PETITION FOR ZONING RE-CLASSIFICATION AMENOR: SPECIAL: EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

County and which is described in the description and plat attached hereto and made a part hereof, hereby petition (1) that the zoning status of the herein described property be re-classified, pursuant to the Zoning Law of Baltimore County, from an......D.R.5.5.

DaR. 16 zone: for the following reasons:

That the Baltimore County Council committed error in placing subject property in a D.R.5.5 classification at the time of its adoption of the Land Use Map of March 24, 1971.

See attached description

FOR FILING

ORDER RECEIVED

County, to use the herein described property, for ... operty is to be posted and advertised as prescribed by Zoning Regulations

and (2) for a Special Exception, under the said Zoning Law and Zoning Regulations of

or we agree to nav expenses of above re-classification and/or Special Exception advertising upon filing of this petition, and further agree to and are to be bound by the zoning led pursuant to the Zouing Law for Balti

Towson, Maryland 21204

per of Baltimore County, this 22pd da

... 197 ... ? That the subject matter of this petition be advertised, as Zoning Law of Baltimore County, in two newspapers of general circula nty, that property be posted, and that the public hearing be had before the Zonin 2 at 10:08 cloc 20th 29th day of March

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 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

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.

- 4 -

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

John J. Bishop, Jr., Esq.
R. Bruce Alder.an, 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

Ce

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 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 Appeal 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 The request for reclassification deals only with the 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 7.R. 16 W/S of the intersection of Moryen Road and Westmoreland Avenue, 9th District

UNIVERSAL HOUSING AND

Folio Case No 5222

***** ORDER FOR APPEAL

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, Mudd, Murray & Howard 409 Washington Avenue Towson, Maryland 21204 823-4111 Towson, 823-4111

IN THE CIRCUIT COURT

FOR BALTIMORE COUNTY

Mise Docket

I HEREBY CERTIFY that on this 34th day of June, 1974 a copy of the aforegoing Order was mailed to the County Board of Appeals, County Office Building, Towson, Maryland 21204, and to John W. Messian, 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 unreason-able, 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;

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 economical developed under the present zoning classifica-

(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 ha 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 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 gair 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

- 2 -

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 "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. Montagmery Ccunty Council, 251 Md. 273, 247 A. 24 255 [1989]; Boslev vs. Hospital for Consumptives. 246 Md. 197, 227 A. 26 746 (1)67); Bosard of County Comm'rs for Prince George's County vs. Farr, 242 Md. 315, 218 A. 26 923 [1986]. 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 [1988]; Mayor and City Council of Generals Vs. 84. of County Comm'rs for Prince George's County, 247 Md. 670, 234 A. 2d 140 [1967]. Agmeslane, Inc. vs. Lucaga, 247 Md. 612, 233 A. 2d Agneslane, Inc. vs. Lucas, 247 Md. 612, 233 A.2d 757 (1967). Further, the one who attacks the determination made by the authority must show ottermination made by the authority must show that it was arbitrary, unreasonable or capricious. Kirkman vs. Montgomery County Council supra; Admeslane, Inc. vs. Lucas, supra; Bosley vs. Hospital for Consumptives, supra; Mayor & City Council of Balto, vs. Sapero, 230 Mt. 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 no 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

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

RE: PETITION FOR RECLASSIFICATION BEFORE from D.R. 5,5 to D.R. 16 W/S of the Intersection of Morven Road and COUNTY BOARD OF APPEALS OF 9th District Universal Housing and BALTIMORE COUNTY

No. 72-224-R

OPINION

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

Testimony produced on benalf of the Petitioner indicated that the total area of the property is 10.6 acres and that the bulk of this property is located or 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 requer ... I 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

The Petitioner advanced testimony through a professional engineer, a realta 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 econ 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 consideration as the tapparanty, developer roads and also the cost of clearing the great to be developed resulting in what they term a prohibitive per lot cost for development under the present

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

nder the existing conditions it is difficult for opposing cars to pass an either Briannliff 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. 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 Berry wasa, 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 west edge of the subject property under consideration here. Both of these streets are fully developed with single individual homes with few, If usy, driveways for off-street parking. Consequently, the undisputed testimony is that each of the streets in part contains cars narked relatively solid on both sides for their entire length, thereby creating the traft... problems indicated previously. The existing streets under discussion are less in width that 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. estified 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 autters.

