

August 1, 1980

Mr. William E. Hammond
Zoning Commissioner
Room 109, County Office Building
Towson, Maryland 21204

RE: Case No. 79-195 X A (R-77-6 X A)
Building Permit Application
No.
9th Election District

Dear Mr. Hammond:

We, the undersigned, being the owner of the above mentioned property and the applicant for the above referenced occupancy permit, do hereby acknowledge that we are fully aware of your Order, being subject to a thirty (30) day appeal period, but wish to go ahead with the construction of improvements on the property prior to the expiration of said appeal period.

We hereby relieve our builder, Baltimore County Maryland and you from any liability or responsibility in this matter and agree to assume any and all financial responsibility for any consequences which might arise during the appeal period if an appeal is filed after construction has begun.

Very truly yours,

Howard L. Long
General Partner
F & S Limited Partnership

Harry S. Shapiro
General Partner
F & S Limited Partnership

DOUG

I APPROVED THE CBO PERMIT ON 9/8/80
~~HE~~ Keep THIS WITH OUR FILE 811

James H. Kain
Clerk
Court of Appeals of Maryland

HOWARD L. FREY, et al.
Petitioners-Appellees
v.
PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY
Respondent-Appellant

IN THE
COURT OF APPEALS
OF MARYLAND



Now come Howard L. Frey, et al., Petitioners-Appellees, by James R. Cook and Herbert R. O'Connor, III, and Cook, Howard, Downes & Tracy, their attorneys, and pursuant to Maryland Rule 811, respectfully petition this Court for a Writ of Certiorari directed to the Court of Special Appeals of Maryland in accordance with the following:

STATEMENT OF THE CASE

These proceedings were heard and decided in the Court of Special Appeals of Maryland referenced as People's Counsel for Baltimore County, Appellant v. Howard L. Frey, et al., Appellees, September Term, 1980, Appeal No. 1357. The Mandate of the lower court is dated June 5, 1981, and its Per Curiam Opinion was filed on May 4, 1981. A copy of the Opinion of the Court of Special Appeals is appended as Exhibit A. The effect of said opinion was to reverse a decision of the Circuit Court for Baltimore County which Court had affirmed a prior decision of the Board of Appeals of Baltimore County.

the Chesapeake Building property in that the said building driveway was not zoned for the intended office use; that there was a commercial parking lot directly across from the subject property which created the heavy commercial impact upon the subject property; and that zoning changes had been allowed by county action for office use of properties further to the west of the subject property since the 1976 Map. These were significant factors presented to the Board of Appeals in this case, and were confirmed by the County Planner, Mr. Heswell, who testified for the People's Counsel. The testimony further revealed that the aforesaid commercial parking lot was operated by the church at said location for a long period of time, was beneficial to the said church and its congregation, and had provided a substantial benefit to the Towson community in creating a significant off-street parking facility. Although the Deputy People's Counsel attempted to imply at the hearing that the church parking lot was illegal, he provided no evidence to support such allegation.

After concluding the testimony before the Board of Appeals on November 13, 1979, on April 24, 1980, the Baltimore County Board of Appeals filed an Opinion and Order which allowed limited use of the subject property for offices, namely 2,312 square feet. Also, the Board of Appeals stated that the present building would be used without any changes to the exterior which would preserve the

Court of Appeals of Maryland PETITION DOCKET

QUESTIONS PRESENTED

1. Did the Court of Special Appeals err in the application of the relevant facts?
2. Did the Court of Special Appeals err in the application of the relevant law?
3. Did the Court of Special Appeals misapply the "fairly debatable" standard applicable to administrative appeals?
4. Did the Court of Special Appeals erroneously interpret Section 602(e) of the Baltimore County Code?
5. Did the Court of Special Appeals err by considering a zoning ordinance, passed by the County Council subsequent to the subject decision of the County Board of Appeals, which ordinance was considered as irrelevant by counsel for all parties and Judge H. Kemp MacDaniel at the Pre-Hearing Conference?

LEGISLATIVE REFERENCES

Section 602(e), Baltimore County Code (1979 Suppl.)

This amendment to the Baltimore County Charter was effective December 8, 1978 and reads as follows:

"The County Board of Appeals shall have original and exclusive jurisdiction over all Petitions for Reclassification."

STATEMENT OF THE FACTS

The facts material to the consideration of the questions presented evolved from a proceeding under an administrative hearing before the Board of Appeals of Baltimore County pursuant to the aforesaid Section 602 of the Baltimore County Charter. This Charter provision was adopted by the voters on November 7, 1978, and has not

natural architecture which has existed for over forty years. Under the prior D.R. 5.5 zoning, there could be no limitations to the exterior architecture, but the said decision of the Board provided this additional preservation for the subject property.

