]
Advisory Committee

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE

No. 74085

DATE: 3/1/74

TO: Richard C. Murray, Esquire
409 Washington Avenue
Towson, Maryland 21204

BILLED

County Board of Appeals

QUANTITY	DESCRIPTION	AMOUNT
1	Cost of certified copies of documents in Case No. 72-224-R W/S of the Intersection of Marven Road and Westmoreland Avenue - 9th District Universal Housing & Development Co. Petitioner	\$ 19.00

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 8249

DATE: April 3, 1973 ACCOUNT: 01-652
AMOUNT: \$70.00
WHITE CASHIER: [Signature]
YELLOW CUSTOMER: [Signature]
Received from Richard C. Murray, Esquire

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 13100

DATE: February 20, 1974 ACCOUNT: 01-652
AMOUNT: \$20.00
WHITE CASHIER: [Signature]
YELLOW CUSTOMER: [Signature]
Received from Richard C. Murray, Esquire

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 2787

DATE: April 11, 1972 ACCOUNT: 01-652
AMOUNT: \$109.50
WHITE CASHIER: [Signature]
YELLOW CUSTOMER: [Signature]
Received from Richard C. Murray, Esquire

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 241

DATE: Oct. 27, 1971 ACCOUNT: 01-652
AMOUNT: \$50.00
WHITE CASHIER: [Signature]
YELLOW CUSTOMER: [Signature]
Received from Richard C. Murray, Esquire

