

PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, or we, Edgar A. Kalb legal owner of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition (1) that the zoning status of the herein described property be re-classified, pursuant to the Zoning Law of Baltimore County, from an M.L.R. & D.R. 5.5 zone to an R.M. zone; for the following reasons:

SEE ATTACHED

See attached description

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

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

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

Secroll Joint Venture Contract purchase:
Address: 215 Dunkirk Building
Baltimore, Maryland 21222
Edgar A. Kalb Legal Owner
Address: 2061 N. Rolling Road
Baltimore, Maryland 21207
Lawrence K. Ginsberg Protestor's Attorney
Address: 215 Dunkirk Building
Baltimore, Maryland 21222

ORDERED By The Zoning Commissioner of Baltimore County, this 13th day of April, 1973, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 5th day of September, 1973, at 11:00 o'clock.

Lawrence K. Ginsberg
Zoning Commissioner of Baltimore County.

(over)

PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, or we, Mary A. Davis legal owner of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition (1) that the zoning status of the herein described property be re-classified, pursuant to the Zoning Law of Baltimore County, from an M.L.R. & D.R. 5.5 zone to an R.M. zone; for the following reasons:

SEE ATTACHED

See attached description

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

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

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

Secroll Joint Venture Contract purchase:
Address: 215 Dunkirk Building
Baltimore, Maryland 21222
Mary A. Davis Legal Owner
Address: 6703 Grove Avenue
Baltimore, Maryland 21207
Lawrence K. Ginsberg Protestor's Attorney
Address: 215 Dunkirk Building
Baltimore, Maryland 21222

ORDERED By The Zoning Commissioner of Baltimore County, this 13th day of April, 1973, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 5th day of September, 1973, at 11:00 o'clock.

Lawrence K. Ginsberg
Zoning Commissioner of Baltimore County.

(over)

BALTIMORE COUNTY ZONING ADVISORY COMMITTEE



PETITION AND SITE PLAN

EVALUATION COMMENTS

BALTIMORE COUNTY ZONING ADVISORY COMMITTEE

April 13, 1973

COUNTY OFFICE BUILDING
111 W. Cross Street
Towson, Maryland 21204

JOHN J. DILLON, JR.
Chairman

MEMBERS

BUREAU OF ENGINEERING

DEPARTMENT OF TRAFFIC ENGINEERING

STATE BOARD COMMISSION

BUREAU OF FIRE PROTECTION

HEALTH DEPARTMENT

PROJECT PLANNING

BUILDING DEPARTMENT

BOARD OF EDUCATION

ZONING ADMINISTRATION

COUNTY OFFICE BUILDING

Lawrence K. Ginsberg, Esq.
215 Dunkirk Building
Baltimore, Maryland 21222

RE: Reclassification Petition
Item 2
Edgar A. and Estella Kalb - Petitioners

Dear Mr. Ginsberg:

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 appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. The Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the appropriateness of the requested zoning.

The subject property is located on the east side of Rolling Road, and the north side of Security Blvd., in the First District of Baltimore County. This property, which is currently zoned Manufacturing, Light Restricted (M.L.R.) and DR 5.5 is requesting a Reclassification to Business Major on 35.7 acres of land. This property, which is currently a large dairy farm, is improved with a dwelling, that fronts on Rolling Road and another dwelling that sits approximately one third the way back from the intersection of Security Blvd. and Rolling Road. There are also various farm buildings located on this site, all of which are not apparently indicated on the submitted site plan. There is also a large storm drain culvert running through the eastern side of the property in a northerly direction - this is not indicated on the site plan. There are residential dwellings along the west side of Rolling Road, and the property immediately to the north is additional property owned by the petitioner that is zoned DR 5.5 and is vacant, unimproved land at this time. There is the existing Security Square Shopping Center to the south of the property, and on the east side there are a few individual dwellings and vacant land. Curb and gutter exists along Security Blvd. at this location, however, Rolling Road is not so improved.

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.

Lawrence K. Ginsberg, Esq.
Item 2
Page 4
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 may 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 this petition not being scheduled for a hearing. Notice of the hearing date and time, which will be between September 1, 1973 and October 15, 1973 will be forwarded to you well in advance of the date and time.

Very truly yours,

John J. Dillon, Jr.
Chairman, Zoning Advisory Committee

JJD:JLD
(Enclosure)

Baltimore County, Maryland Department of Public Works COUNTY OFFICE BUILDING TOWSON, MARYLAND 21204

Bureau of Engineering
ELLENWORTH N. DYER, P. E. CHIEF

April 25, 1973

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

Re: Item #2 (April to October 1973 - Cycle V)
Property Owner: Edgar Kalb, et al
R/S of Rolling Rd., N/S of Security Blvd.
Present Zoning: M.L.R. and D.R. 5.5
Proposed Zoning: Reclass. to R.M.
District: 1st No. Acres: 35.7

Dear Mr. DiNenna:

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 Baltimore 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 plan.

To align Lord Baltimore Drive as suggested, it will be required to re-build Belmont Avenue to tie into Lord Baltimore Drive, 430 feet north of Security Boulevard. Traffic is already extremely heavy at the intersection of Belmont Avenue and Security Boulevard, and an alignment as shown, funneling another road with the traffic magnitude of Lord Baltimore Drive into the intersection would cause traffic to stack in an undesirable manner.

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 undesirable 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 50-foot 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.

Item #2 (April to October 1973 - Cycle V)
Property Owner: Edgar Kalb, et al
Page 2
April 25, 1973

Highways: (Cont'd)

Grove Avenue is a partially existing and partially proposed local road which will ultimately be constructed as a 30-foot curb and gutter street on a 50-foot right-of-way.

Belmont Avenue is an existing road with a 40-foot curb and gutter street on a 50-foot right-of-way.

Storm Drains:

Storm drain facilities are required, and must be extended to a suitable outfall.

The Petitioner must provide necessary drainage facilities (temporary or permanent) to prevent creating any nuisances or damages to adjacent properties, especially by the concentration 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.

Sediment Control:

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.

Water:

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.

Sanitary Sewer:

There is an existing 18-inch Dead Run Interceptor sanitary sewer in a stream approximately 900 feet north of this site, which may be used to serve this site with the proper extensions.

