

PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, or we, IRVIN L. CONSTANTINE, legal owner... of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition (1) that the zoning status of the herein described property be re-classified, pursuant to the Zoning Law of Baltimore County, from an D.R. 3.5 zone to an D.R. 16 zone; for the following reasons:

(1) In classifying the property D.R. 3.5, the Council committed errors as set out on the attached exhibit, which is incorporated by reference herein; and

(2) Substantial changes have occurred in the neighborhood so as to alter its character since the property was so classified by the Council, as set out on the attached exhibit, which is incorporated by reference herein.

See attached description

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

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

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

Oscar Schabb
Contract purchaser
Address: 322 North Stone Street
Rockville, Md. 20850

Irvin L. Constantine
Legal Owner
Address: Gwynnbrook Avenue
Owings Mills, Md. 21117

James D. Nelson
Petitioner's Attorney
Address: 204 W. Pennsylvania Avenue
Towson, Maryland 21204

Protestant's Attorney
Address: 116 Sunnydale Way
Reisterstown, Maryland 21158

ORDERED BY The Zoning Commissioner of Baltimore County, this 13th day of October, 1977, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 23rd day of March, 1977, at 10:00 o'clock A.M.

Robert L. Gilland
Zoning Commissioner of Baltimore County.

(over)

July 11, 1975

James D. Nelson, Esquire
204 W. Pennsylvania Avenue
Towson, Maryland 21204

Re: Case No. 73-221-R
Irvin L. Constantine

Dear Mr. Nelson:

Enclosed herewith is a copy of the Opinion and Order passed today by the County Board of Appeals in the above entitled case.

Very truly yours,

Edith T. Eisenhart, Adm. Secretary

Encl.

cc: Lynn C. Golberg, Esquire
Mr. Douglas S. Spar
Mr. Moser L. West
Mr. Daniel E. Tumbough
Mr. S. E. DiNanno
Mr. J. E. Dyer
Mr. W. D. Fromm
Board of Education
Mr. J. Maxwell
John W. Maxwell, III, Esquire

RE: PETITION FOR RECLASSIFICATION
fr. a D.R. 3.5 to D.R. 16
NW/5 Gwynnbrook Avenue, 850'
SW of Academy Lane
4th District
Irvin L. Constantine, Petitioner
Oscar Schabb and Sanford Slavin,
Contract Purchasers

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. 73-221-R

OPINION

This case comes before the Board on an appeal by the Petitioner from an Order of the Deputy Zoning Commissioner which denied the requested reclassification from D.R. 3.5 to D.R. 16 for the subject property. The subject property is located in the Fourth Election District, same being on the northwest side of Gwynnbrook Avenue approximately 850 feet west of Academy Lane. The subject property contains approximately twenty-four acres and if this petition be successful, it is proposed that this property be improved by approximately two hundred and one (201) townhouses.

The Petitioner, in his presentation to the Deputy Zoning Commissioner, was at that time thinking of building apartments on the subject property, but since the market now seems to abound with apartment units the Petitioner is now proposing townhouses, and it is this townhouse presentation that was presented to the Board. Of course, if the Board would grant this reclassification, the Board cannot dictate the type of residential construction upon the subject property.

Richard L. Smith, an engineer, testified on behalf of the Petitioner and described the neighborhood surrounding the subject property. Mr. Smith indicated that there was sufficient public water pressure in the area for the subject property and that the public sewer for this proposal is about three hundred and fifty feet to the west of the subject property in Roaches Run; this is a fifteen inch sewer line. Mr. Smith stated that the subject property lies within the Gwynns Falls sewer moratorium area, and immediate improvements could not be started upon the subject property until such time as said moratorium is lifted. Mr. Smith further described to the Board how the transition zones required in the existing D.R. 3.5 physically impact the utilization and development of the subject property.

DESCRIPTION

24.0 ACRE PARCEL, PROPERTY OF IRVIN LEROY CONSTANTINE,
NORTHWEST SIDE OF GWYNNBROOK AVENUE, SOUTHWEST OF ACADEMY
LANE, FOURTH ELECTION DISTRICT, BALTIMORE COUNTY, MARYLAND.

THIS DESCRIPTION IS FOR DR-16

Beginning for the same at a point on the northwest side of Gwynnbrook Avenue, 30 feet wide, at the distance of 850 feet, more or less, as measured southwesterly along said northwest side of Gwynnbrook Avenue from its intersection with the center line of Academy Lane, said beginning point being at the dividing line between Lots 108 and 109, Block A, as shown on the plat titled "Property of C. D. Moser" and recorded among the Land Records of Baltimore County in Plat Book W.P.C.7, page 155, running thence binding on said northeast side of Gwynnbrook Avenue, (1) N 55° 31' E 251.2 feet, thence along the dividing line between Lots 118 and 119, Block A, as shown on said plat, (2) N 27° 31' W 151.14 feet, thence along a part of the southeast line of Lot 123 of said Block A and continuing the same course, (3) N 55° 31' E 111.95 feet, thence binding on the center line of Moser Lane, 24 feet wide, (4) N 25° 10' W 28.0 feet, more or less, thence to and along the rear lines of Lots 132 to 136, inclusive, of said Block A, (5) N 59° 30' E 136.25 feet, thence along a part of the easternmost outline of the land shown on said plat, (6)

Constantine - #72-221-R

2.

David Morgan, a traffic expert, testified for the Petitioner and presented some rather detailed information concerning the traffic patterns in the subject area, and his opinion of the impact of the proposal on such traffic.

A principal witness for the Petitioner was Hugh Gelston, a recognized real estate expert, who again detailed his opinion of the neighborhood and described to the Board the general community that surrounds this property. Mr. Gelston also cited a series of zoning changes which, in his mind, warranted the requested reclassification.

C. Richard Moore, a traffic engineer in the employ of Baltimore County, testified in opposition to the granting of this petition. Mr. Moore presented some good detail concerning the traffic conditions in the subject area, particularly at what would prove to be one of the major access roads to the subject property; i.e., the seemingly hazardous intersection of Gwynnbrook Avenue with the Reisterstown Road.

James Haswell, a planner for Baltimore County, also testified in opposition to the granting of this petition. He succinctly told this Board that, in his opinion, there was no evidence of error and/or change in the subject area that would warrant the granting of this reclassification.

The Petitioner carries the heavy burden of evidencing to this Board error in original zoning and/or substantial change in the character of the neighborhood to warrant the requested reclassification. There is a strong presumption of correctness in original zoning.

This Board has carefully reviewed the testimony and evidence presented in this case, and without further detailing same, the Board frankly can find no change and/or error that would warrant the granting of the requested reclassification. As to the subject of error in original zoning, the record seems practically devoid of same. Certainly, based upon the testimony and evidence presented in this case, one can find no proof of said error. As to the subject of change, Mr. Gelston, a witness for the Petitioner, cited several changes in the general Reisterstown area but, frankly, none were close enough nor of a character that might be sufficient evidence to be the basis for a reclassification of the subject property. In the mind of this Board, the Petitioner has

Page Two

N 29° 10' W 259.6 feet, thence by a line across Moser Lane, 20 feet wide, and continuing the same course along the southwest line of Block B, as shown on said plat, two courses: (7) N 19° 48' W 518.7 feet, and (8) N 18° 33' W 1040.0 feet, thence along the north and west outline of the land shown on said plat two courses: (9) S 51° 43' W 718.2 feet, and (10) S 05° 47' E 1080.1 feet, thence along the northwest line of the aforementioned Block A, (11) N 51° 58' E 543.14 feet, thence along the northeast line of said Block A and continuing the same course, (12) S 27° 31' E 823.64 feet, thence along a part of the southeast line of Lot 106 of said Block A, (13) S 55° 31' W 151.2 feet, thence binding on the first mentioned dividing line, (14) S 27° 31' E 151.14 feet to the place of beginning.

Containing, as described, 25.2 acres of land, more or less.

Saving and excepting from said land all of the land conveyed by

Irvin Leroy Constantine to Bankers Trust Company and others by deed recorded among the aforementioned Land Records in Liber W.J.R. 3566, page 359, leaving a net area of 24.0 acres of land, more or less.

HOW:ejq

Job Order No. 71184

September 5, 1972



Constantine - #72-221-R

3.

not met his burden of proof, and hence, for the reasons stated above, this Board shall issue an order denying the requested reclassification.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 11th day of July, 1975, by the County Board of Appeals, ORDERED that the reclassification petitioned for, be and the same is hereby DENIED.

Any appeal from this decision must be in accordance with Rules 8-1 to 8-12 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Walter A. Reiter, Jr., Chairman

W. Giles Parker

Robert L. Gilland

LAW OFFICES OF
NOLAN, PLUMHOFF & WILLIAMS

204 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204

June 17, 1975

JAMES D. NOLAN
- EARLE PLUMHOFF
NOLAN & WILLIAMS
WILLIAM H. WILLIAMS
KENNETH H. MASTERS

AREA CODE 301
TELEPHONE
833 7800

The Honorable Walter E. Reiter, Jr.,
Chairman, County Board of Appeals
County Office Building
Towson, Maryland 21204

The Honorable W. Giles Parker
Board of Appeals
County Office Building
Towson, Maryland 21204

The Honorable Robert L. Gilland
Board of Appeals
County Office Building
Towson, Maryland 21204

Re: Irvin L. Constantine (Schabb and Slavin,
Contract Purchasers) for reclassification
from D.R. 3.5 to D.R. 16; NW/5 Gwynnbrook
Avenue, 850' W of Academy Lane-4th District.

