PETITION FOR ZONING RE-CLASS.FICATION 24-49-R AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:
Bigar A. Kalb and
I, or we, Estells Kalb legal owner. __legal owners_ of the property situate in Baltimore unty 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 on re-classified, pursuant to the Zoning Law of Baltimore County, from an M.L.R. & D.R. 5.5

----zone; for the following

SEE

See attached description

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

Property is to be posted and advertised as prescribed by Zoning Regulations. I, or we, agree to pare some accreased as prescribed by coming Regulations.

I, or we, agree to pay expense 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 one and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimor Biggs A. Kall-Biggs A. Kall-Stella Kall-Stella Kall-Legal On

Address 2001 N. Bolling Road

Baltimore, Maryland 21207

Sectol1 Spint Venture Contract purchaser

County, this ____13th__ , 1973, that the subject matter of this petition be advertised, as of April

ired 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 of Baltimore County in Room 106, County Office Building in Towson, Baltimor 1973 at 11:00o'clock 5th : day of September

Lawrence K. Ginsberg, Esq. Item 2 Page 2 April 13, 1973

This petition for reclassification is accepted for filing on the date of the enclosed filing certificate. However, any revisions or corrections to petitions, descriptions, or plats, as any have been requested by this Committee, shall be submitted to this office prior to Friday, June 1, 1973 in order to allow time for final Committee review and advertising. Failure to comply may result in date and not being scheduled for a hearing. Notice of the hearing date and time, which will be between Expender 1, 197; and October 15, 1973 will be forwarded to you well in advence of the date and time.

Very truly yours, folm J Dillon for
JOHN J. DILLON, JR.,
Chairman, Zoning Advisory Committee

JJDJr.:JD (Enclosure

PETITION FOR ZONING RE-CLASS TCATION AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY

.....legal owner.& of the property situate in Balti inty and which is described in the description and plat attached hereto and made a part hereof, beby petition (i) that the zoning status of the herein described property be re-classified, pursuant M.L.R. 5 D.R. 5.5 to the Zoning Law of Baltimore County, from an M.L.R. &

MINACIED

SEE

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

Property is to be posted and advertised as prescribed by Zoning Regulations. I, or we, agree to pay expenses of above re-classification and/or Special Exception advertising posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimor Jahm N. Havin Shim W. Davis Mary A Davis Mary A Davis Mary A Davis Mary A Grove Avenue

Baltimore, Maryland 21222 ---

215 Dunkirk Building Baltimore, Maryland 21222

ut Baltimore County, that property be posted, and that the public hearing be had before the Zoning commissions of Baltimore County in Room 106, County Office Building in Towson, Baltimore

A--

Baltimore, Maryland 21207

Protestant's Attorney

0.11.9-37 2

HATTER AND

Baltimore County, Maculand Benartment (Of Aublie Morks

COUNTY OFFICE BUILDING April 25, 1973

Mr. S. Eric DiNenna

Re: Item 72 (April to October 1973 - Cycle V)
Property Owner: Edgar Kalb, et al
E/S of Rolling Rd., N/S of Security Rivd.,
Present Soning: Mail., and D.M. 5.5
Proposed Zoning: Reclass. to D.M.
District: lat No. Acress 35.7

The following comments are furnished in regard to the plat submitted to this office for review by the Zoning Advisory Committee in connection with the subject item.

Highways:

The location of Lord Beltimore Drive shown on this plan is a departure from previous agreements among County agencies.

Baltimore County relocated Belmont Avenue in 1972 to the position shown on the

To align Lord Baltimore Drive as suggested, it will be required to re-build Belmont Avenue to tee into Lord Baltimore Drive, 130 feet morth of Security Boulevard. Traffic is already extremely heavy at the intersection of Belmont Avenue and Security Boulevard, and an alignment as shown, funnalling another road with the traffic magnitude of Lord Baltimore Drive into the intersection would cause traffic to stack in an undesirable

The intersection proposed is approximately 780 feet from the Beltway ramp, which is insufficient distance for satisfactory traffic flow.

The Department of Traffic Engineering should indicate whether Baltimore County can live with this undestrable situation.

Security Boulevard is an existing road which has been constructed as a dual lane highway on a 130-foot right-of-way.

Rolling Road is an existing road which will ultimately be constructed as a pot curb and gutter street on a variable right-of-way (minimum 70 feet). Lord Baltimore Drive is a proposed road which will be constructed as a 50-foot curb and gutter street on a 70-foot right-of-way.

Grove Avenue is a partially existing and partially proposed local road which will ultimately be constructed as a 30-foot ourb and gutter street on a 50-foot

Belmont Avenue is an existing road with a 40-foot curb and gutter street on a

Storm drain facilities are required, and must be extended to a suitable outfall, The Petitioner must provide necessary drainage facilities (temporary or permanent)

The Putitioner must provide mecessary drainage labilities (responsely of permanent to prevent creating any mulsances or damages to adjacent properties, appealfully by the compentration of surface waters. Correction of any problem which may result, due to improper grading or improper installation of drainage facilities, would be the full responsibility of the Petitioner.

Development of this property through stripping, grading and stabilization could result in a sediment pollution problem, damaging private and public holdings downstream of the property. A grading permit is, therefore, necessary for all grading, including the stripping of top soil.

Drainage studies and sediment control drawings will be necessary to be reviewed and approved prior to the recording of any record plat or the issuance of any grading or building permits.

There is existing 12-inch water in Belmont Avenue, and there are 16-inch water mains in Security Boulevard and Rolling Road. A public main extension in Lord Baltimore Drive and fire hydrants will be required to protect this property.

There is an existing 18-inch Dead Run interceptor sanitary sewer in a stream xximately 900 feet north of this site, which may be used to serve this site with

Very truly yours,

ELISWORTH N. DIVER, P.E. Chief, Bureau of Engineering

The Petitioner is entirely responsible for the construction, and the cost of the construction and maintenance, of his onsite private sanitary sewerage, which next conform with the Baltimore County Plumbing Code.

Item #2 (April to October 1973 - Cycle V) Property Owner: Edgar Kalb, et al

Property Owner: Page 2 April 25. 1973

Storm Drains:

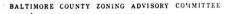
Highways: (Cont'd)

BALTIMORE COUNTY

ZONING ADVISORY COMMITTEE

PETITION AND SITE PLAN

EVALUATION COMMENTS



April 13, 1973

JOHN J. DILLON, JI

MEMBERS

BUREAU OF ENGINEERING DEPARTMENT OF TRAFFIC ENGINEERS STATE ROADS COMMIS

REALTH DEPARTMENT PROJECT PLANNING BUILDING DEPARTME BOARD OF EDUCATION ONING ADMINISTRATE INDUSTRIAL DEVI LOPSENT

Lawrence K. Ginsberg, Esq. 215 Dunkirk Building Baltimore, Maryland 21222 RE: Reclassification Petition Item 2 Edgar A. and Estella Kalb - Petitioners

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

These comments are not intended to indicate the proportisteness of the zoning action requested, but to assure that all parties are all the proportion of the proportion of the diversion of the proportion of the diversion of the

Toning.

The subject property is located on the east side of Rolling Road, and the north side of Security 31vd., in the First District of Baltimore, County. This property, which is cur unity cond ammofacturing, Lipit Restricted (M.L.V.) and DR 5.5 is requesting a Reclassification to Dusiness Major on 35.7 acres of lank. This property, which is the second of Security 91vd, and Rolling Road. There is also a large storm drain culvert running through the estern side of the hope storm drain culvert running through the estern side of the hope storm drain culvert running through the estern side of the hope storm drain culvert running through the estern side of the hope storm drain culvert running through the estern side of the hope storm drain culvert running through the estern side of the hope storm drain culvert running through the estern side of the hope storm drain culvert running through the estern side of the hope storm drain the second of the property, and on the east side there are a few individual delings and vacant land. Curb and gutter exists along leavity by the section, however, folling most is not inforced.

Petitioner is requested to submit a revised site plan that indicates the location of the culvert area and also reflects the comments of the Bureau of Engineering and the Department of Traffic Engineering.

JEFFERSON BUILDING TOWSON, MARYLAND 212

Zoning Commissioner County Office Building Towson, Maryland 21204

Also, capacity problems do occur at the interchange of the Beltway and Security Boulevard. At the present time, there are no scheduled improvements to Rolling Road which a levitate this additional traffic. It should also be proposed improvements to Rolling Road will be at capacity without this increases trip density of this spatition.

The plan also dees not show the proper alignment for Lord Saltimore Drive which intersects Security Boulayard opposite the other entrance to the

C. Richard Mc re Assistant Traffic Engineer

RND - RAM - HWS - an





EUGENE J. CLIFFORD. P.E. WM. T. MELZER

April 26, 1973

Re: Item 2 - Cycle Zoning V - April to Octo-Property Owner: Edgar Kalb, et al Rolling Road N/5 of Security Blvd. Reclassification to B.M. - District I

The subject petition is requesting a change from MLR and DR 5.5 to BM of 35.7 acres.

This zoning change can be expected to increase the trip density of the property from \$600 trips per day to 17,800 trips per day. At the present time, there are severe capacity problems along Rolling Road with long delays not being uncommon during the morning and aftermen peak hours.

CRM: no

Pursuant to the advertisement, posting of preperty, as	
t appearing that by reason o'	
2.5 a. 1.4 A	saniana amanda and an ang
9.8.7.9.8.8.8.	
the above Reclassification should be had; and it further a	appearing that by reason of
a Special Exception for a	should be granted.
IT IS ORDERED by the Zoning Commissioner of Bal	
day of	
the same is hereby reclassified; from a	
zone, and/or a Special Exception for a	should be and the same is
granted, from and after the date of this order.	
Z	oning Commissioner of Baltimore County
at at a word	
Pursuant to the advertisement, posting of property	and public hearing on the above petition
and it appearing that by reason of	C. 3.
188. August of Sport West (All Paris	
the above re-classification should NOT BE HAD, and/or	the Special Exception should NOT BE
GRANTED.	
	aster and American
IT IS ORDERED by the Zoning Commissioner of Ba	
of, 197, that the above re-c	lassification 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 azone; a	
	be and the same is hereby DENIED.
	Zoning Commissioner of Baltimore County

BALTIMORE COUNTY, MARYLAND

April 9, 1973

Comments on reclassification, Zoning Advisory Committee Meeting, April 4, 1973, are as follows:

Metropolitan water and sewer must be extended to the site prior to isquance of building permit.

Community Hygiene Comments: Approval for a shopping center is based upon owner responsibility for the collection, storage and disposal of refuse in accordance with Health Depart-

Very truly yours,

Thomas H. Devlin, Director BUREAU OF ENVIRONMENTAL SERVICES

Property Owner: John W. and Mary A. Davis Location: E/S Rolling Road, N/S Security Blvd. Present Zoning: M.L.R. and D.R. 5.5 Preposed Zoning: Reclass to B.H.

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

District: 1

No. Acres: 35.7

Dear Mr. DiNenna:

ment requirements.

HVB:mne cc: J.A. Messina DEPARTMENT OF HEALTH-

DONALD J. ROOP, M.D., M.P.H.

Pursuant to the advertisement, posting of preperty, and public hearing on the above petition and DOM: With the behavior of the control of the the above Reclassification should be had; and it further appearing that by reason of.... a Special Exception for a _should be granted. the same is hereby reclassified: from a zone, and/or a Special Exception for a ______should be and the same is Zoning Commissioner of Baltimore County Pursuant to the advertisement, posting of property and public hearing on the above retition and it appearing that by reason of the above re-classification should NOT BE HAD, and/or the Special Exception should NOT BE IT IS ORDERED by the Zoning Commissioner of Baltimore County, this......, 197 ..., that the above re-classification be and the same is hereby DENIED and that the above described property or area be and the same is hereby continued as and zone: and/or the Special Exception for be and the same is hereby DENIED.

Office of Planning and Zoning Baltimore County Office Building Towson, Maryland 21204 Jack Dillon Attention: Nr. Officeracy Volume 2001 Advisory Committee Re: Property Owner: John W. and Mary A. Davis Location: E/S of Rolling Road, N.S of Security Boulevard Item No. Reclassification Zoning Agenda Tuesday, April 10, 1973 Gentlemen: Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "x" are applicabl and required to be corrected or incorporated into the final plans for the property. () 1. Fire hydrants for the referenced property are required and shall be located at intervals of feet ilong an approved road in accordance with Baltimore County Standards as published by the Department of Public Works. \boldsymbol{A} second means of vehicle access is required for the site. The vehicle dead-end condition shown at (2) 3. The vehicle dead-end condition shown at EXCEEDS the maximum allowed by the Fire Department. (3) 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operations. (x) 5. (x) 5. (x) 6. (x Reviewer: A Drogo Mark J. Noted and Faul H. Gewale. Planning Group Special Inspection Division Pre Prevention Bureau mls 4/25/72

J. Austin Deitz

INDUSTRIAL DEVELOPMENT COMMISSION BALTIMORE COUNTY, MARYLAND

May 1, 1973

70W90H, MARTLAND 210 307XXXXXX 301 494-3648 H. B. STAAD

Baltimore County Fire Department

Towson Maryland 21204

825-7310

Mr. S. Eric DiNenna Zoning Commissioner, Baltimore County Towson, Maryland

Dear Sire

Re-Re-lassifications - Zoning Cycle V ::Re-lassifications - Zoning Cycle V Property Owner: Edgar Kalb, et al Location: E/S Rolling Rd., N/W Security Blvd. Present Zoning: M.L.R. and D.R. 5.5 Proposed Zoning: Reclass to B.M. District - 1: Acreage - 35.7

The Industrial Development Commission has reviewed the subject petition and inspected the property.

With the complete development of Meadows Industrial Park and the use of the M. L. land on the south side of Security Boulevard the use of the M. L. Iand on the sould sake of sectury bounds of opposite the subject site being used as a shopping center, this office feels the zoning of the petitioners' site is proper and should remain as is to provide land for future industrial development in the western end of the County.

Sincerely.