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

Very truly yours,

Ellenworth N. Dyer
P.E.
Chief, Bureau of Engineering

END:ENW:HNS:ee
26 NW Topo Sheet

BALTIMORE COUNTY, MARYLAND JEFFERSON BUILDING TOWSON, MARYLAND 21204

DEPARTMENT OF TRAFFIC ENGINEERING

EUGENE J. CLIFFORD, P.E.
DIRECTOR

WM. T. MELZER
DEPUTY TRAFFIC ENGINEER

April 26, 1973

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

Re: Item 2 - Cycle Zoning V - April to Oct. 1973
Property Owner: Edgar Kalb, et al
Rolling Road N/S of Security Blvd.
Reclassification to R.M. - District 1

Dear Mr. DiNenna:

The subject petition is requesting a change from M.L.R. and DR 5.5 to RM of 35.7 acres.

This zoning change can be expected to increase the trip density of the property from 3600 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 afternoon peak hours.

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 will alleviate this additional traffic. It should also be pointed out, that due to the numerous zoning changes which have occurred in the area, the proposed improvements to Rolling Road will be at capacity without this increases trip density of this petition.

The plan also does not show the proper alignment for Lord Baltimore Drive which intersects Security Boulevard opposite the other entrance to the shopping center.

Very truly yours,

Richard M. Melzer
Assistant Traffic Engineer

CRM:nc

Pursuant to the advertisement, posting of property, and public hearing on the above petition and it appearing that by reason of

the above Reclassification should be had; and it further appearing that by reason of

a Special Exception for a should be granted.

IT IS ORDERED by the Zoning Commissioner of Baltimore County this day of 197 that the herein described property or area should be and the same is hereby reclassified; from a zone to a zone, and/or a Special Exception for a should be and the same is granted, from and after the date of this order.

Zoning Commissioner of Baltimore County

Pursuant to the advertisement, posting of property and public hearing on the above petition and it appearing that by reason of

the above re-classification should NOT BE HAD, and/or the Special Exception should NOT BE GRANTED.

IT IS ORDERED by the Zoning Commissioner of Baltimore County, this day of 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 to remain a zone; and/or the Special Exception for be and the same is hereby DENIED.

Zoning Commissioner of Baltimore County

Pursuant to the advertisement, posting of property, and public hearing on the above petition and it appearing that by reason of

the above Reclassification should be had; and it further appearing that by reason of

a Special Exception for a should be granted.

IT IS ORDERED by the Zoning Commissioner of Baltimore County this day of 197 that the herein described property or area should be and the same is hereby reclassified; from a zone to a zone, and/or a Special Exception for a should be and the same is granted, from and after the date of this order.

Zoning Commissioner of Baltimore County

Pursuant to the advertisement, posting of property and public hearing on the above petition and it appearing that by reason of

the above re-classification should NOT BE HAD, and/or the Special Exception should NOT BE GRANTED.

IT IS ORDERED by the Zoning Commissioner of Baltimore County, this day of 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 to remain a zone; and/or the Special Exception for be and the same is hereby DENIED.

Zoning Commissioner of Baltimore County

Baltimore County Fire Department

J. Austin Deitz
Chief



Towson, Maryland 21204
828-7310

Office of Planning and Zoning
Baltimore County Office Building
Towson, Maryland 21204
Attention: Mr. Jack Dillon
Chairman
Zoning 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: # 2

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" are applicable 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 along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.
- () 2. A second means of vehicle access is required for the site.
- () 3. The vehicle dead-end condition shown at EXCEEDS the maximum allowed by the Fire Department.
- () 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. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "The Life Safety Code", 1970 Edition prior to occupancy.
- () 6. Site plans are approved as drawn.
- () 7. The Fire Prevention Bureau has no comments at this time.

Reviewed: *[Signature]* Noted and Approved: *[Signature]*
Planning Group Deputy Chief
Special Inspection Division Fire Prevention Bureau

rls
4/25/72

WILLIAM D. FROMM
DIRECTOR
S. ERIC DINENNA
ZONING COMMISSIONER



May 10, 1973

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

Dear Mr. DiNenna:

Comments on Item #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 Boulevard
Present Zoning: M.L.R. and D.R. 5.5
Proposed Zoning: Reclassification to B.M.
District: 1
No. Acres: 35.7

The petitioner should indicate how the remaining D.R. 5.5 land in his ownership 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 any more 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,

[Signature]
John L. Wimbley

John L. Wimbley
Planning Specialist II
Project Planning Division
Office of Planning and Zoning

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING
SUITE 301 JEFFERSON BUILDING 105 WEST CHESTNUT AVE. TOWSON, MARYLAND 21204
AREA CODE 301 PLANNING 484-2171 ZONING 484-3351

BALTIMORE COUNTY, MARYLAND DEPARTMENT OF HEALTH



JEFFERSON BUILDING
TOWSON, MARYLAND 21204

April 9, 1973

DONALD J. ROOP, M.D., M.P.H.
DEPUTY STATE AND COUNTY HEALTH OFFICER

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

Dear Mr. DiNenna:

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

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
Proposed Zoning: Reclass to B.M.
District: 1
No. Acres: 35.7

Metropolitan water and sewer must be extended to the site prior to issuance 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 Department requirements.

Very truly yours,

[Signature]
Thomas H. Devlin, Director
BUREAU OF ENVIRONMENTAL SERVICES

HVS:mpg

cc: J.A. Messina

BOARD OF EDUCATION OF BALTIMORE COUNTY

TOWSON, MARYLAND 21204

Date: April 26, 1973

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

Re: Item 2 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: 1
No. Acres: 35.7 acres

Dear Mr. DiNenna:

No adverse effect on student population.

WNP/ml

Very truly yours,
[Signature]
W. Nick Petrovich
Field Representative

H. ENGLISH PARKS, PRESIDENT
EUGENE C. HESS, VICE-PRESIDENT
HRS. ROBERT L. BERNY

MARCUS M. BOTSARIS
JOSEPH W. MCGOWN
ALVIN LEMCKE
JOSHUA W. WHITLER, SECRETARY

T. BAYARD WILLIAMS, JR.
RICHARD W. TRACY, VICE
MRS. RICHARD F. DUFFIELD



COUNTY OFFICE BUILDING
TOWSON, MARYLAND 21204
JEFFERSON 301
494-3648
H. B. STAAB
DIRECTOR

May 1, 1973

INDUSTRIAL DEVELOPMENT COMMISSION BALTIMORE COUNTY, MARYLAND

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

Dear Sir:

Re: Re-classifications - 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 opposite the subject site being used as a shopping center, this office feels the zoning of the petitioner's site is proper and should remain as is to provide land for future industrial development in the western end of the County.