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 dequate 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

Reil 9: 30 AM

Road to the subject property, where they now terminate

tremely difficult to navigate safely in times of snow or ice because of their

and due to the fact that both of the streets are on a dawngrade from Oakleigh

In view of all the testimony, it is clear to this Board that there presently exists a ratious 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 agin to be had by said reclassification does not constitut 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 aforegoing Opinion, it is this 25th day of January, 1974, by the County Board of Appeals, ORDERED the the reclassification petitioned for, be and the same is hereby DENIED.

evidence presented at the hearing, in the judgment of the Zoning Commissione 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

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 5 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

Baltimore County

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

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

4.

PETITION FOR RECLASSIFICATION -BEFORE THE ZONING WEST SIDE 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.



DATE

RE: PETITION FOR RECLASSIFI-W/S of the Intersection of Universal Housing Development,

NO. 72-224-R (Item No. 10)

BEFORE THE ZONING COMMISSIONE

BALTIMORE COUNTY

The Petitioner requests a Reclassification from a O, R, 5, 5 Zone to a D. R. 16 Zone for a parce; & property located on the west side of t e 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 hehalf of the Petitioner indicated that the bulk of the subject property lies to the west of the Perring Parkway, a four (4) lane duel highway, which bisects the property. The Fetitioner's main contention was that the property could not be economically developed into single family dwellings of because of the topography and also a swail running through the property. It was indicated that a culvert would have to be constructed over a stream to the necessitate a higher denacty for the development of the property to be economi-

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

ndicated that both of these roads are presently four (4) feet under the minimum

The Petitioner plans to develop one hundred and eight (108) garden type partment units on the subject property. This takes into consideration the nsity 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

MEMORANDUM 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.

FROM THE OFFICE OF
GEORGE 1.10 STEPHENS, JR. AND ASSOCIATED INC.
ENGINEERS
P.O. BOX #6828, TOWSON, ND. 21204

Description to Accompany Zoning Petition Reclassification from D.R.3.5 to D.R.16 Zone Universal Housing and Description

September 23, 1971

Beginning for the same at the intersection formed by the south side of on a plat of "Section B, Oakleigh Hills" and recorded among the Land f Baltimore County in Plat Book C. L.B. 17 folio 62, said point of being also the southwest corner of the outline of "Perring Village nts" and recorded among the Land Records of Baltimore County in Plat Book R.R.G. 3G folio 106 and running thence binding on the outlines of the fourth of land described in a deed dated June 15, 1956 from Guarantee Title Corporation to Missouri Realty, Inc. and recorded among the Land Records of Baltimore County in Liber G.L.B. 2951 Inlio 122 the sixteen following courses, viz: (1) North 02° 42' 27" West 494.83 feet, (2) North 02° 42' 27" West 179.81 feet, (5) South 01° 23' 39" East 31.00 feet, (6) South 20° 30' 39" East 80.00 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 143.80 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 pi .. of beginning.

Containing 10.6 acres of land more or less.

BALT ORE COUNTY, MARYLA INTER-OFFICE CORRESPONDENCE

то	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 Mousing and Dev. Co.
Location: WM. int. of Morven and Westmoreland Eds.
Present Zoning: D.R. 5.5
Proposed Zoning: Reclass. to D.R. 16 District: 9 Sector: Northeastern No. Acres: 10.6

Metropolitan sever is available to the site.
Metropolitan water must be extended to the site before building
pernit is issued.