H. B. STAAB Director

BOARD OF EDUCATION OF BALTIMORE COUNTY

TOWSON, MARYLAND - 21204

Date: April 26, 1973

Zoning Commissioner of Baltimore County

Mr. S. Eric DiNenna Zoning Commissioner County Office Building

Z.A.C. Meeting of:

Property Owner: John W. and Mary A. Davis
Location: E/S of Rolling Road, N/S of Security Boulevard
Present Zoning: M.L.R. and D.R. 5.5
Proposed Zoning: Reclass to B.M.

District:

Dear Mr. DiNenna:

No adverse effect on student population.

Very truly yours, W. Wick Ketworch Nick Fetrovich Field Representative

H. EMELIE PARKS, com

WILLIAM D. FROMM S. ERIC DINENNA



May 10, 1973

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

Dear Mr. Di Nenna:

Comments on Item #2, V Zoning Cycle, April to October 1973, are as follows:

Property Owner. Edgar Kalb, et al Location: E/S of Rolling Road, N/S of Security doublevard Present Zoning: M.L.R. and D.R.5.5 Proposed Zoning: Reclassification to 3.M. No. Acres: 35.7

The petitioner should indicate how the remaining D.R.5.5 land in his ownhership will be developed.

The alignment of Lord Baltimore Drive as shown on the site plan does not agree with the Lord Baltimore Drive alignment as proposed by the County.

It is suggested that the petitioner's engineer contact the Department of Traffic Engineering to determine if the alignment of Lord Baltimore Drive, as shown on the site plan, would create anymore of a traffic problem than the alignment proposed by Baltimore County.

All light standards for the parking areas should be indicated on the site plan and be in accordance with Section 409 of the Zoning Regulations.

Very truly yours, John Z. Wimbley John L. Wimbley

Planning Specialist II Project Planning Division Office of Planning and Zoning

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING LDING 105 WEST CHESAFEAKE AVENUE TOWSON, MARYLAND 21204
AREA CODE 301 PLANNING 494-3/11 ZONING 494-3381

BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF TRAFFIC ENGINEERING INTER-OFFICE CORRESPONDENCE

Date May 24, 1973

TO. Mr. John J. Dillon, Jr. FROM: C. Richard Moore SUBJECT: Item 2 - Cycle 5 - Reclassification

In reference to your letter of May 23, 1973, I submit the following

Into office has reviewed uppertent of Public Motas Comments
concerning the subject Coning Case and agrees completely with their assessment of the traffic problems which will be created by the road alignment of Lord Baltimore Drive, shown on the plat. This office continues to recommend
the alignment of Lord Baltimore Drive with intersection Security Boulevard opposite the shopping center.

C. Richard Moore Assistant Traffic Engine

CRM/pl



ZONING FILE NO. 74-49-R

UNREPORTED

IN THE COURT OF SPECIAL APPEALS OF MARYLAND

> No. 694 September Term, 1975

DONALD R. WILLIAMS, et al.

EDGAR A. KALB, et al.

Thompson, Davidson, JJ.

Per Curiam

July 23, 1976 Filed:

This appeal is from an order of the Circuit Court for Baltimore County, affirming a decision of the Baltimore County Board of Appeals, which had reclassified a portion of a tract of approximately 35.7 acres, located in the northeast quadrant of Rolling Road and Security Boulevard, from the M.L.R. zone (Manufacturing Light, Restricted) to the B.M. zone (Business, Major). On appeal, the appellants (protestants) contend that the appellees (owners) failed to prove (1) "a substantial change in the neighborhood" or "original error in the Comprehensive Map of March 24, 1971;" (2) a "need" for additional commercial zoning; and (3) that the "traffic hazard" on adjacent roads would not be increased

The answers to the appellants' contentions are as follows: (1) There was evidence to show that the reclassification in March, 1973, of approximately 4.9 acres of land lying to the east of the subject property, from the M.L.R. zone to the B.M. zone, and the subsequent development of a hotel upon that tract, resulted in the injection and development of a zoning classification and use not previously present or termitted in the northeast quadrant of the intersection. 1 This evidence was sufficient to make fairly debatable the question of whether there was a substantial change in the character of the neighborhoo!

Kirkman v. Montgomery County Council, 251 Md. 273, 278 (1968); Lutherville Community Association, Inc. v. Wingard, 239 Md. 163, 167 (1965); Bishop v. Board of County Commissioners of Prince George's County, 230 Md. '94, 500, 503 (1963). In view of this holding, the question of "error" need not be considered.

-2-

60

(2) A "need" for additional commercial zoning does not have to be proved in order to justify reclassification to a commercial zone. Aspen Hill Venture v. Mon.gomery County Council, 265 Md. 303, 313-14 (1972).

TO BE PAID BY APPELLANTS

(3) There was expert testimony to show that traffic impact would not be increased by the development of the subject property in the requested commercial classification, to any degree greater than that which would result from development of the subject property in its then existing industrial classification, primarily because of a difference in peak traffic hours. This evidence was sufficient to make fairly debatable the question of whether the grant of the requested reclassification would have an adverse effect upon traffic hazards. Gowl v. Atlantic-Richfield Co., 27 Md.App. 410, 417-18 (1975).

Reid . 7/27/16 2:55 PM

ASKEW WILSON & DICICCO

TOWSON, MARYLAND 21204

AREA CODE 301

July 21, 1975

Mr. Victor McFarland 920 Frederick Road Catonsville, Maryland 21228

Re: Donald R. Williams, et al V. Walter A. Reiter, Jr. et al 10/46/5590

Dear Mr. McFarland:

In confirmation of our telephone discussion this afternoon, enclosed herewith please find the Order signed by Judge Turnbull affirming the decision of the Board of Appeals of Baltimore County in the above-captioned matter, which Order was filed this date. Prior to the filing thereof, the order was cad to you over the telephone and you gave your approval as to foot much their capture of the property of the order was filed that you would stop by the clerk's office to tailfy same.

Very truly yours,

Robert A. DiCicco

RAD/cs Enclosure The Honorable John Grason Turnbull Francis D. Murnaghan, Esquire J. Frederick Motz, Esquire John W. Hessian, III, Esquire Martin I. Moylan, Esquire
J. Carroll Holzer, Esquire
County Board of Appeals of Baltimore County RE: PETITION FOR RECLASSIFICATION from M.L.R. and D.R. 5.5 zone to B.M. zone
NE corner Rolling Road and
Security Boulevard Edogr A. Kalb. et ai

BALTIMORE COUNTY Lawrence K. Ginsberg, Contract Purcherars

COUNTY BOARD OF APPEALS

OF

No. 74-49-8

AMENDED ORDER

WHEREAS, by Order of this Board, dated March 27, 1975, an Order of the ner which granted reclassification for certain portions and denied re classification for other portions of the subject property was affirmed; and

WHEREAS, the Board desires to clearly delineate those portions of the subject property for which the reclassification was granted, and Amended Order specifically setting out said areas is as follows:

For the reasons set forth in the written Opinion on this case, the Board affirms the Order of the Zoning Commissioner dated February 15, 1974, and ORDERS day of April, 1975, that the reclassification petitioned for be and the same is hereby GRANTED for that portion of the subject property now zoned M.L.R.

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

Mill 1 arks

RE: PETITION FOR RECLASSIFICATION from M.L.R. and D.R. 5.5 zone to B.M. zone NE corner Rolling Road and Security Boulevard 1st District

Edgar A. Kalb, et al Lawrence K. Ginsberg Contract Purchasers

REFORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

No. 74-49-R

OPINION

This case noties before the Board on an appeal from a decision of the Zoning which granted the requested Business Major classification on the subject property. Said property is located in the First Election District at the northeast corner of Rolling Road and Security Eaulevard, opposite the Security Mall Shopping Center. petition requests a reclassification to Business Major of approximately thirty-five acres

The case before this Board consumed seven days of hearings, and no attempt will be made to summarize at great length the testimony and evidence presented to this Board during these hearings. By way of a hopefully succinct summary, suffice it to say that numerous witnesses took the stand on behalf of and in opposition to the granting of this

The Petitioner, Edgar A. Kalb, testified that he lived on the subject property and that these lands had been in his family for more than two hundred years. subject property is now a farrd has never, to his knowledge, been a subject for a request for any sort of more intensified land use

Richard Smith, an engineer associated with MCA Engineering Company, testified as to the suitability of this site for a large retail shopping ar complex. Mr. Smith cited that the topography was acceptable, and that sewer and water were available to this site

DONALD R. WILLIAMS, et al, Appellan's, WALTER A. REITER, JR. et al,

CONSTITUTING THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

EDGAR A. KALB, et al,

Appellees

and

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW

Misc. Docket No. 10 Folio No. 46 Pile No. 5590

****** ORDER

For the reasons assigned at the conclusion of the hearing held herein, it is hereby

ORDERED, this 18th day of July, 1975, that the Order of the County Board of Appeals of Baltimore County, entered on March 27, 1975 as amended on April 10, 1975, be and it is hereby affirmed.

JOHN GRASON TURNBULL, JUDGE

2.

Approved as to form Counsel for Appellants:

C. Victor McFarland, Esquire

Rec'd 7/22/75 9:30 am

Edgar A. Kalb, et al - #74-49-R

John W. Erdman, a traffic engineer, testified to the aspects of various road movements that now effect the subject property and that might affect the subject property if same were zoned for a shopping center as proposed in this petition.

An additional traffic witness, Dr. Walter Worthington Ewell, also testified on behalf of the Petitioners.

Hugh Gelston, a recognized real estate expert, added comment concerning

Bernard Willemain, a land planner, was the seventh and last witness for the Petitioner, and provided comprehensive detail concerning the proposed reclassification.

The Protestants, ably represented by counsel, presented various neighborhood witnesses as well as several experts who testified in opposition to the granting of this petition. The principal objection of the Protestants was their fear of traffic problems which might be aggravated by the proposed construction

The question to be decided by this Board obviously centers upon whether or not there was error by the Council at the time of the adoption of the comprehensive zoning mop covering the area of the subject property and/or whether or not there has been substantial change in the area since the adoption of said maps which might warrant the granting of the requested reclassification

Without further detailing the evidence and testimony presented in this case, suffice it to say that the Board is impressed with the evidence presented by the Petitioner; It is the judgment of this Board that the Petitioner has sufficiently evidenced error and change in the subject instance which would warrant the granting of the re- ested reclassification. Hence the Board will agree with the findings of the Zoning Commissioner and affirm his decision in granting the requested petition.

The testimony and evidence indicates that the development of the Security Mall Shopping Center on lands zoned "Industrial" was known to the Council at the adoption of the use map, and this seemingly is not the proper approach to comprehensive rezoning to have literally left that location and the subject location in an industrial zoning when it seems conclusive that a commercial/retail type use for these areas was a prime consideration.

Rock 7/22/75 4:30 am

ln the M.L.R. zone, a hotel is neither a permitted use nor a permitted use by way of a special exception. Haltimore County Zoning Regulations (B.C.Z.R.) § 248.4(b) (1975). In the B.M. zone, a hotel is a permitted use. B.C.Z.R. § 233.

Of course, before the 1971 changes in the zoning regulations retail use on industrial land was permitted, but since such time a commercial classification has been required for this use. The Board is very familiar with the location of the subject property, and based up this familiarity coupled with the Petitioner's testimony and evidence, will find that the subject site is well suited for the proposal in the subject instance. It is the judgmen, of this Board that the Council did, in fact, err in 1971 when it did not zone the subject prop erty commercial. In addition, there has been a continual significant change in this that would warrant the granting of this reclassification. The most serious deterrent to the proposal is the question of traffic. The traffic situation in the area of the subject propert is abominable, and is one that must be corrected. However, the traffic situation will be no more seriously affected by the development of the subject property in a commercial classification than it would be in the development of the subject property in an industrial classification, and in summary the problem of traffic will and must be solved regardless of the land use of the subject property. The impact of the subject property, as developed either industrial or commercial, will actually be of little significance compared to the overall existent a offic conditions in the immediate area. It appears to this Board tha north-south direction other than the Beltway must soon be developed in this area if the existing rush hour congestion is to be eliminated. The principal contributor to this problem is, of course, the Social Security Administration which lies just east of the subjec

After carefully considering the testimony and evidence presented in this case the Board, as mentioned above, is impressed with the arguments of the Petitioner and finds that the decision of the Zoning Commissioner is correct, and that the requested reclassific tion should be granted, as there is sufficient testimony and evidence to establish both err and change

Mr. John Erdman, a qualified traffic engineer, concurred with Dr. Ewell in his analysis of the traffic situation of the area.

Testimony submitted by Mr. Edgar Kalb, the Petitioner, indicated that he owned other lands which adjoined the subject property. He testified that he was willing to enter into covenance with whomever was desirous, so that his remaining property would not be Petitioned for or developed commercially. These properties would be retained in their present D. R. 5. 5 classification and developed accordingly.

The subject property is one of the few remaining sparcely farmed, large tracts of land in this area. Mr. Kalb is of the opinion that the subject tract is now ready for development

Residents of the area, in protest of the subject Petition, indicated severe problems which they felt were relevant to the case, i.e., the requested B. M Zone would generate more traffic to the area, therefore, creating more pollution than would a M. L. R. Zone; and the pessible sunoif of water from th subject property, causing an increase in the flowage of a stream known as Dead Run, which is to the north of the subject property

Without reviewing the evidence further in detail but based on all the evidence presented at the hearing, in the judgment of the Zoning Commissions of Baltimore County, the Comprehensive Zoning Map, as adopted on March 24, 1971, is partially in error in classifying the subject property a M. L. R. Zone and a D. R. 5. 5 Zone. It is obvious that the Baltimore County Council in the adoption of the map, attempted to and did create a buffer between the residential houses on Rolling Road to the west and the M. L. R. Zone to the east. Therefore, the Zoning Commissioner does not find error in the creatiof this buffer zone and feels that that portion of the property zoned D. R. 5. 5 should remain in its present classification

Edgar A. Kalb, et al - No. 74-49-R

ORDER

For the reasons set forth in the aforegoing Opinion, the Board affirms the Order of the Zoning Commissioner duted February 15, 1975, and ORDERS this 27th day of March 1975, that the reclassification petitioned for be and the same is hereby

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

As to the requested Reclassification from a M. L. R. Zone to a B. M. Zone, the recommendations of the Baltimore County Planning Board to the Zoning Commissioner, under Item No. 2, states, "The adopted Baltimore County 1980 Guideplan designates the Security Square Shopping Center . . . as the Sector Center." A close review of the 1980 Guideplan, as formally adopted by the Baltimore County Planning Board, indicates that the subject property is encompassed within the Sector Center, in that, the Sector Cente initiates north of the subject property and extends south of Security Boulevard This may have been one of the reasons for confusion during the adoption of

As presently classified, the M. L. R. Zone could be developed into a massive office building and/or office park. This could create many traffic hazards, possibly more than a B, M, Zone

There was further error committed in that the Comprehensive Zoning Map indicated that Security Square Shopping Center had been designated in a M. L. Zone, although plans had been submitted for the development of the property into a shopping mall. Accordingly, the map should have reflected its true intended zoning

The Zoning Commissioner is of the opinion that the subject property can be developed in such a manner as not to be detrimental to the health, safety, and welfare of the community and that there have been substantial changes in the character of the neighborhood to justify the Reclassification from a M. L. R. Zone to a B. M. Zone

Therefore, IT IS ORDERED by the Zoning Commissioner of Baltimor County, this /5 day of February, 1974, that the Reclassification from RE: PETITION FOR RECLASSIFI-NE/corner of Rolling Road and Security Boulevard 1st Election District Edgar A. Kalb, et ux NO 74-49-P (Item No 2)

...