Sincerely,

[Signature]
H. B. STAAB
Director

BALTIMORE COUNTY, MARYLAND DEPARTMENT OF TRAFFIC ENGINEERING JEFFERSON BUILDING TOWSON, MARYLAND 21204 INTER-OFFICE CORRESPONDENCE

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

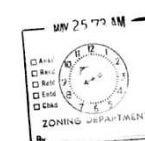
Date: May 24, 1973

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

This office has reviewed Department of Public Works comments concerning the subject Zoning 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.

[Signature]
C. Richard Moore
Assistant Traffic Engineer

CRM/pk



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

Filed: July 23, 1976

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 permitted in the northeast quadrant of the intersection. This evidence was sufficient to make fairly debatable the question of whether there was a substantial change in the character of the neighborhood.

¹In the M.L.R. zone, a hotel is neither a permitted use nor a permitted use by way 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.

RE: PETITION FOR RECLASSIFICATION :
from M.L.R. and D.R. 5.5 zone :
to B.M. zone : COUNTY BOARD OF APPEALS
NE corner Rolling Road and :
Security Boulevard : OF
1st District : BALTIMORE COUNTY
Edgar A. Kalb, et al :
Petitioners : No. 74-49-R
Lawrence K. Ginsberg, :
Secrell Joint Venture :
Contract Purchasers :

AMENDED ORDER

WHEREAS, by Order of this Board, dated March 27, 1975, an Order of the Zoning Commissioner which granted reclassification for certain portions and denied reclassification 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 this 9th 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

Walter A. Reiter, Jr., Chairman

W. Giles Parker

Robert L. Gilland

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) 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. 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. Gowi v. Atlantic-Richfield Co., 27 Md.App. 410, 417-18 (1975).

JUDGMENT AFFIRMED. COSTS
TO BE PAID BY APPELLANTS.

DONALD R. WILLIAMS, et al.,
Appellants,
v.
WALTER A. REITER, JR. et al.,
CONSTITUTING THE COUNTY BOARD
OF APPEALS OF BALTIMORE COUNTY
MARYLAND
and
EDGAR A. KALB, et al.,
Appellees

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
AT LAW

Misc. Docket No. 10
Filed No. 46
File 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

Approved as to form:
Counsel for Appellants:

C. Victor McFarland, Esquire

LAW OFFICES
ASKEW, WILSON & DICICCO

204 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204

JOHN L. ASKEW
MELVIN R. WILSON
ROBERT A. DICICCO

TELEPHONE
AREA CODE 301
873-5400

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 read to you over the telephone and you gave your approval as to form and indicated that you would stop by the clerk's office to ratify same.

Very truly yours,

Robert A. DiCicco

RAD/cs
Enclosure
cc: The Honorable John Grason Turnbull
Francis D. Hurnaghan, Esquire
J. Frederick Motz, Esquire
John W. Hessian, III, Esquire
Martin I. Noylan, 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 : COUNTY BOARD OF APPEALS
NE corner Rolling Road and :
Security Boulevard : OF
1st District : BALTIMORE COUNTY
Edgar A. Kalb, et al :
Petitioners : No. 74-49-R
Lawrence K. Ginsberg, :
Secrell Joint Venture, :
Contract Purchasers :

OPINION

This case comes before the Board on an appeal from a decision of the Zoning Commissioner 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 Boulevard, opposite the Security Mall Shopping Center. The petition requests a reclassification to Business Major of approximately thirty-five acres located at this intersection.

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 reclassification.

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. The subject property is now a farm and 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 complex. Mr. Smith cited that the topography was acceptable, and that sewer and water were available to this site.

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

2.

John W. Erdman, a traffic engineer, testified to the effects 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, gave comment concerning the impact of the proposal.

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 map 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 requested 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.

Rec'd 7/22/75
4:30 am

Of course, before the 1971 changes in the zoning regulations retail use on industrial lands 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 upon 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 judgment of this Board that the Council did, in fact, err in 1971 when it did not zone the subject property commercial. In addition, there has been a continual significant change in this community by its additional business development, which would, in itself, be of a nature 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 property 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 existing traffic conditions in the immediate area. It appears to this Board that some new 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 subject property.

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 reclassification should be granted, as there is sufficient testimony and evidence to establish both error 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 covenants 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 sparsely 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 several 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 possible runoff of water from the 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 Commissioner 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 creation of this buffer zone and feels that that portion of the property zoned D. R. 5.5 should remain in its present classification.

ORDER

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

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

Walter A. Kalb, Jr., Chairman
Walter A. Kalb, Jr., Chairman
W. Giles Parker
W. Giles Parker
Robert L. Gifford
Robert L. Gifford

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 Center 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 the Comprehensive Zoning Map.

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 Baltimore County, this 15th day of February, 1974, that the Reclassification from

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)

BEFORE THE
ZONING COMMISSIONER
OF
BALTIMORE COUNTY

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 Advisory Committee made no adverse comments concerning any problems with these utilities.

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

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.

H. M. T.
Zoning Commissioner of
Baltimore County

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 Security 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 that 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.e., 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 p.m.

C. VICTOR MCF. AND
ATTORNEY AT LAW
840 PINEBROOK ROAD
CATONSVILLE, MARYLAND 21228
(301) 744-0881
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 No. 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,

C. Victor McFarland

CVMCF:sd

Encls.

cc: J. Frederick Mott, Esquire
Francis D. Murnaghan, Esquire
John W. Hession, III, Esquire,
People's Counsel
J. Carroll Holzer, Esquire,
County Solicitor
Martin I. Moylan, Esquire
Mr. Donald R. Williams
County Board of Appeals for
Baltimore County

Rec'd 8-18-75
10:30 AM

NOTICE TO COUNSEL

Court of Special Appeals

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 102B.

With reference to briefs in criminal appeals, extracts from pertinent parts of charge or opinion required as appendix to appellant's 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 filed on or after that date.

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

Julius A. Romano
Clerk

Court of Special Appeals

ANNAPOLIS, MARYLAND 21404



JULIUS A. ROMANO
CLERK

No. 694, September Term, 1975

RECEIVED
SEP 9 1975
OFFICE OF LAW

Donald R. Williams et al.