Gentlemen:

Please find enclosed on behalf of the Petitioner and Contract Purchasers a Memorandum in Support of Petition for Reclassification in accordance with Mr. Reiter's direction at the close of the hearing on May 13, 1975.

Thanking the Board for its attention to this Memorandum, and its consideration of this case, I am

Sincerely,

Newton A. Williams

NAN/hl
cc: Lynn Golberg, Esquire
Jack W. Maxwell III, People's Counsel
George B. P. Ward, Jr.
Messrs. Oscar Schabb and Sanford Slavin
Mr. Richard L. Smith, MCA Associates

Red 6-17-75
3/2/75

RE: PETITION FOR RECLASSIFICATION : BEFORE THE
CATION : DEPUTY ZONING
NW/8 of Gwynbrook Avenue, 850' : COMMISSIONER
SW of Academy Lane - 4th District
Irvin L. Constantine - Petitioner
NO. 73-221-R (Item No. 26) : OF
BALTIMORE COUNTY

This Petition represents a request for a Reclassification from a D.R. 3.5 Zone to a D.R. 16 Zone for a 24 acre tract of ground, located on the north-west side of Gwynbrook Avenue, 850 feet southwest of Academy Lane in the Fourth Election District of Baltimore County.

Testimony was presented on behalf of the Petitioner by Oscar Schabb, contract purchaser of the tract in question; Mr. Richard L. Smith, employed by the firm of Matz Childs and Associates, Inc. who prepared the Petitioner's site plan; Mr. David G. Mongan, traffic engineer employed by the firm of Matz Childs and Associates, Inc.; and Mr. Hugh E. Gelston, a self-employed realtor and appraiser with many years experience in the area.

Testimony indicated that the site has gently rolling topography, is bisected by high tension overhead power lines, and a proposed boulevard (Metropolitan Boulevard) with a right of way width of 120 feet. Three hundred and forty-eight apartment units are proposed with 60% being one-bedroom and 40% being two bedrooms. Rentals will range from \$170.00 for one bedroom to \$275.00 for two bedrooms. The project will have a pool, bathhouse and tennis courts, and will be landscaped with shrubs and trees to provide a pleasant residential atmosphere.

A study, which indicated a need for additional apartments in the area prompted the purchase of the property, which will be built, rented, and managed by the contract purchaser. The time schedule for construction of the apartments, if granted, is expected to begin in 1975 with occupancy in 1976.

Under cross-examination, Mr. Schabb indicated that he was not totally familiar with the number of apartments in the area but did indicate that Richmar

Apartments, which adjoins the proposed site, had a potential yield for 500 units with 250 being built at present. He also indicated that he would not invest four or five million dollars if he felt that a need for additional apartments did not exist in the area. He also felt that there was a need for detached homes in the area, however, development costs, at a density of 3.5 units to the acre, would amount to approximately eight thousand dollars per lot and could not be economically justified. The high cost of individual lot development was based on grading and the fact that the property is bisected by the overhead power lines and Metropolitan Boulevard.

The site is serviced by metropolitan water and sewer and has access to Reisterstown Road via Gwynbrook Road on the south and Hammershire Road on the north. The westernmost boundary line abuts undeveloped D.R. 16 zoned land for approximately one-half of its depth and developed D.R. 3.5 zoned land for the remaining portion. The northernmost boundary line abuts a subdivision of D.R. 3.5 detached homes and the Timber Grove Elementary School. The easternmost and southernmost boundaries also abut D.R. 3.5 zoned and developed properties. Under cross-examination, Mr. Smith indicated that all necessary grading of the site would be done in compliance with County engineering and sediment control standards, and was not expected to cause storm drain runoff problems with regard to adjoining property owners.

The Petitioner's traffic engineer felt that 75% of the traffic generated by development of the subject site would, in the absence of Metropolitan Boulevard, utilize Gwynbrook Avenue with 25% utilizing the residential streets in the subdivision north of the subject property. It was also his opinion that the existing 18 foot of paving on Gwynbrook Avenue was sufficient to handle this flow of traffic. He also felt that the intersection at Gwynbrook Avenue and Reisterstown Road had the site distance necessary to meet National Safety Standards. Under cross-examination, Mr. Mongan admitted that 15% of the traffic on Reisterstown Road exceeded the speed limit on which these standards

The School Board also noted that the Timber Grove Elementary School was presently operating over capacity, by 344 students. The Franklin Junior High School is operating over capacity by 322 students. The Franklin Senior High School is operating over capacity by 145 students.

Planning Board recommendations with regard to the proposed reclassification included the following statement:

"The Planning Board is of the opinion that adequate high density zoning already exists in the area. The land bordering the subject site to the west is vacant, as are a 21 acre parcel to the northwest and an 11 acre parcel to the south on Reisterstown Road, all zoned D.R. 16. Also, there is a vacant 21.9 acre tract of D.R. 10.5 zoned land adjacent to the aforementioned 11 acre parcel. It would appear that the Reisterstown Road corridor is saturated with high-density zoning at the present time. On the east side of Reisterstown Road, Morningside Heights, Enchanted Hills, and Allyson Gardens will ultimately contain approximately 2,000 apartment units. Additionally, there is enough vacant land zoned D.R. 16 in the Reisterstown Road corridor from the Beltway to the Owings Mills area to provide for yet another 2,000 apartment units. The Board believes that the need for higher density residential zoning has been met, that the County Council did not err in zoning this property D.R. 3.5, and that the zoning map is correct. It should be noted that apartments can be built here within the context of D.R. 3.5 zoning without creating an imbalance of densities in the neighborhood."

After reviewing the above testimony and making an on site field inspection of the subject property and surrounding area, it is the opinion of the Deputy Zoning Commissioner that there are no physical features that would require the property to be developed for apartments. The fact that the subject site is bisected by an overhead power line and a boulevard type road, is not in itself reason to reclassify the subject property. Many tracts with similar conditions have been developed throughout the County. By the same token, the fact that land and development costs have risen can not be taken as reason for reclassification. Some changes in zoning classifications have taken place in the area. However, these changes were made to correct zoning classifications with regard to specific properties, and can not be taken to be genuine changes in conditions in the area. The amount of vacant land zoned for apartment use, and the fact that vacancies exist in completed apartments also substantiates

the fact that the existing property is classified properly.

Therefore, IT IS ORDERED by the Deputy Zoning Commissioner of Baltimore County this 27th day of April 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. 3.5 Zone.

James E. Nolan
Deputy Zoning Commissioner of
Baltimore County

POINTS OF ERROR COMMITTED BY
THE COUNTY COUNCIL IN CLASSIFYING
THE SUBJECT PROPERTY R.D.P., AND
CHANGES IN THE NEIGHBORHOOD

The Petitioner states that the County Council committed at least the following errors in classifying the subject parcel D.R. 3.5:

1. That the Council erred in classifying this subject property D.R. 3.5 because due to its topography and location it is better suited to high density residential development such as D.R. 16.

2. That there is an unfilled need for additional apartment land in the Owings Mills area, and it was error for the Council to fail to recognize this fact, as well as the fact that the subject property is extremely well suited to fill this need.

3. And for such other and further errors as will be disclosed upon a minute study of this property which shall be brought out at the time of the hearing hereon.

As to substantial changes which have altered the character of the neighborhood since the County studied the subject property, the following are noted:

1. That a nearby tract was reclassified from D.R. 3.5 to D.R. 10.5 in recognition of the higher density potentials in this area including the subject tract, said reclassification having occurred in Case No. 72-73-R.

2. That the passage of the 2¢ gasoline tax will hasten the construction of the Northwest Expressway and other major area roads which will have a direct effect upon this property, improving its accessibility and increasing the need for higher density zoning in the area.

were based.

The Petitioner's real estate expert indicated that the subject property was zoned in error in that not enough apartment land existed in the immediate area. He also felt that changes had taken place in the area that would warrant the reclassification of the subject property. Development of the site with apartment units was not expected to devalue the adjacent homes. Other areas have developed under similar circumstances. One such example was indicated as the \$50,000.00 homes built adjacent to the Kenilworth Apartments. He felt that present land and development costs would not permit development of the site with homes comparable to the \$21,000.00 homes in the subdivision on the northern boundary of the property.

Mr. Gelston felt that the overcrowded school condition would be alleviated in the near future by an eight room addition planned for the Timber Grove Elementary School and a new junior and senior high school complex proposed to be developed on a 70 acre tract beginning sometime in 1974.

Several area residents testified in protest to the reclassification. Their objections were based on the following statements:

1. The number of apartment developments that presently exist in the area. These developments were listed as Timbercroft, Richmar, Tiffany Square, Walnut Hill, Enchanted Hills, Allyson Gardens, Morningside Heights, Westbury and Chartley.
2. Timbercroft, Richmar, and Tiffany Square Apartment developments are still under construction.
3. The number of vacancies that exist in many of these apartments.

Additional evidence, with regard to the vacancies, was requested by the Deputy Zoning Commissioner, and subsequent to the hearing, a notarized statement by the rental agency of the Ridgemoor Apartments was submitted indicating that 50% vacancies existed in that development as of March 22, 1973.

Also of great concern was the congested traffic situation in the area. Gwynbrook Road was described as being narrow, winding and unsuitable in all respects with additional traffic generated by the proposed development.

