

PETITION FOR ZONING VARIANCE FROM AREA AND HEIGHT REGULATIONS

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

George L. Hampshire

Paul K. Hampshire, legal owner of the property situated in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from the following:

a. Height: 50' permitted to 150' sought (Section 1802.2A)

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (Indicate variances or practical difficulty)

Practical difficulty. (See Memorandum attached)

See attached description

MEMORANDUM

There exists a haunted house in Towson, known as the Old Auer House. Placed there first by the dreams, later maintained by the aspirations and finally ruined by the stupidity of man, it stands as a spectral monument to the utter confusion and chaos created by the adoption of Bill 100 (1970).

This 4.7 acre property had, until 1969, been the private residence of Mr. Peck Auer. The premises are thickly wooded, virtually covered by trees ranging in height from 35 feet to 100 feet, and the dwelling house of Mr. Auer, (now in ruins), occupied a fairly level plateau in almost the exact center of the tract. Except for this plateau, the balance of the property is extremely precipitous, and test boring shows substantial rock burden, and indeed, on some portions of the property there are outcroppings on the land.

It is perhaps of great significance that when Mr. Ralph Talbot developed Southland Hills, he very thoughtfully excluded the subject property and two other properties north of the Auer tract from his development, since the terrain characteristics would not have permitted him to develop those particular properties for individual residences similar to those in Southland Hills.

The variances being sought are:

a. height: 50' permitted to 150' sought (Section 1302.2 A)

The very complex numbering of the regulations must in itself tell much about the absolute fantasy of this legislative jewel.

As matters stand, the owner of the property in this case, on the one hand, permitted to build 26 dwelling units, (apartments, town houses, detached or semi-detached houses, group houses, etc.). On the other hand, the limitations on the height they may build the units, coupled with the restrictions imposed by the residential buffer zone requirement, afford them a meager volume of space in which they may construct these permitted units.

The following factors are unique to this property in this area:

1. Topography
2. Area of property
3. Forestation of subject tract
4. Orientation to existing housing and institutions

Topography: While perhaps not unique in Baltimore County, this is the most extreme precipitous property in the neighborhood having an extreme gradient in all but one tiny plateau whereupon is sited the "ghost house". A large underburden of rock runs throughout the property close to the surface.

Area: This property is 4.7 acres in extent, but by virtue of the residential buffer, zone restrictions, has an unrestricted building area of a fraction of an acre. (See exhibit #1).

Forestation: This property is beautifully enriched by hundreds of trees of all sizes, ranging up to seventy foot giants well over 100 years old.

Orientation to Existing Structures: The subject tract stands back to back with the charming and well-maintained community of Southland Hills to its east and south and would have no ingress or egress through Southland Hills, and no perceivable impact upon it. Facing Burnbrae, another such community, and the YMCA to the west, it is separated from Burnbrae and the YMCA by Chesapeake Avenue, a one-way south-bound public street. To the north is the nearly completed Masonic Temple building, a community hall for the use of the Masonic Order.

The practical difficulty, unique to the petitioners' property, consists in the extreme topography, rocky subsoil and limited area. A relief from these difficulties is sought by this variance petition. As a beneficial by-product many of the lovely old trees can be preserved and surface runoff can be minimized. A development in character and harmony with the surrounding neighborhoods can be constructed and the obvious disadvantages of developing the property as it must now be developed will be avoided.

"To every thing there is a season, and a time to every purpose under the Heaven:

A time to be born, and a time to die; a time to plant, and a time to pick up that which is planted;

A time to kill, and a time to heal; a time to break down, and a time to build up."

Ecclesiastes 3: 1-3

John Warfield Armiger, Esq.
Attorney for Petitioners
200 Padonia Road, East
Cockeysville, Maryland 21030
666-0440

LAW OFFICES
BAKER AND BAKER
10 CHARLES PLAZA - SUITE 202
CHARLES STREET AT BALTIMORE
BALTIMORE, MARYLAND 21201

November 8, 1974

Mrs. Edith T. Eisenhart
Administrative Secretary
County Board of Appeals
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: Hampshire Zoning Case
Chesapeake Avenue

Dear Mrs. Eisenhart:

I am enclosing for your information a copy of a Motion filed by Mr. Hession to appear as Amicus Curie in the Court of Special Appeals of Maryland in the Hampshire Zoning Case and of my Answer thereto.

Sincerely yours,
George W. Baker, Jr.

GWB/sm
Enclosure

RE: PETITION FOR A VARIANCE ()
S/S of Chesapeake Avenue, ()
620' N of Dixie Drive- ()
9th District ()
Paul K. Hampshire, et ux - ()
Petitioners ()
NO. 73-77-A (Item No. 9) ()

BEFORE THE
ZONING COMMISSIONER OF
BALTIMORE COUNTY

ORDER FOR APPEAL

MR. COMMISSIONER:

Please enter an appeal in the above entitled matter to the County Board of Appeals on behalf of the following persons;

Mr. and Mrs. Quentin E. Erlandson
9 Burnbrae Road
Towson, Maryland 21204

Dr. and Mrs. Loren D. Jensen
10 Burnbrae Road
Towson, Maryland 21204

Mr. and Mrs. C. Eugene Schmidt
303 Alabama Road
Towson, Maryland 21204

Mr. and Mrs. Joseph F. Davis
305 Alabama Road
Towson, Maryland 21204

Richard C. Murray

Cook, Mudd, Murray & Howard
409 W. Lexington Avenue
Towson, Maryland 21204
Phone 823-4111
Attorneys for Protestants.



Court of Special Appeals

NOTICE

Kindly confirm the title of your brief in accordance with the changes made in the title of the case as it appears on this receipt.



No. 650, September Term, 1974.

Paul K. Hampshire et ux

George W. Baker, Jr., Esquire
William P. Baker, Esquire

vs.

Attorneys for Appellant

Quento. E. Erlandson et al

Richard C. Murray, Esquire
C. Eugene Schmidt, Esquire

Attorneys for Appellee

The Record in the captioned appeal was received and docketed on September 25, 1974.

The brief of the APPELLANT is to be filed with the office of the Clerk on or before November 4, 1974.

The brief of the APPELLEE is to be filed with the office of the Clerk on or before December 4, 1974.

This appeal has been set for argument before this Court during the month of February, 1975.

Stipulations for extensions of time within which to file briefs will not be granted where the request will delay argument (Rule 1030 (c) 1).

Counsel is likewise notified to advise the office of the Clerk (Pursuant to Rule 1047) of intent to submit on brief at the time of filing his brief. No submission on brief will be accepted within ten (10) days prior to the date of argument without specially obtained permission of Court.

APPEAL DATE (according to Court Docket) 8/26/74

JULIUS A. ROMANO,
Clerk of the Court of
Special Appeals of Maryland.

Rec'd 10-10-74
9:30 AM

FROM THE OFFICE OF
GEORGE WILLIAM S. SPURDAS, JR. AND ASSOCIATES, INC.
ENGINEERS
P.O. BOX #6828, Towson, MD. 21204

June 28, 1972

Description to Accompany Zoning Petition
Variances Requested to Height and
Transition Area Regulations
579 W. Chesapeake Avenue

Beginning for the same at a point which is northeasterly 620 feet more or less measured from the intersection formed by the centerline of Chesapeake Avenue and the centerline of Dixie Drive, said point being, on or near the corner of Chesapeake Avenue at the end of the fourth line of that parcel of land described in a deed dated June 5, 1943 from Nellie L. Gessford, Executrix to Gaylord R. Auer, et ux, and recorded among the Land Records of Baltimore County in Liber R.J.S. 1289, Folio 253, running thence binding reversely on the fourth through the first lines of said deed and binding in the bed of Chesapeake Avenue the four following courses, viz: (1) North 19° 30' East 317 feet, (2) North 39° East 61.83 feet, (3) North 70° East 60 feet, and (4) North 72° 45' East 168 feet to the beginning of the first parcel of land as described in a deed dated June 5, 1943 from Nellie L. Gessford, unmarried to Gaylord R. Auer, et ux, and recorded among the Land Records of Baltimore County in Liber R.J.S. 1289, Folio 253, running thence binding on the first through the third lines of said last mentioned deed and binding in the bed of Chesapeake Avenue the three following courses, viz: (5) North 74° 45' East 100 feet, (6) North 81° 45' East 65 feet, and (7) South 84° East 77 feet, running thence binding on the fourth and fifth lines of the second mentioned deed the two following courses, viz: (8) South 20° West 558 feet, and (9) along a curve to the right with a radius of 52 feet for 77 feet running thence (10) North 72° 15' West binding for part of the distance on all of the sixth line of said last mentioned deed and binding for the remainder on all of the third line of the second parcel of land described in the second mentioned deed, in all 357 feet to the place of beginning. Containing 4.7 Acres of land more or less.

MAY 21 1976

RE: PETITION FOR VARIANCE :
from Section 1802.2A of the :
Baltimore County Zoning :
Regulations :
S/S of Chesapeake Avenue :
620' West of Dixie Drive :
9th District :
Paul K. Hampshire, et ux :
Petitioners :
No. 73-77-A

OPINION

This case comes to the Board on appeal from an Order of the Zoning Commissioner granting the Petitioners' request for a variance to permit a height of one hundred fifty (150) feet in lieu of fifty (50) feet as required by the Baltimore County Zoning Regulations. The Board feels impelled to make it clear at the outset that this case does not involve any change in zoning classification or any change whatever in permitted land use under the Zoning Regulations. The property was the subject of a previous zoning application for apartment zoning under the old regulations prior to the passage of Bill No. 100, which effective date was March 24, 1971. At that time the Petitioner had requested D.R. 16 zoning on the property; however, the County Council, at the time of the adoption of the new zoning maps, placed this property in a D.R. 5.5 classification. The gross area of the property is 4.7 acres, which would allow for the construction of 25 to 26 dwelling units of any type, whether individual homes, town houses, apartments, or any other use, so long as the same was confined to residential development; and the only matter therefore before the Board is whether or not the Petitioner should be granted a height variance to allow him to build one structure of a height greater than the allowed 50 feet rather than have an allowable density spread over the entire tract. To achieve this the burden is on the Petitioner to show practical difficulty or unreasonable hardship, as well as a lack of any detriment to the health, safety and general welfare of the community.