C. Victor McFarland, Esquire

vs.

Attorneys for Appellant

Edgar A. Kalb et al.

J. Carroll Holzer, Esquire
Francis T. Murnaghan, Esquire
J. Frederick Motz, Esquire
Attorneys for Appellee

The Record in the captioned appeal was received and docketed on September 8, 1975

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

The brief of the APPELLEE is to be filed with the office of the Clerk on or before November 19, 1975

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 be granted where the request will delay argument (Rule 1030 (c) 1).

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

Julius A. Romano

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

POINTS IN ERROR COMMITTED BY THE COUNTY COUNCIL
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. and D.R. 5.5:

(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 change in the area;

(2) The subject tract has a great deal of frontage on Security Boulevard, 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 since 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 is now open for business;

(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 tract 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;

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

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

(4) That the general area of Security Boulevard and Rolling Road has undergone tremendous growth changes indicating a continuing need for commercial 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 hereon.

Respectfully submitted:

James E. Ginsberg
JAMES E. GINSBERG
ATTORNEY FOR THE PETITIONER



MATZ, CHILDS & ASSOCIATES, INC.
CONSULTING
ENGINEERS

1020 Cromwell Bridge Rd., Baltimore, Md. 21204. Tel. 301/823-0900

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 right 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



MATZ, CHILDS & ASSOCIATES, INC.

-2-

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 described in the aforementioned deed recorded in Liber W.J.R. 3754, page 525, thence binding reversely on parts



MATZ, CHILDS & ASSOCIATES, INC.

-3-

of the twelfth and eleventh 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.

HGW:sls

J. O. No. 73062

3/27/73



DONALD R. WILLIAMS, et al.,
Appellants
vs.
WALTER A. REITER, JR. et al.,
CONSTITUTING THE COUNTY BOARD
OF APPEALS OF BALTIMORE COUNTY,
MARYLAND
and
EDGAR A. KALB, et al.
Appellees

IN THE

CIRCUIT COURT

FOR

BALTIMORE COUNTY

AT LAW

Misc. Docket No. 10
Rolls No. 46
File No. 5590

ORDER OF APPEAL

Dear Mr. Clerk:

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 Morissette, Rmald Wolff and John T. Moylan, from the Order of His Honor John Grason Turnbull, dated July 18, 1975, in this case.

C. Victor McFarland
Attorney for the Appellants
920 Frederick Road
Catonville, Maryland 21228
744-0911

I HEREBY CERTIFY that on this day of August, 1975, a copy of the foregoing Order of Appeal was mailed to J. Frederick Motz, Esquire and Francis D. Murnaghan, Esquire, Attorneys for the Appellee, Edgar A. Kalb, John W. Bessian, III, Esquire, People's Counsel for Baltimore County, J. Carroll Holzer, Esquire, County Solicitor for Baltimore County and County Board of Appeals of Baltimore County and Martin I. Moylan, Esquire, Attorney for John T. Moylan.

C. Victor McFarland

ZONING PETITION

RE: Petition for Reclassification
NE Corner of Rolling Road
and Security Boulevard
1st Election District
Edward A. Kalb, et al.
Petitioners
No. 74-49-R (Item No. 2)

TO: C. Victor McFarland
We the undersigned do hereby authorize C. Victor McFarland to enter an appeal in our
behalf from the decision of the Zoning Commission S. Eric Dillman dated February 15, 1974
as referenced above.

NAME (Please Sign)	ADDRESS	ZIP
John T. Mochan	2100 N. Spring Rd. 21207	21207
Robert E. McFarland	205 N. Spring Rd. 21207	21207
James A. McFarland	205 N. Spring Rd. 21207	21207
James A. McFarland	205 N. Spring Rd. 21207	21207
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NAME (Please Sign)	ADDRESS	ZIP
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ZONING PETITION

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Edward A. Kalb, et al.
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ZONING PETITION

RE: Petition for Reclassification
NE Corner of Rolling Road
and Security Boulevard
1st Election District
Edward A. Kalb, et al.
Petitioners
No. 74-49-R (Item No. 2)

TO: C. Victor McFarland
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James A. McFarland	205 N. Spring Rd. 21207	21207

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
1st District
Edward A. Kalb, et al.
Petitioners
(Lawrence K. Ginsberg, Secoll
John Vanecko, contr. purchasers)
File No. 74-49-R
Donald R. Williams, et al.
Protestants - Appellants

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW
Misc. Docket No. 10
Folio No. 46
File No. 5590

CERTIFICATE OF NOTICE

Mr. Clerk

Pursuant to the provisions of Rule 1101-8(4) of the Maryland Rules of Procedure,
Walter A. Belter, Jr., W. Giles Parker and Robert L. Gifford, constituting the County Board
of Appeals of Baltimore County, have given notice by mail of the filing of the appeal to the
representative of every party to the proceeding before it, namely, Lawrence K. Ginsberg,
Esq., 102 W. Pennsylvania Avenue, Towson, Maryland, 21204, Robert A. DiCicco, Esq.,
200 W. Pennsylvania Avenue, Towson, Maryland, 21204, Francis D. Murnaghan, Jr., Esq.,
1800 Mercantile Bank and Trust Building, 2 Hopkins Plaza, Baltimore, Maryland, 21201, and
J. Frederick Motz, Esq., 1800 Mercantile Bank and Trust Building, 2 Hopkins Plaza, Baltimore,
Maryland, 21201, attorneys for the Petitioners, and C. Victor McFarland, Esq., 920 Frederick
Avenue, Baltimore, Maryland, 21228, and Martin I. Maylan, Esq., 288 Washington Avenue,
Towson, Maryland, 21204, attorneys for the Protestants, and Mr. W. Allen Welch, 1909
Brookdale Road, Woodlawn, Maryland, 21207, Protestants, a copy of which Notice is attached
hereto and prayed that it may be made a part thereof.