OF BALTIMORE COUNTY

BEFORE THE

ZONING COMMISSIONER

The Petitioners request a Reclassification from a M. L. R. Zone and a D. R. 5. 5 Zone to a B. M. Zone for a parcel of property containing 35. 7 acres of land, more or less, located on the northeast corner of Rolling Road and Security Boulevard, in the First Election District of Baltimore County

Evidence on behalf of the Petitioners indicated that the intended use of the subject property would be a shopping center, which would contain two buildings, one consisting of 162,000 square feet and the other consisting of 28 000 square feet for a total of 190 000 square feet. The majority of the property is presently classified M. L. R., with a small portion fronting on Rolling Road, which is zoned D. R. 5. 5.

The Security Square Shopping Center complex on Security Boulevard is directly across from the subject property. It is zoned M. L. but was "grandfathered" under Bill No. 100, 1970

Water and sewer facilities are available to the property, and the Zoning

There was extensive testimony with reference to the possibility of the ubject property having been classified in error. Mr. Bernard Whillemain qualified planner, indicated that he felt that the Baltimore County Council's tion of the Comprehensive Zoning Map, on March 24, 1971, was in erro

a M. L. R. Zone to a B. M. Zone should be and the same is hereby reclassified from and after the date of this Order, subject to the approval of a site plan by the Department of Public Works and the Office of Planning and Zoning.

Further, IT IS ORDERED that the Reclassification from a D.P. 5. 5 Zone to a B. M. Zone be and the same is hereby DENIED

He stated that there had been many changes taking place in this area since the Comprehensive Zoning Map was adopted, i.e., relocation and reconstruction of roads and the building of Security Mall. He further indicated that there have been substantial changes in the character of the neighborhood, citing Case No. 73-222-R, which granted B.R. Zoning to a parcel of property located on Secur ity Boulevard, immediately east of the subject property.

There was extensive testimony with reference to the location of the subject property, as to whether or not the proposal is in accordance with the 1980 Guideplan for Baltimore County. In essence, is the subject property located within the Sector Center as described therein

The recommendations of the Baltimore County Planning Board to the Zoning Commissioner, under Item No. 2. stated 'hat the subject property was outside the Sector Center

Further, there was thorough testimony with reference to traffic and the traffic conditions of the area, i.c., the close proximity of the subject tract to the Baltimore Beltway: a description of the road network in the area; and the anticipated reconstruction, relocation, and extension of many of the roads.

Dr. Worthington Ewell, a qualified traffic engineer, testified that the

subject property, as presently classified, would generate traffic at a different peak hour than the requested B. M. Zone. It was cited that the subject property could be developed as an office building or office-park complex, which would create certain traffic patterns that could be detrimental to the health, safety and welfare of the community. The peak hours of traffic in a M, L, R, Zone would be early in the morning and, in the evening, from approximately 5:00 p.m. to 7:00 p.m. Flow of traffic in a B.M. Zone would be throughout the day, but would be more concentrated after 7 n.m.

> C. VICTOR MCF. August 15, 1975

SPECIAL DELIVERY

Circuit Court for Baltimore County Court House Towson, Maryland 21204

Re: Order of Appeal-Special Court of Appeals Donald R. Williams, et al, Appellants vs. County Board of Appeals, et al, Case Bo, 5590/10/46

Dear Mr. Clerk:

Enclosed is an Order of Appeal to be filed in the subject case, together with a check in the amount of \$40.00, representing advance costs.

Thank you for your cooperation.

Very truly yours, 116 164 C. Victor McParland

CVMcF:fd
Encls.

Francis D. Nurnsghir. Esquire
Francis D. Nurnsghir. Esquire
Francis Counsel
J. Carr. Counsel
J. Carr. Sequire,
County Solicitor
Martin I. Noylan, Esquire
Mr. Donald M. Milliams
County Board of Appeals for
Baltimore County

- 3 -

-5-

Picel. 8.18.75

NOTICE TO COUNSEL

Court of Special Appeals

As to all records docketed on or after July 1 .1975 As to all records docketed on or after July 1,1975 counsel are required to print a record extract or appendix in civil cases only. See new Maryland Rule 1028.

With reference to briefs in criminal appeals With reference to briefs in <u>criminal</u> appeals, extrects from pertinent parts of charge or opinton required as appendix to appellants brief, if any deal with points raised by appellant as issues on appeal. New Maryland Rule 1031 c 6. See also new Maryland Rule 1031 d 6 relating to requirements of appellee to print appendix.

The number of printed briefs required to be filed has been reduced from forty copies to thirty copies effective July 1, 1975 with any briefs required to be

Billed on or after that date.

Tor a complete text of the new Rules adopted by the Court of Appeals or. June 16, 1975 see the Maryland Register, Volume 2, Number 14, dated Wednesday, June 25, 1975.

Court of Special Appeals



5£? 9 (8)5 OFFICE OF LAW

Donald R. Williams et al.

C. Victor McFarland, Esquire

Attorneys for Appellan

Edgar A. Kalb et al.

J. Carroll Holzer, Esquire Francis I). Murnaghan, Esquire J. Frederick Motz, Esquire Attorneys for Appelle

The Record in the captioned appeal was received and docketed on

The brief of the APPELLANT is to be filed with the office of the Clerk October 20, 1975

The brief of the APPELLEE is to be filed with the office of the Clerk

This appeal has been set for argument before this Court during the month of February 17,18,19,20,23 and 24, 1976.

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

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

Selin a. Pomens

JULIUS A. ROMANO.

MCA TOD

MCA DOD CONSULTING

DESCRIPTION

35.7 ACRE PARCEL, PART OF THE LAND OF EDGAR A. KALB AND OTHERS, EAST SIDE OF ROLLING ROAD, NORTH SIDE OF SECURITY BOULEVARD, FIRST ELECTION DISTRICT, BALTIMORE COUNTY MARYLAND.

This Description Is For "BM" Zoning

Beginning for the same at a point on the east right of way line of Rolling Road, as shown on Baltimore County, Bureau of Land Acquisition Plats 70-119-1 and 70-119-9, at the northwest end of the gusset line connecting said east right of way line of Rolling Road with the north right of way line of Security Boulevard, as shown on said first mentioned plat, running thence binding on said -ight of way line of Rolling Road four courses (1) northwesterly, by a curve to the left with the radius of 3864, 72 feet, the distance of 66.00 feet, (2) northwesterly, by a curve to the left with the radius of 1537. 89 feet, the distance of 170.33 feet, (3) northwesterly, by a curve to the right with the radius of 944, 93 feet, the distance of 128, 36 feet. and (4) northwesterly, by a curve to the right with the radius of 1874, 86 feet, the distance of 98.43 feet, to a point on the sixth line of the land described in the deed to Edgar A. Kalb and wife recorded among the Land Records of

Baltimore County in Liber C. H. K. 1242, page 213, thence binding on a part of said sixth line, (5) N 89° 30' 45" W 17. 29 feet to a point in the center of Rolling Road, as referred to in said deed and in the deed to John Franklin Kalb and others, recorded among said Land Records in Liber W. J. R. 3754 page 525, thence binding on the center of said Rolling Road two courses: (6) N 03* 15' W 298 feet, more or less, and (7) N 02* 15' W 105 feet, more or less, thence along the line between the area zoned "D.R. - 5.5" and the area zoned "M. L.R." two courses: (8) S 85° 30' E 1270 feet, more or less and (9) S 59° 30' E 440 feet, more or less, to a point in the second line of the land described in the deed to Edgar A. Kalb and wife recorded among the aforementioned Land Records in Liber G. L. B. 2066, page 21, thence binding reversely on a part of said line, (10) N 48° 46' E 80 feet, more or less, to a point in the center of Grove Avenue, thirty feet wide, as shown on the plat of "Belmont Heights" recorded among said Land Records in Plat Book W. P. C. 7, page 35, thence binding on the center of said Grove Avenue, (11) S 41° 14' E 267 feet, more or less, thence binding on the second line of the land described in the deed to John W. Davis and wife, recorded among said Land Records in Liber R. J.S. 1361, page 503, (12) S 48 * 46' W 490 feet to a point in the twelfth line of the land rescribed in the aforementioned deed recorded in Liber W. J. R. 3754, page 525, thence binding reversely on parts

DOTHERS THE PROOF COMMITTEEN BY THE COUNTY COUNTY. IN CLASSIFYING THE SUBJECT PROPERTY M.L.R. AND D.R. 5.5. AND CHANGES IN THE NEIGHBORHOOD

The Petitioner states that the County Council committed at least the following errors in classifying the subject parcel M.L.R.

- (1) A large parcel located directly across the street on Security Boulevard had already begun development to a regional shopping center and in error, the County Council did not recognize this tremendous
- (2) The subject tract has a great deal of frontess or Security ard, and as such has excellent access to the Beltway, which indicates that the property should have been classified in the commercial category by the County Council: and
- (3) For such other and further reasons as may be disclosed upon minute study throughout the case, and further error by the Council is hereby assigned and will be noted when and as found
- As to substantial changes which have altered the neighborhood the Council studied the subject property and last classified it, the following are noted:
- (1) That the regional shopping center directly across Security Boulevard from the subject tract has now been fully developed and
- (2) That the character of Security Boulevard is changing from rural and low density residential uses to commercial uses, which is an ongoing change in the character of the neighborhood;
- (3) That the road patterns in the area of the subject trace has changed substantially as set forth below:
 - (a) The widening of Security Boulevard;
 - (b) The re-routing of Belmont Avenue:
 - (c) Rolling Road's projected widening:

MCA DOD

-3-

of the twelfth and aleventh lines of said last mentioned land two courses: (13) S 41" 14' E 214, 4 feet, and (14; S 39" 51' 08" W 271. 36 feet to a point on the north right of way line of Security Boulevard, as shown on Baltimore County, Bureau of Land Acquisition Plat 70-119-2, thence binding on the north right of way of said Security Boulevard, as shown on said last mentioned plat and on the aforementioned plat 70-119-1, three courses: (15) westerly, by a curve to the left with the radius of 4648,66 feet, the distance of 222,74 feet, (16) S 87° 38' 21" W 236, 15 feet, and (17) westerly by a curve to the right with the radius of 2226.83 feet, the distance of 644.63 feet, and thence along the gusset line herein referred to, (18) N 48* 00' 27" W 229. 32 feet to the place of beginning

Containing 35.7 acres of land, more or less

HCW-ele

J. O. No. 73062



(d) The projection of Lord Baltimore Boulevard throws the subject tract.

All of the above road changes indicate the change in the reighborhood to commercial uses

- (A) That the coneral area of Security Boulevani and Bolling Brad has undergone tremendous growth changes indicating a continuing need for compercial uses in the area.
- (5) Such other and further neighborhood changes as will be disclosed by a minute study of the area, are hereby assigned and they will be developed in full at the time of the hearing bareon.

Respectfully submitted:

AWRENCE K. GINSBERG ATTORNEY FOR THE PETITIONER

powarp & WILLIAMS, ot al.

Appellante

WALTER A. REITER, JR. et al,

Appellees

. ORDER OF APPEAL

Dear Mr. Clark

Please enter an appeal to the Court of Special Appeals of Maryland, on behalf of the Appellants, Donald R. Williams, Donald Tillman, Mary Crehan, Leo Morisette, Ronald Wolff and John T. Moylan, from the Order of His Honor John Grason Turnbull, dated July 18, 1975, in this case.

> C. Victor McParland Attorney for the Appellants 920 Frederick Road ville, Maryland 21228

TH THE

CIRCUIT COURT

FOR

BALTIMORE COUNTY

AT LAW

Misc. Docket No. 10 Polio No. 46 Vila No. 5590

day of August, 1975, a SPRENY CHRTIFY that on this copy of the aforegoing Order of Appeal was "miled to J. Frederick Require and Francis D. Murnaghan, Esquire, Attorneys for the Appellee, Edgar A. Kalb, John W. Hessian, III, Esquire, People's Counsel for Baltimore County, J. Carroll Holser, Esquire, County Solicitor for Baltimore County and County Board of Appeals of Baltimore County and Martin I. Moylan, Esquire, Attorney for John T. Movlan.

e, victo

Water Supply II Sewerage & Drainage & Highways III Structures & Developments & Planning III S

RE. PETITION FOR RECLASS PICATION | IN THE from M.L.R. and D.A.S. to B.M. zone NE camer of facility faced and Security Devices | CIRCUIT COURT Security Devices | In the security Devices | FOR SECURITY SECURITY

CERTIFIED COPIES OF PROCEEDINGS BEFC.": THE ZONING COMMISSIONER AND BOARD OF APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT

And now come Water A. Belter, Jr., W. Gilles Farker and Rebers L.