This property is located on the south side of Chesapeake Avenue approximately 600 feet west of Dixie Drive, in the 9th District of Baltimore County, and is within a short distance of what has been described as the Towson Core Center, which appears on the Guide Plan Maps as a sector center, being the largest type of commercial-industrial

Paul K. Hampshire, et ux - No. 73-77-A

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same is hereby GRANTED, subject to the approval of a site plan by the Bureau of Public Services and the Office of Planning and Zoning.

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

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

John A. Slawik
John A. Slawik, Chairman
Robert L. Giffard
Robert L. Giffard

Paul K. Hampshire, et ux - No. 73-77-A

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guide plan area in Baltimore County. Across Chesapeake Avenue from the subject property is a large tract of land owned and operated by the YMCA as a community building, to the east is the institutional use of the Masonic Temple, and to the south it abuts the rear yards of houses facing on Alabama Road. The topography of the property is extremely rough, consisting of what may be described as a ravine with a small plateau at the top, with a stream running along Chesapeake Avenue at the northernmost boundary of the property, and is presently "improved" by an old frame dwelling which has been vandalized and is almost in ruins at the present time.

Mr. Hampshire testified at the hearing that he wishes to construct one building, which will only occupy from three to five percent of the total land, the rest being left for open space, presently existing trees and parking areas. He has asked for a variance to a height of 150 feet but testified that his architects have advised him that his plans can be carried out with a maximum height of 133 feet. The proposal is to divide the buildings into floors of 9600 square feet each, having 13 floors at the most, with parking space underground, to be sold as condominium apartments, which, of course, would be limited to the number of dwelling units allowed for the entire tract under the D.R. 5.5 zoning, namely, twenty-six apartments more or less, assuming that there were to be more than one apartment on each floor. The lot is heavily wooded with what can only be described as old and beautiful trees, and the proposed use would allow them to remain and with much better care and preservation than they are presently having. The plot presented by the engineers in evidence (Exhibits No. 1 and No. 1-A) shows that the proposal will more than meet every other requirement of the Baltimore County Zoning Regulations, i. e., as to setbacks, open space, parking areas, roadways and access roads, which will be only to Chesapeake Avenue and not to Alabama Road. The plans as presented are entirely in accordance with both the letter and the spirit of the Zoning Regulations as to use and every other requirement other than height, which is the variance requested.

There was testimony by Mr. Hampshire, and also by competent engineers, that there would be practical and unreasonable hardship in attempting to make any other

RE: PETITION FOR A VARIANCE :
S/S of Chesapeake Avenue, :
620' W of Dixie Drive - :
9th District :
Paul K. Hampshire, et ux :
Petitioners :
NO. 73-77-A (Item No. 9) :
BALTIMORE COUNTY

The Petitioners request a Variance from Section 1802.2A of the Baltimore County Zoning Regulations to permit a height of one hundred and fifty (150) feet in lieu of the prescribed fifty (50) feet. The property is located on the south side of Chesapeake Avenue, six hundred and twenty (620) feet west of Dixie Drive, in the Ninth District of Baltimore County and containing 4.7 acres of land, more or less.

Evidence on behalf of the Petitioners indicated that they acquired the property approximately two and one-half (2 1/2) years ago and that the property is bounded on the south with individual homes, the Masonic Temple on the east and the YMCA property on the north. It was indicated that two (2) buildings are proposed, one of which is to be twelve (12) stories and the other, to be thirteen (13) stories and would be developed as condominium type complexes. There would be no rentals, but each condominium would range in sale value from Eighty Thousand Dollars (\$80,000) to One Hundred and Fifty Thousand Dollars (\$150,000) per unit, depending on the size, etcetera.

The property is presently zoned D.R. 5.5 and if developed into single family units, would necessitate extensive roads, driveways and utilities. Due to the topography of the property, which slopes severely, the average grade of the roads would be an excess of ten (10) per cent.

John Hocheder, Jr., engineer testifying on behalf of the Petitioners, indicated that most other properties to the east and north of the subject property have good topography. He also indicated that the subject property is unique because of its grade and topography. It was also stated by

Paul K. Hampshire, et ux - No. 73-77-A

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layout for the use of this property within the Zoning Regulations, which opinion was fundamentally based on the topography of the site and an attempted plan to plat a development in any other use, which it was testified would not work under any other D.R. 5.5 use. All utilities, including water and sewerage facilities are available at the site and adequate. It is obvious that this development would not tend to overcrowd schools in the area nor increase the traffic to any great extent.

It was testified by a qualified realtor and appraiser, Mr. Hugh Gelston, that this location was ideal for its planned use, that there were large open spaces nearby in connection with the institutional uses which would fit in with the proposed plan, and that the Hampshire lot additionally only adjoined four or five lots on Alabama Road to the rear. He expressed his opinion that the effect of the proposed construction on the value of neighboring properties would be favorable rather than detrimental, and he cited many other areas where apartment construction has had this effect in support of his opinion. He further testified that the construction of small garden apartments which would be allowed under the zoning would be detrimental, as it would necessitate the destruction of almost all of the large trees, and that it would be a great waste of land for the small number of cottages which could be built due to the topography, which type of development would also force the removal of most of the trees and shrubbery. He also pointed out that the construction of this mid-rise condominium would attract older people, few children and afford a much higher degree of security than any other type of development allowed. A number of residents in the neighborhood were in favor of the proposal, and probably more were opposed to it for varying reasons.

The Protestants presented an engineer, Mr. Robert A. Whiteford, of the Greiner Environmental Systems, Inc., who stated he had reviewed the plans and prepared himself a proposed garden apartment layout which would provide for two three story buildings containing respectively thirteen and twelve units, for a total of twenty-five, at 1250 square feet each. It appears to the Board that such construction, which would be allowed without a variance, would be much more detrimental to the neighborhood than any proposed by Mr. Hampshire. On cross-examination Mr. Whiteford was forced to

Mr. Hocheder, that if the property were developed into garden type apartment units, that portion of the subject property with good topography could not be developed because it falls within the required transitional area adjoining single family dwellings.

Residents of the area, in protest of the subject Petition, indicated that they do not want to live near or next to high rise towers. They felt that the property should be developed as single family dwellings.

Without reviewing the evidence further in detail but based on all the evidence presented at the hearing, in the judgment of the Zoning Commissioner of Baltimore County, the Petitioners have met the burden of proving hardship and unreasonable difficulty and that the proposed improvements will not be detrimental to the health, safety and general welfare of the community. There has been a need experienced for the availability of condominiums throughout Baltimore County and the country. If developed as proposed, much more open space would be provided. Because of the topography involved, its location to the Towson Core, the subject property should be developed as proposed.

Therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 12th day of January, 1973, that the herein described Petition for Variance to permit a height of one hundred and fifty (150) feet in lieu of the required fifty (50) feet should be and the same is hereby GRANTED from and after the date of this Order, subject to the approval of a site plan by the Bureau of Public Services and the Office of Planning and Zoning.

Eric Di Nedin
Eric Di Nedin
Zoning Commissioner of Baltimore County

Paul K. Hampshire, et ux - No. 73-77-A

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admit that he had to agree with the Petitioners' engineer that individual lots would be impractical on the topography as it exists, and would further be damaging to the appearance in that it would require the destruction of most of the large trees.

The Protestants further produced Mr. Frederick P. Klaus, a realtor and appraiser, who expressed his opinion that the property could be developed as per Mr. Whiteford's plan, only provided it were used for very expensive deluxe apartments in garden-type buildings because, as he expressed it, how could twenty-five small apartments support all the necessary proper upkeep of woods, swimming pool, etc. necessary for the almost five acres. Luxury condominiums are exactly what Mr. Hampshire is proposing for this tract, and the Board is of the opinion that the plan, as submitted constitute the most satisfactory use of the land, both in accordance with the general plans for Baltimore County, and in its effect upon the immediate neighborhood.

Under all the evidence in the case, and after considering the exhibits and viewing the property, the Board has come to the conclusion that the judgment of the Zoning Commissioner should be affirmed, and the variance requested should be granted to a height of 133 feet, as testified to by the owner, rather than the 150 feet requested as an approximate height in the petition. William H. McLean, Jr. vs. Joseph L. Soley, 270 Md. 208 : Loyola Building & Loan Ass. vs. Buchman, 227 Md. 243, 176 A.2d 355 (1961); 2 Rathkopf, The Law of Zoning and Planning, (3d ed. 1972) 45-28, 29. In the judgment of the Board the Petitioners have met the burden of proving hardship and unreasonable difficulty, and that the proposed improvements will not be detrimental to the health, safety and general welfare of the community.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 12th day of February, 1974, by the County Board of Appeals ORDERED, that a Variance of one hundred thirty-three (133) feet in lieu of the required fifty (50) feet be and the

January 12, 1973

John V. Armiger, Esquire
230 Padonia Road, East
Cockeysville, Maryland 21030

RE: Petition for Variance
S/S of Chesapeake Avenue,
620' W of Dixie Drive -
9th District
Paul K. Hampshire, et ux -
Petitioners
No. 73-77-A (Item No. 9)

Dear Mr. Armiger:

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

Very truly yours,

Eric Di Nedin
S. ERIC DI NEDIN
Zoning Commissioner

SEDrvc
Attachments

cc: Richard Murray, Esquire
Mercantile-Towson Building
Towson, Maryland 21204

C. Eugene Schmidt, Esquire
409 Chesapeake Building
Towson, Maryland 21204

ORDER RECEIVED FOR FILING

DATE January 12, 1973

BY *Eric Di Nedin*

ORDER RECEIVED FOR FILING

DATE January 12, 1973

BY *Eric Di Nedin*

PAUL K. HAMPSHIRE, et ux
Appellants
vs.
QUENTON E. ERLANDSON, et al
Appellees
IN THE
COURT OF SPECIAL APPEALS
OF
MARYLAND
No. 650
September Term, 1974

MOTION FOR LEAVE TO APPEAR AS AMICUS CURIAE

BALTIMORE COUNTY, MARYLAND, by John W. Hessian, III, Assistant County Solicitor, moves for leave to appear in this appeal as amicus curiae, respectfully suggesting to the Honorable Court that said Motion is based on the following grounds, viz.:

1. That there is present in this appeal an issue which affects the public interest of the citizens of Baltimore County, as distinguished from the particular and specific property right of the individual parties herein, viz: whether as a matter of law variances from the basic zoning regulations may be granted by the County Board of Appeals without regard for the spirit and interest of said regulations, as required therein.
 2. That the Movant's interest in participating in this appeal is that the criteria applicable to the granting of variances from the height limitations prescribed by the Baltimore County Zoning Regulations be maintained at the highest standard because of the importance of such limitation to the "Density-Residential" zoning concept newly-adopted by the County Council of Baltimore County.
 3. That the Movant respectfully suggests to this Honorable Court that it was permitted to participate as amicus curiae in proceeding in the Circuit Court for Baltimore County.
- AND AS IN DUTY BOUND, etc.