The narrow bridge that presently exists on this road was not considered to be of the width or type of construction necessary to accommodate heavy construction equipment that would use it in connection with development of the site. Improvements to the bridge are not expected to take place for a period of eight years. Their objections also included the hazardous site distance at the intersection of Gwynbrook Road and Reisterstown Road, nine accidents having occurred there over the last year; the increased travel time to and from work brought about by the traffic congestion that exists on Reisterstown Road; the fact that area schools were overcrowded from the first day that they opened, additions being constructed are to take care of present overcrowded conditions; and any additional density in the area would bring about yet additional problems. Most of those who testified, indicated that they purchased homes in this area to escape the crowded conditions that would be brought about by development of the subject tract as proposed.

Comments by the Department of Traffic Engineering state:

"The subject site, as presently zoned, can be expected to have a trip density of 840 trips per day. The requested reclassification would have a trip density of approximately 2880 trips per day.

This site, for the present time, will be serviced almost exclusively by Gwynbrook Avenue which is a very narrow, poorly graded road. There are extreme sight distance problems at Gwynbrook Avenue where it meets Reisterstown Road. This site, if reclassified, can be expected to add to the already existing capacity problems on Reisterstown Road."

The Baltimore County Board of Education comments with regard to the subject Petition state:

"The existing D.R. 3.5 zoning could yield approximately 55 Elementary, 16 Junior High, and 12 Senior High pupils. For the proposed D.R. 16 zoning a 3 bedroom garden apartment factor was used since there was no bedroom breakdown on the plat submitted. The yield could be approximately 334 Elementary, 142 Junior High, and 45 Senior High pupils. The allowable number of apartments could yield approximately 365 Elementary, 156 Junior High, and 49 Senior High pupils."

3. Such changes as a minute study of the property and area will disclose, and which are hereby assigned, and which will be noted when and as found, including at the time of the hearing hereon.

Respectfully submitted,

James D. Nolan
James D. Nolan
Attorney for the Petitioner

OCT 21 1975

or apartments at the present D.R.3.5 density. As was previously noted, these transitional zone requirements are the reason that a D.R.16 zone has been requested, although it is the developer's intention according to his testimony to develop the property for townhouses at an approximate density of ten to the acre. In response to a question by Mr. Parker, Mr. Smith indicated that only 10 acres of the 24 acres are available for clustering, and only 84 units can be built thereon. This is certainly a waste of land, and clearly not in accordance with the densities prevailing to the west on the Richmar Tract, and a short distance to the south where a large amount of high density zoning has been placed and is being utilized by development. As Mr. Smith notes, the transitional zone requirements prohibit any development of a townhouse or garden apartment within 300 feet from any existing house bordering the tract, or within 250 feet from any recorded lot less than two acres in area. D.R.16, on the other hand, utilizes a 75-foot setback which renders large portions of the tract usable as shown on Petitioner's Exhibit 2. As for density, 201 townhouses shown on Petitioner's Exhibit 2 represent a density just slightly in excess of eight per acre and as shown thereon, it would really be difficult to place any more on the subject property and thus the eventual developed density would be on the order of eight to nine to the acre, if this reclassification were to be granted. An examination of the site plan, Petitioner's Exhibit 2, would also demonstrate that all of the townhouses have been oriented to face adjoining properties, rather than being oriented to place their rear yards against adjoining properties, this being done in an effort to meet the requests of neighboring property owners.

One of the major areas explored by protestants' counsel on cross examination of Mr. Smith was the area of storm drainage. Mr. Smith pointed out that the Bureau of Engineering standards

now require a 100-year storm drainage reservation, since Hurricane Agnes, and that this is a substantial increase over former standards. Also, it was noted by the Chairman Mr. Reiter, Baltimore County on December 1, 1974, instituted new storm water management standards and these standards require that a two-year storm flow be retained on the property after development at the same rate as prior to development. Mr. Smith was certain that appropriate holding and retention methods to meet the new storm water standards could be developed.

The next witness to testify as a part of the Petitioner's case was Mr. David Mongan of MCA, a graduate and experienced traffic engineer. Mr. Mongan's qualifications were offered and inserted in the record.

Mr. Mongan first of all indicated that he agrees with the description of the property as offered by previous witnesses in the case. Mr. Mongan next described the road network available to the property and stated that Gwynnbrook Avenue, on the southeast side of the property, is an 16-foot road with shoulders varying in width from zero to two feet, while Reisterstown Road, one-half mile to the west, also designated as U.S.140, has 40 feet of paving with shoulders approximately six feet in width. To the east of the subject property is another two-lane road, namely, Academy Lane.

Mr. Mongan acknowledged that the State Highway Administration figures show Reisterstown Road carrying heavy volumes, with a 1973 A.D.T. of 27,500 vehicles west of Owings Mills. The peak hour is in the evening from 4:30 to 5:30 p.m. with approximately 2700 vehicles being carried, representing 10% of the average daily traffic on the road. Mr. Mongan indicated that Gwynnbrook Avenue has an hourly carrying capacity, the theoretical capacity, at level of service E or F of 630 vehicles per hour total in both directions. At level of service C Gwynnbrook Avenue

would have a capacity of 350 vehicles per hour in both directions. As for the one-lane bridge, Mr. Mongan indicated that Mr. John Trenner of Baltimore County had indicated to him that engineering plans are near completion and they are ready to go to a construction contract for an improved bridge.

According to Mr. Mongan's calculations, 201 townhouses as shown on Petitioner's Exhibit 2 would generate approximately 1708 vehicle trips per day, with approximately 10% of this figure concentrated in the peak hour for 171 peak hour trips. Mr. Mongan estimated that the traffic from the project would divide itself during the peak hour, with 127 vehicles proceeding toward Reisterstown Road, approximately 70%, and 30% of the peak hour traffic coming in from Reisterstown Road, or 43 trips. With one entrance as proposed, Mr. Mongan estimated that 60% of the daily trips would go to Reisterstown Road and 40% would disperse themselves toward Park Heights Avenue and Greenspring Avenue, over roads to the east. Mr. Mongan indicated that he lived in the Reisterstown area and that he had made travel time studies using various routes and each route had taken twenty to twenty-two minutes and were all very comparable. All of these routes studied by Mr. Mongan avoid Reisterstown Road and use secondary roads to the east of the property as noted.

According to Mr. Mongan's study, Gwynnbrook Avenue is carrying 135 vehicles presently in the peak hour and 171 new trips would be added by the subject property for a total of 306 peak hour trips, substantially less than the 350 peak hour trips which Gwynnbrook Avenue can handle at level of service C according to his studies.

During the course of this case a great deal of discussion ensued concerning the question of sight distance at Gwynnbrook Avenue and Reisterstown Road, particularly sight distance in a southerly direction, looking toward Baltimore City. According to

Mr. Mongan, while the sight distance is not outstanding in a southerly direction at Gwynnbrook and Reisterstown Road, it does meet the State Highway Administration standards for the posted speed limit of 40 miles per hour. Mr. Mongan acknowledged that there is some difficulty in getting on to Reisterstown Road from Gwynnbrook Avenue during the peak hours, but he stated that traffic signals to the north and the south at the Owings Mills Elementary School on the south and at High Falcon Road on the north tend to give some break in traffic on Reisterstown Road. Furthermore, he had inquired as to accidents at this intersection and had found that it is not classified as a high accident intersection, that is, an intersection wherein more than ten accidents occur a year. In fact, in 1971, eight accidents occurred at the intersection, in 1972, seven accidents and in 1973 only three accidents.

Based upon his studies, Mr. Mongan concluded that the traffic from 201 townhouses with the rebuilt bridge would still allow Gwynnbrook Avenue to operate at level of service C, which, as the Board knows is an acceptable level. It should also be noted that Baltimore County would most likely require that Hammershire Road be opened to offer another means of access to the property and that traffic from the property could go out Hammershire to High Falcon Road and exit onto Reisterstown Road with the benefit of a traffic light at High Falcon and Reisterstown Road. As can be seen on Petitioner's Exhibit 2, Hammershire Road has been constructed as a 40-foot paved road on a 60-foot right-of-way, whereas Embleton Road and other side streets in Country Club Estates have not been constructed to collector street standards. The Petitioner submits that between Gwynnbrook Avenue and Hammershire Road the traffic from the subject property could be handled quite adequately.

Mr. Gelston - The Realtor and Appraiser

The final expert witness to testify on behalf of the Petitioner was Mr. Hugh Gelston, an acknowledged expert who deals in real estate appraising and zoning, with offices in Towson. As the Board well knows, Mr. Gelston is an experienced realtor and appraiser with many years of familiarity with both Baltimore County in general and the Owings Mills area in particular. After describing the surrounding uses which have previously been noted in this Memorandum, Mr. Gelston stated the neighboring development to the north, Country Club Estates, had been built during the 1960's. Mr. Gelston also noted the Brookshire development, a quadraminium type development developed by Pulte, had experienced good sales. Mr. Gelston stated that some 186 units had been sold in 1973 and 34 or 35 units were sold in 1974.

Based upon his experience as a realtor, and an appraiser, Mr. Gelston stated that townhouses were very appropriate for this area of Owings Mills and are very much in demand. He stated that the area is a nice one, and that it is an excellent market area for reasonably priced homes. He stated that he felt townhouses developed at an approximate density of 10.5 or less to the acre would be an appropriate transition from the garden apartments on the Richmar site developed at a D.R.16 density to the west.