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

Santarian II
Water and Sewer Section
BUREAU OF ENVIRONMENTAL HEALTH

HVR/klr

IVED FOR FILING 2

DATE

JAN. 21, 1975

130

IN THE

CIRCUIT COURT

SALTIMORE COUNTY AT LAW

Zoning File No. 72-224-R

Misc. Docket No.___ 388 File No. 5222

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

MR. CLERK

Plane file. & c.

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

cc: James H. Cook, Esq. Richard C. Murray, Esq. John J. Bishop, Jr., Esq. Jerald D. Mazer, Esq. Zoning, B. Anderson Planning, R. Werneth

> 1 COOK, MUDD, MURRAY & HOWARD

TOWSON, MARYL IND 21204

March 20, 1973

Mr. S. Eric Di Nenna Zoning Commissioner County Office Building Towson, Maryland 21204

Re: Petition of Universal Housing and Development Co, - 72-224-R

Dear Mr. Di Negna

Enclosed you will find an Order for Appeal in the above together with our check in the amount of \$70 payable to "Baltimore County, Maryland".

RCM/njb

Enclosure

MACO TO PM -

BE: PETITION FOR BECLASSIFICATION IN THE from D.R. 5.5 to D.R. 16 W/S of the intersection of Morven Road and Westmareland Avenue CIRCUIT COURT FOR BALTIMORE COUNTY 388 Folio No. 5222

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come John A. Slowik John A. Miller and Robert L. Gilland. ng the County Board of Appeals of Baltimore County, and in assuer to the Order for Appeal directed against them in this case, herewith return the record of proceedings had in the above extitled matter, consisting of the following certified copies or original papers on file in the Office of the Zoning Department of Baltimore County:

......

ZONING ENTRIES FROM DOCKET OF ZONING COMMISSIONER OF BALTIMORE COUNTY

No. 72-224-R

Apr. 30, 1970 Comments of the Bureau of Engineering filed

Comments of the Boltimose County Zoning Advisory Committee filed

Planning Board Recommendations filed

Nov. 8, 1971 Additional Comments by the Baltimore County Zoning Advisory Committee filed

Petition of Universal Housing and Development Company for reclassifi-cation from D.R. 5.5 to D.R. 16 on preparty located on the west side of Norven Road and Westmareland Avenue, 9th District filled

22 Order of Zoning Commissioner directing advertisement and posti property – date of hearing set for March 29, 1972 at 10:00 a.m.

Certificate of Publication in newspaper - filed Mar. 13

16 tificate of Posting of property - filed

29 At 10:00 a.m., hearing held on petition by Zoning Commissioner case held sub curie

Mar. 5. 197a Order of Zonina Commissioner desvine reclassification

Order of Appeal to County Board of Appeals from Order of Zoning

BALLINO COUNTY OFFICE OF PLANNING ZOUNG

JANES E. DYEN

194 - 3151 474 - 3361

March 5, 1973

James H. Cook, Esquire Towson, Maryland 21204

> RE: Petition for Peclassification W/S of the Intersection of Avenue - 9th District Universal the stag Development Company Petitioner NO. 72-234-R (item No. 10)

Dear Mr. Cooks

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

Very World yours, S. ERIC DI NEDNA Zoning Commissioner

SETMA cc: Mrs. Joseph Matulionis

7919 Westmoreland Avenue Baltimore, Maryland 21234 Jerdy Mazer, Esquire

600 E. Joppa Band Townon, Maryland 21294 Mr. August Einsteiner 7003 Tills Gift in a Maltymore tiesten

Phoche Ingram 7305 Park Drive Baltimore, Maryland 21234

Mr. Francis Werneth 9701 Oak Schmitt Avenue Baltimore, Marylane 2-254

JOHN W. ERDMAN ASSISTANT COMMISSIONER

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6 Universal Housing - 9/388/5222

Peb. 20

25

13

In November of 1978, Mr. Erdman was appointed an Assistant Commissioner in the Denartment of Transit and Traffic of the City of Baltimore. While functions related to the administration of the Denartment are and/or responsibility. Wr. Erdman related to the administration of the Denartment are and/or responsibility. Wr. Erdman also serves as the Chief of the Bureau of Traffic of the Interestate Division for Baltimore City. Before joining the staff of the Denartment of Transit and Traffic, Mr. Erdman was employed by the conculting firm of Edwards and Kelcey, the Denartment of Transit and Traffic Engineering and the consulting firm of J. S. Greiner and Commany. Mr. Erdman undertook assignments as Profeet Engineer in the Minneapolis office and Newark headquarters office of Edwards and Kelcey.