Muriel E. Buddemeier
County Board of Appeals of Baltimore County
County Office Building, Towson, Md. 21204
Telephone - 494-3180

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

- 2 -

mailed to Lawrence K. Ginsberg, Esq., 102 W. Pennsylvania Avenue, Towson, Maryland,
21204, Robert A. DiCicco, Esq., 200 W. Pennsylvania Avenue, 21204, Francis D. Murnaghan,
Jr., Esq., 1800 Mercantile Bank and Trust Building, 2 Hopkins Plaza, Baltimore, Mary-
land, 21201, and J. Frederick Motz, Esq., 1800 Mercantile Bank and Trust Building, 2 Hopkins
Plaza, 21201, attorneys for the Petitioners, and C. Victor McFarland, Esq., 920 Frederick
Avenue, Baltimore, Maryland, 21228, and Martin I. Maylan, Esq., 288 Washington Avenue,
Towson, Maryland, 21204, attorneys for the Protestants, and Mr. W. Allen Welch, 1909
Brookdale Road, Woodlawn, Maryland, 21207, Protestants, on this 29th day of April,
1975.

Muriel E. Buddemeier
County Board of Appeals of
Baltimore County

cc: L.K. Ginsberg, Esq.
Robert A. DiCicco, Esq.
F.D. Murnaghan, Jr., Esq.
J. Fred. Motz, Esq.
C. Victor McFarland, Esq.
M. I. Maylan, Esq.
Mr. W. Allen Welch
Mr. J. Howell, Planning
Mr. 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 APPEALS FOR BALTIMORE COUNTY
N/E Corner of Rolling Road and Security Boulevard -- First
District 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.

Francis D. Murnaghan, Jr.

J. Frederick Motz
1800 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 29th day of July, 1974,
copies of the foregoing Entry of Appearance were mailed first
class, postage prepaid to Lawrence K. Ginsberg, Esq., Fine &
Klauber, P.A., 44 Equitable Building, Calvert and Fayette 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, Esq., 920 Frederick
Road, Baltimore, Maryland 21228, Attorney for Protestants.

J. Frederick Motz

Rec'd 7-11-74
9:15 AM

LAW OFFICES OF
FINE & KLAUBER, P. A.
44 EQUITABLE BUILDING
CALVERT AND PATETTE STREETS
BALTIMORE, MARYLAND 21204
TELEPHONE 301-782-9180

DAVID HENDERSON
COUNSEL
MELVIN L. FINE
1900-1980

March 13, 1974



Mr. S. Eric Dinenna
Zoning Commissioner
Baltimore County Office of Planning
and Zoning
Office of Zoning Commissioner
Towson, Maryland 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. 74-49-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, I am.

Very truly yours,

LAWRENCE K. GINSBERG

LKG:df
Encs.

PETITION FOR RECLASSIFICATION
N/E CORNER OF ROLLING ROAD AND
SECURITY BOULEVARD
1st Election District
Edgar A. Kalb, et ux
Kalb, Petitioners,
No. 74-49-R (Item 2)

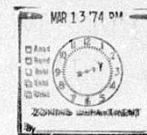
BEFORE THE
ZONING COMMISSIONER
OF
BALTIMORE COUNTY

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.

LAWRENCE K. GINSBERG
Attorney for Petitioners
44 Equitable Building
Baltimore, Maryland 21202
752-6169



FINE & KLAUBER, P.A.
ATTORNEYS AT LAW
EQUITABLE BUILDING
SUITE 404
CALVERT & PATETTE STS.
BALTIMORE, MD. 21204
301-782-9180

BALTIMORE COUNTY OFFICE OF PLANNING & ZONING

OFFICE OF ZONING COMMISSIONER



S. ERIC DINENNA
Zoning Commissioner
JAMES E. DYER
Deputy Zoning Commissioner

474-3351
474-3391

February 15, 1974

Lawrence K. Ginsberg, Esquire
44 Equitable Building
Baltimore, Maryland 21202

RE: Petition for Reclassification
N/E 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 captioned
matter. Copy of said Order is attached.

Very truly yours,

S. ERIC DINENNA
Zoning Commissioner

SED/sw

Attachments

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 CHESAPEAKE AVENUE TOWSON, MARYLAND 21204

LAW OFFICES
STENGEL, ASKEW & WILSON
208 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204

LEWIS STENGEL, OWNER
TELEPHONE
AREA 1-LOD 86
RCH 5400

August 22, 1973

HAND DELIVERED

Mr. S. Eric Dinenna
Zoning Commissioner
Jefferson Building
Towson, Maryland 21204

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

Dear Mr. Dinenna:

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

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

Very truly yours,

Robert A. DiCicco

RAD/cas

cc: Lawrence K. Ginsberg, Esquire

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

Filed: July 23, 1976

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 Compre-
hensive 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.

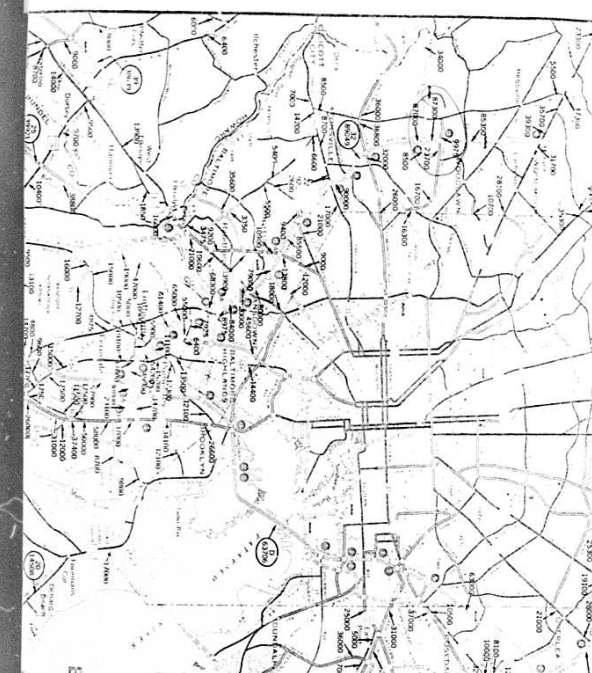
¹In the M.L.R. zone, a hotel is neither a permitted use
nor a permitted use by way of a special exception. Baltimore
County Zoning Regulations (B.C.Z.R.) § 248.4(b) (1975). In the
B.M. zone, a hotel is a permitted use. B.C.Z.R. § 233.

Kirkman v. Montgomery County Council, 251 Md. 273, 278 (1968);
Lutherville Community Association, Inc. v. Winward, 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) A "need" for additional commercial zoning does not
have to be proved in order to justify reclassification to a com-
mercial zone. Aspen Hill Venture v. Montgomery County Council,
265 Md. 303, 313-14 (1972).