Mr. Gelston next testified that in his opinion the zoning of the property in a D.R.3.5 classification in 1971 was erroneous for a number of reasons, including:

1. The subject property and other area properties are sandwiched between D.R.16 zoning to the south and west and the Western Maryland Railroad track and M.L.-1.M. zoning to the east, as well as the Rossmore State Training School property a short distance to the east of Academy Lane. In Mr. Gelston's opinion, the entire area in this wedge as far north as the Country Club Estates property should be placed in higher density zones.

2. In accordance with oft repeated statements from the Office of Planning and the Planning Board, areas within the Metropolitan district should be fully utilized, rather than continuing urban sprawl on properties in the northern part of the County outside of the Metropolitan district.

3. All utilities are available to the subject property and the subject property is within reasonable commuting distance of Baltimore City, and numerous employment centers in Baltimore County.

4. The subject property is within the urban rural demarcation line and as Mr. Parker noted it fits all of the Planning Board criteria, that is, no open space would be taken and it would not involve an extension of utilities to areas presently not served.

As for changes in the area, since March of 1971, Mr. Gelston noted the following:

1. A change from D.R.3.5 to D.R.10.5 approximately 800 feet to the south in Case No. 72-738, which property is being developed as townhouses.

2. The second change noted was the property of approximately ten acres formerly zoned D.R.16 and which was reclassified to B.R. in Case No. 73-50-R, thus deleting approximately ten acres of existing D.R.16 previously available in the area. This property owned by Palisades Construction Company is on the east side of Reisterstown Road approximately 300 feet north of Pleasant Hills Road.

3. The third change noted by Mr. Gelston was a reclassification of five acres from B.L. and D.R.3.5 to B.R. in Case No. 73-44-R, on the west side of Reisterstown Road a short distance to the north of Featherbed Lane. This is the property being developed by Ungar Oldsmobile, formerly owned by Mr. Warren Klavans.

Mr. Gelston stated that in his opinion correct zoning for the property would be a D.R.16 density, or a D.R.10.5 density if it were not for the transitional zone requirements and problems imposed by the 10.5 zone. The Board is referred once again, as did Mr. Gelston, to Petitioner's Exhibit 4, graphically illustrating these problems. Mr. Gelston stated that in his opinion as a realtor such zoning of the subject property would have no adverse effect on the area and that the proposed townhouses would actually have a beneficial effect on surrounding areas. In substantiation of this conclusion, Mr. Gelston offered a list of sales in the Country Club Estates area which indicated that the Brookshire development of quadraminiums on the northwest side of Country Club Estates had not had an adverse effect on property values in that area. This list of sales in the Country Club Estates area was stipulated to and offered in evidence as Petitioner's Exhibit 6. The next area covered by Mr. Gelston was the area of schools.

As the Board knows, Mr. Gelston for many years has been associated with the Baltimore County Board of Education in connection with acquiring new school sites for the Board. In this regard, Mr. Gelston's knowledge was most illuminating as to school sites available in this area of Owings Mills. Mr. Gelston first noted the acquisition by the Board of Education of the Red Run Junior-Senior High School site on Dolfield Road, comprising approximately 120 acres, which as noted will be for a Junior High and a Senior High School. The Woodholme Elementary School site of approximately 20 acres had been acquired by the Board approximately a year prior to the hearing, and this is also available to serve area needs. Although not in the immediate area, the Windsor Mill Junior High School site on Windsor Mill Road will offer some relief to all area schools, due to a redivision of applicable school district lines. In the immediate area, Mr.

Gelston noted that an eight classroom addition is slated for construction in the near future on the Timbergrove Elementary School at the northeast corner of the site. The Board also owns a site known as the Cedarmere Elementary School site to the northwest of the property, as well as a 50-acre site on Tollgate Road a short distance to the south on Reisterstown Road, which will be the site of a combined Junior and Senior High School. Thus, it would appear from Mr. Gelston's testimony that the Board of Education is rapidly moving to meet the educational needs of the area.

Reply To Various Points Raised By The Protestants

The protestants have raised a number of points in their Memorandum, and the purpose of this section is to try to briefly reply to some of these points.

The protestants claim that individual homes similar to Country Club Estates can be built equally as well on the Constantine property as the proposed townhouses. But is this really the case? The Petitioner would point out that the Country Club Estates property was obviously a larger parcel and that the Constantine property was bypassed for some reason when Country Club Estates was built during the 1960's. Furthermore, Country Club Estates was built during a time when there was a different market for individual homes and according to Mr. Gelston, even as late as 1970, sale prices of \$18,000 to \$19,000 in fee were not unknown. As the Board well knows virtually no residential property can be bought for this figure today. Construction costs have risen greatly and even townhouses would have to sell in the \$40,000 range to be economically feasible in today's market. Individual homes would have to sell for \$50,000 or more, and in Mr. Schabb's opinion and in the opinion of other persons who have viewed the property objectively and with expertise, homes in this price range could not be sold on the subject property. In like manner, it would not be practical to cluster 84 or so town-

houses or garden apartments on the ten acres available for such use with the present D.R.3.5 zoning, since the rents for such units would be prohibitively high, if rental, and the asking price if sold would be prohibitively high and beyond the market for such units.

Another major area of concern was that of storm drainage runoff and Petitioner believes that this concern is in large measure met by the new storm water management policies of Baltimore County which are the law and which must be adhered to in any development of the subject property. As previously noted, a 100-year flood plain would be required, and the developer would be required to develop a plan for the property which would retain the runoff from a two-year storm to the same extent as it is retained at the present time in its undeveloped state. The Petitioner submits that development under the new, more rigorous standards will not cause flooding problems, and that they should not be held responsible for flooding problems which develop largely through the type of development previously allowed, such as the Country Club Estate area. Any developer of the subject property cannot be expected to solve all drainage problems in the entire area, and of course any development of the subject property will increase runoff under certain conditions, but any development will now, of course, be required to meet higher standards.

Argument

Counsel for the Petitioner concedes that the burden is heavy on one asking a change in zones through the petition process. Counsel for Petitioner in this case relied heavily on that principle in Stratakis v. Beauchamp, 269 Md. 643, and the Beauchamp decision is cited as one of the stronger statements of the rule. However, like all rules, there are exceptions and caveats to be considered.

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In the present case it should be borne strongly in mind that the request is for an increase in residential density on this tract, and not for a change from a residential zone to a commercial zone or an industrial zone. Under the new density ratio zones which permit clustering, the request is even a less major change than for example a request under the old Regulation for a change from R-10 to R.A. or R.G. In Missouri Realty, Inc. v. Ramey, 216 Md. 442, the Court of Appeals said:

"It should be noted here that this case involves an application for reclassification from one residential sub-category to another; not the removal of the land from the use category in which it was placed when originally zoned, as was the situation in many of the cases presented to this Court. In this respect, the situation is, to a certain degree, different from the application to reclassify property zoned as residential to commercial or industrial."

Stanley D. Abrams, Esquire, of the Montgomery County Bar in his book Guide to Maryland Zoning Decisions, (The Niche Company, 1975) at Section 1.2, page 6, states that the Missouri Realty decision represents a "relaxation" of the usual rule as to the burden of proof resting upon the petitioner. See also The Chatham Corp. v. Beltran, 243 Md. 138 at page 150; and Chesman v. Montgomery County, 259 Md. 641 at page 648.

The Petitioner and Contract Purchasers thus would assert that the real question in this case is whether the tract is appropriate for the construction of 84 townhouses, or apartments, or whether it is more appropriate for the construction of 290 to 250 townhouses as requested. As anyone who has bought a house since 1971 knows, things have changed radically in the housing market since 1971. Inflation in wages and materials has escalated yearly since 1971, and according to a recent article in Newsweek, an individual home is now out of the reach of five out of six families in the United States. Houses that were built and sold in the mid-teens in the 1960's now carry a purchase price of \$50,000 or more, and are out of reach of the ordinary individual.

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The County Council could not possibly have foreseen the course of events since 1971, since our National Government did not foresee it and has been unable to do anything effective about it. In the light of all of these factors, the Petitioner and the Contract Purchasers believe that a good case has been made for the granting of D.R.16 zoning on this tract. As previously mentioned in this Memorandum, the ability to cluster at a D.R.3.5 density does not really exist on the great majority of this tract, with only about 40% of the tract, or around ten acres, available for clustering, and it would be a gross waste and misuse of land to leave the balance of the tract entirely open. The Petitioner believes that 200-plus townhouses which would sell in the \$40,000 price range would be an excellent use for this tract, and would not waste land and would help to meet the needs for adequate and decent housing for individuals who wish to live in the Owings Mills section of Baltimore County. Accordingly, the Petitioner and the Contract Purchasers would respectfully ask that the Board grant D.R.16 zoning on the subject tract.

Respectfully submitted,

James D. Nolan
James D. Nolan

Newton A. Williams
Newton A. Williams

Robert A. Williams
Nolan, Plumhoff & Williams

I HEREBY CERTIFY that on this 14th day of June, 1975, a copy of the foregoing Petitioner's and Contract Purchasers' Memorandum in Support of Petition for Reclassification was mailed, postage prepaid, to Lynn C. Golberg, Esquire, 110 Sunnydale Way, Reisterstown, Maryland 21136.