Mr. Erdman's most recent assignments include: a study of traffic studies for the Village of Burnsville, Minnesota; a study of the movement of material and vehicles into and within the Rouge manufacturing area of the Ford Motor Commany in Bearborn, Michigan; a study of downtown parking in the Town of Westfield, New Jersey: traffic studies of alternate sites for a Manhattan Convertion Center and a Traffic Operations (TOPICS) Study for Biddeford-Sacc, Wains.

His experience includes the analysis and documentation of highway needs; supervision of volume, speed, and socident studies; review of urain highway desire fifte standard studies; so the standard stand

Wr. Erdman graduated from Johns Honkins University with a degree in Civil Engineering. He has also completed traffic engineering complete the state of the state

Universal Housing - 9/388/5222

2.

Hearing on appeal before County Board of Appeals - case held sub curie

tion to Accompany Order for Appeal filled in the Circuit Court all limore County

Plot of subject property, 1/22/73 propored by G. W. Stephen.

Study of development cost in D.R. 5.5 including charts for single lots

ent Cost Estimate in D.R.

3 - Plut - Apartment layout for D.R.
 5.5 zoning

Development Cost Estimat

5.5 loid out for apartment

Copy of contract to Coffman Associates, Inc. - 11/24/72

- (a tc h) Photos of surrounding area

Resolution of Greater Parkville Community Council, Inc.

Page 48 and 5 - Baltimore County Capital Budget, 2/19/68

(1 to 3) Photos of area - örlarelifi

Order of Dismissal, 8/1/72, Case #71-170-R

Map - Planning 11/24/70 - 3-C, (Custody of Planning & Zoning)

" 8 - Zoning File #72-224-R

Traffic Stude

and Berrywood

- 1 - 1517 Clearwood

2 - 1533 Clearwood

Planning Board Recom-Item 10

Official Zoning Map, Towson 3-C, 3/24/71

" 4 - Study of development for D.R. 16

Order for Appeal filed in the Circuit Court for Baltimore County

Order of County Board of Appeals danying reclassif

Certificate of Notice sent to all Interested parties

Transcript of Testimony filed - 2 volumes

•

G

Patitioner's Fuhible No. 1 -

Profestants' Exhibit H

3.

Mar. 18, 1974 Record of proceedings filed in the Circuit Court for Baltimore County

Record of proceedings pursuant to which said Order was entered and next records of the Zoning Department of Baltimore County, as are also the use dishict maps, and your Respondents respectively suggest that it would be ent and incopropriate to file the same in this proceeding, but your Respondents will produce any and all such rules and regulations, tagether with the zoning use district reps, at the hearing on this petition or whenever directed to do so by this Court.

Respectfully submitted

Edith T. Eisenhart, Administrative Secre County Board of Appeals of Baltim

@

5140 2080 540 200 225 220 2265

* Assumes 14 use a remove - - - - - - -

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Concl. 21002

Future volumes (total) will be some 25 % greater than Today. [53.5] Future volumes will at the stry 200, - 30%

of existing available capacity, [2305]

JAN. 21, 1975

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

NO. 421

September Term, 1974

· No. 72-224-R

INTUERRAL HOUSTNO AND

W BARHARA 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 hard 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 adop; 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 Haldemann v. Comm'rs. of Howard Co.,

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

W/S of the intersection of IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

MISC. CASE:

MEMORANDUM CTINION AND CO.