Gilland, constituting the County Board of Appeals of Baltimore County, and in answer to
the Order for Appeal directed against them in this case, herewith return the record of proceedings had in the above entitled matter, consisting of the following certified copies or
original papers on file in the office of the Zening Department of Baltimore Countys

ZONING ENTRIES FROM DOCKET OF ZONING COMMISSIONER OF BALTIMORE COUNTY

No. 74-49-R

Apr. 13, 1973 Petition of Edgar A. Kalb, et al (Lawrence K. Giraberg, Secroll Joint Venture, contr. pur.) for reclamification from M.L.R. and D.R.S.5.5 to B.M. zone, on property located on the northeast corner of Rolling Road and Security Boulevard, 1st District - filed

" Order of Zoning Commissioner directing advertisement and posting of property – date of hearing set for September 5, 1973 of 11:00 a.m.

* Baltimora County Zoning Advisory Committee comments - filed

Baltimora County Planning Board comments and map - filed

Aug 16 Certificate of Publication of property - filed

" 17 Certificate of Posting of property - filed

Sept. 5 At II a.m. hearing held on petition by Zoning Commissioner. Case held sub curia.

Feb. 15, 1974 Order of Zoning Commissioner granting reclassification in pur

DONALD R. WILLIAMS, ET AL : IN THE

APPELLANTS : CIRCUIT COURT

'S. :

MALTER A. REITAL, IR., ET AL,
CONSTITUTING THE COURTY BOARD OF
ARCAL OF BALTIMORE COURTY.

BALTIMORE COUNTY

and : AT LW

EDGAR A. KALB, et al

APPELLES : Misc 5590/WHG

PETITION OF APPEAL RULE 1100 B2 E

The Petition of Donald R. Williams, Donald Tillman, M. Allen Welch, Ronald Wolff, Leo Morissette, John T. Moylan and Mary Crehan, by C. Yictor McFerland, their attorney, pursuant to the Maryland Rules of Procedure, respec

 That the Appellants are all owners of properties located in the communities affected by the proposed reclassification and appeared before the County Board of Appeals of Baltimore County and some of the Appellants testi fied in these proceedings known as Case No. 74-49-R Petition of Edgar A. Kalb, et al.

2. That the Appellants are jointly and severally aggreeved by the decision appealed from as required by Article 66 Sec. 4.08(a) of the Annotated Code of Maryland, 1974 Cumulative Supplement and Article 5 Section 604 of the Baltimore County Charter and Section 22 - 28 of the Baltimore County Code 1968 Edition as property owners and taxpayers and their close proximity to the Kalb mornerity.

 That the Appellants have duly entered an Appeal from the County Board of Appeals of Baltimore County's decision in these proceedings, in conformity with Rule 1101 B2A of the Maryland Rules.

 That the said Order of the County Board of Appeals and Amended Order was improper, an abuse of administrative discretion, and illegal, arbi-

Kalb - No. 28-49-R (5590) Order of Appeal to County Beard of Appeals from Order of Zra.'ng ed to County Board of Appeals from Order of Zoning Oct Dec. Order of County Board of America counting melantification Mar. 27, 1975 nded Order of County Board of Annea Order for Appeal filled in the Circuit Court for Baltin 25 nd, Esq., etterney for protest . 29 Certificate of Notice sent to all Interested partie May ompany Order for Appeal filed in the Circuit Court for 22 Transcript of testimony - filed (3 volumes Petitioners' Exhibit No. 1 - Aerial map 8-115E. " " 2 - Site Plan by MCA, 8-7-74 " " 3 - MCA - Information Sheet, 9-16-74 " 4 - Order of Deputy Zuning Court
No. 73-222-8 " 5 - 1980 Guide Man Map, adapted 6-15-72 " " 6 - Traffic study 3 pages) " 7 - A,B&C -3 Photos " " 8 - Aerial photo of area, 3-28-72 " " 9 - Official zoning map, 1000, Western Area, 2-8 " " Tu - NW 2-G Official Zoning Map, 200 scale " " 11 - A thru H, Series of photos of area By reference - Official Zoning Regula-List of protostants present 9-16-74

trary, capri fous and contrary to law for the following reasons:

a. That the decision and Orders of the County Board of Appeals is inconsistent with and contrary to the weight of all the evidence as disclosed by the entire record and is not fairly debatable.

b. That the decision and Orders of the County Board of Appeals is against the competent substantial and material evidence as disclosed by the entire records and is not fairly debatable.

c. That said decision and Orders constitutes an arbitrary and capricious act, and a gross abuse of administrative discretion in view of the entire record.

d. That the decision of the said Board, in granting the requisted reclassification, is not supported by any substantial testimony in the record pertinent to the issue.

 e. That the said County Board of Appeals misinterpreted the evidence before them and misapplied the law in reaching their decision.

f. That there was no evidence to justify a conclusion that a substantial change had occurred in the neighborhood.

g. That there was no evidence to justify a conclusion that there was error in the original zoning.

h. That there was ample evidence that the subject property could be developed in its present classification M.L.R.

 That the Appellants offered ample evidence to prove that the proposed reclassification generally will present a hazard to the health afety and welfare of the community (Sec. 22-18 Baltimore County Code 1968 Edition).

J. That the proposed use of the subject property would offer a duplication of services and good available at many, many locations and shopping centers within five minutes of the tract under consideration and serve no public purpose.

k. For other and further reasons which will be set forth at the time of the argument on this Appeal. $\begin{tabular}{ll} -2- \end{tabular}$

Protestants' Exhibit C - Resolutions - Rolling Road Farms Comm. Asse

Kalb - No. 74-49-8 (\$5590)

D - Inc.

E - Affil dovit - F - Interoffice mamo - W. D. Francto F. Devber

5 - 16-73 meeting, pg. XV Environmental Impact Study for Social Security

Impact Study for Social Security

G = Letter from Jos. M. Roulhac to Manning
Board, and plot detect Oct. 12, 1970

" " H = Letter from Attorney Roulhac and plats to County Council Jen. 1971

" I - Page 55, Issue 705, New zoning for new Baltimore County maps

" J - Transcript pg. 105, 10-13-70-8elto.Co. Planning ld., public hearing " K - Item 2, pg. 6 and 7, Zoning Cycle V, April-October 1973

" L - Trio Generation Study

" M - List of Protestants (12-11-74)

" N - Survey of shapping areas

" O - Map to accompany survey

May 23, 1975 Record of proceedings filed in the Circuit Court for Baltimore County

Record of proceedings pursuant to which said Order was entered and self-Board acted are permanent records of the Zoning Department of Baltimore County, as are also the use district maps, and your respondents respectively suggestificatiff would be inconvenient and inappropriate to file the same in this proceeding, but your respondents will produce any and all such rules and regulations, logather with the zoning use district maps at the hearing on this patition, a whenever directed to do so by this Court.

Respectfully submitted,

cc: B.Anderson, Zoning
L.K. Ginsberg, Esq.
Robt. DiCicco, Esq.
C.V. McFarland, Esq.
M.I. Moylan, Esq.
J. Frad. Motz, Esq.
J. Frad. Motz, Esq.

Muriel E. Buddomeler County Board of Appuals of Baltimore County

MHEREFORE, the Appellants respectfully request that the aforesaid Opinion and Order of the County Board of Appeals dated March 27, 1975 and the Amended Order of the Baltimore County Board of Appeals dated April 9, 1975 be reversed, set aside and annulled.

0

Tritor McFarland
Treuth and McFarland
920 Frederick Road
Baltimore, Maryland 21228

Attorney for Appellanta

I HERENY CERTIFY that on this of day of Light 1975, a copy of the aforegoing Petition of Appeal was mailed to Robert A. Dicicce. Esquire, 208 W. Pennsylvania Avenue, Towson, Md. 21204, Francis D. Nurnsighan, Jr.: Esquire, A. Controlle Bank a Trust Dullding, Saltiuners M. 21201, Martin I. Moylan, Esquire, See A. Saltiuner M. 21204, and John W. Hestian, Ill., Esquire, People a Counsel for Baltiuner County, County Office Building, Towson, Md. 21204 and County Good 2: Appeals of Saltiuners County, Nd., County Office Building, Ill. Chestpack Avenue, Towson, Md. 21204.

C. Victor McFarland Treuth and McFarland 920 Frederick Road Baltimore, Haryland 21228 744-0931

Attorney for Appellants

MOUTH UP

TREUTH AND MCFARLAND
970 PRECIPIE NO.
CATOROVILLE MARTIANO 21228
April 30, 1975

Clerk of the Circuit Court for Baltimore County Courts Building Towson, Maryland 21204

6

Re: Donald R. Williams, et al vs. Walter A. Reiter, Jr., et al Misc. Case No. 5590/10/46

Dear Mr. Cler

CVMcFifd

Enclosed please find the Petition of Appeal to be filed in the subject case.

Thanking you in advance for your cooperation

Very truly yours,

• A Differe Expuire

Enc. cc: Robert A Offico, Esquire Francis D. Wurnaghan, Jr., Esquire Martin I. Moylan, Esquire John W. Hessian, III. Caquire County Board of Appeals of Baltimore County, Maryland Mr. Donald R. William

Recil 5/1/75

J. WILLIAM TREUTH, JR

T 'TH AND INCFARLAND
920 PREDERICK AVENUE
CATONSVILLE, MARYLAND 21224

March 13, 1974

(6)

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

(8)

Re: Petition for Reclassification NB/Corner of Rolling Road and Security Blvd. 1st Election District Edgar A. Kalb, et ux - Petitioners No. 74-49R (item no. 2)

Dear Mr. Di Nenna

Please enter an appeal from the Zoning Commissioners decision of Pebruary 15, 1974 on behalf of the petitioners as listed on the enclosed four sheets entitled 'Zoning Petition'. Please enter my appearance on behalf of the protestants.

With kind personal regards.

Very truly yours,

CVMcF: fd

Enc.
CC: Robert A. Di Cicco, Esquire
Mr. Donald E. Tillman
Mr. W. Allen Welch
Martin I. Movlan Esquire



Re-2 51/25

APR 0 1 1977

RE: PETITION FOR RECLASSIFICATION from M.L.R. and D.R. 5.5 to B.M.zone NE corner of Rolling Road and Security Boulevard Int District

File No. 74-49-R

Mr. Clerks

Donald R. Williams, et al

CIRCUIT COURT

FOR

AT LAW

File No.

.

CERTIFICATE OF NOTICE

Walter A. Reiter, Jr., W. Giles Parker and Robert L. Gilland, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the appeal to the

Maryland, 21201, attorneys for the Petitioners, and C. Victor McFarland, Eq., 920 Frederick e, Maryland, 21228, and Martin I. Moylan, Esq., 266 Washington Avenue,

Towson, Maryland, 21204, attorneys for the Protestants, and Mr. W. Allen Welch, 1909 rooksiale Road, Woodlawn, Maryland, 21207, Protestant, a copy of which Notice is attached

herete and prayed that It may be made a part thereof.

Presument to the provisions of Rule 1101-8(4) of the Maryland Rules of Procedur

ve of every party to the proceeding before it; namely, Lawrence K. Ginsberg,

rsylvania Avenue, Towson, Maryland, 21204, Francis D. Murneghan, Jr., Eq.,

tile Bank and Trust Building, 2 Hopkins Place - Baltimore, Maryland, 21201, and J. Frederick Motz, Esq., 1800 Mercentile Bank & Trust Building, 2 Hopkins Plaza, Baltim

I HEREBY CERTIFY that a copy of the aforegoing Certificate of Notice has been

BALTIMORE COUNTY

Misc. Docket No. 10

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Victor | the und ა ₽

undersigned do her from the decision

ZIP

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Petition for Reclassification (Corner of Rolling Road and Security Roulewart -list Election District Boar A. Rab, et ux -Petitioners No. 74-49-R (Item No. 2) RE:

the

NAME (Please Sign)	2105 CANADOS	41Z
	2/0/ (36) Baser Ru	2007
		7577
	2113 Androck Me	2,167
1		

ailed to Lawrence K. Ginsberg, Esq., 102 W. Pennsylvania Avenue, Towson, Maryland, ert A. DiCleco, Esq., 208 W. Pennsylvania Avenua, 21204, Francis D. Mornacantile Bank & Trust Building, 2 Hopkins Plaza, Sal altimore, Maryland, 21228, and Martin I. Moylan, Esq., 208 Washin Brookdale Road, Woodicwn, Maryland, 21207, Protestant, on this 29th day of April,

-2-

cc; L.K. Ginsberg, Eq.,
Robt. A. DiCleco, Esq.,
F.D. Murneghen, Jr., Esq.,
J. Fred. Motz, Esq.,
C. Victor McFarland, Esq.,
M. J. Moylon, Esq.,
Mr. W. Allen Welch
Mr. J. Howsell, Planning
Ms. B. Anderson, Zoning

JFM/mab 4563/47334 7/10/74

APPEAL OF EDGAR A. KALB, et al. . BEFORE THE BOARD OF ZONING

RE: PETITION FOR RECLASSIFICATION N/E Corner of Rolling Road and Security Boulevard -- First District APPEALS FOR BALTIMORE COUNTY CASE NO. 74-49-R

> ENTRY OF APPEARANCE

Please enter the appearance of Francis D. Murnaghan, Jr. and J. Frederick Motz as additional counsel for the Petitioners in the above case.

Prancis D. Murnaghan, Jr.

(b)

J. Frederick Notz 1850 Mercantile Bank & Trust Bldg. Two Hopkins Plaza Baltimore, Maryland 21201 (301) 752-6780

Attorneys for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this @ day of July, 1974, copies of the foregoing Entry of Appearance were mailed first class, postage prepaid to Lawrence K. Ginsberg, Esq., Fine & Elauber, P.A., 44 Equitable Building, Calvert and Payette Streets, Baltimore, Maryland 21202 and to Robert A. DiCicco, Esq., 208 W. Pennsylvania Avenue, Towson, Maryland 21204, Attorneys for Petitioners, and to C. Victor McFarland, Enq., 920 Frederick Road, Baltimore, Maryland 21228, Attorney for Protestants.