James D. Nolan
James D. Nolan

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RESUME OF DAVID G. MORGAN

POSITION: Traffic Engineer in firm of MGA Engineering Corporation
ADDRESS: 423 Valley Meadow Circle
Reisterstown, Maryland
EDUCATION: Bachelor of Science in Civil Engineering
University of Maryland (1971)
Master of Science in Civil Engineering, Degree Candidate
University of Maryland
Member of the following Engineering Organizations and Honoraries:
National Society of Professional Engineers
Institute of Traffic Engineers
American Society of Civil Engineers
Highway Research Board
Chi Epsilon
International Municipal Signal Association
Engineer-in-Training in Maryland

SUMMARY OF TRAFFIC ENGINEERING EXPERIENCE:

As Traffic Engineer for the firm of MGA Engineering Corporation, I am in charge of all work as follows: Intersection design, traffic signalization, highway signing, and traffic studies. In connection with our planning work, it is necessary to make traffic counts, studies, and prepare written reports regarding traffic problems as related to planning centers, industrial developments and the expansion of residential areas. I have had experience in the preparation of traffic studies, analysis, and reports as related to application for rezoning of properties. I have given testimony not only in Baltimore and Calvert Counties, Maryland, but also in the State of Delaware.

In traffic signalization and the geometric design of intersections, work includes collection, analysis, and interpretation of all types of traffic data in order to determine and justify the type of facility recommended. Responsibility also includes field inspections, preparation and checking of contract drawings, traffic reports, contract specifications, cost estimates, and final quantities. Past assignments have included traffic signalization in the Annapolis and Glen Burnie areas, I-95 highway signing, preliminary roadway studies, the preparation of environmental impact statements, and numerous traffic studies concerning varying types of land uses.

While employed for Ewell, Bomhardt and Associates, Inc., I assisted in data collection and performed intersection capacity analysis, and proposed improvements for the City of Rockville TOPICS Program. At the University of Maryland, I was a research assistant and the projects in which I participated included: "Traffic Flow Through a Restricted Facility - The Baltimore Harbor Tunnel", "An Operational Evaluation of Truck Speeds on Interstate Highways", traffic studies for rezoning hearings, "Before and After Study of the Kenilworth Avenue and Greenbelt Road Intersection", and a Traffic Data Workshop in conjunction with the Maryland Police Training Commission.

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Mr. David Hutchinson
TO: Administrative Assistant..... Date: March 18, 1975.....
Mr. S. Eric DiNenna
FROM: Zoning Commissioner.....
Case No. 73-221-R (Item No. 26) - Irvin L. Constantine
SUBJECT: Case No. 73-32-RX (Item No. 26) - John J. Schuster, et ux

I am in receipt of Inter-Office Correspondence from Mr. William D. Fromm, Director of Planning, dated March 11, 1975, with reference to certain zoning matters. Said correspondence was received in my office on March 12, 1975, and indicated that you wanted a reply no later than March 12, 1975. As you can see, this is impossible. I would respectfully request that inquiries made with reference to zoning requests or zoning information be directed to me.

Case No. 73-221-R is the Petition of Irvin L. Constantine requesting a Reclassification from a D.R.3.5 Zone to a D.R.16 Zone, for 24 acres of land located on the northwest side of Gwynnbrook Avenue, 850 feet southwest of Academy Lane, in the Fourth Election District of Baltimore County. After a public hearing, this Petition was denied on April 27, 1973, by Mr. James E. Dyer, Deputy Zoning Commissioner. The Petitioner filed a timely appeal, and the matter is now before the Baltimore County Board of Appeals.

With reference to the Petition of John J. Schuster, et ux, Case No. 73-32-RX, it is a request for a Reclassification from D.R.3.5 and D.R.16 Zones to a B.L. Zone, with an additional request for a Special Exception for offices. The property is located on the northwest side of Hammershire Road, 300 feet northeast of Reisterstown Road, in the Fourth Election District of Baltimore County. A hearing was conducted by myself, and I am now holding the matter sub curia.

S. Eric DiNenna
S. ERIC DINENNA
Zoning Commissioner

SED/srl

cc: Mr. William D. Fromm
Director of Planning

Mr. James E. Dyer
Deputy Zoning Commissioner

April 27, 1973

James D. Nolan, Esquire
204 West Pennsylvania Avenue
Towson, Maryland 21204

RE: Petition for Reclassification
NW 1/4 of Gwynnbrook Avenue, 850'
SW of Academy Lane - 4th District
Irvin L. Constantine - Petitioner
NO. 73-221-R (Item No. 26)

Dear Mr. Nolan:

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

Very truly yours,

J. E. Dyer
JAMES E. DYER
Deputy Zoning Commissioner

JED:dme

Attachments

cc: Lynn Gilford Golberg, Esquire
110 Sunnydale Way
Reisterstown, Maryland 21136

Mr. Douglas S. Spear
Country Club Estates
Community Association of Reisterstown, Inc.
Box 32,
Reisterstown, Maryland 21136

Mr. Monte L. West
Vice-President
National Home Construction Corp.
951 A South George Mason Drive
Arlington, Virginia 22204

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

A. V. Quimby
Acting Director
Baltimore County Office Building
111 W. Chesapeake Ave.
Towson, Md. 21204
494-3211

January 29, 1973

Mr. S. Eric DiNenna, Zoning Commissioner
Zoning Advisory Committee
Office of Planning and Zoning
Baltimore County Office Building
Towson, Maryland 21204

Dear Mr. DiNenna:

Comments on Item #26, IV Zoning Cycle, October 1973-April 1973, are as follows:

Property Owner: Irvin L. Constantine
Location: N/W Gwynnbrook Ave., 850' S/W of Academy Lane
Present Zoning: D.R.3.5
Proposed Zoning: Re Zoning from D.R.3.5 to D.R.16
District: 4
No. Acres: 25.2 acres

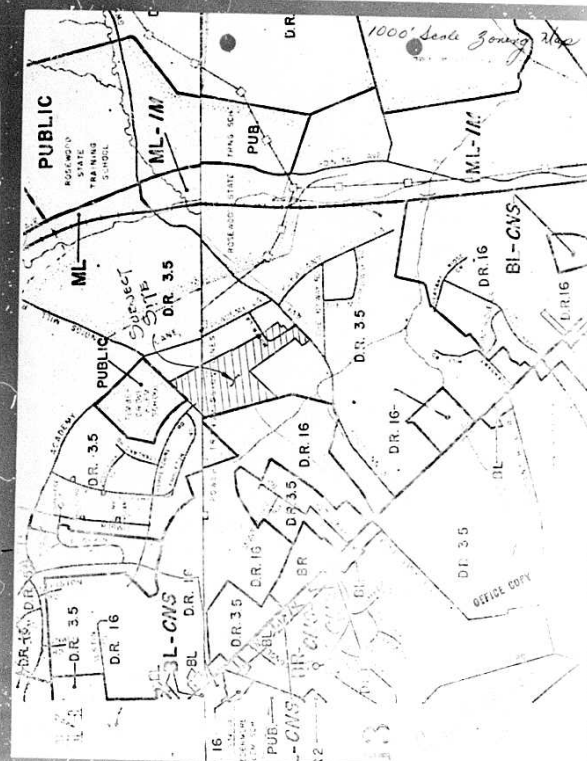
The proposed residential lots should not be rezoned D.R.16 as they would not be buildable lots because of the 75' required setback.

The pool and bath house must be setback 75'.

The circulation, parking and road layout will be subject to approval of the Joint Subdivision Plan Committee.

Very truly yours,

Richard B. Williams
Richard B. Williams
Planner I
Project Planning Division
Office of Planning and Zoning



IRVIN L. CONSTANTINE • IN THE
(Schabb and Slavin, contr. pur.) • COUNTY BOARD OF APPEALS
for Reclassification from D. R. • OF BALTIMORE COUNTY
3.5 to D. R. 16 • CASE NO. 73-221-R
Nw/4 Gwynnbrook Ave. 850' W. of
Academy Lane
4th District

PROTESTANTS' MEMORANDUM

It is Protestants' position that the evidence offered by Petitioners does not sustain the allegations of their Petition, nor does it meet the requirements of law for the granting of reclassification from the present D. R. 3.5 to D. R. 16.

As to claimed error in zoning:

1. Petitioners claim topography and location are better suited to apartments.

ANSWER:

- A. One of Petitioners, Mr. Oscar Schabb, admits it is economic considerations that required high density - to cover the high purchase price of Mr. Constantine's land. He admits that Mr. Constantine could develop the property at 3.5 quite profitably by simply eliminating the purchase price as a consideration. It was further admitted that the lower the purchase price, the less density required for profitable development.
- B. Mr. Schabb admits the land is basically level and gently sloping and could be developed at any density.
- C. He further admits he did not consider 3.5 quadraminium development and thought only in terms of individual houses at present zoning.
- D. Petitioners claimed need for apartments and so testified at the Commissioner hearing. Before this Board, they admit this is not true. Contrary to the wording of their Petition, they now offer a non-binding proposition of townhouses with a 10.5 density.
- E. Subject site is surrounded by 3.5 communities, a school, individual homes and, on one side only, a long-zoned but undeveloped D. R. 16.
- F. Adverse effects on existing residences and facilities to be discussed later.

3. Gwynnbrook Avenue regularly flooded by norm. rain storms.

SCHOOLS:

Testimony of Hugh Gelston, Petitioners' real estate expert

1. Sites are being acquired for construction of schools to alleviate present over-crowding.

ANSWER:

A. He admitted:

- (1) He could not supply completion dates of proposed construction.
- (2) He was not familiar with the capacities of the proposed schools.
- (3) He did not consider the effect on existing and proposed schools of the number of children to be coming from residential units now zoned for but not yet built in the area.
- (4) He had no knowledge as to the extent of present over-crowding of existing schools.
- (5) Could not state which county schools or areas would be in the district for the proposed schools and benefit from their construction.
- (6) Could not state the benefit the proposed schools would have in relieving the existing over crowded facilities in the Owings Mills-Reisterstown area.
- (7) Distorted benefits to the area by giving straight line distances to the proposed schools instead of distances by the roads the children would travel to school.