BALTIMORE COUNTY, MARYLAND

By
John W. Hessian, III
Assistant County Solicitor

I HEREBY CERTIFY, That a copy of the foregoing Motion for Leave to Appear as Amicus Curiae and the proposed Order appended thereto, was this _____ day of October, 1974, mailed to George W. Baker, Jr., Esquire and William F. Baker, Esquire, Allen Burch & Baker, 10 Charles Place, Suite 203, Baltimore, Maryland 21201, Attorneys for Appellants, and to Richard C. Murray, Esquire, Cook, Mudd, Murray & Howard, 409 Washington Avenue, Towson, Maryland 21204, Attorneys for the Appellees.

John W. Hessian, III

PAUL K. HAMPSHIRE, et ux
Appellants
vs.
QUENTON E. ERLANDSON, et al
Appellees
IN THE
COURT OF SPECIAL APPEALS
OF
MARYLAND
No. 650
September Term, 1974

ORDER

The Motion of Baltimore County, Maryland, for Leave to Appear as Amicus Curiae in this Appeal is this _____ day of October, 1974, by the Court of Special Appeals of Maryland, granted, and it is ORDERED that the Movant shall file its brief herein as amicus curiae on or before the _____ day of _____, 1974.

CHIEF JUDGE

PAUL K. HAMPSHIRE, et ux
Appellants
vs.
QUENTON E. ERLANDSON, et al
Appellees
IN THE
COURT OF SPECIAL APPEALS
OF
MARYLAND
No. 650
September Term, 1974

ANSWER TO MOTION FOR LEAVE TO APPEAR AS AMICUS CURIAE

Paul K. Hampshire and Georgie L. Hampshire, Appellants, by George W. Baker, Jr., William F. Baker and Allen and Baker, their attorneys, in Answer to Motion for Leave To Appear As Amicus Curiae filed by John W. Hessian, III, Assistant County Solicitor, object thereto on the following grounds:

1. Zoning is purely a legislative function. Ed. of Co. Comm'rs. v. Edmonds 240 Md. 680 (1965). The Legislative Branch of the Baltimore County government is the County Council. Art. III, see 301 of the Baltimore County Charter. The County Board of Appeals whose decision was reversed by the Circuit Court for Baltimore County is the body of zoning experts for Baltimore County. Cf. Finney v. Hallie, 241 Md. 224, 241, (1966). It is appointed by the County Council of Baltimore County pursuant to Article VI, Section 601 of the Baltimore County Charter. (A copy is attached.) The Board of Appeals thus exercises quasi-judicial and legislative functions. Mayor and City Council of Baltimore v. Shapiro, 187 Md. 623, 627 (1946).
2. John W. Hessian, III, Assistant County Solicitor who has filed the motion for leave to appear as amicus curiae in this case, is in the Executive Branch of the Government of Baltimore County. Baltimore County Charter, Art. IV, Sections 401, 501, 507. (Copies are attached.)
3. The Baltimore County Solicitor is the legal advisor of Baltimore County and of its various offices, departments, boards,

commissions and other agencies, including the Board of Appeals. Baltimore County Charter, Sections 508, 605; Baltimore County Code, Art. II, Section 2-16. (Copies are attached.)

4. In paragraph 2 of his Motion, the Assistant County Solicitor suggests that the Board of Appeals has not maintained the highest standard as to height regulations. He is in effect setting up himself, a member of the Executive Branch of Baltimore County, as more qualified in such matters than the Board of Appeals which is the body of zoning experts appointed by the Legislative Branch of Baltimore County (The County Council).

5. It would be highly irregular for an Assistant County Solicitor who is charged under Sections 508 and 605 of the Baltimore County Charter and Section 2-16 of the Baltimore County Code with the duty of serving as counsel to the County Board of Appeals, to appear in a case as an amicus curiae for the purpose of opposing a decision of the agency for which he serves as counsel.

6. If the legislative body of Baltimore County is not satisfied with the interpretation placed by the Board of Appeals (Baltimore County's body of zoning experts) on the "Variances" Section of the Code, it can amend it.

7. It would do extreme damage to the attorney-client relationship, to the concept of confidential relationships, and to the public image of the courts and the profession of law if counsel for the Board of Appeals is now permitted to appear as amicus curiae to oppose a decision of his client.

8. In addition to the above reasons which the Appellants contend preclude an Assistant County Solicitor from appearing as amicus curiae for the purpose of opposing the decision of the Board of Appeals, the office of the County Solicitor has no authority to take an appeal on behalf of Baltimore County except upon the written order of the County Solicitor, approved by the County. Baltimore County Code, Art. II, Section 2-17. (A copy is attached.) [An appeal to the Court of Special Appeals of Maryland is not

specifically referred to in that section since that section was enacted prior to the creation of the Court of Special Appeals. It is apparent, however, that that section was intended to include any appeal to an Appellate Court since all Appellate Courts to which an appeal could then be taken from either the state or federal court were listed].

9. Although the aforesaid Motion was filed by the Assistant County Solicitor in the name of Baltimore County, it is clear from the record below, and in this Court, that he was and is acting on his own behalf.

10. Although the lower court allowed the Assistant County Solicitor to participate in the proceedings in the lower court for the purpose of opposing the decision of his client the Board of Appeals, the Appellants contend that the lower court acted erroneously in so allowing it.

AND AS IN DUTY BOUND, etc.

Geo. W. Baker, Jr.
George W. Baker, Jr.

William F. Baker
William F. Baker

Allen and Baker
Allen and Baker
Attorneys for Appellants
10 Charles Place - Suite 202
Baltimore, Maryland 21201
539-2846

I HEREBY CERTIFY, that on this _____ day of October, 1974, a copy of the foregoing Answer To Motion For Leave To Appear As Amicus Curiae was mailed to Richard C. Murray, Esquire, Cook, Mudd, Murray & Howard, 409 Washington Avenue, Towson, Maryland 21204 and to C. Eugene Schmidt, 401 Washington Avenue, Towson, Maryland 21204, Attorneys for the Appellees, and to John W. Hessian, III, Assistant County Solicitor, County Office Building, Towson, Maryland 21204.

George W. Baker, Jr.
George W. Baker, Jr.

PAUL K. HAMPSHIRE, et ux
Appellants
vs.
QUENTON E. ERLANDSON, et al
Appellees
IN THE
COURT OF SPECIAL APPEALS
OF
MARYLAND
No. 650
September Term, 1974

ORDER

The Motion of John W. Hessian, III, Assistant County Solicitor for Baltimore County, Maryland, for Leave to Appear as Amicus Curiae in this _____ day of October, 1974, by the Court of Special Appeals of Maryland, denied.

CHIEF JUDGE

§ 301 THE CHARTER § 302

- (b) Repealed by Bill No. 46, 1965.
- (c) Monthly legislative sessions. The county council shall also meet on the first Monday of each month for the purpose of enacting legislation, but if the said first Monday shall be a holiday the said session day shall be held on the next succeeding day which is not a holiday.
- (d) Meetings. The county council may also meet for the purpose of approving the county budget and performing other duties properly exercisable by the county council under the provisions of this Charter other than enacting legislation at such other times and at such places as the council may determine.
- (e) Emergency sessions. The county council may be called into emergency session for the purpose of enacting legislation either by the county executive or by any five councilmen, provided, however, that before any bill shall be passed as such an emergency session, it shall require the affirmative vote of five members of the county council.
- (f) Quorum. At all meetings of the county council, other than emergency sessions, four members thereof shall constitute a quorum for the transaction of business.
- (g) Rules of procedure. It shall be the duty of the county council to adopt rules of procedure. (Bill No. 93, 1962, sec. 1; Bill No. 46, 1965.)

Article III. The Legislative Branch.

Sec. 301. Composition.

The legislative branch of the county government shall be composed of the county council and the officers and employees thereof.

Sec. 302. Officers.

(a) Presiding officer. The county council at its first regular session in each calendar year shall elect from its membership a chairman who shall preside at all its meetings. In the

DIVISION 4. REORGANIZATION OF DEPARTMENTS UNDER STATE LAW.

Sec. 541. Furthering legislation.

If the General Assembly shall at any time transfer to the voters of the county or to the county council jurisdiction or control over the affairs of any of the departments of the county government in excess of the jurisdiction or control vested in the county government by law or by this Charter, then to the extent of such transfer, the county council may by legislative act provide for the reorganization of such departments and the administration of their affairs under county law.

Article VI. County Board of Appeals and Appeal Tax Court.

Sec. 601. County board of appeals; appointment; terms; compensation.