Universal Housing and Development Company that filed the above appeal from a decision of the County Board of Appeals intend January 25, 1974, denying its request for a reclassification from D.R. S.E to D.R. 16 for the west side of the intersection of Morven Road and Westmon Land 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 streems 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 betwoon them.

Petitioner's basis for the appeal covers:

action of the County Board for Baltimore County was unreasonable, arbitrary and unlawful, in that it was contrary to the evi-dence and the weight of the evidence;

- (2) That the County Board of Appeals misconstru and misint rpreted 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 de-veloped 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 affirme 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.

would be to sell the the the enter and that to further magnify this property, and the mere fact that they did not take into account the Petitioner's aconomic gain to be had by said reclassification does not constitute error. The Brard feels that the burden of proof to show error on the part of the Sounty Jouncil 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

"We have often repeated the principles here we have clear repeated the principles are 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

authority's determination is correct if there were such legally cufficient widence 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 suprisions. (Citations

JUDGMENT AFFIRMED COSTS TO BE PAID BY

APPELLANT.

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

. . .

253 Md. 298, 306-307:

omitted1.

"We have often repeated the printiples here applicable: courts have no power to rezone and may not substitute their judgment for that of the expartise of the zoning authority. Kirkman vs. Montgomery County Courcil, 25 Md. 273, 247 A 24 255 [1965]; Boaley vs. Rospital for Md. 273, 047 A.2d 25 [1960]; Booley vo. 1602011a; Md. 273, 047 A.2d 25 [1960]; Booley vo. 160301a1 for Consumptives, 246 Md. 107 Booley vo. 160301a1 for Consumptives, 246 Md. 107 Booley vo. 160301a1 for County Comercia for Prince Goods at Society 1, Booker 248 Nd. 315, 216 A.2d 293 [1960]. It has long been settled that the coning 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 [1960]; Msyor and Clix Council of Greenbett vs. Bd. of County Co. Tra for Frince Deerge's County, 247 Md. 070 [294 A.2d 10 [1960]; Msgmellane (1990); May or and 21th Young 1 of Greenbelt vs. Ed. of County Co. My Sor Prints Georges 7 County, 287 MA. of 0, 234 A. 3d 199 (1971); Agreelens, Inc. vs. Luzas, 247 MA. 612, 233 A. (24 97); [1971]. Further, the one who attacks the determination made by the authority must show that Wasterman Doubt Character Street County County County Markers Doubt Character Street County County County County Markers Doubt County County County County County County County Markers Doubt County Count va. Montgomery Council, supra; Agneslane, Inc. vs. Lucas, supra; Boxley vs. Hospital Per Consumptive, supra; Mayor & City Council of Balto. vs. Sapero, 230 Nd. 291, 186 A.2d 834 (1962).

As has been stated many times before, the decision to be made by this Court on a zoning appeal is whethe, 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 Petit Protestants to make the issues fairly debatable. Nor has there been a mowing that the Board abused the discretion vested in it by law. The strongest argument put forth by Petitioner concorns itself with the alleged economic disadvantage of D.R. 6 % as compared to D.R. 16. The Court feels that even if this wer found to be the case, substantial evidence was presented with allowed the Scard to decide the way that it did, even if it but a great deal of emphasis in the economic Wourt will as tirm the Board's decision.

The argument presented of Baltimore County, that the enti- natter is res judicata, and not be decided at this In for the above reasons, but the Court to encoteent of the

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

2.2.2

Ste . Co.

BALTIMORE COUNTY ZONING ADVISORY COMMITTEE

November 8, 1971

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

> RC: Property Owner: Universal Housing and Dev. Co. Locations W.S. Int. of Morven and Westmoreland Rds. Present Zoning: D.R. 5.5 Proposed Zoning: Calass. to D.R. 16 District: 9th Sector Workheastern No. Acres: 10.6 Item 10

The following comments were compiled after a field investigation and an 'n-effice 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 Berrymood soul and Refunciff Road. It is an unimproved, wedde lot that lies adjacent to the Perring Parkway on the east, waant residential to the south, and an existing residential neighborhood in the west and north. There are no cepital improvements on the Location of this property at this time.