(3) There was expert testimony to show that traffic im-
pact 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 classifica-
tion, primarily because of a difference in peak traffic hours.
This evidence was sufficient to make fairly debatable the ques-
tion of whether the grant of the requested reclassification
would have an adverse effect upon traffic hazards. Jowl v.
Atlantic-Richfield Co., 27 Md.App. 410, 417-18 (1975).

JUDGMENT AFFIRMED. COSTS
TO BE PAID BY APPELLANTS.



STATE OF MARYLAND
TRAFFIC VOLUME MAP

1972

AVERAGE DAILY TRAFFIC

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

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

No. 5323

DATE 5/18/75 ACCOUNT 01712

C. Victor McFarland, Esq.
920 Frederick Rd.
Catonsville, Md. 21228

AMOUNT \$39.00

WHITE CASHIER DISTRIBUTION YELLOW CUSTOMER
FOR AGENT

Edgar A. Kelly, et al - Case No. 74-49-R

APR 30 1975

39.00 CASH

"We are thus, in this case, faced with the abstract question of whether, absent a statutory mandate such as is usually required for the exercise of special exception, 'a lack of need' may be the sole basis for the rejection of a zoning reclassification. In order to decide to answer this question in the negative, the court would be required to find that the asserted validity of zoning laws that are subject to special exception is dependent upon the independent and essential upon a reasonable balancing of public interest in zoning as against opposing private interests in property" (McQuinn, Municipal Code of Chicago, 1983, p. 10).

It is difficult to see how the court is to grant the requested rezoning in the instant case, on the sole basis that no need existed for the proposed use, does not, in our opinion, bear a necessary causal relation to the public welfare. Creative Studio v. Board, supra, cited by Richmond Realty v. Whittell, 226 So. 2d 273, 285, 173 A.2d

The Protestant's witness, Robert L. Morris, in detail, proved, by three sources of statistics, that shopping centers produce vastly greater numbers of trips per day than Industrial Parks, Research and Development Areas, and General Manufacturing Areas (P. Ex. "1," E. 327).

"Unquestionably, much of the testimony in the transcript was devoted to the question of need because the appellates were fully aware that ever if substantial change in the character of the neighborhood were established, in effect, of itself, would not necessarily compel a rezoning. It is scarcely lay the foundation for it. *Furnace Branch Land Co. v. Bd. of County Comm'rs*, 232 Md. 536, 539, 194 A.2d 640 (1963). On the other hand, change, buttressed by a need for the facility, might well have resulted in need being the persuasive factor. *Wakefield v. Kraft*, *supra*," 202 Md. 136, 146, 96 A.2d 27 (1953).

TABLE OF CITATIONS

Cases	Page
<i>Agrestine, Inc. v. Lucas</i> , et al. 247 Md. 612, 233 A.2d 757 (1967)	11,17
<i>Aspen Hill Venture v. Montgomery County Council</i> , 265 Md. 303, 289 A.2d 303 (1972)	9,10
<i>Chapman v. Montgomery County Council</i> , 259 Md. 611, 271 A.2d 156 (1970)	7
<i>Furnace Branch Land Co. v. Bd. of County Com'rs</i> , 232 Md. 536, 194 A.2d 640 (1963)	7
<i>Hardesty v. Dunphy</i> , 259 Md. 718, 252 A.2d 552 (1970)	10
<i>Landay v. Board of Zoning Appeals</i> , 173 Md. 460, 196 A. 293 (1938)	10
<i>Messenger v. Board of County Commissioners</i> , 259 Md. 693, 271 A.2d 166 (1970)	7,8
<i>Polinger v. Briefs</i> , 244 Md. 538, 224 A.2d 460 (1966)	11
<i>Price v. Cohen</i> , 213 Md. 457, 132 A.2d 125 (1957)	11,12,14,15,16
<i>Quinn v. County Commissioners of Kent County</i> , et al., 20 Md. App. 413, 316 A.2d 535 (1974)	11
<i>Richmark Realty v. Whittell</i> , 226 Md. 273, 173 A.2d 196 (1961)	9
<i>Rockville Fuel & Feed Co. v. City of Gaithersburg</i> , 266 Md. 117, 291 A.2d 672, 50 ALR 3d 583 (1972)	18
<i>Strataski v. Beauchamp</i> , 268 Md. 643, 304 A.2d 244 (1973)	17
<i>Sukovich v. Doub</i> , 258 Md. 263, 265 A.2d 447 (1970)	11,14
<i>Wakefield v. Kraft</i> , 202 Md. 136, 96 A.2d 27, (1953)	7,8
Statutes	
Bill 100 - County Council of Baltimore County Enacted 8/5/1970, effective 9/19/1970	5,16,17,18,19
Article 22-20 of the Baltimore County Code, 1968 Edition	18
Article 22-18 of the Baltimore County Code, 1968 Edition	11,15

CONCLUSION

No credible testimony or other evidence was produced by the Appellees, before the Board of Appeals, concerning "error in the map", change in the neighborhood or that the proposed reclassification would be in the "public interest". The Appellees cause so lacked substantial evidence that the decision of the Board was arbitrary, capricious, unjust, unsupported and, therefore, not "fairly debatable".

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

Respectfully submitted,

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

Attorneys for Appellants.

acre) to a B.M. (Business Major) zone. Both applications were signed by Lawrence K. Ginsberg for Secroll 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 be reclassified to a B.M. zone. The Petitioners have not included, in the Petitions for Reclassification, the present home and lot of the Petitioner, Edgar 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 June 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 denied the requested reclassification from D.R.5.5 to a B.M. zone. An appeal was duly entered to the County Board of Appeals and, after days of hearings, the County Board of Appeals, in its written Order of March 27, 1975 and Amended Order dated April 9, 1975, affirmed the Order of the Zoning Commissioner, granting only the requested reclassification from M.L.R. to B.M. The Petitioner did 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 Protestants 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 oral arguments of counsel for the parties, John Grason Turnbull, 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. zoning for the subject tract. Even if this be true, it is difficult to believe that, despite publication of the mapping process and the public hearings, a man of Mr. Kalb's sophistication was unaware of the proceedings.