An Appeal was taken by the People's Counsel for Baltimore County to the Circuit Court for Baltimore County, and on August 26, 1980, Judge Cullen H. Holmes filed an Opinion and Order affirming the decision of the Board of Appeals. After the decision of the Board of Appeals, as aforesaid, an Occupancy Permit for Office Use was issued by Baltimore County which enabled the property to be used for office use. Substantial repairs and alterations were made pursuant to validly issued permits to convert the property from residential to office use, and the owners have occupied the property for office use continuously since said time. As a result of this conversion, the property can no longer be used for residential purposes under its present condition.

Subsequent to the issuance of the aforesaid Occupancy Permit for Office Use, a new Land Use Map was adopted by the County Council for Baltimore County attempting to change the zoning for the subject property back to D.R. 5.5 residential use. However, such action was a nullity in view of the prior vested interest in the Petitioner herein as a result of the prior Occupancy Permit issued in accordance with the case of Swarthmore Co. v. Kresinger, 258

been construed previously by the Court of Appeals of Maryland under the facts and circumstances in this case.

The property in question is located at 307 W. Chesapeake Avenue in Towson, Maryland. The 300 block of W. Chesapeake Avenue is the first block from Bosley Avenue (a major six-lane highway designed to circle Towson) where the County Courts Building exists. Every property, except one, has office or commercial use in this block, and the property located directly adjacent to the subject property at 305 West Chesapeake Avenue is a highrise office building consisting of 78,000 square feet of offices and a large parking lot, said building being known as the Chesapeake Building. The entire property occupied by the Chesapeake Building for offices and parking measures about two city blocks.

Prior to the reclassification of the subject property in this proceeding, the subject property was zoned D.R. 5.5 which allowed residential use of 5.5 dwelling units per acre, and the change to D.R. 16, with a special exception for office use, was the normal reclassification procedure at the time of this proceeding for the allowance of office use.

Before the change for office use of the subject property, the property was occupied by an eight-piece band living in communal fashion in a shockingly slum-like atmosphere with their pet snakes. Plaster was falling from

walls and ceilings, holes existed in walls and ceilings, pipes were leaking, paint was peeling and flaking from inside and outside of the property, shutters were hanging loose and falling from the outside of the property, the sidewalks and pathways were loose and cracked, the roof was leaking, the railing on the inside of the property leading to the second floor was loose, water was flooding conditions existed in the basement, shrubbery was overgrown, rainspouts were bent, cracked and falling from the property, and the property was generally crumbling in a state of disrepair and deterioration.

Testimony before the Board of Appeals by the prior property owners was uncontroverted to the effect that the property had deteriorated since the 1976 Land Use Map, as a result of the spectre and impact of the heavy commercial use next door including the light, noise and traffic from the next door property. The prior owners further testified that they could not find any suitable and reasonable use for the subject property for residential purposes which relegated the property to its rooming house existence and resulting deterioration.

The testimony of the real estate expert for the Petitioners herein, Mr. Baldwin, was uncontroverted to the effect that the heavy use of the Chesapeake Building caused the subject property to deteriorate since the 1976 Land Use Map; that there was an error in the Zoning Line on

MD. 517, 206 A.2d 341.

As the County Council action could not affect the use of the subject property for office use, this was not an issue, nor evidence, before the Circuit Court for Baltimore County, and this was not to be an issue before the Court of Special Appeals. At the Pre-Hearing Conference before Judge MacDaniel of the Court of Special Appeals of Maryland (pursuant to Rule 1024), John Hessian, the People's Counsel, admitted that the County Council action concerning its 1980 Land Use Map was not an issue, nor evidence, in the case at bar and could not affect the office use of the Petitioners herein. However, the Deputy People's Counsel inserted a footnote in the Appellant's Brief before the Court of Special Appeals to the effect that the County Council had down-zoned the subject property to its former D.R. 5.5 classification. This footnote was not only highly prejudicial, and improper, but provided a foundation for direct, and indirect, consideration of the said 1980 County Council action in the case at bar by the Court of Special Appeals.

ARGUMENT

It is respectfully submitted that the granting of this Petition is desirable, and in the public interest because the decision of the Court of Special Appeals is based upon two serious propositions which appear to change existing law applicable to appeals from administrative

decisions. Firstly, the Court of Special Appeals substituted its judgment for that of the administrative agency, and the Court did not comment upon significant evidence which reflected upon a mistake in the 1976 Zoning Map. The first sentence of the Court's opinion appeared to indicate a departure from precedent for judicial review of administrative agencies. The Court said:

"This case calls upon us to determine whether a 'mistake' was made in the comprehensive rezoning of Baltimore County in 1976."

This statement reflects an erroneous approach in that the issue did not relate to a direct attack upon the 1976 zoning ordinance, but whether the Circuit Court for Baltimore County acted properly in determining that there was legally sufficient evidence before the Board of Appeals to support its conclusions in accordance with its legislative authority. The Court of Special Appeals failed to recognize that the Baltimore County Code provided two distinct methods for rezoning: (1) a change made by the County Council on the Comprehensive Zoning Map; and (2) a change made by the County Board of Appeals on a Petition for Reclassification.

The second departure of the Court of Special Appeals from law applicable to appeals from administrative decisions is the Court's consideration of an issue not presented to the administrative decision-making body.