Testimony of Gloria Leonard:

1. On executive committee Timber Grove Elementary P. T. A.
2. Portable classrooms now being used at Cedarvale Elementary.
3. Timber Grove Elementary, nearest to subject tract, is grossly overcrowded, kindergarten children are bussed to an annex outside the neighborhood, all rooms including the cafeteria are used as classrooms, Special Education children are bussed out of the community, and classes and teachers must move from room to room because of the lack of space.
4. The planned addition to Timber Grove will not totally relieve existing severe overcrowding.

2. Petition states need for additional apartments in Owings Mills.

ANSWER:

- A. Petitioners admit this is not true as stated above.
- B. Several witnesses testified to high apartment vacancy rates in the area.
- C. Petitioners offer no survey data to show need or demand for dwelling units of various densities or configurations - only broad generalizations.

As to claimed change in neighborhood:

1. Petitioners state one nearby tract reclassified from 3.5 to 10.5.

ANSWER:

- A. That one tract is a transition between D.R. 16 and D. R. 3.5 zoning and is located 800 feet from the subject tract.
- B. Other changes testified to by Petitioners' witnesses too far away to be relevant and in neighborhoods of drastically contrasting character. Subject area is residential and low density.
- C. Testimony by Protestants that in the nearest 10.5 quadraminium community, a substantial number of units have for many months been offered unsuccessfully for sale or resale.
- D. 10.5 zoning is not as bad as 16.
2. Petition states that the Northwest Expressway will improve accessibility and increase need for high-density zoning.

ANSWER:

- A. Testimony of E. Richard Moore, Assistant County Traffic Engineer:
- (1) Expressway not funded. Construction may begin in 1980 - not definite.
- (2) If every road planned for the next ten years in the Reisterstown - Owings Mills area is constructed, Reisterstown Road traffic will still exceed its capacity.
- (3) Two thousand dwelling units zoned at D. R. 16 but not yet built in this corridor will contribute even more vehicles to the present overcrowded roads.

AREAS OF TESTIMONY

TRAFFIC:

Testimony of David Mongan, MCA Engineering Corp:

1. Testified Reisterstown Road not yet saturated, could handle additional traffic.

REAL ESTATE VALUES:

Testimony of Mr. Gelston:

1. Property values in the area have gone up.

ANSWER:

- (1) Not one unit in the nearest quadraminium community was sold, although offered for sale, during 1975.
- (2) He does not deal in real estate in the area and his only knowledge of property values is as an appraiser for the school board and from County records.
- (3) He testifies regularly as an "expert" witness for developers seeking rezoning, and rents his office in the same building owned and occupied by Petitioners' attorney.
- (4) He testified before the commissioner that the best use of the subject tract was for apartments but before this Board he said it would be for townhouses and when questioned about this inconsistency, testified both were correct.

Testimony for Protestants by Zelma Rnsor, Realtor:

1. Specializes in the Owings Mills-Reisterstown Road area, sells more residential units there than all other brokers combined, counsels regularly with persons buying or selling residences in the area.
2. Cited comparative examples from her own files to prove that individual homes adjoining high density developments in the area sell for lower prices and are on the market for substantially longer periods of time than individual homes adjacent to other individual homes.
3. She testified without charge in the interest of the community and pointed out that if the proposed townhouses were in fact built, it would probably add to her business.

FLOODING:

Testimony of Mrs. Leonard:

1. Roaches Run, alongside subject tract, overflows as a result of every normal rainfall.
2. Surface water from the subject tract presently flows into Roaches Run. Denuding of the existing vegetation, trees, and natural growth from the subject site for purposes of high density development will increase the runoff into Roaches Run and magnify the flooding problem. (See photograph in evidence of "rip-rap" stones piled south of Gwynnbrook Avenue at Roaches Run, used periodically for

ANSWER:

- A. He admitted he drove from his home in Reisterstown to the hearing in Towson via the "back route" which meanders circuitously through the Valley, rather than by the shorter direct route down Reisterstown Road and across the Beltway. He could not even tell the direction he was going on several of these roads. Obviously his own knowledge and experience varied from his testimony.

2. Testified there is a "vertical curve" on Reisterstown Road to the left of cars exiting from Gwynnbrook Avenue. She latter being the only existing access road to the subject tract and that there is sufficient stopping distance for cars cresting the hill toward that intersection.

ANSWER:

A. He admitted:

- (1) Stopping distance between the hillcrest and the said intersection is adequate only for vehicles proceeding at the 40 mile per hour speed limit or less.
- (2) Many vehicles exceed the speed limit.
- (3) Eighteen wheel tractor trailers use Reisterstown Road regularly and need a longer stopping distance.
- (4) The intersection is not visible until the "vertical curve" is created.
- (5) At night, vehicles must have crested the hill and be proceeding down the hill before the driver can have lights to illuminate the intersection, which is otherwise dark, thereby using up a part of the theoretically available stopping distance.

3. Testified as to gaps in continuous traffic on Reisterstown Road, because of traffic signals one-half mile above and below this intersection.

ANSWER:

- A. Admitted countless access roads, driveways, and parking lots between the traffic signals and the intersection, are constantly disgorging vehicles to fill these theoretical gaps.
- B. Traffic signals are not coordinated so as to create a simultaneous opening at the intersection for both north and south bound traffic.

the purpose of resisting erosion damage to Roaches Run.)

3. Hampshire Road at the northern edge of the subject tract is regularly flooded as a result of normal rainfalls.

Testimony of Mrs. Carolina Swenson:

1. Storm Agnes in 1973 caused major flooding in the area. Residences in lower elevations alongside the subject tract flooded, occupants forced to evacuate.
2. Same storm flooded roads in the area. She and her husband abandoned their cars which were then totally immersed in water and she survived the storm by climbing a tree - within a mile of her home on Hampshire Road very near the subject property.

Stipulated preferred testimony of Cass Warfield, County Department of Public Works:

1. Surface runoff of water from the subject tract would be double at D. R. 16 development as against 3.5.

Testimony by Mr. Smith for Petitioners:

1. County will requiring sewer capacity for two year storms

ANSWER:

- A. Testimony from several residents that there had been several storms much more severe than two year storms, in each of the last three years, causing major flooding.

GENERAL:

Testimony of Mrs. Claire Bosley:

1. Virtually life long resident of the community, very active in behalf of community interests.
2. Major concern of community organizations is the damaging effects, in all possible ways, of past high-density spot zoning and rezoning. Roads are jammed beyond capacity, transients in high density units strain community facilities, rising vandalism especially by inhabitants of multiple dwellings. Fire and police protection are inadequate and property values are affected negatively wherever high density are permitted.

Testimony of Dorothy Dalebo, R. N.:

1. Fears high density development will result in opening of the now dead-end Hampshire Road into the proposed community and transform their narrow quiet residential street into a high speed and dangerous thoroughfare.
2. Developers of nearby high density communities have left unsafe and unhealthy conditions contrary to their promises that there would be

C. Reisterstown Road is very heavily traveled.

- D. It is a US highway and provides the only access road to a major portion of northern Baltimore County, part of Carroll County and even to a part of south-central Pennsylvania.
- E. Many drivers use "back roads" over longer mileage for the purpose of avoiding over-congested Reisterstown Road.

4. Testified that Gwynnbrook Avenue has theoretical additional capacity

ANSWER:

- A. Admitted Gwynnbrook Avenue has a deteriorated roadbed with blind curves and hills, a one lane wooden bridge.
- B. Admitted exit from Gwynnbrook to Reisterstown Road is difficult.

Testimony for Protestants by T. Richard Moore, Assistant County Traffic Engineer:

1. 542 accidents in 1973, 9 of which at the Gwynnbrook intersection; 392 in the first 9 months of 1974, 4 at the Gwynnbrook intersection, on Reisterstown Road from the Beltway to Reisterstown.
2. Reisterstown Road rated "F" lowest possible traffic rating.
3. Reisterstown Road will be over-crowded by local usage even if the Northwest Expressway is in fact someday built and removes through traffic.

Testimony of James Roswell, County Planning Staff:

1. No plan to improve Gwynnbrook Avenue from its low level condition.
2. Proposed Metropolitan Boulevard on northern part of subject tract not in any construction program.

Testimony of Mrs. Ruth Larkin:

1. Drives school bus every school day from Gwynnbrook Avenue left on Reisterstown Road, waits up to 10 minutes for a break in the traffic to make a left turn possible and "scared to death" every day she makes this turn because of the speed and/or size of the vehicles cresting the hill to her left. A substantial number of vehicles on Reisterstown Road are exceeding the speed limit and she must continue to use Gwynnbrook Avenue even if a new access road were someday constructed into the subject site.

Testimony of Mr. Albert Turnbaugh

1. Counted 600 cars passing between 4 to 6 PM at Gwynnbrook Avenue and Academy Road on a random day.
2. Academy Road, at the perimeter of the subject tract, is one lane wide and existing homes hinder widening.

none. Well-being of children now in the community must be considered.