J. Frederick Mots

FINE & KLAUBER, P. A. 44 EQUITABLE BUILDING CALVERT AND FAYETTE STREETS

March 13, 1974

Mr. S. Eric Dinenna Zoning Commissioner Baltimore County Office of Planning and Zoning Office of Zoning Commissioner Towson, Mayland 21204



DELIVERED BY HAND

RE: Petition for Reclassification
N/E Corner of Rolling Road and
Security Boulevard - 1st Elec. Dist.
Edgar A. Kalb., et ux - Petitioners
No. 74.40. P. (1.20 Mr. - Petitioners) lo. 74-49-R (Item No. 2)

Dear Commissioner Dinenna

Enclosed herewith please find Order for Appeal on behalf of Edgar A. Kalb and Estella Kalb, Petitioners in the above captioned case. I am also enclosing herewith my check in the amount of \$70.00 to cover the cost of filing the aforesaid Appeal.

I would appreciate if you would acknowledge the receipt of same at your earliest possible opportunity.

Thanking you for your immediate attention and anticipated cooperation in this matter, ${\bf I}$ am.

ZONING FILE NO. 74-49-R

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 694

September Term, 1975

DONALD R WILLIAMS, et al.

v.

EDGAR A. KALB, et al.

Thompson, Davidson,

Moore, JJ

Per Curiam

July 23, 1976

PETITION FOR RECLASSIFICATION N/E CORNER OF ROLLING ROAD AND SECURITY BOULEVARD Ist Election District Edgar A. Kalb, Estella Kalb, Petitioners, No. 74-49R (Item 2)

BEFORE THE ZONING COMMISSIONER

BALTIMORE COUNTY

ORDER FOR APPEAL

MR. COMMISSIONER:

Please enter an Appeal in the above captioned case on behalf of the Petitioners, Edgar A. Kalb and Estella Kalb, from your Decision and Order dated February 15, 1974.



ME MAR 1 3 74 DM -

ATTOMNETS AT LAW EQUITABLE BUILDING BUITE 44 BALTIMONE, MD, 21209 782-6160

> This appeal is from an order of the Circuit Court for Baltimore Courty, affirming a decision of the Baltimore County Board of Appeals, which had reclassified a portion of a tract of approximately 35.7 acres, located in the northeast quadrant of Rolling Road and Security Boulevard, from the M.L.R. zone (Manufacturing Light, Restricted) to the B.M. zone (Business, Major). On appeal, the appellants (protestants) contend that the appellees (owners) failed to prove (1) "a substantial change in the neighborhood" or "original error in the Comprehensive Map of March 24, 1971;" (2) a "need" for additional commercial zoning; and (3) that the "traffic hazard" on adjacent roads would not be increased.

> The answers to the appellants' contentions are as follows: (1) There was evidence to show that the reclassification in March, 1973, of approximately 4.9 acres of land lying to the east of the subject property, from the M.L.R. zone to the B.M. zone, and the subsequent development of a hotel upon that tract, resulted in the injection and development of a zoning classification and use not previously present or permitted in the northeast quadrant of the intersection. 1 This evidence was sufficient to make fairly debatable the question of whether there was a substantial change in the character of the neighborhood.

BALTIMONE COUNTY OFFICE OF PLANNING ZONING

OFFICE OF ZONING COMMISSIONES

S. ERIC DINENHA JAMES E, DYER



February 15, 1974

Lawrence K. Ginsberg, Esquire Could fall and the 44 Equitable Building Baltimore, Maryland 21202

> RE: Petition for Reclassification NE/corner of Rolling Road and Security Boulevard -1st Election District Edgar A. Kalb, et ux -Petitioners NO. 74-49-R (Item No. 2)

Dear Mr. Ginsberg:

I have this date passed my Order in the above cantioned matter. Copy of said Order is attached.

ERIC DI NENNA

SED/sw

cc: Mr. Donald E. Tillman 2105 Rolling Road Baltimore, Maryland 21207

> Mr. W. Allen Welch 1909 Brookdale Road Baltimore, Maryland 21207

Martin I. Moylan Esquire 208 Washington Avenue Towson, Maryland 21204

Robert A. DiCicco, Esquire 208 West Pennsylvania Avenue Towson, Maryland 21204

111 WEST CHESAPEAK: AVENUE TOWSON, MARYLAND 21204

Kirkman v. Montgomery County Council, 251 Md. 273, 278 (1968); Lutherville Community Association, Inc. v. Wingard, 239 Md. 163, 167 (1965); Bishop v. Board of County Commissioners of Prince George's County, 230 Md. 494, 500, 503 (1963). In view of this holding, the question of "error" need not be considered.

-2-

(2) A "need" for additional commercial zoning does not have to be proved in order to justify reclassifization to a commercial zone. Aspen Hill Venture v. Montgomery County Council, 265 Md. 303, 313-14 (1972).

(3) There was expert testimony to show that traffic impact would not be increased by the development of the subject property in the requested commercial classification, to any degree greater than that which would result from development of the subject property in its then existing industrial classification, primarily because of a difference in peak traffic hours. This evidence was sufficient to make fairly debatable the question of whether the grant of the requested reclassification would have an adverse effect upon traffic hazards. Gowl v. Atlantic-Richfield Co., 27 Md. App. 410, 417-18 (1975).

JUDGMENT AFFIRMED. COSTS TO BE PAID BY APPELLANTS.

STENGEL, ASKEW & WILSON

HAND DELIVERED

TOWSON, MARYLAND 1994 August 22, 1973

MG 22 73 PM

MANAR P. KALLS

Re: Petition of Secroll Joint Venture NE corner Security Boulevard and Rolling Roads

Mr. S. Eric DiNenna

Zoning Commissioner

Towson, Maryland 21204

Jefferson Building

Please enter my appearance on behalf of the Petitioner Secroli Joint Venture. It is my understanding that the matter is presently scheduled for hearing on Wednesday. September 5, at 11:00 a.s.

I shall be grateful if you will forward me copies of the comments and the original petition and memorandum.

Very truly yours,

fat to Bles Robert A. Dicicco

cc: Lawrence K. Ginsberg, Esquire

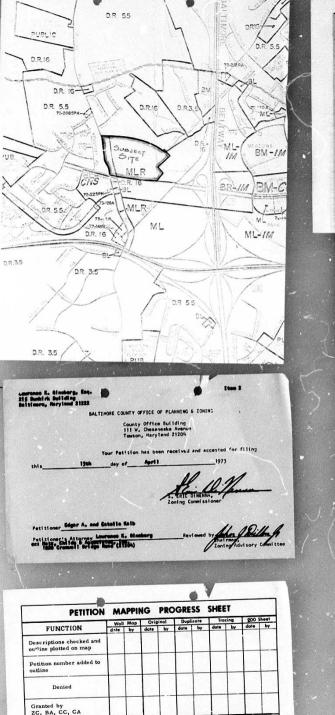
STATE OF MARYLAND

TRAFFIC VOLUME MAP 1972

AVERAGE DAILY TRAFFIC

ID ON DATA OBTAINED BETWEEN OCTOBER 1, 1971 AND SEPTEMBER 30, 1972

ln the M.L.R. zone, a hotel is neither a permitted use nor a permitted use by Lay of a special exception. Baltimore County Zoning Regulations (B.C.Z.R.) \$ 248.4(b) (1975). In the B.M. zone, a hotel is a permitted use. B.C.Z.R. \$ 233.



Revised Plans:
Change in outline or description___Yes

Reviewed by:

	PETITION FOR RECLASSIFICATION IN DISTRICT	•
	EONING From M.L.R. and D.R. 5.5 in B.M. Zone. LOCATION. Northwas corner of Rolling Road and Security	·
1	Dankvard Time: WEDNESDAY. SEPTEMBER 5, 1973 of 11.00 A.M.	
	Count's Office Bailding, US W. Chestapeake Avender, Tourism, Varyland.	THI
1	Baltimore County, by authority of the Eming Aut and Regulations of Baltimore County, will hold a mable bearing:	
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1	Piret District of Baltimore County Beginning for the same at a peate on the rest right of way for at Reling Road, as shown on	lished
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	the distance of 110.00 feet, and (4) northpesterly, by a curve in the right with the radius of 1574.00	
	point on the sixth line of the land described in the deed to Edgar A. Kalt and wife recorded among the Land Records of Ballimore	
	County in Liber C.M.M. 1862, page 212, thence hinding on a part of said sixth time, (5) 96 95° 30° 00° W 17.30 feet on points on the armire of	
	Reling Rand, as referred to in said deed and in the deed to Jeta Franklin Kalb and others, recur- ded among said Land Records in	
	Liber W.J.R. 2750, bulle one, thence binding on the center of said Rolling Road two marses: (6) N 60° 15' W 300 feet, more or lock, and '15' W 300 feet, more or lock,	
	or less, thence along the line be- tween the area round "D.R.; 6.5" and the area round "M.L.R." (see control (d) 8 00° 8 120 feet,	
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	ine, (10) N OF OF EM Percy, more or less, to a point in the rester of Grove Avenue, thirty feet wide, as shown on the plat of "Belmont	
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	Herickis* reconfied animag with Land Reversit to Plat flowing W.P.C. 2, page 28, thereof how this risk 12, page 28, thereof how this risk 12, page 28, thereof how the risk 14, page 28, page 28	
<u>,</u>	R.J.S. 1881, page 887, (12) 5 40° 40. W 400 Feet to a point in the investible fine of the land described in the aforecommissioned deed reconstruint Liber W.J.R. 2754, page 32°, these is binging reversely on parts of the investible and eleventh lance of soul but mensioned land from companions.	
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	mine. Containing 25.7 acres of land, more or lees. Being the property of Ericar A. Kalh and Exicita Kalk, as down on play Joan field with the Zonine.	
	on plat plan filed with the Soliton Department: Hearing Date: Wednesday, Sep- tember 3, 1973 at 1.00 AM. Public Hearing: Room 186.	
	Chraneake Avenue, Towner, Mei	
	BY ORDER OF SERIC DINENA DONING COMMISSIONER OF BALTIMORE COUNTY Aug. 16	
1		
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	ALTIMORE COUNTY, MAR OFFICE OF FINANCE - REVENUE DI MISCELLANEOUS CASH REI	YLOD VISION CEIPT
	pays Mau 3, 1973	ACCOUNT

OFFICE OF CATONSVILLE TIMES CATONSVILLE, MD. 21228 August 20,

THIS IS TO CERTIFY, that the annexed advertisement of S. Eric Dinerna, Zoning Commissioner of Baltimore County

was inserted in THE CATONSVILLE TIMES, a weekly newspaper published in Baltimore County, Maryland, once a week for One

EMODERATE weeks before the 20 day of Aug., 1973, that is to say. the same was exerted in the issue of August 16, 1973.

STROMBERG PUBLICATIONS, Inc.

By Ruth Worgan

Court of Special Appeals of Maruland

Annapolis, Marylan Donald R. Williams et al OFFIC Edgar A. Kalb et al Stipulation/Order for Extension of time for filing brief filed 10/20/75 Brief of Appellant due in Clerk's office on or before Brief of Appellee due in Clerk's office on or before

CERTIFICATE OF POSTING

Date of Posting MARCH 30,1974 Petitioner: EDGAR A: KALB ST AL Petitioner: + DORE AT ISSUED SEE SEE SEELING ROBE SEE SECURITY GIVE. Location of Signar Q. F. BERRT. 2001. Balking Berry @ Misson Security BLUD OPPOSITE WEATERACE TO SOCIETY MALL Posted by Alexan & Roland Dale of return APRIL 5, 1974

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Clerk.	

Court of Special Appeals of Maruland

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Posted for Petition for Reclassification

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CERTIFICATE OF POSTING

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Posted by Floring To Colours Date of return 4.6. 24,1973

Date of Posting AuGust 17,1823

ZONING DEPARTMENT OF BALTIMORE COUNTY

Petitioner EDGAR A. KAKA
Location of property NE/Cor of Bolling Rd as Security Blue

Annapolis, Maryland 21404

Stipulation/Order for Extension of time for filing brief filed Brief of Appellant due in Clerk's office on or before Brief of Appellee due in Clerk's office on or before

Julius a formano Clork

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

No. 11188

Petitioner's Attorney GINSBERG Reviewed by USBE

No. 8322

AMOUNT \$50.00

DISTRIBUTION White Calmin Series Villow Customen 1871cs F. Friedman, 2004.
215 Dunkirk Bullding F. Ittimore, Ma. 21222 (within for Edgar A. Kalb Cotton for Edgar A. 5 00 Cotto

BALTIMORE COUNTY, MARYLAND OFFICE OF MINCE - REVENUE DIVISION

DATE 9/5/73 ACCOUNT 01. 662

Case No. 74-49R Edgar A. Kalb Security Blvd. & Rolling Road

PINK - AGENCY

AMOUNT \$163.32

BALTIMORE COUNT OFFICE OF FINANCE RE MISCELLANEOUS CA	VENUE DIVISION	No. 13158
DATE March 19, 1	1974_ ACCOUNT	01-662
	AMOUNT	\$70.00
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BALTIMORE COUNTY, MARYLAND	No. 13159
OFFICE OF FINANCE - REVENUE DIVISION	
MISCELLANEOUS CASH RECEIPT	
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DATE March 19, 1974 ACCOUNT	01-662
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C. Victor McFarland, Esquire	VELLOW - CUSTOMER
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NE/corner of Relling Road and See	curity Boulevard
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70.00 MM

BALTIMORE COUNTY, MARYLAND OFFICE OF FINANT REVENUE DIVISION MISCELLANEOUS CASH RECEIPT DATE May 31, 1974 ACCOUNT 01-662 white cashien Finx agency Lawrence K. Ginsberg, Esquire cost of Posting Property of Edgar A. Kalb, et al, for an Appeal Hearing
NE/corner of Rolling Road and Security Boulevard - 1st
District
Case No. 74-49-R

OFFICE OF FINALE - REV MISCELLANEOUS CA		No. 5323
DATE 5/15/75	ACCOUNT_	01.712
C. Victor McFarland 920 Frederick Rd. Catonsville, Md. 212	AMOUNT_ 28	\$39.00
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Edgar A. Kalb, et al	- Case No. 74	1-49-R
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THE APPELLES DID PROVE, INADVERTENTLY, A NEED FOR COMPREHENSIVE ZONING, RATHER THAN

PROVING SUBSTANTIAL CHANGES AND ORIGINAL

for to existing snopping centers, one of which is the largest in bathnete country, without the assurance of any present or future relief of traffic congestion, should not be required to bear the additional burden of a third shopping center, without a comprehensive plan.

needs of the surrounding community as well as communities within and without

Baltimore County. A comprehensive plan is imperative, if the traffic situation is to be controlled. It could well be that an impartial observer may feel that the only

solution to the traffic problem, if relief can not be obtained by new construction.

is to avoid, for the present, the development that would create additional traffic. Perhaps an M.R. classification would be the fairest to all concerned, because

it would allow development, after a public hearing, and, therefore, traffic generation could thereby be controlled.