Mr. Willemain and Mr. Klaus testify that, because a right to erect a shopping center was given to Mr. Krieger, it should be given to the Appellees (E. 98, 144). Their contention ignores the fact that Mr. Krieger had a right to build a shopping center since the 1962 map. Also ignored throughout the Appellees case is the obvious fact that there would be no buffer zone between the subject parcel, if zoned for a shopping center, and the residential. The Security Mall is buffered by the Beltway, Security Boulevard, M.L.R. land and I70N. Both the testimony of Mr. Klaus and Mr. Willemain are vague and general, except for the testimony concerning the effect of Bill 100 on the M.L. zoning, but the conclusion of a non-conforming use is unwarranted. Testimony as to Bill 100's effect on the Appellees property is vague and illusory. No attempt was made to prove that the Appellants' property can not be used as presently zoned or that Bill 190 had any effect on the Appellants' ability to profitably use it.

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 rezoning.

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 effect of Bill 100, on the Appellees property, can be the subject of this case.

The Zoning Laws of Baltimore 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 tract, along with many other parcels in Baltimore County zoned M.L. without development at the time of the mapping process, was given the advance notice of Bill 100 and the Appellees are chargeable with that knowledge (E. 95). Even though the map might cause someone to be to the use of the Krieger tract, the erection of the shopping center was actual notice of its use.

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

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

The Appellees' land has been in his family ownership for approximately 200 years and originally contained 130 acres (E. 19). Several parcels were conveyed out, for the development of the sub-division of Rolling Road Farms (E. 20) and for the rights-of-way of Security Boulevard (E. 20) and to Zanvil Krieger (E. 20-21). The lands conveyed to Zanvil Krieger became part of that land assembled by him, part of which is now the largest shopping center in Baltimore County, known as Security Square, and lies across Security Boulevard (E. 209, 212, 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 born 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 tract on November 15, 1962 (E. 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 Zanvil Krieger. Between the M.L. property of Zanvil Krieger, northward to Security Boulevard, is a parcel of land that was formerly owned by the Appellees, Edgar A. Kalb, et ux., which was later conveyed to Krieger (E. 250) and is zoned M.L.R. along the south side of Security Boulevard. This parcel provides a strip of M.L.R. property approximately 500 feet deep, from approximately 200 feet east of Rolling Road, running on the south side of Security Boulevard to the west side of the Baltimore County Beltway right-of-way.

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, is the same as if the shopping center had been built in the years before the Amendment to Bill 100 was completed and in operation at the time the amendment was passed (E. 209). In the years that an M.L. zone allowed shopping centers and industrial uses, a change in the neighborhood was not 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 a use to the M.L. classification, but deleted a use. The vagueness of Mr. Willemain's idea as to "change in the neighborhood", as applied to the erection of Security Mall, in an M.L. zone, is illustrated when he avoided answering a direct question (E. 138), as 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, 207).

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 piecemeal change therefrom, there must be produced strong evidence in the original zoning or comprehensive rezoning or the evidence 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." *Agrestine v. Lucas*, 247 Md. 612, 618, 233 A.2d 757 (1967) (cases then cited).

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

All witnesses agreed that the subject property is burdened by a serious traffic 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

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 ERROR IN THE MAP.

Not only is the record lacking evidence of need, it is devoid of such affirmative testimony. On the contrary, the record is filled with testimony growing without contradiction, that there is no need for additional shopping, much less another shopping center (E. 181-182, 297, 292-304). 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 head, 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. Staab, Director of Baltimore County Industrial Commission (E. 224), that the property should remain in its present classification, due to Baltimore County's need for additional industrial land (E. 225-228). A survey was made by the Protestant's witness, Donald R. Tillman (Protestants Exh. N's: "N & O" E. 328-348/349) which dramatically illustrated the lack of need, by demonstrating that ample shopping is available for whatever the residents of the area require (E. 300-308).

The importance of a showing of "need" is stated by the Court of Appeals by Judge Diaper, 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 Appellees: Erman, Ewell, Klaus, and Willemain, as stated by Mr. Erdman, "No sir, 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) can generate 17,290 trips per day on 35 acres, as opposed to 1,015 trips per day for a 29 acre General Manufacturing Plant or 2,660 trips per day for a 47 acre Industrial Park. These statistics are susceptible to calculations to provide figures for the acreage involved in the case at bar. The statistics are also susceptible to being applied to percentages of traffic peaks at various hours, derived from a comparable location.

The sources of Mr. Morris' statistics are: 1) Maryland State Roads Commission's "Trip Generation Study, 1968"; 2) Maricopa Association of Governments, "Trip Generation by Land Use, 1974"; 3) Maryland Department of Transportation data elicited for the Maricopa data. The Appellee's witness 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).

It is true that reliable statistics were not available for Security Mall, because it was still under construction, nor the proposed shopping center, but they were available for the Chadwick Shopping Center and other existing shopping centers of comparable locations. Without such traffic counts, it was incumbent on the Appellees' witnesses to obtain the data similar to that obtained by Mr. Morris.

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

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

and *Price v. Cohen*, supra.

In *Wakefield v. Kraft*, *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-legislative function of zoning regulations.

To further bolster the Appellants 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. 693, 271 A.2d 166 (1970) Judge Barnes, at page 172:

"Even if an applicant meets his burden of proving that there was a mistake in the original comprehensive zoning or that changes have occurred in the neighborhood causing a change in the character of the neighborhood, this merely permits the legislative 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 its immediate neighborhood. A shopping center adds traffic, artificial light, noise, increased use of utilities, emergency facilities, etc., not to mention its 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 is cannibalization of newer shopping malls on older shopping centers and, particularly, old commercial strip zones in long established communities.

The proposed shopping center, even if it builds a better commercial "mouse trap", can not compete with Security Mall, with its Sears, Hochschild Kohn, J.C. Penny and other class "A" tenants (E. 294-333). It can, however, cannibalize the tenants and customers of the Chadwick Shopping Center (E. 297, 333) and parasitically draw business from Security Mall, causing additional traffic movements; particularly, 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. 61, 71). The development of the Appellees land as a shopping center, to the contrary, could add more traffic (E. 241, 274, 278, 327), flatten, 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, if a movie theatre is included and the stores are open on Sunday.