The potitioner's plat does not indicate the proper breakdown by density units as required under 8111 No. 100. It also does not indicate all satuacks from each building to the various property lines. Should this reclassification be granted, it would be required to seet all those requirements as laid down by 8111 No. 100 and the Comprehensive

Very truly yours, Mire L. Myon OLIVER L. MYERS, Chairman

DATE: October 26. 1971

zoning Agenda: Cycle for October '71

JJDJr.:JD

S. Eric DiNenna, Zoning Commissioner

M/S, int. of Morvon and Westmoreland Rds.

() 2. A second means of access is required for the site.

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

exceeds the mo imum allowed by the Pire Department.

() 4. The site shall be made to comply with all applicable requirements of two Hational Pire Protection Association Standard No. 101, "The Life Safety Code", 1967 Edition, and the Fire Prevention Code prior to occupancy or commencement of openation

() 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 whom construction plans are submitted for approval.

6. The Fire Department has no comment on the proposed site.

Universal Housing and Day, Co.

The hydrants shall be located at intervals of feet along

FROM: Fire Prevention Bureau

Fire Congressent

an approved road.

() 3. The dead-end condition shown at

SUBJECT: Property Owners

LOCATION:

BALTIMORE COUNTY ZONING ADVISORY COMMITTEE

OUNTER L. USE

BEAUTH DEPARTME

BOART OF ADDRESS.

James H. Cook, Esq., 409 Washington Avenue Towson, Maryland 21204

RE: Type of Hearing: Reclass, to D.R. 16 Location: W/S Int. of Morven and Westmoreland Rds. Petitioner: Universal Housing and Dev. Co. 9th District Item 10

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 Ser panel sound eliminatifi flend. It is an unimproved, wonded lot title lies ediscost to the Perring Parkusy on the assi, weach residential to the south, and an existing peridential 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 returned by the Zoning Advisory Committee and Encourage the English Property Committee and Encourage Truntained by William Siftee in Connection with them 20th remain will and in effect. We are enclosing browth the William Siftee in Connection with a warner copy of those comments which are applicable to the current patiston.

PROJECT PLANNING DIVISION:

TO S. Eric DiMenna

PROM. Ellsworth M. Diver, P.W.

District: 9th

Snelosure

This office has reviewed the subject site plan and offers

BALMORE COUNTY, MARYIMID

INTER-OFFICE CORRESPONDENCE

The subject property constitutes the same property previously reviewed by the States Advisory Constitute and Known as Item (2h, (1969-190)) county Order (7h+1.70-1). The convents furnished by this office at connection with Item (2h) remain wall and in effect. We are enclosing bereaft is a zerox of y of those communits which are applicable to the current patition.

SUBJECT, Item file (Ovels Cetaber 1971 - April 1972) Property Cumer: Universal Housing and Dev. Co. Location: WS, int. of Normer ar. Westorcland Rds. Present Zoning: D.N. 5.5 Proposed Zoning: Relaise to D.N. 16

Sector: North

The density figures need to be revised to comply with 8111 100. The layout should be eltered to eliminate the front and back parking that exists for 36 of the proposed units.

Date __ Dotober 22, 1971

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

HEALTH DEPARTMENT:

Metropolitan sever is available to the site.

Metropolitan water must be extended to the site before building permit

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

STATE HIGHWAY ADMINISTRATION:

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

DEPI . 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. Briarciff Road, which will provide access to the subject site, is a low dansity residential street and was not designed to handle an apartment development.

BOARD OF EDUCATION:

The Owkleigh Elementary School services this area and is currently III popils over-capacity (based on the Sept. 0, 1971 envellment). The land, as it is now zened, would yield approximately it imemnately uports on the land of the development of the proposed I and 2 bedroom apartment development county yield approximately 3 elementary purils.