3. Offered photographs of unsightly, unhealthy, and hazardous conditions thus created.

Testimony of Paul Vashke:

1. Recreation facilities grossly inadequate and no help in sight. Juvenile delinquency increasing in the area as a direct result and especially by occupants in the multi dwellings.

Offered in evidence, summation of Baltimore County Police data showing 2,624 reported crimes in this area in 1974, many in serious categories.

Testimony of Mr. Roswell, County Planning Office:

1. No facilities of any kind are available to accommodate the proposed development.

ARGUMENTS

The law does not require a land owner be accorded zoning that will rip-rap for him the highest possible return - only that it can be reasonably used in the existing zoning. Petitioners admit that Mr. Constantine could profitably develop this land at 3.5 and they offer no in-depth surveys as to the extent of demand for any type of 3.5 development. They offer only broad generalizations in support of rezoning to afford them a maximum possible return.

Coppolino vs County Board of Appeals of Baltimore County, and Askew vs same, Court of Special Appeals of Maryland, November 18, 1974. These companion cases are uniquely parallel in fact to the instant case. Following are small portions of a totally relevant opinion:

No zoning principle "is more rudimentary than the strong presumption of the correctness of original zoning. To sustain a piecemeal change in circumstances such as those present here, strong evidence of mistake in the original zoning or comprehensive zoning as evidence of substantial change in the character of the neighborhood must be produced....this burden is onerous.

"....An opinion, even that of an expert, is not evidence strong or substantial enough to show error in the comprehensive rezoning or classification unless the reasons given by the expert as the basis for his opinion, or other supporting facts relied upon when by him are themselves strong enough to do so.

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

in the subject case, the County Council zoned the property. The County Planning Board asserted its opposition to the proposed zoning change in its report of January 25, 1973.

Cherry Chase Village vs Montgomery County, 258 MD. 27 (1970)

"There is a strong presumption in favor of the correctness of both original and comprehensive zoning."

Cabin John Ltd. vs Montgomery County, 259 MD. 661

"...The vague and unsupported expert testimony, however emphatic, does not take the place of the necessary factual support that would prove an applicant is denied all reasonable use of his property. Appellee's experts merely invoked economic inflexibility as some form of magic incantation in hope of transposing one zoning use to another. Such general statements and use of magic words are ineffective."

The testimony of Messrs Smith and Morgan must be weighed in light of the following admitted by them to be true:

1. They testified in the course of their employment by MCA and were not paid by the Petitioners any special fee for their testimony.
2. MCA will obtain lucrative contracts from the contract purchasers, if the Petition were granted.
3. These are not independent expert witnesses, but rather employees of a company which hopes to be among those to reap substantial economic benefits from the proposed rezoning.

This is a petition for reclassification to D. R. 16 and the amended proposal of 10.5 density townhouses is merely a vehicle, if not a diversionary tactic, for the obtention of same. This Board well knows petitioners can revert to the original concept of D. R. 16 apartments if their Petition were granted.

Deleterious changes in the Reisterstown-Owings Mills community caused by past bad zoning practice, must be stopped now. The subject petition is totally unsustainable in either proof or law.

Respectfully Submitted.

Lynn C. Golberg
LYNN C. GOLBERG
Attorney For Protestants

June 6, 1973

Case No. 73-221-R (Item No. 26) - Irvin L. Constantine

NW/5 of Gwynnbrook Avenue, 850' SW of Academy Lane - 4th District

Petition for Reclassification

Brief in Support of Application from James D. Nolan, Esquire

Description of Property

Plat to Accompany Petition for Reclassification

200' Scale Zoning Map

1000' Scale Zoning Map

Certificates of Publication

Certificate of Posting (Two (2) Signs)

Baltimore County Planning Board Comments and Accompanying Map

Zoning Advisory Committee Comments, dated October 13, 1972

Microfilm Records of Area Cases Nos. 72-25-A, 72-73-R, and 73-46-RA

Flier Sent to Valleys Planning Council Members

Two (2) Letters of Protestants

Letter from Lynn C. Golberg, Esquire, dated March 28, 1973, with attachments

Letter from Lynn C. Golberg, Esquire, dated March 30, 1973

Letter from James D. Nolan, Esquire, dated April 2, 1973

Twenty-two (22) Pages of Protestants' Signatures

Petitioner's Exhibit 1 - Plat to Accompany Petition for Reclassification

Petitioner's Exhibit 2A, 2B, and 2C - Photographs

Petitioner's Exhibit 3 - 200' Scale Aerial Photograph

Petitioner's Exhibit 4 - Record Plat, Section One, Richmar Apartments

Protestants' Exhibit A - Protestants' Notes in lieu of Testimony

Protestants' Exhibit B - Affidavit

Protestants' Exhibit C - Certification

Protestants' Exhibit D - Twelve (12) Photographs

Protestants' Exhibit E - Three (3) Photographs

Case No. 73-221-R (Item No. 26)
June 6, 1973
Page 2

Order of the Deputy Zoning Commissioner, dated April 27, 1973 - DENIED

Order of Appeal from James D. Nolan, Esquire, on Behalf of the Petitioner and Contract Purchaser, received May 8, 1973

James D. Nolan, Esquire
204 West Pennsylvania Avenue
Towson, Maryland 21204

Counsel for Petitioner
and Contract Purchaser

Lynn C. Golberg, Esquire
110 Sunnydale Way
Reisterstown, Maryland 21136

Counsel for Protestants

Mr. Douglas S. Spear
President
Country Club Estates Community Association
of Reisterstown, Incorporated
Box 32
Reisterstown, Maryland 21136

Protestant

Mr. Monte L. West
Vice President & Regional Manager
National Homes Construction Corporation
951A South George Mason Drive
Arlington, Virginia 22204

Interested Party

Re: Petition for Reclassification * BEFORE THE
NW/5 of Gwynnbrook Avenue, * DEPUTY ZONING
850' SW of Academy Lane * COMMISSIONER
4th District *
Irvin L. Constantine - Petitioner * OF
No. 73-221-R (Item No. 26) * BALTIMORE COUNTY

ORDER FOR APPEAL

Mr. Clerk:
Please enter an appeal to the County Board of Appeals from Deputy Commissioner Dyer's Opinion and Order of April 27, 1973, and each and every part thereof, denying the requested reclassification to D.R.16.

James D. Nolan
204 W. Pennsylvania Avenue
Towson, Maryland 21204
823-7800
Attorney for the
Petitioner and Contract Purchaser

HEREBY CERTIFY that on this 8th day of May, 1973, a copy of the foregoing ORDER FOR APPEAL was mailed to Lynn Clifford Golberg, Esquire, at 110 Sunnydale Way, Reisterstown, Maryland 21136.



James D. Nolan
Attorney for the Petitioner
and Contract Purchaser

PETITION FOR
RECLASSIFICATION
4th DISTRICT
ZONING: From D.R. 17 to D.R. 16
14 Zone
LOCATION: Northwest side of
Gwynnbrook Avenue 850 feet
more or less, Southwest of
Academy Lane
DATE & TIME: WEDNESDAY,
MAY 15, 1973 at 10:00 A.M.
PUBLIC HEARING: Room 108,
County Office Building, 111 W.
Chesapeake Avenue, Towson,
Maryland
The Zoning Commissioner of Baltimore County is hereby giving notice of the hearing on the proposed reclassification of the above described property to the public hearing.
Present Zoning: D.R. 17
Proposed Zoning: D.R. 16
All that parcel of land in the
Fourth District of Baltimore County
THIS DESCRIPTION IS FOR D.R. 16
Beginning for the same at a point on the northeast side of Gwynnbrook Avenue, at the distance of 850 feet, more or less, as measured southwesterly along said northeast side of Gwynnbrook Avenue from the intersection with the center line of Academy Lane, said beginning point being at the dividing line between Lots 108 and 109, Block A, as shown on the plat titled "Property of C. D. Moore" and recorded among the Land Records of Baltimore County in Plat Book W.P.C. 7, page 135, running thence along said northeast side of Gwynnbrook Avenue (1) N 89° 31' E 251.2 feet, thence along the dividing line between Lots 108 and 109, Block A, as shown on said plat, (2) S 89° 31' E 118.8 feet, thence along the center line of Manor Lane, 24 feet wide, (3) S 89° 31' E 251.2 feet, thence along the dividing line between Lots 108 and 109, Block A, as shown on said plat, (4) S 89° 31' E 118.8 feet, thence along the center line of Manor Lane, 24 feet wide, (5) S 89° 31' E 251.2 feet, thence along the dividing line between Lots 108 and 109, Block A, as shown on said plat, (6) S 89° 31' E 118.8 feet, thence along the center line of Manor Lane, 24 feet wide, (7) S 89° 31' E 251.2 feet, thence along the dividing line between Lots 108 and 109, Block A, as shown on said plat, (8) S 89° 31' E 118.8 feet, thence along the center line of Manor Lane, 24 feet wide, (9) S 89° 31' E 251.2 feet, 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CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District 21 Date of Posting MARCH 7 1973
Posted for IRVIN L. CONSTANTINE
Petitioner IRVIN L. CONSTANTINE
Location of property 111 W. Chesapeake Ave. 850' SW of Academy Lane
Location of Sign 111 W. Chesapeake Ave. SW of W. of Nolan Rd.
(S) DEAD END OF HANOVERSHIRE RD.
Remarks:
Posted by James D. Nolan Signature Date of return MARCH 15 1973

James D. Nolan, Esquire
204 W. Pennsylvania Avenue
Towson, Maryland 21204

Item # 26

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

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

Your Petition has been received and accepted for filing
this 11th day of October 1972.