This community is additionally burdened with the traffic 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 congestion. The staggering of shifts tends to flatten out the peak hour traffic curve (E. 279, 280). The Appellees' witnesses did not consider, in any detail, whether the Social Security traffic shifts affected the estimated traffic generated by maximum 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 its 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, road lay 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 principle that, "Such ordinances (zoning ordinances) are in derogation of the common-law right to so use private property as to realize its highest utility, and while they should be liberally construed to accomplish their plain purpose and intent, they should not be extended by implication to cases not clearly within the scope of the purpose and intent manifest in their language." *Landay v. Board of Zoning Appeals*, 173 Md. 460, 466, 196 A. 293, 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 of mistake has been established. This of course is fallacious reasoning, as it ignores 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, traffic congestion or lack of parking facilities, to cite 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 amounting to anything more than its substituting an economic judgment of its own for that of the shopping center's entrepreneur, as to the financial success of the venture." cf3

In the present case, a vacuum was caused by the Appellees failure to produce testimony as to need. Into this vacuum, 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. 328, 348/349); (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 its present classification (F. 226, 251); and (f) demonstrated, indirectly, a need for a comprehensive long-range view of the entire area (E. 301-302).

Apfen 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 District Council's evidence.

The Court of Appeals has been very sensitive to "impermissible change of mind and heart", *Polinger v. Briefe*, 244 Md. 538, 224 A.2d 460 (1966), "to blow hot and to blow cold", *Agneslane, Inc. v. Lucas*, 247 Md. 612, 233 A.2d 757 (1967), to expert witnesses not providing "Chapter and Verse", *Sarkovich v. Doubt*, 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. The Special Court of Appeals' requirement of specificity is illustrated by Judge Menchine in *Quinn v. County Commissioners of Kent County, et. al.*, 20 Md. App. 413, 316 A.2d 535, beginning at page 540.

II.

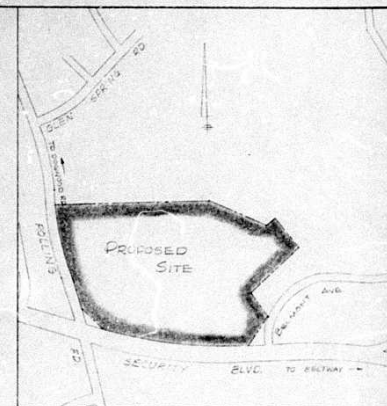
THE APPELLEES FAILED TO PROVE THAT THE GRANT OF THE RECLASSIFICATION WOULD NOT SUBSTANTIALLY INCREASE THE TRAFFIC HAZARD ON ROLLING ROAD AND SECURITY BOULEVARD.

All traffic experts and the Board itself agreed that the traffic problem at the subject intersection is acute and getting worse, without the third shopping center. The Board, in its Opinion, states traffic "... is abominable ..." (E. 16). Dr. Ewell, the key traffic expert for the Appellees, states traffic is "... chaotic ..." (E. 73). There is no relief for the present traffic situation in the foreseeable future (E. 186, 240).

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. ..."

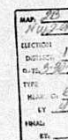
"Zoning regulations must be designed to lessen traffic in the streets and highways and, in changing zoning regulations, traffic plans should have material consideration." cases cited. *Price v. Cohen* 213 Md. 457, 132 A.2d 125 at 129 (1957).



LOCATION PLAN
SCALE 1" = 500'

GENERAL NOTES

1. TOTAL AREA OF PROPERTY OWNED BY PETITIONER: 69.6 ACRES
2. AREA OF PROPERTY REQUESTING RECLASSIFICATION: 267 ACRES
3. EXISTING ZONING OF PROPERTY: DR 55 & M.L.R.
4. EXISTING USE OF PROPERTY: RESIDENTIAL & FARM USE
5. PROPOSED ZONING OF PROPERTY: DR 55 & B.M.
6. PROPOSED USE OF PROPERTY: NEIGHBORHOOD SHOPPING CENTER
7. OFF STREET PARKING DATA:
 - A. TOTAL RETAIL FLOOR AREA: 190,000 SQ. FT.
 - B. REQUIRED OFF-STREET PARKING: 355 SP.
 - C. PROPOSED OFF-STREET PARKING: 1789 SP.



old plat

PLAT TO ACCOMPANY PETITION
FOR
RECLASSIFICATION OF PROPERTY
VICINITY
SECURITY BLVD. & ROLLING RD.

ELECTION DIST. 1 BALTIMORE CO., MD.
SCALE: 1" = 100' MARCH 27, 1973



old plat

MCA 
MATZ, CHILDS & ASSOCIATES, INC.
CONSULTING
ENGINEERS
1020 Cromwell Bridge Rd., Baltimore, Md.



10 13062 WO. 4005

APR 01 1977



LOCATION PLAN
SCALE 1" = 500'

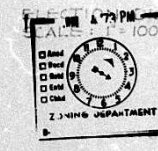
GENERAL NOTES

1. TOTAL AREA OF PROPERTY OWNED BY PETITIONER: 66 ACRES.
2. AREA OF PROPERTY BEING RECLASSIFIED: 287 ACRES.
3. EXISTING ZONING OF PROPERTY: DR 55 & M.L.R.
4. EXISTING USE OF PROPERTY: RESIDENTIAL & FARM USE.
5. PROPOSED ZONING OF PROPERTY: DR 55 & BM.
6. PROPOSED USE OF PROPERTY: NEIGHBORHOOD SHOPPING CENTER.
7. OFF-STREET PARKING DATA:
 - A. TOTAL RETAIL FLOOR AREA: 190,000 SQ. FT.
 - B. REQUIRED OFF-STREET PARKING: 955 SP.
 - C. PROPOSED OFF-STREET PARKING: 1009 SP.
8. LIGHTING OF SITE WILL BE SHOWN ON THE FINAL SITE PLAN IN ACCORDANCE WITH SECTION 109 OF THE ZONING CODE.

REVISED PLANS

KALB - Item 2
II Cycle

PLAT TO ACCOMPANY PETITION
FOR
RECLASSIFICATION OF PROPERTY
VICINITY
SECURITY BLVD. & ROLLING RD.



BALTIMORE CO., MD.
MARCH 27, 1973
REVISED MAY 31, 1973



10 13062 WO. 4008

MICROFILMED

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MATE, CHILDS & ASSOCIATES, INC.
CONSULTING
ENGINEERS
1020 Crumwell Bridge Rd. Baltimore, Md.