A study may verify the traffic projections of Mr. Morris, the pro-testants witness, that traffic generated in a manufacturing zone would not increase traffic to a point where it would be detrimental to the community in which the

If the Appellees property is reclassified, without a comprehensive map, the chronic traffic problem is left to chance for a solution, and zoning is left to

A community that bears the burden of the traffic to Social Security Headquarters (in excess of 16,000 employees) each work day, and the traffic to and fro to existing shopping centers, one of which is the largest in Baltimore County,

The largest shopping center in Baltimore County supplies the shopping

IMPORTANT NOTICE

If no brief is to be filed on or before this date, counsel will rase notify this office.

The Assignment of this Court will be published in The Daily Record and counsel will be notified of the date this case

COURT OF SPECIAL APPEALS OF MARYLAND

SEPTEMBER TERM, 1975

DONALD R. WILLIAMS, et al.

EDGAR A. KALB, et al.,

APPELLANTS' BRIEF

Court of Special Appeals of Maryland

STATEMENT OF THE CASE

This case arises from two applications; one by Edgar A. Kalb, et ux., and the other by John W. Davis, et ux., filed September 5, 1973, for reclassification of their combined property, a 35.7 acre parcel of land, from its present zoning, M.L.R. (Manufacturing Light Restricted) and D.R.5.5 (Residential-5.5 houses per

SEPTEMBER TERM, 1975 DONALD R. WILLIAMS, et al. OFFICE OF LAW EDGAR A. KALB, et al., APPEAL FROM THE CIRCUIT COURT OOHN GRASON TURNBULL, Judge)

APPELLANTS' BRIEF

THE PAUL M. HARROD COMPANY, BALTIMORE, MARYLAND 21234

Court of Special Appeals of Maryland

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DUESTIONS PRI	SENTED
TATEMEN, OF	FACTS
ARGUMENT:	
L	Did the appellees prove the additional burden cast upon them of need, assuming, arguendo, that they met the heavy burden of proof as to substantial change in the Neighborhood or original error in the map
11.	Did the Appellees prove that the grant of the reclassification would not substantially increase the traffic hazard on Rolling Rood and Security Boulevard, assuming, arguerdo, that they met the heavy burden of proof as to substantial change in the neighborhood or original error in the map. 11
III.	Did the Appellees meet the heavy burden of proof cast upon them as to substantial change in the neighborhood?
IV:	Did the Appellees meet the heavy barden of proof cast upon them as to original error in the Comprehensive Map of March 24, 19712
V.	Did the Appellees, rather than proving sub- stantial changes and original error, prove instead a necd for comprehensive zoning?

The Appellees witnesses claim that the County Council erred by not zoning the Krieger property, that was later developed as Security Mall, M.L. or B.R. and now allowing a "Grandfather's Clause". The nebulous effect on the Kalb property L. described by Mr. Willemain (E. 118-122, 127):

"... the Kalb property was deprived of service and some of the assets that would make it a better place for the industrial, at the same time it changed the market picture and the land use factors on the Kalb property, making it attractive for more quality stores, with direct change of traffic across Security Boulevo.2 from the regional shopping center." (E. 73)

This is a good example of the vague and general statements of the alleged effect of the erection of Security Mail upon the subject property. Mr. Willemain refers to the area as industrial park, which it is not. The Kalb property that is the subject of this case is a strip of industrially zoned land separated from other industrially zoned land by Security Boulevard on the south. To the west is D.R. 5.5 residential land and, beyond, Rolling Road. To the east is the only industrial land contiguous to the subject property. To the north are residential lands (D.R. 5.5) of the Appellees.

In all of the record, there is not a shred of evidence that any of the factors were unknown to the County Council, including the effect of Bill 100, except that the proposed roads that were to handle future traffic would not be built, and that the Ramada Inn would be zoned later, without opposition, because it was a compatible use (E. 49, 10f, 295).

On or before October 16, 1976, the County Council for Baltimore County will again pass a comprehensive land use map (E. 40), in accordance with Section 22-20 of the Baltimore County Code, 1968 Edition, as amended. At that time, the zoning classification of the Krieger tract can be redetermined, the training the section 22-20 of the Baltimore County Code, 1968 Edition, as amended. At that time, the zoning classification of the Krieger tract can be redetermined, the training the section 22-20 of the Baltimore County Code, 1968 Edition, as amended. At that problems, and the community needs as well as the Appellees needs can be reviewed. On that occasion, the County Council will not be concerned with the constitutional rights of Mr. Krieger as in 1971, see Rockville Fuel and Feed Co. v. City of Gaithers-burg. 266 Md. 117, 291 A.2a 672, 50 ALR 3.d 583 (1972).

From at least November 15, 1962, through March 24, 1971, until some time before 1973, the applicants made no effort to contest the M.L.R. zoning granted them. However, an attorney appeared before the Planning Board and the

QUESTIONS PRESENTED

- 1. Did the Appellees prove the additional burden cast upon them of need, assuming, arguendo, that they met the heavy burden of proof as to sub-stantial change in the neighborhood or original error in the map?
- 2. Did the Appellees prove that the grant of the reclassification would not substantially increase the traffic hazard on Rolling Road and Security Boulevard, assuming, arguendo, that they met the heavy burden of proof as to
- 3. Did the Appellees meet the heary burden of proof cast upon them as to substantial change in the neighborhood?
- 4. Did the Appellees meet the heavy burden of proof cast upon them as to original error in the Comprehensive Map of March 24, 1971
- 5. Did the Appellees, rather than proving substantial changes and original error, prove instead a need for comprehensive zoning?

STATEMENT OF FACTS

The subject property is of irregular shape and dimensions and is located in the First Election District of Baltimore County, Maryland, All of the Appellees' land, approximately 58 acres (E. 20), lies in the northeast quadrant formed by the intersection of Security Boulevard and Rolling Road. The portion of the Appelless' property that is the subject of this case is bordered on the West by the D.R.5.5 parcel that was requested to be zoned B.M. but denied in this case. The D.R.5.5 parcel intervenes between Rolling Road and that portion of the Appellees' land that is the subject of this case. The subject parcel of land begins approximately 200 feet from the East side of Rolling Road and runs roughly parallel to Rolling Road, with the exception of the home lot of Edgar A. Kalb, et ux., which causes the zoning line to swing around the home lot and back, continuing approximately 200 feet from Rolling Road. The subject property is bounded on the North by other lands of the Appellees and Grove Avenue; on the East by other industrial land, the proposed Lord Baltimore Drive and Belmont Avenue; and on the Southernmost boundary line by the North side of Security Boulevard.

The Appellee was well aware of Baltimore County's concern over traffic concestion, before the hearing.

The Appellers' witnesses overlooked 'he proposition that, since the development of the subject property, in either industrial or as a shopping center, will increase traffic, according to that it estimony (E. 56), then the only means to lessen traffic is a comprehensive rezoning. If the roads that were contemplated in the 1971 Comprehensive Zoning, to relieve traffic, are no longer being planned, a case for comprehensive rezoning to consider all possible alternatives, is apparent.

111

THE APPELLEES DID TOT MEET THE HEAVY BURDEN OF PROOF CAST UPON THEM AS TO SUBSTANTIAL CHANGE IN THE NEIGHBORHOOD.

The only change in the character of the neighborhood referred to by the Appellees' witnesses, was the Ramada Inn, whice is completely surrounded by industrial lead (f. 82. 121), over 350° from the subject property and is across Belmont and (f. 82. 25). The canning of the most is a use compatible with an Appellees witnesses, Smith (f. 82.) and Klaus (f. 106). See Surkrich's r. Dunh supro. at page 452, for incompatible changes that did not constitute a change in the neighborhood see.

All other factors were known to the County Council, including construction of Security Boulevard (E. 251-253). There was no showing, by the Appellees, of change in conditions or circumstances which affects the -haracter of the neighborhood.

In addition, the County Council of Baltimore County knew that the property now known as Security Mall could be developed: either industrially or as a shopping center, under the uses allowed in an M. Loone until March 24, 1971. After March 24, 1971, the effective date of the Comprehensive Map and Bill 100. ZamyJ Krieger, the owner of Security Mall, had a time limit in which to conform to the "Grandfathers' Clause." That 1,00, was known to the County Council. His

Part of the property of Zanvyl Krieger was zoned M.L. (E. 251). The M.L. zoning, at that time, allowed certain Business Roadside uses (B.R.), including a shopping center (E. 125, 251), however, the M.L.R. zone did not allow those is.R. needs [1-180].

On March 24, 1971, the County Council of Baltimore County, after a series of public hearings, adopted the Comprehensive Land Use Map for the area, which provided M.L. and M.L.R. zoning, deking the L.M. zone for the Krieger tract (E. 250-258), and the Appellees were given a M.L.R. zone (again) and the L.M. zone was deleted. The zoning remained basically the same as the 1962 M-9. (E. 162).

Coincidentally, with the passage of the aforementioned Comprehensive Land Use Map, County Council Bil. 100 fa set of amendments to the Zoning Coule Decame affective (E. 179). Bill. 100 allowed M.L. zoned property, as of that dark, to erect shopping centers, if developers presented plans within a cut off period, even after the map was adopted. This provision was enacted because the M.L. sassification did not provide for those Business Rouside uses thereafter. That provision is referred to as "Grandfather's Clause" and did not apply to the Appelless property nor that part of Kerger's property that was retained as M.L.R. The "Grandfather's Clause" applied only to the M.L. zone of Krieger, when the Crandfather's Clause" and, the engineering the Compiled with the provisions of the "Grandfather's Clause" and, thereafter, exceed Security Square, the largest shopping center in Baltimore County (E. 125), after the adoption of the map (E. 254).

Despite request for commercial zoning, the arbject tract was given industrial zoning by the County Council, after public hea sing on successive Comprehensive Zoning Maps of November 15, 1962 and March 24, 1971 (E. 1923. Withhost authorization, an attorney appeared before the Planning Board of Baitmore County and the County Council of Baltimore County and spoke for reclassification from industrial to B.R. (E. 194-197) for the subject traci. Mr. Kalb denies that he ever requested a zoning change or authorized anyone to appear on his behalf (E. 21).

No direct testimony was produced to indicate a need for an additional shopping center on the subject tract (E. 18, 153.). Testimony was produced, without contradiction, that there is no need for an additional shopping center in the area of the subject caret (E. 300-306). Affirmative testimony was produced that there is a need to retain the property for industrial use (E. 25, 228, 251).

12

The Court of Appeals, in Price v. Cohen, supra, denied the reclassification because

". . . rezoning here would materially increase the traffic hazard. . ."

The Court, in that case, referred to Dr. Ewell's testimony, a witness for the protestants:

"... he thought that the additional traffic which would be generated by the shopping center would exceed the capacity of such road ..." In his opinion, it was unsatisfactory to build two shopping centers opposite each other on a 30 foot road because of the potential cross movement of traffic ..."

Nowhere, in Dr. Ewell's testimony, does he address himself to this blookward. The cross traffic problem is critical bree time on Security Boukevard. The cross traffic problem is critical bree because the traffic is even now at or beyond capacity (E. 239, 240). Richard Moore, Assistant Traffic Engineer in charge of the Bureau of Planning and Design, Department of Traffic Engineering. Baltimore County, testified that the following intersections are indicated "L" (maximum number of vehicles that can pass the intersection without complete failure): Woodlawn Drive and Security Boudevard (east of property). Security Boudevard and Rolling Road (subject intersection), Rolling Road and Route 40 (south of subject tract)(E. 237). These statistics were founded in a fifteen month study (E. 237). No projects are planned for the present, on a short or long range basis, for "fedure congestion on the roads" (E. 186, 240).

The protestants testified as to the chaotic traffic problem and it's effect on their lives, including their fear of traffic blocking emergency vehicles (E. 157, 293, 296, 310) and the depreciation of the value of their property (E. 101, 170, 260) caused by a third shopping center on four corners.

The Appellees solution to the traffic problem is to build a shopping center on the 35.7 acre parcel and use the D.R.5.5 land for parling (E. 61), leaving the consequences to chance.

The utilization of the subject property as industrial would not lessen existing traffic problems, but, at least, its effect would only be felt during the week (E. 156). The Appellees unsupported theory, that a massive industrial development,

say that whatever benefits there are from the first shopping center; are not enhanced by additional shopping centers. The benefits are proportionately diminished as the disadvantages increase. While land values might increase, or be unaffected by one shopping center, they may be diminished by too many shopping centers (E. 262).

Burdening this neighborhood with it's third major shopping center will create a lack of balance and harmony. The granting of the reclassification, in the case at bar, could ultimately lead to a four shopping center corner, if need is not a critical consideration in the present case.

the case of Aspen Hill Venture v. Montgomery County Countrel 265 who are 32, 289 A.24 303 (1972) does not give aid and comfort to the Appellecs, even though a first blush it may seem so. No need was shown, by the applicant, for a reclassification for a shoopping center use on part of a 15.5 acre tract, Previously, a part of the applicant's property had been round for a shooping center. Actually, the evidence admitted disclosed a conflict in the evidence of need; a) the Durice Council's decision to deep the application, for failure to prove need, was based on their opinion that no need existed for additional shooping facilities, which conflicted with b) evidence from a County study in the same area, produced in a subsequent case, based it's finding of no need on existing facilities, including the Aspen Hill Venture's land, as if fully developed. The Venture's land was shown on Ic. Master Plana as alopoping center.