The issuance of the occupancy permit by Baltimore County pursuant to Swarthmore, supra, established a property

right in the Petitioners herein which could not be defeated by the subsequent 1980 Land Use Map. This was a recognized legal conclusion at the conference before Judge McDaniel. Although the Court of Special Appeals attempted to agree that this was not an issue to be considered, it proceeded to use the evidence of the 1980 Map directly and indirectly in its Opinion. In reviewing the 1976 action of the County Council, the Court of Special Appeals referred to the 1980 comprehensive re-zoning by the Council, and incorporated same in a footnote in its Opinion notwithstanding its statement that the said 1980 County Council action did not play a part in its decision. Firstly, it is difficult to comprehend that one would hear something and not have it register as a part of the thought process. Also, the Court of Special Appeals used such 1980 County Council action in its conclusion that no hardship, or forfeiture, should be considered. The Court used such evidence improperly in such conclusion when it stated as follows:

"The Appellees purchased this building fully aware that it was zoned D.R. 5.5 and that a change in zoning would be necessary before they could use it as a place of business. They knew of the Petition to re-zone the property and substituted themselves in the proceedings in place of the previous owners, knowing within a matter of weeks that the decision of the Circuit Court was being appealed, they chose, nevertheless, to proceed with their renovation plans, possibly because they also knew that the County Council intended to revert the property back to D.R. 5.5 in the 1980 comprehensive re-zoning."

-7-

the Court of Appeals of Maryland again stated the fundamental principle of administrative law that a reviewing court should not substitute its judgment for the expertise of the administrative agency from which the appeal is taken.

The errors, or changes, relating to the subject property as presented before the Board of Appeals may be summarized as follows:

(a) The County Council failed to take into account existing factors, or foresee the effect or trends, relating to the subject property causing it to deteriorate from the impact of the commercial uses in the 300 block of Chesapeake Avenue, and more particularly the impact from the Chesapeake Building.

(b) The County Council recognized its failure to anticipate trends by subsequently rezoning for office use properties further to the west of the subject property, and by allowing such properties to expand from existing structures in areas more residential in character than the subject property.

(c) The County Council was in error in establishing the demarcation line which encroached upon the Chesapeake Building property.

(d) The County Council was in error in not considering the impact of the commercial use of the Church parking lot.

-13-

The direct use of the improper evidence was utilized by the language "possibly because they also knew that the County Council intended to revert the property back to D.R. 5.5 in the 1980 comprehensive re-zoning."

We believe that the direct, and indirect, use of the 1980 Land Use Map issue constituted a serious and substantial error concerning the consideration of the case at bar, which isolated the constitutional rights of due process of the Petitioners.

In the case of Stanley v. Safe Deposit and Trust Co., 87 Md. 430, the Court of Appeals of Maryland succinctly spelled out the time honored principles relating to the introduction of new evidence at the appellate level. The Court stated at Page 439 as follows:

"We must deal with cases as they are brought before us by the record transmitted from the Court below, and we have no power, whilst reviewing a particular order from which an appeal has been taken, to receive evidence or to renege the record for the Court below to hear testimony on totally different questions that in no way reflect on the only issue brought to this Court for review."

The appellate decisions of Maryland have been clear on the role of the Courts in appeals from administrative bodies. The said Courts have repeatedly stated that decisions of administrative bodies are prima facie correct, and that the Courts should not substitute their judgment for the expertise of those persons who constitute the administrative agency.

-10-

Although the case before the Court of Special Appeals was pursuant to an Appeal from the Circuit Court for Baltimore County, the said Court of Special Appeals did not comment upon the legal analysis of the trial Court in this case, but merely substituted its judgment of certain facts. In reversing the Circuit Court decision, the Court of Special Appeals indicated that it believed that the County Council had squarely presented to it the very same facts and issues that the Board of Appeals considered in its hearing in the case at bar. We do not believe that this conclusion is accurately reflected in the record, and we do believe that the "non-issue" of the 1980 Land Use Map affected this determination.

In commenting upon testimony before Council of 1976, the Court of Special Appeals referred to testimony that indicated that "the property will deteriorate." (emphasis provided)

However, in 1979, at the conclusion of the hearing before the Board, the deterioration of the subject property had become an existing fact and not a prophecy. Also, after the 1976 Land Use Map, the County Zoning Authorities had recognized errors in the 1976 Map, or changes in the neighborhood, by re-zoning for office use properties to the west of the subject property. Additionally, the error in the demarcation line which encroached upon the Chesapeake Building property, and the failure to consider the impact of the commercial parking lot at the church