There is hereby created and established a county board of appeals consisting of three members who shall be appointed by the county council for three year terms, provided, however, that the first county board of appeals appointed pursuant hereto shall consist of one member appointed for a term of one year, one for a term of two years, and the third for a term of three years. Thereafter, all appointments or reappointments shall be for three year terms, except that an appointment to fill a vacancy occurring before the expiration of a term shall be for the remainder of the unexpired term. All members of the board shall be residents of Baltimore County, and appointments shall be made so that not more than two members of the board shall be members of the same political party. As compensation, each member of the board shall be paid at the rate of thirty-six hundred dollars (\$3600.00) per year, unless such compensation be changed as provided in section 608 of this article.

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council and to the county executive, and copies shall be made available to the public and the press no later than September 1, 1958, and every two years thereafter on the same day. All records of the county auditor and all records and files pertaining to the receipt and expenditure of county funds by all officers, agents and employees of the county and all offices, departments, institutions, boards, commissions and other agencies thereof shall be open to the inspection of the accountants conducting the biennial audit. The county council shall have the power to implement the provisions of this section by legislative act not inconsistent herewith, and to require such additional independent audits as it shall deem necessary.

Article IV. The Executive Branch.

Sec. 401. Composition.

The executive branch of the county government shall consist of the county executive, the county administrative officer, and all officers, agents and employees under their supervision and authority.

Sec. 402. County executive.

(a) *Nature and term of office; mode of election; qualifications; salary.* The county executive shall be the chief executive officer of the county and the official head of the county government. In such capacity, he shall be the elected executive officer mentioned in section 5 of article XIIA of the

"Since the county executive has the duty to supervise, direct and control the administrative services of the county, he must necessarily acquire appropriate office space and such other facilities as may be necessary from time to time properly to conduct the county's business, and this is an executive rather than a legislative function. *Horne v. Baltimore County et al.*, 232 Md. 371, 179 A.2d 778 (1962). This section cited in *Cohen v. Baltimore County*, 229 Md. 515, 185 A.2d 185 (1962) and in *Kane v. Baltimore County*, 221 Md. 446, 150 A.2d 810 (1962).

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(b) *Other officers.* Subject to the approval of the county executive, the county administrative officer shall, in the case of a vacancy or temporary absence, designate within thirty days a person to serve as acting head of any office or department in the administrative services until the appointment of a successor. Unless at the time of such appointment the temporary appointee is a subordinate officer in the office or department to which he is designated as acting head, he shall possess all the qualifications for the office specified in article V of this Charter for an original appointee.

(c) *Limitation on term of temporary appointees.* No person shall serve as an acting county administrative officer or acting head of any office or department for a period longer than sixty days without the approval of the county council. (Bill No. 95, 1962, sec. 1.)

Article V. The Administrative Services.

DIVISION 1. OUTLINE OF ORGANIZATION.

Sec. 501. General supervision.

Except as otherwise provided herein or in the public general laws of this state, the administrative services of the county shall be subject to the supervision and control of the county administrative officer, who shall be responsible solely to the county executive for their efficient operation and management.

Sec. 502. Composition; restrictions on creation of additional offices and departments.

The administrative services shall consist of the offices and departments hereinafter enumerated and described. Except as otherwise herein expressly provided, no additional offices or departments shall be created except by amendment to this Charter. Existing or additional duties and functions may,

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than the county solicitor. The county solicitor shall also be the legal adviser and legislative draftsman for the county council; he shall be responsible for the maintenance of the journal of the county council. He shall, upon request, give advice and opinions upon any legal questions affecting the interests of the county when the same are submitted to him. (1) By resolution of the county council, (2) by written request of the county executive or the county administrative officer, or (3) with the approval of the county administrative officer, or (4) with the approval of the head of any office or department, by written request of the head of any office or department in the administrative services. All deeds, bonds, contracts, releases and other legal papers and instruments in which the interests of the county shall, before their execution or delivery, be submitted to the county solicitor and shall be approved by him in writing as to their form and legal sufficiency. The county solicitor shall have such additional duties as may from time to time be provided by law.

Sec. 509. Assistants to county solicitor.

The county solicitor, with the approval of the county executive, may appoint such assistants to serve as members of his legal staff as may be necessary for the proper conduct of the public business of his office, subject, however, to such limitations as to number, term and compensation as may be provided from time to time by this Charter or by law.

Sec. 510. Temporary additional legal assistance.

Nothing in this article contained shall be construed as preventing the county executive, with the approval of the county council, from engaging the services for a temporary period of any attorney or attorneys for legal work of an extraordinary nature when the work to be done is of such character or magnitude as to require legal services in addition to those provided by the regular staff of the office of law. By resolution which shall not be subject to the executive veto, the county council may, by the affirmative vote of not less than five mem-

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agreed thereby may appeal such decision to the circuit court of Baltimore County, which shall have power to affirm the decision of the board, or, if such decision is not in accordance with law, to modify or reverse such decision, with or without remanding the case for rehearing, as justice may require. Whenever such appeal is taken, a copy of the notice of appeal shall be served on the board by the clerk of said court, and the board shall promptly give notice of the appeal to all parties to the proceeding before it. The board shall, within fifteen days after the filing of the appeal, file with the court the originals or certified copies of all papers and evidence presented to the board in the proceeding before it, together with a copy of its opinion which shall include a statement of the facts found and the grounds for its decision. Within thirty days after the decision of the circuit court is rendered, any party to the proceeding who is aggrieved thereby may appeal such decision to the court of appeals of this state. The review proceedings provided by this section shall be exclusive.

Sec. 605. Employees of the board.

The board may appoint such employees, and the county executive shall make available to the board such services and facilities of the county as are necessary or appropriate for the proper performance of its duties. The county solicitor or some member of his legal staff designated by him shall serve as counsel to the board.

Sec. 606. Furthering legislation.

The county council shall have the power to enact furthering legislation not inconsistent with the provisions of this article to implement and define the powers and functions of the county board of appeals as herein specified. The county council may by legislative act increase the compensation of the members of the county board of appeals provided in section 601 of this article and thereafter decrease such com-

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this section shall be continued to require the county executive to furnish a copy of any such books, accounts or papers unless the copy is to be certified and unless the prescribed fees have been paid in advance. (Bill No. 63, 1954.)

Sec. 2-14. Salary of liquor inspectors.

The liquor inspectors of the county shall receive an annual salary of two thousand seven hundred dollars, amounting from June 1, 1959. (Baltimore Co. Code, 1955, sec. 46, 1954, ch. 120. Bill No. 123, 1959.)

Sec. 2-15. Compensation of deputy medical examiners.

Each deputy medical examiner of the county shall receive as compensation thirty-five dollars for each death he investigates in accordance with the provisions of section 3 of article 22 of the Annotated Code of Maryland, 1957. (Bill No. 119, 1954.)

Article II. County Solicitor.

Sec. 2-16. Powers and duties generally.

The county solicitor shall be the legal adviser of the county and on its several departments and agencies, including the board of license commissioners, the office of the county treasurer, the county board of education, the board of zoning, the county welfare board, and all other departments, commissions, boards and agencies, having general supervisory and direction of the legal business thereof. No such decision and direction of the legal business of the county shall have any authority or power to employ or retain any legal counsel other than the county solicitor. He shall upon request give advice and opinions upon any legal questions affecting the

"For Charter provisions as to the county solicitor, see Char., § 507 et seq.

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administrative services of the county shall hold such terms and receive such compensation as may from time to time be provided by this Charter or by law.

Sec. 506. Staff and clerical personnel.

With the approval of the county administrative officer and subject to the merit system provisions of the county personnel law and the applicable provisions of public general law, the head of each office and department shall have the power to employ such staff and clerical personnel as may be necessary to carry out the duties and functions of his office or department. If such employment shall be undertaken if the cost thereof exceeds the available appropriation or allotment therefor.

DIVISION 2. OFFICES OF THE ADMINISTRATIVE SERVICES

Subdivision 1. The Office of Law.

Sec. 507. The county solicitor generally.

The office of law shall be administered by the county solicitor. He shall be a resident of the county and a member in good standing of the Bar of the Court of Appeals of Maryland and of the Circuit Court for Baltimore County. He shall have been actively engaged in the general practice of his profession in this state for at least five years prior to his appointment.

Sec. 508. Powers and duties of the county solicitor.

The county solicitor shall be the legal adviser of the county and of its several offices, departments, boards, commissions and other agencies. Except as provided in section 510 of this article, no office, department, board, commission or other agency or branch of the county government shall have any authority or power to employ or retain any legal counsel other

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interests of the county, when the same are submitted to him by any county officer or the head of any county department, office, commission, board or agency. All deeds, bonds, contracts, releases and other legal papers and instruments involving the interests of the county or to be executed and approved by any officer of the county, shall be submitted to the county solicitor before they are approved or executed, and approved by him as to their sufficiency and compliance with laws and conditions under which executed. (Baltimore Co. Code, 1955, ch. 111; 1954, sec. 2-6, 1951, ch. 23, sec. 1873.)

Sec. 2-17. Seals, etc.

The county solicitor shall have sole charge and direction of the preparation and trial of all suits, actions and legal proceedings of every kind to which the county or any department, officer, commission, board or agency thereof is a party. He shall have authority to institute, defend or discontinue on behalf of the county, any suit, action or legal proceedings in any local state or federal court or before any administrative agency thereof; provided, however, that no appeals on behalf of the county shall be taken to the Court of Appeals of Maryland, to the United States Circuit Court of Appeals, or to the Supreme Court of the United States, except upon the written order of the county solicitor, approved by the county. (Baltimore Co. Code, 1955, sec. 212; 1953, sec. 2-4, 1951, ch. 23, sec. 1850.)

Article III. State's Attorney.

Sec. 2-18. Accounts.