ZONING ADMINISTRATION DIVISION:

The patitioner's plat does not indicate the proper breakdows by density units as required under SIII No. 100. It also cose not indicate all satbacks from each building to the various properly lines. Should his reclassification be greated, it would be required to act all those equirements as leid down by SIII's. In Oc and the Comprehensive Design Fancia.

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

Jamus H. Cook, Esq., Item 10

held not less than 30, nor more than 90 days after the dom on the filing certificate, will be forwarded to you in the near future.

Very truly yours. Oliver I. Myers OLIVER L. MYERS, Chairman

JJ0:J0

STATE HIGHWAY ADMINISTRATION

300 WEST PRESTON STREET BALTIMORE MD. 21201

November 2, 1971

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

ITEM 10. Re: Baltimore County Reclassification cycle for the period of Oct. 71 to April '72. Northeastern Section Property Gwers' Universal Housing & Dev. Co. Location W/S int. of Morven 5 Westmorel and Rds.
Perring Parkway
Present 4oning: D.R. 5.5
Proposed 4oning: Reclass to D. R. 16 District: 9th Section: Northeastern No. Acres: 10.6

Dear Mr. DiNennat

The subject plan indicates that there should be no adverse effects

Very truly yours,

Charles Lee, Chief Development Engineering Section

by: John E. Meyers Asst. Development Engineer

CL:JEH:bk

BALLIMORE COUNTY, MARYLA...

DEFERSON BUILDING TOWSON, MARYLAND 21204 INTER-OFFICE CORRESPONDENCE

5. 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.
Morven and Westmoreland Roads Reclass. to DR 16

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

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

C. Richard Moore Assistant Traffic Engine

Note: Above comments indicated with a check apply.

20(12)3 42/12(4) (11.27)2 (22.27) OF Person of Cor. 7, April 72

Petitioner: L'angente Housens & Des Co Location: Wis out of Monten & Westmonelland Ros.

Present Zoning: Diz 5.5

Proposed Zondig: Dat 16

No. of Acres: 10.6

Comments: The Charleson Elementing somen services this then the necessary in facts the contractity (Assenting THE SET 20 1571 FARMENED THE COND, IS IT IS NOT TENED, LEVED YIELD ADDRESSIONATELY 14 ELEMENTARY PLANTS LINES FLICY DELECTED LINES A CHILD'S TETTO PROGRESS I 4 A BENGLAM APARTMENT DENSIRATIONERS PLANT MENT APPRINIMITELY ? FLENESTING FLEIL.

BALT. DRE COUNTY, MARYLA.

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 Morven and Westmoreland Rds.

This office has reviewed the subject site plan and offers it a 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 -Seuilding relationship that exists for 36 of the proposed units.

TOWSON IN LES TOWSON, MD. 21204 THIS IS TO CERTIFY, that the annexed advertisement of S. Eric Dinenna Zoning Commissioner of Haltimore County

STROMBERG PUBLICATIONS, Inc.

By Butt morgan

OFFICE OF

was inserted in THE TOWSON TIMES, a weekly newspaper published

weeks before the 13 day of March 1972 that is to say, the same

in Baltimore County, Maryland, once a week for one x

was inserted in the issue of March 2, 1972.

OR IGINAL

CERTIFICATE OF PUBLICATION

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson Baltimore County, Md., operatorsect appearing on the ... 9th ... day of Sarch 19. 72

THE JEFFERSONIAN.

Cost of Advertisement, \$

10.00		
4 Sym	CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY	#72-224-1
	Towson, Maryland	
market 9 X.	Date of Porting Need, Morel 29th 1972 6 16 16 18 18 18 18 18 18 18 18 18 18 18 18 18	3-9-72
uni	las la House Que Co	
Location of property	1/5 of the Intersection of Morres	r and
Location of Signs	1 at End of Brianceff Rd 18 End	Burgwood R
1 Believe teris	ulff Rt & Berymond Rd Ion Me	row Kd,
Remarks		
Posted by Mail	H) diss Date of return. 3	1-16-72