-12-

A typical case was decided by the Court of Appeals of Maryland in 1979 when it reviewed the question of judicial review of decisions of administrative agencies in the case of Mayor and Alderman vs. Annapolis Waterfront, 284 Md. 333, 396 A.2d 1080. In this case, the Circuit Court for Anne Arundel County granted an injunction against the administrative decision, and the Court of Special Appeals affirmed the said Circuit Court. On Certiorari to the Court of Appeals, the Court of Appeals reversed the said Court of Special Appeals and discussed the scope of judicial review in said case. The Court of Appeals stated that: "Administrative agencies, such as we have here, are arms of the Legislature and derive all of their authority from the Legislative Branch." The Court went on to say that "Courts of this State are without power to interfere with any exercise of the legislative prerogative within constitutional limits, or with the lawful exercise of administrative authority or discretion." In further discussing the scope of judicial review, the Court said that "the judicial branch of the Government ordinarily may, through appeal, the writ of Mandamus by Injunction, or otherwise, correct any abuse of discretion by administrative agencies or review their actions when arbitrary, illegal, capricious, or unreasonable." Additionally, the Court said:

"However, the scope of judicial review of decisions by administrative agencies is narrow, recognizing that Board members have expertise in a particular area and ordinarily

-11-

the Court of Appeals of Maryland again stated the fundamental principle of administrative law that a reviewing court should not substitute its judgment for the expertise of the administrative agency from which the appeal is taken.

The errors, or changes, relating to the subject property as presented before the Board of Appeals may be summarized as follows:

(a) The County Council failed to take into account existing factors, or foresee the effect or trends, relating to the subject property causing it to deteriorate from the impact of the commercial uses in the 300 block of Chesapeake Avenue, and more particularly the impact from the Chesapeake Building.

(b) The County Council recognized its failure to anticipate trends by subsequently rezoning for office use properties further to the west of the subject property, and by allowing such properties to expand from existing structures in areas more residential in character than the subject property.

(c) The County Council was in error in establishing the demarcation line which encroached upon the Chesapeake Building property.

(d) The County Council was in error in not considering the impact of the commercial use of the Church parking lot.

-15-

should be free to exercise their discretion as such. Accordingly, this Court adheres to the proposition that a reviewing Court will not substitute its judgment for that of an administrative board where the issue is fairly debatable and the record contains substantial evidence supporting the administrative decision."

The Court in Mayor and Alderman, further quoted from Lyer v. Stone, 253 Md. 533, 253 A.2d 372, as follows:

"We have made it quite clear that if the issue before the administrative body is fairly debatable, that is that its determination involved testimony from which a reasonable man could come to different conclusions, the Courts will not substitute their judgment for that of the administrative body, in the absence of an unconstitutional taking of private property for public use without the payment of just compensation."

In Bulleck v. Pelham Woods Apartments, 283 Md. 505, 390 A.2d 1119, the Court stated that the Court must review the agency's decision in the light most favorable to the agency, and in the light of the fact that the decisions of agencies are prima facie correct and carry with it the presumption of validity.

In the recent case of Chesapeake Ranch Club, Inc. v. Fulcher, before the Court of Special Appeals of Maryland, filed March 10, 1981, and reported in the Daily Record of May 2, 1981, the Court of Special Appeals stated as follows:

"In light of the evidence before the Zoning Board, we conclude that the matter before the Board was 'fairly debatable' and that there was ample evidence to support its conclusion."

In another recent case of O'Donnell v. Bassler, 425 A.2d 1063, reported in the Daily Record of April 7, 1981,

-17-

The factors that existed at the time of the 1976 Land Use Map that were not considered, and the impact of time between 1976 and 1979 on the subject property, as well as the surrounding neighborhood, should have made the issues before the Board "fairly debatable."

In the case of Boyce v. Serbly, 25 Md. App. 43, 331 A.2d 137, the Court of Special Appeals reviewed the applicable test for determining the scope of judicial review in a zoning case. The Court, in affirming the Circuit Court for Baltimore County, stated that evidence of mistake in the original zoning, or comprehensive zoning, or evidence of substantial change in the character of the neighborhood could be produced. If the issue is fairly debatable, and there was legally sufficient evidence before the Board, then the decision of the Board should be sustained. In Boyce, the Court further stated:

"Error can be established by showing that at the time of the comprehensive zoning, the Council failed to take into account the existing facts, or projects, or trends, which were reasonably foreseeable of fruition in the future, so that the Council's action was premised initially on a misapprehension."

In Boyce, the Court further stated:

"Error or mistake may also be established by showing that events occurring subsequent to the comprehensive zoning have proven that the Council's initial premises were incorrect."

The Court, in Boyce, also quoted from Racville v. Stone, 271 Md. 655, 298 A.2d 536, as follows:

-16-

PETITION FOR: Change in Zoning Classification
From DR 5.5 to DR 16, with special exception for Office Use.