Eric D. Nanno
Zoning Commissioner

Petitioner: Irvin L. Constantine

Petitioner's Attorney James D. Nolan

Reviewed by James D. Nolan
Advisory Committee

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

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

Your Petition has been received: this 21st day of Sept 1972. Item # 2106

Sept 1972. Item # 2106

Eric D. Nanno
Zoning Commissioner

Petitioner Constantine

Submitted by Towson Williams

Petitioner's Attorney James D. Nolan

Reviewed by J. B. Brown

* This is not to be interpreted as acceptance of the Petition for assignment of a hearing date.

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, SA, GC, CA										
Reviewed by: <u>J. B. Brown</u>	Revised Plans: Change in outline or description <u>Yes</u> <u>No</u>									
Previous case: <u> </u>	Map # <u> </u>									

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

No. 5768

DATE Nov. 6, 1972 ACCOUNT 01-662

AMOUNT \$50.00

DISTRIBUTION
WHITE - CASHIER
PINK - AGENCY
YELLOW - CUSTOMER
Messrs. Nolan, Plunkoff and Williams
204 W. Penna. Ave.
Towson, Md. 21204
Petition for Reclassification for Irvin L. Constantine

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

No. 8393

DATE May 18, 1973 ACCOUNT 01-662

AMOUNT \$10.00

DISTRIBUTION
WHITE - CASHIER
PINK - AGENCY
YELLOW - CUSTOMER
James D. Nolan, Esquire
Cost of Posting of Pet. entry on Case No. 73-221-R
NW/S of Gwynnbrook Pk. Ave, 850' SW of Academy Lane - 4th District
Irvin L. Constantine - Petitioner

100 CME

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

No. 8217

DATE March 22, 1973 ACCOUNT 01-662

AMOUNT \$113.63

DISTRIBUTION
WHITE - CASHIER
PINK - AGENCY
YELLOW - CUSTOMER
James D. Nolan, Esq.
204 W. Penna. Ave.
Towson, Md. 21204
Advertising and posting of property for Irvin L. Constantine -- 73-221-R

11363 CME

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

No. 8379

DATE May 11, 1973 ACCOUNT 01-662

AMOUNT \$70.00

DISTRIBUTION
WHITE - CASHIER
PINK - AGENCY
YELLOW - CUSTOMER
James D. Nolan, Esquire
NW/S of Gwynnbrook Avenue, 850' SW of Academy Lane - 4th District
Irvin L. Constantine - Petitioner
(Cost of Appeal on Case No. 73-221-R)

700 CME

200' Scale Zoning Map

TIMBER GROVE
ELEM. SCHOOL

D.R. 3.5

D.R. 16
65-39 R

SUBJECT
SITE

D.R. 3.5

D.R. 3.5

D.R. 16
65-39 R(1)

D.R. 3.5





EXISTING UTILITIES
 HAMMSBROOKE ROAD: Ex. 3" Water 167-338.5
 Ex. 3" Sewer 67-348.5
 GWYNNBROOK AVE: Ex. 24" Water 66-1124.3
 ACADEMY LANE: Ex. 24" Water 66-1125.3

OFFICE COPY
 #26
 ZONING AREA ELEMENT
 By
 REVISED PLANS

GENERAL NOTES:

1. Total Area of Tract owned by petitioner = 240 AC.
2. Existing Zoning of Tract: DR-3.5
3. Existing Use of Tract: Farm Use & No Use
4. Proposed Zoning of Tract: DR-16
5. Proposed Use of Tract: "Garden Apartments"
6. Density Calculations
 - A. Number of Units: 534
 - B. Number of Units: 348 Act
 - C. Required off-street parking: 535 spaces
 - D. Proposed off-street parking: 555 spaces
7. A indicates Location of Street Lights on Public Streets

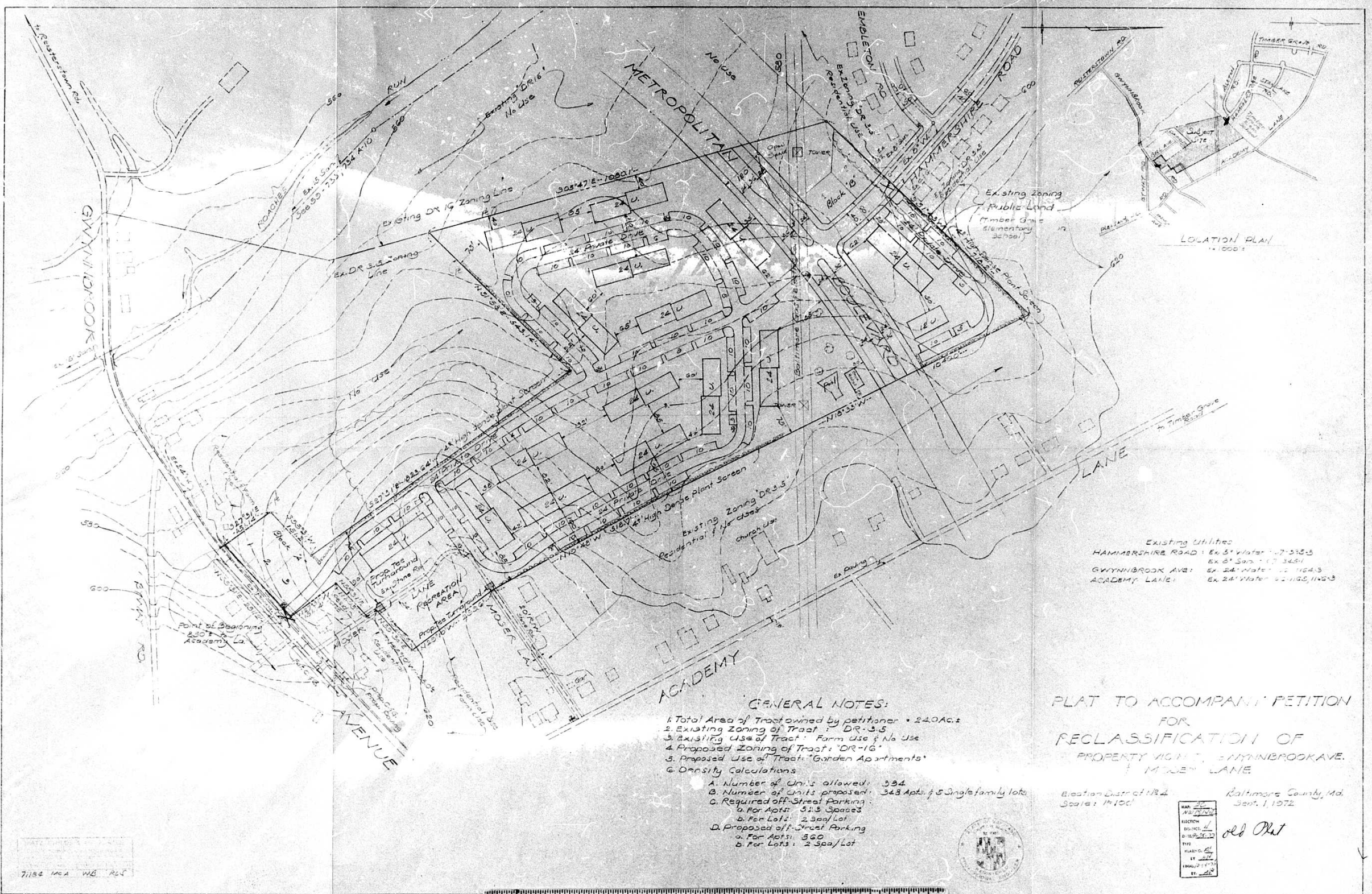
PLAT TO ACCOMPANY PETITION
 FOR
 RECLASSIFICATION OF
 PROPERTY HIGHLY GYNNBROOK AVE
 MOSEY LANE



RET EX #1

71184 MEA VHE RLS





Existing Utilities
 HAMMERSHIRE ROAD: Ex 6" Water - 107-515.3
 Gwynnbrook Ave: Ex 6" San - 107-345.1
 Gwynnbrook Ave: Ex 24" Water - 102-1164.3
 ACADEMY LANE: Ex 24" Water - 102-1165.115.3

- GENERAL NOTES:**
1. Total Area of Tract owned by petitioner = 24.0 AC.±
 2. Existing Zoning of Tract: DR-3.5
 3. Existing Use of Tract: Farm use & No Use
 4. Proposed Zoning of Tract: DR-16
 5. Proposed Use of Tract: "Garden Apartments"
 6. Density Calculations:
 - A. Number of Units allowed: 334
 - B. Number of Units proposed: 343 Apts. & 5 Single family lots
 - C. Required off-Street Parking:
 - a. For Apts: 51.5 Spaces
 - b. For Lots: 2.3 spa/Lot
 - D. Proposed off-Street Parking:
 - a. For Apts: 350
 - b. For Lots: 2 Spa/Lot

**PLAT TO ACCOMPANY PETITION
 FOR
 RECLASSIFICATION OF
 PROPERTY VIENT, GWYNNBROOK AVE.
 & ACADEMY LANE**

Election District 11B4 Baltimore County, Md.
 Scale: 1"=100' Sept. 1, 1972

MAP	11B4
FILE	11B4
REVISION	11B4
DATE	11B4
PLANNED	11B4
REALLY	11B4
BY	11B4

old Plat

7/184 MCA WB RLS