It shall be the duty of the state's attorney of the county, in making up his accounts against the county for all such

"For state law as to salaries of state's attorney and his staff, see Ann. Code of Md., 1957, art. 12. As to courts, fees, implementation and enforcement, see Tit. 7 of this Code.

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UNREPORTED

IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 650
September Term, 1974

PAUL K. HAMPSHIRE et ux.

v.

QUENTON E. ERLANDSON et al.

Thompson,
Davidson,
Moore, JJ.

Per Curiam

Filed July 18, 1975

On 25 January 1974 in the Circuit Court for Baltimore County Judge H. Kemp MacDaniel entered an order reversing a decision of the County Board of Appeals for Baltimore County (Board) which had granted a petition for a height variance to permit the erection of a structure 133 feet in height on 4.7 ± acres of land, located in Towson, Maryland, and classified in the D.R.-5.5 zone (Density Residential, 5.5 dwelling units per acre, maximum height 50 feet). The variance granted by the Board would have permitted the construction of a high-rise elevator condominium apartment building containing, in conformity with the density limits of the D.R.-5.5 zone, approximately 25 dwelling units. The height of the proposed building, however, would be nearly triple that allowed in the D.R.-5.5 zone.

On appeal the appellants (owners) principally contend that the Circuit Court erred in reversing the order of the Board because there was "fairly debatable" evidence to show that strict compliance with the zoning regulations for Baltimore County would result in practical difficulty or unreasonable hardship; that the variance could be granted without substantial injury to the public health, safety and general welfare; and that the variance was in strict harmony with the spirit and intent of the height regulations. See Baltimore County Zoning Regulations (Interim ed. 1971) § 307. The owners conclude that the action of the Board was not arbitrary, capricious or unreasonable and should have

D.R. 16 classification (apartments) under the old regulations prior to the passage of Bill No. 100 (effective March 24, 1971). With the adoption of the new zoning maps by the Baltimore County Council, the property was classified as D.R. 5.5, causing that application to become moot. The petition for variance, now on appeal, originally requested variances for two structures of 150 feet each. At the hearing before the Board, the petition was amended so that only one building of 150 feet in height was involved.

This appeal was filed with the Court on March 1, 1974. A hearing was held May 10, 1974 by the Court at which time counsel for all concerned parties presented oral argument. Counsel have also submitted written memorandums which have been thoroughly reviewed by the Court. Having reviewed the transcript, memorandums, and the law, the Court is now ready to make its decision.

The subject property is located on the south side of Chesapeake Avenue, approximately 620 feet west of Dixie Drive in the 9th District of Baltimore County. Although located in the area of the Towson Core Center, a sector center on the Guide Plan Maps (zoning maps of Baltimore County), it is over 2000 feet away and not in visual contact. The total area of the wooded and hilly property is 4.7 acres, with a stream running along the northernmost boundary (Chesapeake Avenue). An old large frame dwelling, although in disrepair, improves the property. Across Chesapeake Avenue the Towson Branch of the Young Men Christian Association (YMCA) operates a community building, under a special exception, on a large tract of land. Around the YMCA there are homes constituting the Burnbrae development. The southern portion of the property abuts the

use in the D.R.-5.5 zone was ambiguous and unclear in that it failed to state expressly whether elevator apartments, listed as permitted uses in the R.A.E.-1 and -2 zones, were also permitted uses in the D.R. zones. In order to resolve that ambiguity and ascertain the true legislative intent, Fairchild Industries v. Maritime Air Service, Ltd., 274 Md. 181, 185 (1975); Truitt v. Board of Public Works, 243 Md. 375, 394 (1966); Kimbrough v. Giant Food, Inc., ___ Md.App. ___, ___ (No. 570, September Term, 1974, filed 5 June 1975), the trial court relied upon the "Final Report of the Baltimore County Planning Board" dated 4 September 1969. This report, because it is a required predicate to the enactment of a comprehensive zoning plan in Baltimore County, Baltimore County Code (1968, 1972 Cum.Supp.) § 22-21, is an integral part of the zoning process which, in the absence of any evidence to show that the County Council of Baltimore County (Council) did not act in accordance with its recommendations, may properly be considered in determining legislative intent. Allers v. Tittsworth, 269 Md. (177, 683 (1973); Truitt, supra, at 243 Md. 389-90; Public Service Commission v. Sun Cab Co., 160 Md. 476, 481 (1931). Recognizing that a zoning ordinance should be read as a whole, Kenyon v. Board of Zoning Appeals of Hartford County, 235 Md. 388, 394 (1964), the court construed the intent of the Council in establishing the height restrictions in the D.R. zones as being such as to exclude moderate and high density elevator apartment buildings from

rear yards of homes in the Southland Hills Development, which face Alabama Road. The Masonic Temple adjoins the property along part of its east boundary. Except for the YMCA and Masonic Temple, the property is located in extensive D.R. 5.5 and D.R. 3.5 zones.

The only matter before the County Board of Appeals was whether or not the Petitioners should be granted a height variance to allow them to build one structure of a height greater than the allowed 50 feet in D.R. 5.5 zoning, rather than have an allowable density spread over the entire tract. All parties argue that the 4.7 acres under D.R. 5.5 zoning allows for the construction of approximately 25-26 residential units, which can either be individual residences, garden apartments, townhouses, condominium units, or any other type of residential use, by virtue of Bill No. 100.

In its Order the Board stated that Petitioners' burden was "to show practical difficulty or unreasonable handicap, as well as lack of any detriment to the health, safety and general welfare of the community." The burden placed upon Petitioners is heavier and more demanding than that just stated. Variances are permitted by virtue of Section 307 of the Baltimore County Zoning Regulations which states in part:

Section 307 - VARIANCES

"The Zoning Commissioner of Baltimore County and the County Board of Appeals upon appeals, shall have and they are hereby given the power to grant variances from height and area regulations, from off-street parking regulations and from sign regulations, only in cases where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. No increase in residential density beyond that otherwise allowable by the Zoning Regulations shall be permitted as a result of any such grant of a variance from height or area

buildings in D.R. zones and to confine construction of such structures to R.A.E.-1 and -2 zones. We are equally persuaded that the grant of the requested variance, which would have resulted in the construction of a high-rise elevator building in a D.R. zone of a height far in excess of that permitted even in a R.A.E.-1 zone in Baltimore County, is not, and cannot be, in harmony with the spirit and intent of these height regulations. Under these circumstances there is no purpose in remanding the case to the Board for the presentation of additional evidence with respect to this item.

The owners' remaining contentions, that the lower court erred in allowing an assistant county solicitor to participate in the proceedings before the lower court and that the D.R. zoning regulations, as construed by the lower court, do not bear a substantial relation to the public health, safety or general welfare, were not raised below, nor sufficiently preserved for review, and are, therefore, not properly before us. Sordenes v. Aetna Life Insurance Co., 21 Md. App. 453, 464 (1974); Gordon v. Contractors Transport Corp., 18 Md.App. 284, 290-91 (1973); Maryland Rule 1085.

ORDER AFFIRMED. COSTS TO BE PAID BY APPELLANTS.

"regulations. Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area, off-street parking or sign regulations, and only in such manner as to grant relief without substantial injury to public health, safety, and general welfare. x x x" (Emphasis added.)

Reading the statute points out that the Board understated the burden placed on Petitioners by failing to include that the variance must be in "strict harmony with the spirit and intent of said height x x x regulations." Inasmuch as the variance was granted, it stands to reason that the Board found that Petitioners met the burden placed upon them by the Board. The problem arises in deciding whether this was accomplished along with the possible inadvertent proving of strict compliance with the spirit and intent of the height regulations, although evidently not required by the Board, but by the law.

The law is well settled that if the issues involved are fairly debatable and the facts are sufficient to support the Board's decision, it must be upheld. Sembly v. County Board of Appeals, 269 Md. 177 (1973); Gerachis v. Montgomery County Board of Appeals, 261 Md. 153, 156, 274 A2d 379 (1971); Haldeman v. Board of County Commissioners, 253 Md. 298 (1969). "Fairly debatable issue." (a Maryland zoning case phrase) has been defined as "whether its determination is based upon evidence from which reasonable persons could come to different conclusions." Sembly, supra, 181. Therefore, this Court will not substitute its judgment for that of the administrative body, in this instance the County Board of Appeals, where the issues are fairly debatable, unless the decision of that body can be shown to be arbitrary, capricious or illegal. Sembly, supra, 181; Board v. Oak Hill Farms, 232 Md. 274. This Court has no power

to resolve the conflicts in the evidence presented to the Board if there was, in fact, any evidence of a substantial nature supporting and justifying the Board's actions.

On the issue of "practical difficulty or unreasonable hardship", the record is replete with evidence of various nature brought forth by Petitioners and Protestants to support each view. This is a classic example of a "fairly debatable issue." And with this determination, the Court has no alternative but to uphold the Board's decision, there being sufficient evidence to allow to find as they did. This reasoning holds true also on the issue of whether the variance would be detrimental to the health, safety and general welfare of the community.

The real issue of this case, though, is whether Petitioners produced evidence to show that the variance would be in strict harmony with the spirit and intent of the height regulations, and/or whether the Board was illegal in its actions in not requiring that such evidence be produced. The Court need not go into a lengthy discussion of the law concerning the application of the language of the statute involved. Suffice it to say that the zoning laws are to be strictly applied and are not to be carried out in a manner other than that provided. The Board is required by the law to determine whether the variance petitioned for would be in strict harmony with the spirit and intent of the height regulations of the Zoning Regulations for Baltimore County, and to determine findings of fact setting forth and specifying the reason or reasons for allowing the variance. Section 307, Baltimore County Zoning Regulations. It is evident from the record and the Order of the Board that the Board has not complied with this mandatory

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The County Council passed Bill No. 100 August 3, 1970, creating D.R. and R.A.E. zoning classifications, indicating clearly that the warnings given by the Planning Board were heeded.