BASIS FOR REQUEST: Error in Zoning Maps

LOCATION OF PROPERTY: 307 West Chesapeake Ave., Towson, Md. 21204

- 1 - Said property is located within the convenience circle centered on the Baltimore County Government buildings, with the Court House located approximately 1 block to the east.
- 2 - Said property is located within an area which is contiguous to DR 16 Zoning, with special exception for office use.
- 3 - Said property is located directly across the street from a commercial parking lot, which rents parking spaces on a monthly basis to the businesses in the area.
- 4 - Said property is contiguous with the existing Chesapeake Building located at 305 West Chesapeake Ave., and the expansive parking area.
- 5 - Said property is the first property located east of Boxley Avenue which is zoned for residential use, located on West Chesapeake Ave.
- 6 - Said property is located in an area destined to become fully used as commercial - office use - which has natural barriers against expansion into the residential areas, namely Florida Ave., the Presbyterian Nursing Home, Y.M.C.A., Board of Education property on Central Ave.
- 7 - Said property is not suitable for residential use due to the location next to the Chesapeake Building, with the traffic and parking situation making it unsafe for a family with children. A child has been struck by an automobile directly in front of this property.
- 8 - Said property has a shadow cast over it by the Chesapeake Building, restricting the normal usage of the back yard for plant cultivation.
- 9 - Said property has lights cast on it from the Chesapeake Building, thereby restricting the privacy which would be available and normal for a family residence.
- 10 - West Chesapeake Avenue is utilized on the north side for commercial use, offices - churches - schools - parking.

Page 2

- 11 - West Chesapeake Avenue is utilized on the south side for commercial use, east of said property.
- 12 - Present DR 16 Zoning boundaries do not represent a uniform, well planned growth for this area, but instead encourages deterioration of said property. Such deterioration can be evidenced by the types of street crimes in this area.
- 13 - Residential use of this property is restricted by the erection of parking time limits, posted by the Baltimore County government.



**SPELLMAN, LARSON
& ASSOCIATES, INC.**

SUITE 110 - JEFFERSON BUILDING
105 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
623-3535

ROBERT E. SPELLMAN, P.L.S.
JOSEPH L. LARSON
LOUIS J. PIASECKI, P. E.

December 4, 1978

Mr. Nicholas B. Commodari, Chairman
Zoning Plans Advisory Committee
Baltimore County Office Building
Towson, Maryland 21204

RE: Item No. 5
Reclassification and Special Exception
and Variance Petition

Dear Mr. Commodari:

Please be advised that I have discussed with Mr. John L. Wimbley of Current Planning and Mr. Charles E. Burnham, Plans Review Chief, their comments relative to the zoning plat prepared by this office for the above referred to reclassification.

Mr. Wimbley has agreed that there is no necessity at this time to revise the plat pursuant to your comments. The petitioner has indicated that he has been unsuccessful in attempting to obtain an entrance off of the existing drive for the adjoining Chesapeake Building.

If at a future date he is successful, we will revise the plans that will be necessary for a change of occupancy permit. Mr. Burnham has also agreed that there is no necessity of changing our plat at this time to conform to the requirements of the handicapped regulations and that these can be incorporated into the plans at the time the plan is submitted for an occupancy permit.

We hope this letter will satisfy your requirements relative to our request and submission of plat.

Very truly yours,

SPELLMAN, LARSON & ASSOCIATES, INC.

Robert E. Spellman
Robert E. Spellman
President

cc: James K. Flannery, Sr.

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

December 18, 1978

COUNTY OFFICE BLDG.
121 W. Chesapeake Ave.
Towson, Maryland 21204

006
Nicholas B. Commodari
Chairman

MEMBERS
Bureau of Engineering
Department of Traffic Engineering
State Roads Commission
Bureau of Fire Prevention
Health Department
Project Planning
Building Department
Board of Education
Zoning Administration
Industrial Development

Mr. James K. Flannery, Sr.
628 Wilton Road
Towson, Maryland 21204

RE: Item No. 5
Petitioner - Flannery
Reclassification, Special
Exception & Variance Petitions

Dear Mr. Flannery:

Please be advised that the acceptance certificate for the above petition, dated January 30, 1979, was incorrect. Enclosed is verification that the correct date of acceptance was December 14, 1978. This should replace the previous certificate.

Very truly yours,

Nicholas B. Commodari
NICHOLAS B. COMMODARI
Chairman
Zoning Plans Advisory Committee

NBC/sf

enclosure

cc: Spellman, Larson & Assoc.
105 W. Chesapeake Avenue
Towson, Maryland 21204

April 9, 1979

CASE NO. R-79-6-XA

JAMES K. FLANNERY, ET AL

5/5 W. Chesapeake Ave. 95' E. of Florida Ave.
9th District

for -

Reclassification from D.R. 5.5 to D.R. 16 zone

Special Exception for Offices

Variance - Side Yard Setbacks

ASSIGNED FOR:

TUESDAY, JUNE 26, 1979 at 10 a.m.



**SPELLMAN, LARSON
& ASSOCIATES, INC.**

SUITE 110 - JEFFERSON BUILDING
105 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
623-3535

ROBERT E. SPELLMAN, P.L.S.
JOSEPH L. LARSON
LOUIS J. PIASECKI, P. E.