The Court said, in reversing the denial, at page 308:

"We are thus, in this case, faced with the abstract question of whether, absent a statutory mustate such as is usually required in cases or ejection of a 2 noing reclassification. In deciding to answer this question in the negative, we are mindful of the fact that the constitutionality and validity of zoning leave deepend essentially upon a reasonable balancing of public interest in zoning as against opposing private in 25 40, p. 90. The legislative discussed in the proposed use, does not, in our opinion, bear a sufficient relation to the public welfare to be supported as a valid enactment of the po/ce power, Creative School **, Bonnal supract, Relativant Really **, Whitting*, 226 Ma. 273, 285, **173 A.23

The Appelices witnesses 'ignored their obligation to assess the present traffic situation and what effect the planned improvements may have for the present and future. The Appellees witnesse." failure to produce data, and ignore cross shopping centers traffic movements, is too basic to be inadvertently forpotten, particula by because of Dr. Ewell's concern with cross shopping center traffic expressed in Price v. Cohen, survey.

"(T)he prevailing general rule, almost universally fellowed, is that an expert's opinion is of no greater probative value than the soundness of his reasons given therefor will warrant (cases cited)". Surkorich v. Doub, supra.

The main thrust of the Appellees case, concerning traffic, is that a shopping center's peak hours do not collide with the peak hours of traffic going to and from employment (E. 27). In Appellant's expert, Robert Morris, da' not context that proposition with regard to morning traffic (E. 275), however, he did testify as to the conflict in the evening traffic hours (E. 276), in addition, he did produce data as to the trip generation, various property uses, inclinaindustrial and shopping centers, that daspelled the assumption of the Appellee traffic experts that a shopping center will cause less traffic than industrial (E. 327). Mr. Morris, whose credentials are impressive, testified that the peak hour traffic of a shopping center is spread out and, therefore, a peak is not as great (E. 277). Testimony was produced that Social Security Headquarters, less than a mile away, generates most of the troffic, staggers its shifts over several hours to relieve traffic congestion, and spreads out the peak hour traffic (E.280).

The projected peak hour traffic caused by the present shopping centers and the proposed shopping center were not correlated with Social Social

The opinion of Dr. Ewell and John W. Erdman, without documentation and data, except for current traffic counts, is unforgivable in view of the Planning Board's published recommendations (P. Ex. "K" E. 325). The Appellees were "frewarned" about traffic concern by the County.

The Protestart's witness, Robert L. Morris, in detail, proved, by three sources of statistics, that shopping centers produce vasily greater numbers of trips per day than Industrial Parks, Research and Development Areas, and General Monofestrian Areas (P. S. "L" E. 327).

"Learn if we accept the Board's implicit conclusion that the distance to the presently existing shorping centers is unreasonable, in the passage quoted from Milere x. Abrahams; signa, it is abrahamsty clear that Casself, the seminal case in this area, does not represent the proposition that need can serve as a substitute for change or mistake. In all individual applications for reclassifications, there must first be a finding of substantial change in the character of the tenfings alone mistake in the comprehative body to grant the requested recoining but does not require it to does of Messenger & Board of Counts Commissioners, supra 271 A.2d at 172. It is then that feator of need can play a significant role, for it there is no need whatsoever the rezoning might be arbitrary and caprisions. Right Research of the desirability of the resoning of the contribution of the contrib

Assuming that the Appellees proved change and error, the lack of need shown by failure of the Appellees to produce proof that there exists need for the requested recoining and the Appelleast proof that the only need that exists is for industrial, brings the Appellees back to where they started, with a justification for an industrial classification only.

in another shopping center case, Chapman v. Montgomery County, Council 259 Md. 641, 271 A.2d 156 (1970) at page 159, Judge Finan, in a more forceful statement referring to need, stated:

> "Unquestionably, much of the testimony in the transript was devoted to the question of need because the appelleswere fully water that ever if substance the character of the neighborhood were established and itself; would not necessarily complete the character of the control of the character of the control of the character of the character of the character of the Land Cov. Pd. of County Comir. 323 Md. 536, 539, 194 A.25 (40 (1963). On the other hand, change, buttreased by a need for the facility, might well have resulted in need being the persuasive factor. Widefield v. Kraft, supra." 20.2 Md. 136, 146, 96. A.21 (21 1963).

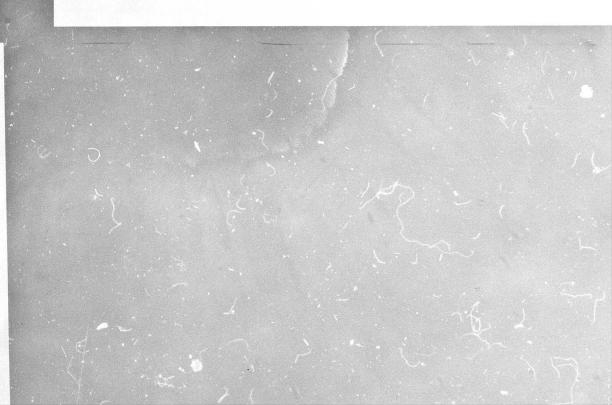


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Wakefield v. Kraft, 202 Md. 136, 96 A.2d 27, (1953)	

Statutes

ill 100 - County Council of Baltimore County Estacted 6/3/197	5.16,17,18,1
effective 9/19/1970	

There presently exists shopping centers on the southwest and southeast adrant of the intersection of Security Boulevard and Rolling Road.

The Appellers' land has been in his family ownership for approximately 200 years and originally contained 130 ares (fil. 19). Several parcels were conveyed out, for the development of the sub-division of Rolling Road Farm (fil. 20) and for the rights-of-way of Security Boulevard (fil. 20) and to Zannyl Krieger (fil. 20-21). The lands conveyed to Zannyl Krieger became part of that land assembled by him, part of which is now the largest shopping center in Baltimore County, known as Security Souraer, and lies across Security Boulevard (fil. 20), 21.2. 250.

The Appellees' property is known as Rolling Road Farms, as is the adjacent sub-division to the North (formerly Kalb property) in which some of the Appellants live.

The Petitioner is a farmer-businessman, having been an officer in a Building and Loan Association since he was 22 years old.

The Farm is used for farming; cattle (10 head) and crops (E. 20). Located on the farm is the Appellees' (Kalb's) 14 year old ranch-type house (E. 19), the old farm house in which one of the Appellees, Edgar A. Kalb, was oom and raised, a barn, and frame outbuilding (E. 19).

The Appellees' contract purchaser, Secroll Joint Venture, plans to erect a 22 retail store shopping center on this 35.7 acre site (E. 27). Adequate water and sewer lines are available (E. 30-31).

The present zoning classification of M.L.R. was placed on the subject too November 15, 1902 (R. 250) as part of a large industrial area [E. 210). This industrial area included the present site of Security Square and was then owned by Zanoly Krieger. Anothward to Security Boulevard, is a parcel of land that was formerly owned by the Appellers. Ligar A. Kalb, et al., which was alter conveyed to Krieger (E. 250) and is zoned M.L.R. abong the south side of Security Boulevard. This parcel provides a strip of M.L.R. property approximately 200 feet east from a previous made you for extending Roads, running on the south side of Security Boulevard to the west side of the faithmen County Relative, infection was a construction of the Baltimone County Relative, infection was

CONCLUSION

No credible iestimony or other evidence was produced by the Appellees, before the Board of Appeals, concerning 'error in the may', change in the neighborhood or that he reposed reclassification would be in the "public interest." The Appellees comes to tacked substantial evidence that the decision of the public and the public of the appeal of the public states of the public public states and the public states of the public states of the public states are public to the public states of the public states

Therefore, the decision of the County Board of Appeals should be reversed as to the reclassification of the Appelless property from M.L.R. to B.M.

Respectfully submitted.

C. VICTOR McFARLAND JOHN P. ZEBELEAN, JR.,

Attorneys for Appellants

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failure to utilize the provisions of the "Grandfather's Clause", as set forth in Bill 100, would restrict his uses thereafter to industrial, under the Amended M.L. Classification, as seven other locations in Baltimore County (E. 191, 207).

The effect, after the shopping center met the requirements of Bill 100, it has ame as if the shopping center had been built in the years before the Amendments to Bill 100 and completed and in operation at the time the amendment was passed (E. 209). In the years that an M.L. zone allowed shopping centers was passed (E. 209). In the years that an M.L. zone allowed shopping centers was made in an industrial uses, change in the neighborhood was noted caused when the election to build a shopping center was made in an industrial area or vice versa. The effect of Bill 100 was to extend that option a few months more. It did not add as use to the M.L. classification, but deleted a use. The vagueness of Mr. Willemain's ice as to "change in the neighborhood" as applied to the erection of Security Mail, in an M.L. zone, is illustrated when he avoided answering a direct question (E. 138), is well as Klaus (E. 107).

The County hoped that Krieger would build industrial rather than a shopping center (E. 180-194), and chose to avoid constitutional issues (E. 191,

IV.

THE APPELLEES FAILED TO MEET THE HEAVY BURDEN OF PROOF CAST UPON THEM AS TO ORIGINAL "ERROR" IN THE COMPREHENSIVE MAP OF MARCH 24 1971.

"It is now firmly established that there is a strong presumption of the correctness of original zoning and of comprehensive rezoning, and that to sustain a preconcal change therefrom, there or comprehensive rezoning or elsewidence of substantial change in the character of the neighborhood (cases cited) ... And of course, the burden of proof facing one seeking a zoning reclassification is quite onerous. "Agusclaine v. Lucas. 247 Md. 612, 618, 233 A. 24 751 (1867) (cases then cited).

See also Stratakis v. Beauchamp. 268 Md. 643, 652, 304 A.2d 244, 249 (1973) "... none is more rudimentary ..."

acre) to a B.M. (Business Major) zone. Both applications were signed by Lawrence K. Ginsberg for Secretl Joint Venture as contract purchasers. The presently zoned M.L.R. portion of the subject tract was requested to be reclassified to a B.M. zone and the present D.R. 5.5 zoned portion of the subject tract was requested to reclassified to a B.M. zone. The Petitioners have not included, in the Petitions for Reclassification, the present home and lot of the Petitioner, Yalpar A.Kalb., et ux., facing Rolling Road, as well as other D.R. 5.5 lands of the Kalbs.

The present zoning of tracts as M.L.R. and D.R.5.5 are the results of the Comprehensive Zoning Ordinances (maps) of November 15, 1962 and March 24, 1971

On February 15, 1974, the Zoning Commissioner, S. Eric DiNenna, in his written Opinion, granted the requested reclassification of the M.L.R. zone to a B.M. zone, but dende the requested reclassification from D.R.S.5 to a B.M. zone. An appeal was duly entered to the County Board of Appeals, and later days of hearings. the County Board of Appeals, in this written Order of March 27, 1975 and Amended Order stated April 9, 1975, affirmed the Order of the Zoning Commissioner, granting only the requested reclassification from M.L.R. to B.M. The Petitioner ded not press the request for a reclassification from D.R.5.5 to B.M. before the County Board of Appeals.

On April 25, 1975, the Frotestants duly filed an Appeal from the Orders of the County Board of Appeals to the Circuit Court for Baltimore County. A Petition of Appeal was filed by the Protestants on May 1, 1975 and, on June 5, 1975, the Petitioners filed their Answer (to Petition of Appeal).

On July 18, 1975, after receiving written memoranda from the parties, reviewing their contents and on completion of eral arguments of counsel for the parties, John Grason Turmbull, Judge, in a spontaneous oral Opinion, affirmed the County Board of Appeals and the same day signed a brief written Order affirming the County Board of Appeals.

On August 18, 1975, the Protestants duly entered an Order of Appeal from the decision of the Circuit Court for Baltimore County, Maryland, to the Special Court of Appeals of Maryland.

On October 21, 1975, counsel for Appellants and Appellees filed a Stipulation for Extension of Time to File Joint Record Extract and Appellants Brief to November 19, 1975 and Appellees Brief to December 19, 1975. County Council, at public hearings, and requested B.R. roning for the subject tract. Even if this be true, it is difficult to believe that, despite publication of the mar-ping process and the public hearings, a man of Mr. Kalh's sophistication was manuare of the proceedings.

Mr. Wilemain —: Mr. Klaus settify that, because a right to crect a hopping center was given to Mr. Krieger, it should be given to the Appelless E. 98, 144). Their contention ignores the set that Wr. Arieger had a sight to build a shopping center since the 1962 map. Also gapored throughout the Appellers is the obvious fact that there would be no buffer not between the subject pared, if zoned for a shopping center, and the residential. The Security Mall is buffered by the Beltrays, Secur. y Boolevard, M.L.R. Indiand 170N. Both the testimony of Mr. Klaus and Mr. Willemain are vapie and general, except for the testimony of concerning the effect of Bill 100 on the M. L. zoning, but the conclusion of a non-conforming use in unwarranted. Testimony as to Bill 100's effect on the Appellants properly: a variege and Illisory. No attempt was made to prove that the Appellants properly: can not be used as presently zoned or that Bill 100 had any effect on the Annellant's hills' to norfitably use.

No theory is advanced as to how an error, even if made by the County Council, in the zoning of the Krieger tract, affected the Appellees' property to require a reconing.

The legality of the zoning of the Krieger tract can not be litigated in this proceeding because the parties affected are not parties to this case. Therefore, only the affect of Bill 100, on the Appellees property, can be the subject of this

The Zoning Laws of Bultimore County and the comprehensive mapping process are available to the public, as the date, time and location of the public meetings are advertised. The Krieger trust, along with many other parcels in Bultimore County zoned M.L. without development at the time of the mapping process, was green the advance notice of Bill 100 and the Appellers are chargeable with that knowledge (E. 95). Even though the map might car-aire sourcess are the use of the Krieger trast, the exercision of the shopping center was actual notice of

A reclassification of the Appellees 35.7 acres will amount to spot zoning, without buffers or lines of demarcatio, between it and the residential property to the north, which would be apolied by comprehensive zoning.

All witnesses agreed that the subject property is burdened by a serious raffic problem (E. 71, 240, 260).