No testimony was presented by Petitioners on the issue of whether the variance would be in harmony with the spirit and intent of the height regulations of D.R. zoning. They have failed in their burden of proof in this respect. Furthermore, for the reasons stated above, it is inconceivable that such evidence could be produced in this instance. The only evidence produced on the issue was from Protestants by the testimony of Mr. Norman E. Gerber (Chief of the Community Planning Division of the Office of Planning and Zoning), and Mr. Frederick P. Klaus, who both testified basically that the desired variance would not be in harmony with the spirit and intent of height regulations. On this issue then, the Court is presented with a record devoid of affirmative evidence in support of Petitioners' burden, the only evidence being of a negative nature. This is not a "fairly debatable issue" with supporting evidence for the Board's decision. Petitioners have failed to meet fully the requirements and burden placed upon them by Section 307. And, the Board has acted arbitrary, capricious and illegal in granting the height variance there being no evidence to support a determination that the variance would be in strict harmony with the spirit and intent of the height regulations, nor did they set forth findings of fact with reasons on this issue.

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requirement, there being no mention of facts concerning the harmonizing of the height variance with the spirit and intent of the regulations. In this respect, the Board has acted illegally.

Even if the Board had acted legally, can a variance of 133 feet in lieu of the 50 feet height requirement be allowed in a D.R. 5.5 zone. Section 1802.2 sets forth that the maximum height of buildings in D.R. 5.5 zones is to be 50 feet, with the highest possible building height in a D.R. zone being 60 feet (D.12.16). Under the D.R. zoning, the total area zoned one classification multiplied by the density residential unit per acre rating of that classification equals the number of units that may be constructed on that particular tract of land. In this instance, the parties agree that Petitioners may build 26-26 residential units on the 4.7 acres zoned D.R. 5.5 (e.g. 4.7 x 5.5 = 25.86 units). These units may be placed on a portion of the land or spread out over it, so long as they conform with the entire Zoning Regulations. Petitioners' proposal of the high-rise apartment building places all the units in one constituting approximately 12% of the land area, and thus, the need for the height variance over 50 feet.

R.A.E. zoning classifications refer to elevator-apartment residence zones. Section 200.1 sets out the legislative policy of R.A.E. 1 classification by stating:

"R.A.E. 1 zones provide for development of elevator-apartment buildings at moderate density. These zones may be situated only near adequate community or town-center commercial facilities." (Emphasis added.)

Subsection B goes on to indicate that any R.A.E. 1 zone must be entirely located 1000 feet of a C.C.C. district

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For the above reasons, it is this 25th day of July, 1974, by the Circuit Court for Baltimore County, ORDERED that the Order of the County Board of Appeals of Baltimore County dated February 28, 1974, be and the same is hereby REVERSED.

H. Kemp MacDaniel
H. KEMP MACDANIEL
JUDGE

HW:acd:mno
cc: Richard C. Murray, Esq.
G. Mitchell Austin, Esq.
John W. Hession, III, Esq.
County Board of Appeals of Baltimore County

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(commercial, community core), or within a town center. The closest town center or C.C.C. district to the involved property is the Towson core, which as already stated, is over 2000 feet away, making the property well outside the permitted area for R.A.E. 1 zoning. The maximum height regulation for buildings in R.A.E. 1 zoning is 85 feet above the average grade level of the street line or the building foundation line, whichever is higher.

The only other classification in which elevator-apartment buildings are specifically allowed is R.A.E. 2 zones. This zoning provides for development of elevator-apartment buildings at relatively high density in residential settings close to the major commercial and cultural centers of the county where ample utilities and other public facilities are available. Section 201.18 limits the location of R.A.E. 2 zones to town centers. The maximum height of a building in such a zone is not set out in exact feet measurements but is 1 1/2 times the maximum height that would be permitted by application of the height regulations for D.L. zones.

Looking at the variance granted by the Board it is apparent that they and Petitioners contemplated an elevator-apartment building, or "tower." This is clearly the type of building anticipated for R.A.E. zones. The height variance granted, though, goes above the maximum standards allowed in these zones, while exceeding the maximum height for D.R. 5.5 by 83 feet, nearly triple that allowed. It is the opinion of this Court that the zoning regulations, as established by Bill No. 100, were never intended to be applied in such a manner as to allow an elevator-apartment building in a D.R. 5.5 zone. Although Section 1801.1A states that "other apartment

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PETITION FOR VARIANCE	IN THE
SOUTH SIDE OF CHESAPEAKE AVENUE	CIRCUIT COURT
620 East West of Dixie Drive	
9th District-PAUL K. HAMPSHIRE	FOR
PETITIONERS NO. 73-77-A	BALTIMORE COUNTY
PAUL K. HAMPSHIRE and	
GEORGIE L. HAMPSHIRE	MISCELLANEOUS DOCKET: 9
Petitioners and Applicants	
MR. & MRS. QUENTON E. ERLANDSON	FOLIO: 391
DR. & MRS. LOREN D. JENSEN	CASE: 5228
MR. AND MRS. C. EUGENE SCHMIDT	
MR. & MRS. JOSEPH P. DAVIS	ZONING FILE NO. 73-77-A
Protestants	
BALTIMORE COUNTY, MARYLAND	

MEMORANDUM OPINION AND ORDER

The cry of "arbitrary, capricious and illegal, and against the weight of the evidence" has once again resounded upon the halls of justice, the origin of its generation not unfamiliar. Protestants vehemently adhere to the calling without thought of compromise, while Petitioners advance the argument that the generating force is without error. The scales having been adequately supplied with the merits, it is this Court's responsibility to determine the weight of each proposition.

This appeal is brought to this Court by the Protestants from an Order, dated February 8, 1974, of the County Board of Appeals for Baltimore County. Petitioners, Mr. and Mrs. Paul K. Hampshire, were granted by the Order a height variance of one hundred thirty-three (133) feet instead of the required maximum fifty (50) feet, for a building in D.R. 5.5 zoning under the Baltimore County Zoning Regulations. The involved property was the subject of a prior zoning application requesting

buildings" are permitted as of right in D.R. zones of all classifications, the fact that R.A.E. zones were specifically established for elevator-apartment buildings indicates that they were not intended to be allowed in D.R. zones. This is further indicated by the locations established for R.A.E. zones which are in or near town centers and not majority residential areas.

It is conceded that the intent of the legislature in passing statutes is not always readily determinable; but, in this instance, the intent of the County Council in adopting parts of Bill No. 100 on the matter of "density-residential" zoning is determinable from the "Final Report of the Baltimore County Planning Board," to the County Council, dated September 4, 1969, where it is stated:

"The Planning Board recognized that a clear-cut conversion to 'density' zoning in its present form would present two problems. One would be the possibility that new, diversified housing development might not be compatible with present nearby development or subdivision lots in separate ownership. And the other would be the inappropriate development pattern that might result from allowing high-rise apartment buildings at intermediate density levels. So the Board does propose continuation of some limitations on development styles."

"These recommendations for future residential developments are, in general: 1) that where new buildings and lots are to be within 300 or 400 feet of existing buildings or vacant lots already subdivided for development, the types of the new dwellings and sizes of the new lots should be made compatible--according to a table established for the purpose--with the buildings and subdivision lots already constructed or laid out; and 2) that no dwellings be built more than 50 or 60 feet high."

"But the latter restriction does not mean that high-rise apartment buildings would not be permitted in Baltimore County. On the contrary, they would be encouraged in suitable locations and under appropriate controls, both in larger unit developments and in the high-density residential zones established especially for them." (Emphasis added.)

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D.R. 16 classification (apartments) under the old regulations prior to the passage of Bill No. 100 (effective March 24, 1971). With the adoption of the new zoning maps by the Baltimore County Council, the property was classified as D.R. 5.5, causing that application to become moot. The petition for variance, now on appeal, originally requested variances for two structures of 150 feet each. At the hearing before the Board, the petition was amended so that only one building of 150 feet in height was involved.

This appeal was filed with the Court on March 1, 1974. A hearing was held May 10, 1974 by the Court at which time counsel for all concerned parties presented oral argument. Counsel have also submitted written memorandums which have been thoroughly reviewed by the Court. Having reviewed the transcript, memorandums, and the law, the Court is now ready to make its decision.

The subject property is located on the south side of Chesapeake Avenue, approximately 620 feet west of Dixie Drive, in the 9th District of Baltimore County. Although located in the area of the Towson Core Center, a sector center on the Guide Plan Maps (zoning maps of Baltimore County), it is over 2000 feet away and not in visual contact. The total area of the wooded and hilly property is 4.7 acres, with a stream running along the northernmost boundary (Chesapeake Avenue). An old large frame dwelling, although in disrepair, improves the property. Across Chesapeake Avenue the Towson Branch of the Young Men Christian Association (YMCA) operates a community building, under a special exception, on a large tract of land. Around the YMCA there are homes constituting the Burnbrae development. The southern portion of the property abuts the

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*Rec'd 8-6-74
11 AM*

rear yards of homes in the Southland Hills Development, which face Alabama Road. The Masonic Temple adjoins the property along part of its east boundary. Except for the YMCA and Masonic Temple, the property is located in extensive D.R. 5.5 and D.R. 3.5 zones.

The only matter before the County Board of Appeals was whether or not the Petitioners should be granted a height variance to allow them to build one structure of a height greater than the allowed 50 feet in D.R. 5.5 zoning, rather than have an allowable density spread over the entire tract. All parties argue that the 4.7 acres under D.R. 5.5 zoning allows for the construction of approximately 25-26 residential units, which can either be individual residences, garden apartments, townhouses, condominium units, or any other type of residential use, by virtue of Bill No. 100.