DESCRIPTION FOR REZONING AND SPECIAL EXCEPTION TO ZONING, NO. 307 WEST CHESAPEAKE AVENUE, 9TH DISTRICT, BALTIMORE COUNTY, MARYLAND

Beginning for the same at a point on the south side of West Chesapeake Avenue, 60 feet wide, at the distance of 95 feet more or less measured easterly along the south side of West Chesapeake Avenue from the centerline of Florida Avenue running thence and binding on the south side of West Chesapeake Avenue South 76 Degrees 23 Minutes East 55.00 feet thence leaving the south side of West Chesapeake Avenue and running South 13 Degrees 26 Minutes West 125.00 feet North 76 Degrees 23 Minutes West 55.00 feet and North 13 Degrees 26 Minutes East 125.00 feet to the place of beginning.

Containing 0.16 acres of land, more or less.

9-28-76



RESIDENTIAL & COMMERCIAL DEVELOPMENT DESIGN • LAND SURVEYING
LAND PLANNING • SUBDIVISION LAYOUT • FEASIBILITY STUDIES • ESTIMATING
GRADING STUDIES • LOCATION SURVEYS • TECHNICAL CONSULTATION

PETITION FOR RECLASSIFICATION, SPECIAL EXCEPTION AND VARIANCE

9th District

CONING: Petition for Reclassification from a D.R. 5.5 Zone to a D.R. 16 Zone with a Special Exception for offices and Variance for side yard setbacks and parking

LOCATION: South side of West Chesapeake Avenue, 95 feet East of Florida Avenue

DATE & TIME: Tuesday, June 26, 1979 at 10:00 A.M.

PUBLIC HEARING: Room 218, Courthouse, Towson, Maryland

The County Board of Appeals for Baltimore County, by authority of the Baltimore County Charter will hold a public hearing:

Present Zoning D.R. 5.5
Proposed Zoning: D.R. 16 with a Special Exception for offices (IDCA 78-65-X) and Variance to permit side yard setbacks of 6.3 feet and 9.5 feet in lieu of the required 25 feet and 5 parking spaces in lieu of the required 7 spaces

The Zoning Regulation to be excepted as follows:

Section 1802.2B (V.B.2) - side yard setbacks
Section 109.2b(5) - parking for offices

All that parcel of land in the Ninth District of Baltimore County

Being the property of James K. Flannery, et al, as shown on plat plan filed with the Zoning Department

Hearing Date: Tuesday, June 26, 1979 at 10:00 A.M.
Public Hearing: Room 218, Courthouse, Towson, Maryland

BY ORDER OF
WALTER A. REITER, JR., CHAIRMAN
COUNTY BOARD OF APPEALS OF
BALTIMORE COUNTY

Mr. James K. Flannery
628 Wilton Rd.
Towson, Md. 21204

NOTICE OF HEARING BEFORE THE

COUNTY BOARD OF APPEALS

RE: Petition for Reclassification, Special Exception and Variance, 5/5 West Chesapeake Ave., 95' East of Florida Ave. - 9th District, James K. Flannery, et al Petitioners, Case No. R-79-6-XA

TIME: 10:00 A.M.

DATE: Tuesday, June 26, 1979

PLACE: ROOM 218, COURTHOUSE, TOWSON, MARYLAND

Walter A. Reiter, Jr.
CHAIRMAN, COUNTY BOARD OF APPEALS

This case calls upon us to determine whether a "mistake" was made in the comprehensive rezoning of Baltimore County in 1976. The subject property, located in West Towson on the south side of Chesapeake Avenue, is a colonial type dwelling situated on .16 acres of land. The premises, 307 W. Chesapeake Avenue, has as its neighbors, to the east the "Chesapeake Building," a five-story office building, to the west and south residential dwellings, and to the north, across Chesapeake Avenue, a church and its parking lot.

In 1976, the property was rezoned D.R. 5.5. In 1979 the new owners filed a petition for reclassification with the County Board of Appeals. The petition sought a change to D.R. 16 along with a special exception to allow office use and zoning variances to modify the setback restrictions and the number of parking spaces required. On April 24, 1980, the Board of Appeals found that the County Council erred in 1976 and therefore granted the reclassification, the special use, and the requested variances. The People's Counsel for Baltimore County, appellant here, appealed to the Circuit Court, which affirmed the Board's decision. From that decision appellant brings this appeal and poses the following question:

"Did the trial court err in finding that there was legally sufficient evidence presented to the County Board of Appeals for Baltimore County for the Board to find error in the Comprehensive Land Use Map adopted October 3, 1976?"

The standards which control our review of this case have been stated often. See Hoy v. Boyd, 42 Md.App. 527 (1979), Boyce v. Sembly, 25 Md.App. 43 (1975), and Howard County v. Dorsey, 45 Md.App. 692, cert. granted Md. (1980). Our inquiry is limited to whether the action

and believed that it would, through the "Domino Effect," lead to the destruction of their residential neighborhood.

Based on this evidence, the Board issued its opinion granting the various changes requested. The Board's reasoning is succinctly summarized by the following portion of its opinion.