The Petitioners plan to erect a 22 store shopping center with 1,740 parking spaces (E. 27). The proposed stores, together with the two existing shopping centers, will provide 119 stores (E. 333) at the intersection of Security Boulevard and Rolling Road.

ARGUMENT

1.

THE APPELLEES DID NOT PROVE THE ADDITIONAL BURDEN OF PROOF CAST UPON THEM OF NEED, ASSUMING, ARGUENDO, THAT THEY MET THE HEAVY BURDEN OF PROOF AS TO SUBSTANTIAL CHANGE IN THE CHARACTER OF THE NEIGHBORHOOD OR ORIGINAL FROOR IN THE MAP.

Not only is the record lacking evidence of need, it is decide of such affirmative testimony. On the contrary, the record is filled with testimony proxing, without contradiction, that there is no need for additional shopping, much less another shopping center (r. 18.14.18.2, 297, 20.340). From the subject tract, you can observe the largest shopping center in Baltimore County, 100 acre Security Square (E. 102, 125) and, with a slight turn of the lead, you will observe another, much smaller, shopping center, Chadwick Shopping Center (E. 295-296). The only positive testimony, without contradiction, is that of H.B. Stash, Director of Baltimore County, when the state of the stat

The importance of a showing of "need" is stated by the Court of Appeals by Judge Digges, in speaking for the Court, in *Hardesty v. Dunphy*, 259 Md. 718, 271 A.2d 152 (1970) at page 155:

These statistics lay bare the basic premise of the witnesses of the Appellee. Erman, Ewell, Klaus, and Willemain, as stated by Mr. Erdman, "No str. I am saying if it were developed into an office park, it would be much worse than built as a shopping center, and if developed in the normal M.L.R. use, it would be about the same (E. 56).

A Shopping Center (completed) an generate 17,290 trips per day on 35 acres, as opposed to 1,015 trips per day for a 29 acre General Manufacturing 2-ac or 2,660 trips per day for a 7-acre Industrial Park. These statistics are susceptible to calculations to provide figures for the acresge moveden the cace at bar. The statistics are susceptible to being applied on percentages of traffic peaks at various hours, derived from a comparable loca-

The sources of Mr. Morris' statistics are; 1) Marjand State Roads Commission's "Trip Generation Study, 1968", 2) Maricopa Association of Governments, California, "Trip Generation by Land Use, 1974", 3) Marjand Nepatriment of Transport,tion data elicited for the Maricopa data. The Appellee's winess used data from an incomplete shopping center, made no allowance for variables and supplied other data from conjecture (E. 69, 71, 79, 81, 85, 111, 112).

All, because it was still under construction, nor the proposed shopping center, but they were available for the Claudwick Shopping Center and other existing shopping centers of comparable locations. Without such traffic counts, it was incumbent on the Appellees' witness to obtain the data similar to that obtained by Mr. Morris.

The burden of a traffic expert's testimony is not lessened when his testimony involves placing a particular use at a location with an existing "chaotic" traffic problem. The Appliants believe that the burden increases because of the provision of the Baltimore Courty Code, Article 22-18, requiring

"... reduce congestion in the roads. ..."

and Price v. Cohen, supra:

In Wakefle'd v. Kruft, supra, the majority Opinion, by Hammond J., later Chief Judge, and the dissenting Opinion of the then Chief Judge of the Court of Appeals Sobeloff, stresses the importance of need in the exercise of police power in the quasi-lesislative function of zoning regulations.

To further bolster the A2-ellants contention that, even if the Appellees proved the dynamics of mistake or change: the Board was not compelled to grant the reclassification requested, but there must exist a need (justification) for the reclassification as stated in Messenger v. Board of County Commissioners 259 Md. 603, 271 A.2 lof6 (1970) Judee Barnes, at once 172:

"Even if an applicyt meets his burden of proving that there was a mistake in the original comprehensive zonge or that changes have occurred in the neighborhood causing a change; in the character of the neighborhood chas meets the Rigislative body to grant the requested rezoning but does not require it to do so." (Emphasis theirs)

The urgency of requiring a showing of need is more important in shopping center cases than other reclassifications, because of the impact a shopping center has on it's immediate neighborhood. A shopping center adds traffic, artificial light, noise, increased use of utilities, emergency facilities, etc., not to mention it's economic effect.

Additional impacts are created by adding shopping centers to a neighborhood. To survive, the second shopping center must appeal to an area greater than its immediate neighborhood (E. 157, 297). The most significant side effect of the proliferation of shopping centers are cannibilation to never shopping malls on older aborping centers and, particularly, old commercial strip zones in long established organization.

The proposed shopping center, even if it builds a better commercial "moust tep", can not compete with Security Mall, with it's Sears, Hochschild Kohn, J.C. Penny and other class "A" tenants (E. 994-333). It can, however, cannibate the tenants and customers of the Chadwick Shopping Center (E. 299, 333) and parasitically draw business from Security Mall, causing additional traffic movements materially cross traffic.

The Appellants do not mean to imply that shopping centers are necessarily detrimental to a residential neighborhood, but the Appellants do mean to rather than the development as a shopping center, of the Appellees land, would cause greater traffic congestion at current peak hours, is not illustrated by data from actual developed industrial land in the neighborhood. (E. 6.1.1). The development of the Appellees land as a shopping center, to the contrary, could add more traffic E. 241, 274, 278, 3279, latten, lengthen or stretch out peak hour traffic (E. 278, 280) and add additional traffic not only during the week but also on the week-ends, including Sunday it a movie theatter is included and the stores are onen on Sunday.

This community is additionally burdened with the 'raffic of Social Security Headquarters, located one mile away, (more than 16,000 employees) all week long, which has been staggered, in shifts, because of the existing traffic convention. The staggering of shifts tends to flatten out the peak hour traffic curve (3, 279, 280). The Appellees' witnesses did not consider, in any detail, whether the Social Security traffic shifts affected the estimated traffic generated by maximumly developed industrial capacity of commercial development of the Appellees' property. The projection of these traffic counts, the flow of traffic, the lengthening of the peak hours, the effect of staggered traffic and it's peaks, what road construction is projected and what effect they will have, and other factors, such as future residential construction as projected, was not considered in any comparison whatsoever by the Appellees' witnesses. Some of these factors were brought out during cross-examination and the answers were "ad libbed" by the Appellees' witnesses. Not only did Dr. Ewell avoid the question of cross traffic interrupting the "green time" on Security Boulevard, but, also, the effect of the additional traffic movements (i.e. left and right turns to and from the subject tract, developed as commercial or industrial and compared). The only comparison of traffic counts was given by the Appellants' witness Morris (E. 327).

At the time of the hearing, the Security Square shopping Center was incomplete, as well as the M.R. property of Krieger, except for the construction of one bank (E. 294).

"Chapter and verse" were not produced as to how the maximum industrial development would have been made, the allowable parking spaces, height and square foot size of buildings, working hours and number of employees, types of uses likely, most law out.etc.

However, the only data produced, that applied specifically to shopping centers, was that produced by the Appellants' witness, Robert L. Morris (E. 282).

196 (1961), when balanced against the rights of the property owner. In such a situation we must not forget the underlying punciple that, Such ordinances (coning ordinances) are in detogation of the common-law right to 50 use private property as to realize its highest utility, and white they should be liberally construct to accomplish their plan purpose and intelligentic property of the complete of the control of the state of the control of the control of the control of the language. Londoy v. Board Zouling Appeals, 173 Md. 460, 466, 196. A 297-296 (1938).

"The District Council argues that such a proposition of law would require it to grant a requested commercial zoning as a matter of law once change or mistake has been established. This of course is fallications reasoning, as it ignoress the fact that there are other factors which enter into such a determination, as for example, whether the rezoning is detrimental to the public interest by way of creating a traffic hazard, raffic consection or lack of morths facilities, to tile but a few.

"Indeed, in the instant case, where the lack of need is unaccompanied by any detriment to the public interest, should the application be granted, we cannot view the District Council's action as amousting to anything more than its substituting an economic judgment of its own for that of the shorping center's entrepreneur, as to the financial success of the writter." (37)

In the present case, a vacuum was caused by the Appellees failure to produce testimony as to need, finct bit wacuum, the Appellants produced testimony that (a) demonstrated a lack of public need for additional commercial facilities at the subject site to service residents of the area (E. 228, 248/349); (b) demonstrated a surplus of local commercial shopping facilities to service residents (E. 157, 295, 297); (c) demonstrated the present hazardous traffic congestion would be increased (E. 156, 291); (d) demonstrated the loss of value of the resident's houses (E. 158, 291); (e) demonstrated, without contradiction, the public need to retain the Appellees property in it's present classification (F. 226, 251); and (f) demonstrated, indirectly, a need for a comprehensive long-range view of the entire area (E. 301-302).

Aspen Hill Venture v. Montgomery County Council, supra, did not address itself to circumstances such as exist in the present case. No evidence was

produced in that case to show that retention of the present zoning was in the public interest and the detailed study proved that additional shopping facilities were necessary, indirectly. The critical failure in that case, was the conflict and contradiction in the Detailer Council washing to

The Court of Appeals has been very sensitive to "impermisable change of mind and heart", Nolinger v. Birley, 244 Md. 538, 224 A. 2d 460 (1966), "to blow hot and to blow coid." Agreelane, Inc. v. Licaz, 247 Md. 612, 233 A. 2d 757 (1967), to expert witnesses not providing "Chapter and Verse", Surkowich v. Doub, 258 Md. 263, 265 A. 2d 447 (1970). The Court has not, therefore, been unmindful of the forces that come to bear in the course of human conduct and zoning cases. Especial Court of Appeals "requirement of specificity is fibrated by Judge Menchine in Quinn's County Commissioners of Kent County, et. al., 20 Md. App. 413, 316 A. 2d 535. becoming a tames 450.

ш,

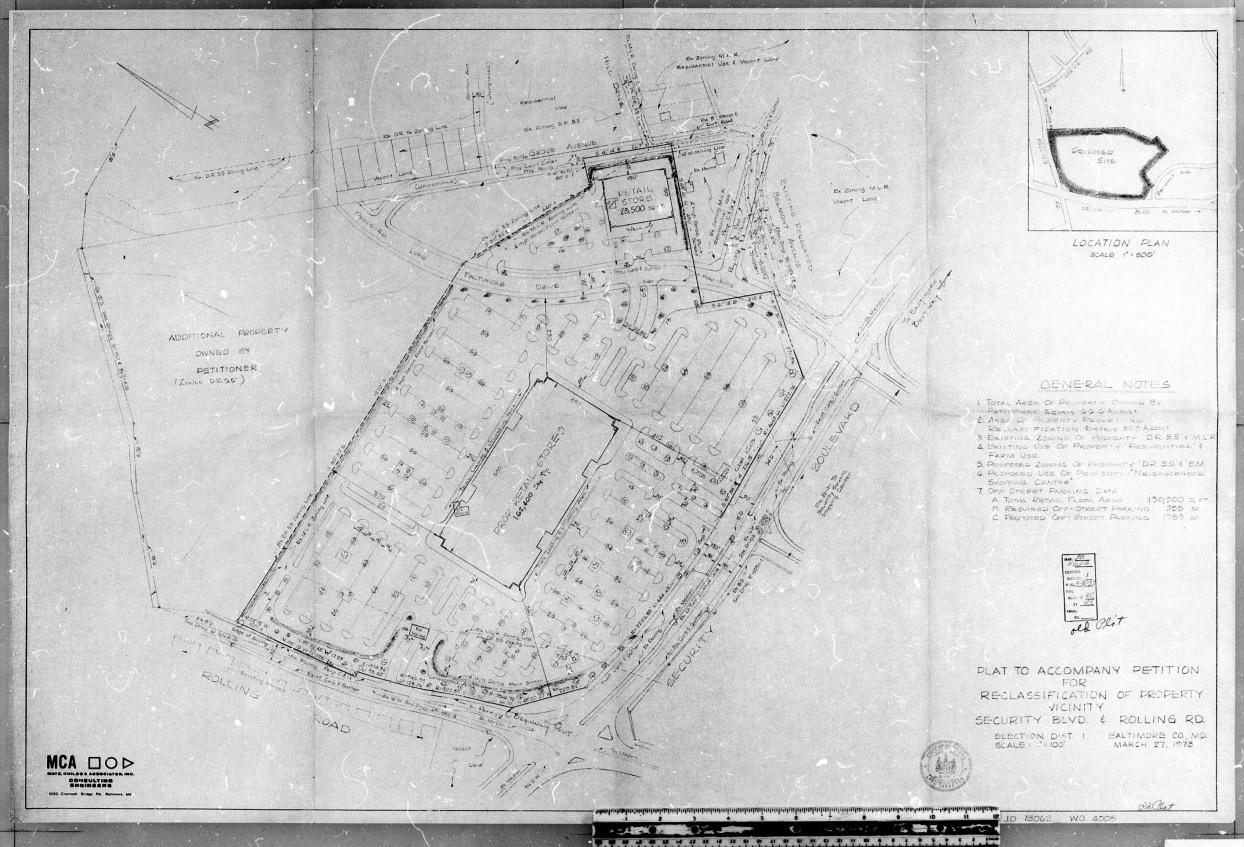
THE APPELLEES FAILED TO PROVE THAT THE GRANT
OF THE RECLASSIFICATION WOULD NOT
SUBSTANTIALLY INCREASE THE TRAFFIC HAZARD ON
ROLLING ROAD AND SECURITY ROULEVARD.

All traffic experts and the Board itself agreed that the traffic problem at the subject intersection is acute and getting worse, without the third sheeping center. The Board, in it's Opinion, states traffic."... is adominable... (C. 10). I would the key traffic expert for the Appellees, states traffic is "... chaotic... (C. 23). There is no relief for the present traffic station in the foresextable future.

Article 22-18 of the Baltimore County Code, 1968 Edition, requires that zoning regulations shall promote

"...health, safety, morals and general welfare of the Community." and "... shall be designed to reduce congestion in the roads, streets and alleys, to promote safety from fire..."

"Zoning regulations must be designed to lessen traffic in the streets and highways and, in changing zoning regulations, traffic plans should have material consideration." cases cited. Price v. Ochn. 213 Md. 457, 132. A 2d. 125 at 129 (1957).



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