In its Order the Board stated that Petitioners' burden was "to show practical difficulty or unreasonable handicap, as well as lack of any detriment to the health, safety and general welfare of the community." The burden placed upon Petitioners is heavier and more demanding than that just stated. Variances are permitted by virtue of Section 307 of the Baltimore County Zoning Regulations which states in part:

"Section 307 - VARIANCES

"The Zoning Commissioner of Baltimore County and the County Board of Appeals upon appeals, shall have and they are hereby given the power to grant variances from height and area regulations, from off-street parking regulations and from sign regulations, only in cases where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. No increase in residential density beyond that otherwise allowable by the Zoning Regulations shall be permitted as a result of any such grant of a variance from height or area

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(commercial, community core), or within a town center. The closest town center or C.C.C. district to the involved property is the Towson core, which as already stated, is over 2000 feet away, making the property well outside the permitted area for R.A.E. 1 zoning. The maximum height regulation for buildings in R.A.E. 1 zoning is 85 feet above the average grade level of the street line or the building foundation line, whichever is higher.

The only other classification in which elevator-apartment buildings are specifically allowed is R.A.E. 2 zones. This zoning provides for development of elevator-apartment buildings at relatively high density in residential settings close to the major commercial and cultural centers of the county where ample utilities and other public facilities are available. Section 201.1B limits the location of R.A.E. 2 zones to town centers. The maximum height of a building in such a zone is not set out in exact feet measurements but is 1 1/2 times the maximum height that would be permitted by application of the height regulations for B.L. zones.

Looking at the variance granted by the Board it is apparent that they and Petitioners contemplated an elevator-apartment building, or "tower." This is clearly the type of building anticipated for R.A.E. zones. The height variance granted, though, goes above the maximum standards allowed in these zones, while exceeding the maximum height for D.R. 5.5 by 83 feet, nearly triple that allowed. It is the opinion of this Court that the zoning regulations, as established by Bill No. 100, were never intended to be applied in such a manner as to allow an elevator-apartment building in a D.R. 5.5 zone. Although Section 1B01.1A states that "other apartment

"regulations. Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area, off-street parking or sign regulations, and only in such manner as to grant relief without substantial injury to public health, safety, and general welfare. x x x" (Emphasis added.)

Reading the statute points out that the Board understated the burden placed on Petitioners by failing to include that the variance must be in "strict harmony with the spirit and intent of said height x x x regulations." Inasmuch as the variance was granted, it stands to reason that the Board found that Petitioners met the burden placed upon them by the Board. The problem arises in deciding whether this was accomplished along with the possible inadvertent proving of strict compliance with the spirit and intent of the height regulations, although evidently not required by the Board, but by the law.

The law is well settled that if the issues involved are fairly debatable and the facts are sufficient to support the Board's decision, it must be upheld. Seably v. County Board of Appeals, 269 Md. 177 (1973); Gerachis v. Montgomery County Board of Appeals, 261 Md. 153, 156, 274 A2d 379 (1971); Haldeman v. Board of County Commissioners, 253 Md. 298 (1969). "Fairly debatable issue." (In Maryland zoning case phrase) has been defined as "whether its determination is based upon evidence from which reasonable persons could come to different conclusions." Seably, supra, 182. Therefore, this Court will not substitute its judgment for that of the administrative body, in this instance the County Board of Appeals, where the issues are fairly debatable, unless the decision of that body can be shown to be arbitrary, capricious or illegal. Seably, supra, 182; Board v. Oak Hill Farms, 232 Md. 274. This Court has no power

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buildings" are permitted as of right in D.R. zones of all classifications, the fact that R.A.E. zones were specifically established for elevator-apartment buildings indicates that they were not intended to be allowed in D.R. zones. This is further indicated by the locations established for R.A.E. zones which are in or near town centers and not majority residential areas.

It is conceded that the intent of the Legislature in passing statutes is not always readily determinable; but, in this instance, the intent of the County Council in adopting parts of Bill No. 100 on the matter of "Density-Residential" zoning is determinable from the "Final Report of the Baltimore County Planning Board," to the County Council, dated September 4, 1969, where it is stated:

"The Planning Board recognizes that a clear-cut conversion to 'density' zoning in its purest form would present two problems. One would be the possibility that new, diversified housing development might not be compatible with present nearby development or subdivision lots in separate ownership. And the other would be the inappropriate development pattern that might result from allowing high-rise apartment buildings at intermediate density levels. So the Board does propose continuation of some limitations on development styles.

"These recommendations for future residential developments are, in general: 1) that where new buildings and lots are to be within 300 or 400 feet of existing buildings or vacant lots already subdivided for development, the types of the new dwellings and sizes of the new lots should be made compatible--according to a table established for the purpose--with the buildings and subdivision lots already constructed or laid out; and 2) that no dwellings be built more than 50 or 60 feet high.

"But the latter restriction does not mean that high-rise apartment buildings would not be permitted in Baltimore County. On the contrary, they would be encouraged in suitable locations and under appropriate controls, both in larger unit developments and in the high-density residential zones established especially for them." (Emphasis added.)

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to resolve the conflicts in the evidence presented to the Board if there was, in fact, any evidence of a substantial nature supporting and justifying the Board's actions.

On the issue of "practical difficulty or unreasonable hardship", the record is replete with evidence of various nature brought forth by Petitioners and Protestants to support each view. This is a classic example of a "fairly debatable issue." And with this determination, the Court has no alternative but to uphold the Board's decision, there being sufficient evidence to allow to find as they did. This reasoning holds true also on the issue of whether the variance would be detrimental to the health, safety and general welfare of the community.

The real issue of this case, though, is whether Petitioners produced evidence to show that the variance would be in strict harmony with the spirit and intent of the height regulations, and/or whether the Board was illegal in its actions in not requiring that such evidence be produced. The Court need not go into a lengthy discussion of the law concerning the application of the language of the statute involved. Suffice it to say that the zoning laws are to be strictly applied and are not to be carried out in a manner other than that provided. The Board is required by the law to determine whether the variance petitioned for would be in strict harmony with the spirit and intent of the height regulations of the Zoning Regulations for Baltimore County, and to determine findings of fact setting forth and specifying the reason or reasons for allowing the variance. Section 307, Baltimore County Zoning Regulations. It is evident from the record and the Order of the Board that the Board has not complied with this mandatory

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The County Council passed Bill No. 100 August 3, 1970, creating D.R. and R.A.E. zoning classifications, indicating clearly that the warnings given by the Planning Board were heeded.

No testimony was presented by Petitioners on the issue of whether the variance would be in harmony with the spirit and intent of the height regulations of D.R. zoning. They have failed in their burden of proof in this respect. Furthermore, for the reasons stated above, it is inconceivable that such evidence could be produced in this instance. The only evidence produced on the issue was from Protestants by the testimony of Mr. Norman E. Gerber (Chief of the Community Planning Division of the Office of Planning and Zoning), and Mr. Frederick P. Klaus, who both testified basically that the desired variance would not be in harmony with the spirit and intent of height regulations. On this issue then, the Court is presented with a record devoid of affirmative evidence in support of Petitioners' burden, the only evidence being of a negative nature. This is not a "fairly debatable issue" with supporting evidence for the Board's decision. Petitioners have failed to meet fully the requirements and burden placed upon them by Section 307. And, the Board has acted arbitrary, capricious and illegal in granting the height variance there being no evidence to support a determination that the variance would be in strict harmony with the spirit and intent of the height regulations, nor did they set forth findings of fact with reasons on this issue.

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requirement, there being no mention of facts concerning the harmonizing of the height variance with the spirit and intent of the regulations. In this respect, the Board has acted illegally.

Even if the Board had acted legally, can a variance of 133 feet in lieu of the 50 feet height requirement be allowed in a D.R. 5.5 zone. Section 1B02.2 sets forth that the maximum height of buildings in D.R. 5.5 zones is to be 50 feet, with the highest possible building height in a D.R. zone being 60 feet (D.12.16). Under the D.R. zoning, the total area zoned one classification multiplied by the density residential unit per acre rating of that classification equals the number of units that may be constructed on that particular tract of land. In this instance, the parties agree that Petitioners may build 25-26 residential units on the 4.7 acres zoned D.R. 5.5 (e.g. 4.7 x 5.5 = 25.86 units). These units may be placed on a portion of the land or spread out over it, so long as they conform with the entire Zoning Regulations. Petitioners' proposal of the high-rise apartment building places all the units in one constituting approximately 12% of the land area, and thus, the need for the height variance over 50 feet.

R.A.E. zoning classifications refer to elevator-apartment residence zones. Section 200.1 sets out the legislative policy of R.A.E. 1 classification by stating:

"x x x R.A.E.1 zones provide for development of elevator-apartment buildings at moderate density. These zones may be situated only near adequate community or town-center commercial facilities." (Emphasis added.)

Subsection B goes on to indicate that any R.A.E. 1 zone must be entirely located 1000 feet of a C.C.C. district

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For the above reasons, it is this 25th day of July, 1974, by the Circuit Court for Baltimore County, ORDERED that the Order of the County Board of Appeals of Baltimore County dated February 28, 1974, be and the same is hereby REVERSED.

H. Kent MacDaniel
H. KENT MACDANIEL
JUDGE

EDMAC:mo
cc: Richard C. Murray, Esq.
G. Mitchell Austin, Esq.
John W. Hessian, III, Esq.
County Board of Appeals of Baltimore County ✓

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BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. S. Eric DiNenna, Zoning Commissioner Date: October 3, 1972

FROM: Norman E. Gerber, Office of Planning

SUBJECT: Petition #73-77-A, Southeast side of Chesapeake Avenue 620 feet West of Dixie Drive.
Petition for Variance for Height.
Paul K. Hampshire & Georgie L. Hampshire - Petitioners

9th District

HEARING: Tuesday, October 3, 1972 (10:00 A.M.)

The Office of Planning and Zoning has reviewed the subject petition and has the following comments to offer:

This requested variance to the height regulations in a D.R. 5.5 zone is completely inconsistent with the Master Plan for this area. The Guideplan states that high rise apartment buildings should be limited to commercial cores, town centers and community centers. This property is approximately 2000 feet from and not in visual contact with the Towson Town Center.

The revised plan does not indicate the need for a variance to the residential buffer zone and the petition should be revised to reflect this.