"In the judgment of this Board, based primarily upon the precise location of the subject lot immediately next and literally in the shadow of the five story Chesapeake Building, the County Council did in fact err when they did not zone the subject property DR 16. Primarily because of the proximity of the Chesapeake Building, the subject property can no longer reasonably serve as a residence and the use should be for offices in the existing structure. The Board notes with interest the new legislation which will provide specific classification for offices in residential zones. The subject property would certainly seem to be an ideal location for this zone when this zoning classification becomes part of the regulations." (Emphasis supplied.)

This excerpt from the Board's opinion and the entire record in this case indicate rather clearly that the Board of Appeals and the Circuit Court did not properly apply the test set out in Howard County v. Dorsey, supra, and Boyce v. Sembly, supra.

The gist of appellees' position was before the County Council in 1976, in the context of the comprehensive rezoning; it was considered and rejected. The owner of the property at that time testified at a public hearing on June 4, 1976, as follows:

"I'm one of the owners of the property at 307 West Chesapeake Avenue. We are requesting a change in zoning from DR 5.5 to DR 16 with a special exception for offices. This will allow this house to be used for offices, yet will

taken by the Board was "arbitrary and discriminatory or fairly debatable." Trainer v. Lipchin, 269 Md. 667, 672 (1973). That inquiry, however, is subject to the equally basic maxim that the task presented to one who seeks to overcome the strong presumption of the correctness of original zoning or comprehensive rezoning "is manifestly a difficult one." Stratakis v. Beauchamp, 268 Md. 643, 653 (1973).

In Howard County v. Dorsey, 45 Md.App. at 703-04, this Court reiterated the circumstances under which a zoning mistake will be found. Quoting from Boyce v. Sembly, 25 Md.App. at 51-52, we said:

"It is presumed, as part of the presumption of validity accorded comprehensive zoning, that at the time of the adoption of the map the Council had before it and did, in fact, consider all of the relevant facts and circumstances then existing. Thus, in order to establish error based upon a failure to take existing facts or events reasonably foreseeable of fruition into account, it is necessary not only to show the facts that existed at the time of the comprehensive zoning but also which, if any, of those facts were not actually considered by the Council. This evidentiary burden can be accomplished by showing that specific physical facts were not readily visible or discernible at the time of the comprehensive zoning...; by adducing testimony on the part of those preparing the plan that then existing facts were not taken into account...; or by producing evidence that the Council failed to make any provision to accommodate a project, trend or need which it, itself, recognized as existing at the time of the comprehensive zoning... Because facts occurring subsequent to a comprehensive zoning were not in existence at the time, and, therefore could not have been considered, there is no necessity to present evidence that such facts were not taken into account by the Council at the time of the comprehensive zoning. Thus, unless there is probative evidence to show that there were then

retain its exterior residential appearance. This property is less than a block from the new County Courthouse. It is in the unique position as it is directly adjacent to the five story Chesapeake Building. No road or alley or anything separates this house from this office building. Originally there were six houses on the south side of the 300 block of Chesapeake Avenue between Bosley and Florida Road all zoned DR 5.5. The zoning of four of these houses was changed to DR 16 leaving only two houses, 307 and 309 with the 5.5 classification. The Judge on the Assessment Appeals Board stated that the present 5.5 zoning classification is a gross error in zoning. The tax assessor stated that the property is not suitable as a residence.

"On this property is a large three story room house, which would appeal only to a large family. It is completely unsuitable for a residence. It is unsafe to raise children there. My niece was hit by a car in front of the residence. My sister had to move from there after living there for over thirty years, because of the danger. It is impossible to get suitable tenants to rent this house, and is unsaleable as a residence. The property will deteriorate and become an eyesore in the neighborhood, as are many houses in the area, if this zoning request is not granted. The residents in the area are asking for a DR 16 zoning, so that they will have offices as neighbors with suitable residential appearances rather than the present type of tenants that are occupying the homes.

"I, therefore, urge you to rezone 307 West Chesapeake Avenue as DR 16 with special exception for office use. This is the only reasonable solution to the problem of this particular property...."

Several other individuals testified at that hearing and other hearings, before the 1976 rezoning, that they were pleased that the property was proposed as D.R. 5.5 and that such zoning would help maintain the residential nature of the neighborhood.

It is clear from this that the County Council had squarely presented to it the very same facts and issues that the Board of

existing facts which the Council, in fact, failed to take into account, or subsequently occurring events which the Council could not have taken into account, the presumption of validity accorded to comprehensive zoning is not overcome and the question of error is not 'fairly debatable.'... (Citations omitted; footnote omitted.)

These rules necessitate our reviewing the evidence presented to the Board in support of the application.

Appellees' first witness was Robert Spellman, a registered land surveyor. He testified as to the zoning of 307 W. Chesapeake Avenue and the surrounding properties. He discussed the existing property setbacks and went into great detail about the parking situation on the premises and the need for a variance to allow the office use. Mr. Spellman opined that there would be no adverse effect on the neighborhood from an engineering point of view.