ELEPHONE 494-2413		INVOICE COUNTY, MARY AND OF FINANCE	No. 7	
	TOWS	COURT HOUSE BULLED		
то:	Richard C. Murroy, Esquire 409 Washington Avenue Towson, Maryland 21204	County Bo	ord of Appe	als'
DEPOSIT TO	ассоинт но. 01.712 ретасн	RETURN THIS PORTION WITH YOU ALONG PERFORATION AND KEEP THIS PORTION FOR Y		\$ 19.00
Daniel A	Cost of certified copies of documen			\$ 19.00
		Universal Housing & Development Petitioner	Co.	
10				

IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND

MAIL TO OFFICE OF FINANCE, REVENUE DIVISION COURTHOUSE, TOWSON, MARYLAND 21204

PETITION	M	MAPPING PROGRES					S SHEET				
FUNCTION			Ori	inal	Dupl	Duplicate		Tracing		200 Sheet	
Tottorion	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							H			-	
Reviewed by:		-	(or desc	riptic	on		

CERTE	FICATE OF POSTING
ZONING DEPAR	TMENT OF BALTIMORE COUNTY #72-224-R
	Towsen, Maryland
6:11	
District. 9.4.	Date of Posting 4-19-23
Posted for:	
Petitioner: Universal 1	Tensing Development Co.
Location of property: W/S of 27	truction of many 18 4
Location of Signa: 1 Portal @ &	al & Brincell St 10 sel & Bornel
Rd 1 on Mestroneland	od y Brinceff Ed 10 Gd y Burgond
Remarks:	/ /
Posted by Mul H Mrs	Date of return: 4-24-23
Signature	

· appeal

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING
County Office Building 111 W. Chesapeake Avenue Towson, Naryland 21204
Your Petition has been received and accepted for filing
this 22nd day of Fabruary 19772
16 10 2/
S. ERIC DI NENNA, Zoning Commissioner
Petitioner: Universal Housing and Day, Co.
Petitioner's Attorney Jame H. Cook Reviewed by Clave & March
Chairman of Advisory Committee

BALTIMORE CO'INTY, MARYLAND OFFICE OF FINANC. REVENUE DIVISION MISCELLANEOUS CASH RECEIPT	BALTIMORE CCUNTY, MARYLAND OFFICE OF FRANKA, REVENUE BINSON MISCELLANEOUS CASH RECEIPT
DATE April 3, 1973 ACCOUNT 01-662	DATE February 20, 1974 ACCOUNT 01-662
AMOUNT \$70,00	AMOUNT \$20.00
Cost of an Appeal on Case No. 72-724-R W/s of the Intersection of Horven Avenue and Welt-moreland Avenue - 9th District Universal Housing Development Company - Epitionar Received from Richard C. Murray, Esquire	Richard C. Murray, Esquire Cost of Posting Property of the Universal Housing Development Compan, for an Appeal Hearing W/S of the Intert time of Morven Avenue and Westmore- Land Avenus District Case No. 22-224-R

OFFICE OF	ORE UNITED TO THE PROPERTY OF	VENUE	DIVISION		No.	2787
DATE	Agu. 11,	1972	ACCOUNT!	-662		
			AMOUNT	81/49	.50	
	CASHIER	PIN	HIBSTION K-AGENCY		VELLO	W - CUSTOMER
409 W	s. Cook, Machington A	we.	irray & Ho	ward		
Adver	tising and	posti	ug of prop	erty f	or U	4 9.5 G MG

BALTIMORE : UNTY, MARYL OFFICE OF FINANCE REVENUE DIVISI MISCELLANEOUS CASH RECEIL	ON STATE
OATE Oct. 27, 1971 Acc	OUNT 01-662
AM	DUNY \$50.00
MHITE CASHIEN FINE AG Messrs. Cook, Mudd, Murray 409 Washington Ave. Towson, Md. 21204 Petition for Reclassificat	ENCY YELLOW CUSTOMER