NEG:cm

THE TOWSON TIMES

TOWSON, MD. 21204 September 18 - 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 consecutive weeks before the 18 day of September 1972; that is to say, the same was inserted in the issue of September 14, 1972.

STROMBERG PUBLICATIONS, Inc.

By: Ruth Morgan

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

No. 5043

DATE Oct. 2, 1972 ACCOUNT 01-662

AMOUNT \$66.50

WHITE - CASHIER DISTRIBUTION
PINK - AGENCY YELLOW - CUSTOMER

Paul K. Hampshire
330 W. 24th St.
Baltimore, Md. 21211
Advertising and posting of property
#73-77-A

65.50

CERTIFICATE OF PUBLICATION

TOWSON, MD. September 14, 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~~ ^{one} time before the 18th day of October 1972, the first publication appearing on the 14th day of September 1972.

THE JEFFERSONIAN,
L. Leach Smith,
Manager.

Cost of Advertisement, \$

CERTIFICATE OF POSTING

TOWSON DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 9th Date of Posting: Sept 16, 1972

Posted for: APPEAL

Petitioner: PAUL K. HAMPSHIRE

Location of property: 569 W. CHESAPEAKE AVE. 620' W. OF DIXIE DRIVE

Location of Sign: 569 W. CHESAPEAKE AVE.

Remarks:

Posted by: Charles P. Hall Date of return: Sept 22, 1972

CERTIFICATE OF POSTING

TOWSON DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 9th Date of Posting: March 9, 1973

Posted for: APPEAL

Petitioner: PAUL K. HAMPSHIRE

Location of property: 569 W. CHESAPEAKE AVE. 620' W. OF DIXIE DRIVE

Location of Sign: 569 W. CHESAPEAKE AVE.

Remarks:

Posted by: Charles P. Hall Date of return: March 15, 1973

CERTIFICATE OF POSTING

TOWSON DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 9th Date of Posting: Sept 16, 1972

Posted for: VARIANCE

Petitioner: PAUL K. HAMPSHIRE

Location of property: 569 W. CHESAPEAKE AVE. 620' W. OF DIXIE DRIVE

Location of Sign: 569 W. CHESAPEAKE AVE.

Remarks:

Posted by: Charles P. Hall Date of return: Sept 22, 1972

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

No. 7071

DATE March 1, 1973 ACCOUNT 01-662

AMOUNT \$35.00

WHITE - CASHIER DISTRIBUTION
PINK - AGENCY YELLOW - CUSTOMER

Richard C. Murray, Esquire
Cost of Appeal on Case No. 73-77-A
5/8 of Chesapeake Avenue, 620' W of Dixie Drive -
9th District
Paul K. Hampshire - Petitioner

35.00

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

No. 3794

DATE August 16, 1972 ACCOUNT 01-662

AMOUNT \$25.00

WHITE - CASHIER DISTRIBUTION
PINK - AGENCY YELLOW - CUSTOMER

John W. Aminger, Esq.
200 Fendora Road, East
Cockeysville, Md. 21030
Petition for Variance for Paul K. Hampshire
#73-77-A

TELEPHONE
404-2413

BALTIMORE COUNTY, MARYLAND OFFICE OF FINANCE

No. 74087
DATE: 3/5/74Revenue Division
COURT HOUSE
TOWSON, MARYLAND 21204BY: County Board of Appeals
(Pending)TO: Richard C. Murray, Esq.
Marcellus-Towson Bldg.
Towson, Md. 21204

DEPOSIT TO ACCOUNT NO. 01-712

RETURN THIS POSTAGE WITH YOUR REMITTANCE

TOTAL AMOUNT

QUANTITY \$23.00

For copies of certified documents in Case No. 73-77-A
5/8 of Chesapeake Avenue 620'
W. of Dixie Drive
9th District

Paul K. Hampshire, et al
Petitioners

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

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		No	
Previous case:			Map #							

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

No. 13098

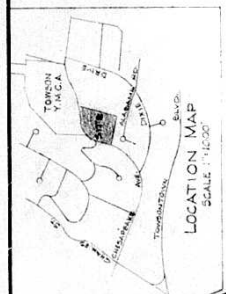
DATE February 20, 1974 ACCOUNT 01-662

AMOUNT \$5.00

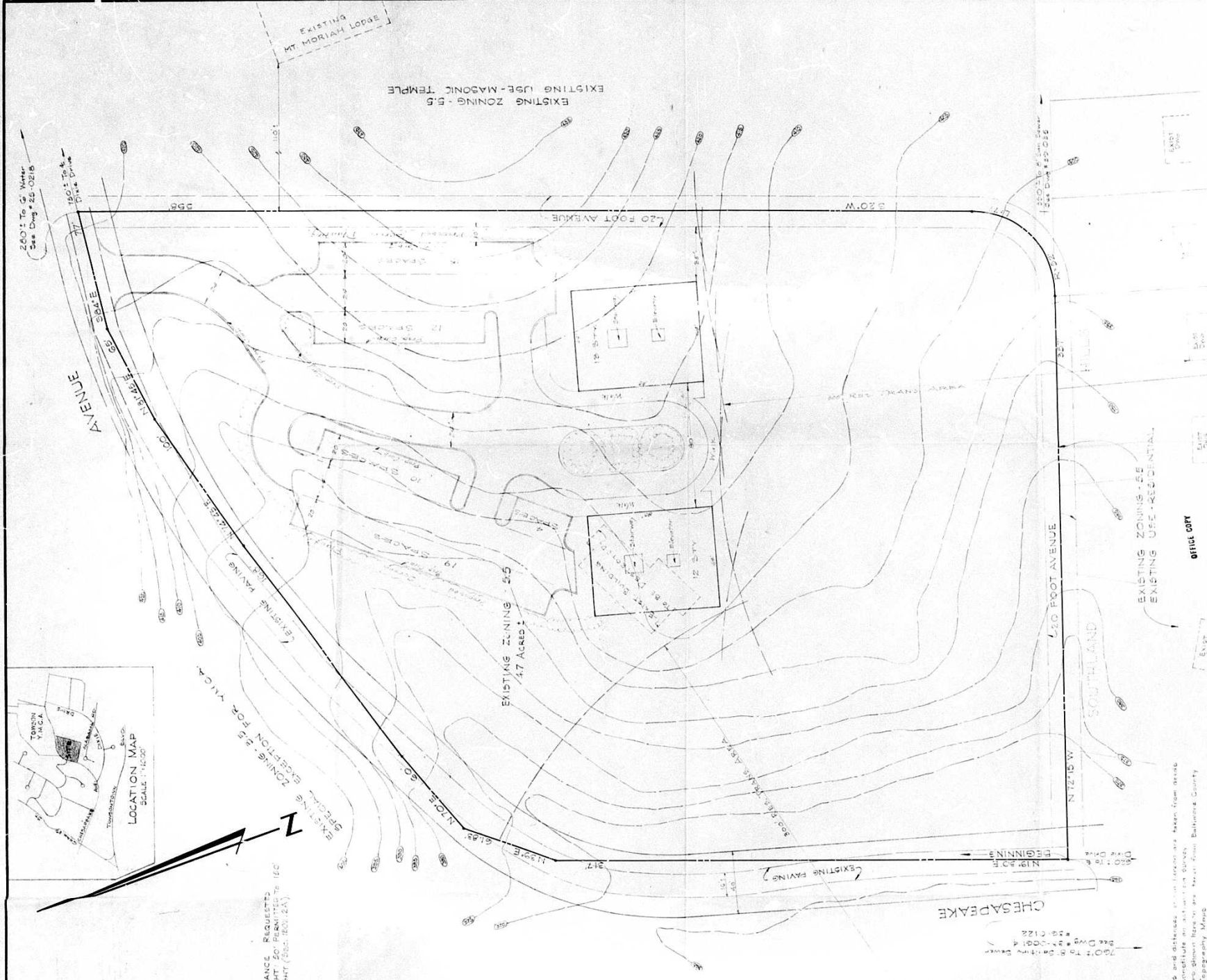
WHITE - CASHIER DISTRIBUTION
PINK - AGENCY YELLOW - CUSTOMER

Richard C. Murray, Esquire
Cost of Posting Property of Paul K. Hampshire, et al,
for an Appeal Hearing
5/8 of Chesapeake Avenue, 620' W of Dixie Drive - 9th
District
Case No. 73-77-A

MAY 21 1976



NOTE:
VARIANCE REQUESTED
HEIGHT 50' PERMITTED TO
HEIGHT 55' (SEE 100' Z.A.)



NOTES:

- 1) Easements and distances shown are taken from records and may constitute an actual lien on the property.
- 2) All proposed improvements are shown from Baltimore County 200' Scale Topographic Map.
- 3) All proposed improvements are shown from the Right-of-Way for Chesapeake Ave. to 40 feet wide and is shown on the plan based on centerline of existing paving (24' wide) taken from Baltimore County 200' Scale Topographic Map.
- 4) No improvements are shown on the plan for the proposed development.
- 5) Utility lines to be shown on the plan are shown on the plan for the proposed development.
- 6) Water to be shown on the plan is shown on the plan for the proposed development.

AREA "A" TRACT DENSITY TABULATION
DENSITY UNITS PERMITTED (35 x 35)
DENSITY UNITS PROPOSED
PARKING REQUIRED 8
PARKING PROVIDED 8
OPEN SPACE REQUIRED 10%
OPEN SPACE PROVIDED 10%
ALL THE BEACON JUNCTION



REVISION #1

OFFICE COPY

EXISTING ZONING - E-5
EXISTING USE - RESIDENTIAL

PLAT TO ACCOMPANY ZONING PETITION

VARIANCE REQUESTED TO HEIGHT REGULATION

509 WEST CHESAPEAKE AVENUE
BALTIMORE COUNTY, MARYLAND
ELECTION DISTRICT #9
JUNE 28, 1972
JULY 11, 1972
REVISED - JULY 11, 1972