Appellees' second witness was William Baldwin, an appraiser/broker since 1949. Mr. Baldwin testified as to the surrounding zoning and gave a detailed account of the run-down condition of the home. He concluded that it was a mistake to zone the property D.R. 5.5 and that the property was unsuitable as a family home.

The third witness was Howard Frey, a co-owner of the property. His testimony emphasized the deteriorated condition of the building. He detailed the use he would make of the property if the zoning change was granted and he was able to move his office to that location. It was his opinion that moving his office into the building would have no adverse effect on the neighborhood.

appeals found so compelling. Obviously, the Council had found these same facts less persuasive. That the Board disagreed with the Council's conclusion and believed that a buffer zone would be more appropriate does not mean that the Council made a "mistake," as that term is traditionally defined.¹ Boyce v. Sembly, supra.

Appellees assert that if we reverse, a great hardship -- a forfeiture -- would result because they have already altered the premises to allow for office use and have moved their businesses there. We could not disagree more strongly. Appellees purchased this building fully aware that it was zoned D.R. 5.5 and that a change in zoning would be necessary before they could use it as a place of business. They knew of the petition to rezone the property and substituted themselves in the proceedings in place of the previous owners. Knowing within a matter of weeks that the decision of the Circuit Court was being appealed, they chose nevertheless to proceed with their renovation plans, possibly because they also knew that the County Council intended to revert the property back to D.R. 5.5 in the 1980 comprehensive rezoning. They took a calculated risk, knowing full well the possible consequences, and we will not "bail them out" now. If we were to agree with their position on forfeiture, we would be participating in the virtual destruction of the appellate process.

JUDGMENT REVERSED; CASE REMANDED FOR ENTRY OF AN ORDER REVERSING THE DECISION OF THE COUNTY BOARD OF APPEALS; APPELLEES TO PAY THE COSTS.

1. Although it cannot and did not play any part in our decision, it is interesting to note that in the 1980 comprehensive rezoning the County Council reaffirmed its earlier determination and rezoned this property D.R. 5.5. We give no weight to that event because it did not take place until after the Board had rendered its decision and appellees had secured an occupancy permit.

The final witness for appellees was Harry Shapiro, the other co-owner of the property. Mr. Shapiro also testified as to the run-down condition of the premises, the nature of his law practice and how such a practice would not impose a burden on the surrounding neighborhood, how he and Mr. Frey were willing to invest money to make the building an asset to the community, and how they were willing to retain the outer appearance of the structure. Lastly, he stressed the unique nature of 307 W. Chesapeake Avenue, in that it was directly next to the Chesapeake Building.

At the Board's hearing, appellant relied heavily on the decision made by the County Council in the 1976 comprehensive rezoning. Numerous record extracts from the hearings held prior to the 1976 rezoning were admitted as exhibits. These exhibits show that a great deal of attention was focused on the issue of how to prevent a "Domino Effect" from destroying the residential nature of West Towson. James Hoswell, a planner with the County, testified as to how decisions were made on where to place the border between D.R. 5.5 and D.R. 16. It was Mr. Hoswell's opinion that the property was properly zoned D.R. 5.5 and should remain so. In response to a question from the Board chairman as to why no buffer was established between the Chesapeake Building and the residential homes, Mr. Hoswell answered, "[I]t is an imperfect world...." The remaining witnesses called by appellant were all residents of West Towson and spokespersons for the various neighborhood associations. All were opposed to the D.R. 16 zone change.

HOWARD L. FREY, et al.

In the
Court of Appeals
of Maryland

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY

Petition Docket No. 222.
September Term, 1981.
(No. 1352 September Term, 1980
Court of Special Appeals)

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and

it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

RECEIVED
BALTIMORE COUNTY
SEP 17 12 28 PM '81
COUNTY BOARD
OF APPEALS
BY:

/s/ Robert C. Murphy
Chief Judge

Date: September 9th, 1981.

RE: PETITION FOR RECLASSIFICATION : IN THE CIRCUIT COURT
from D.R. 5.5 to D.R. 16 :
PETITION FOR SPECIAL EXCEPTION : FOR BALTIMORE COUNTY
for Office Use :
PETITION FOR VARIANCE from Sec. : AT LAW
1801.2.C.6(V.B.2) to permit side :
setbacks of 6'3" and 9'5" instead of : Misc. Docket No. 12
required 25', and Sec. 409.28 (5) : Folio No. 210
to permit 5 parking spaces in lieu of :
the required 7 spaces. : File No. 7160
5/5 of West 307 Chesapeake Avenue, :
95' E of Florida Ave., 9th District :
James K. Flannery, et al, Petitioner :
Zoning Case No. R-79-6-XA :
John W. Hession, III, People's Counsel :
for Baltimore County, Appellant :

PETITION FOR EXTENSION OF TIME TO FILE TRANSCRIPT OF PROCEEDINGS

John W. Hession, III, People's Counsel for Baltimore County, and Peter Max Zimmerman, Deputy People's Counsel, Praterants below, petition this Court, pursuant to Maryland Rule 87(b), for an extension of time within which to file the transcript of proceedings before the Baltimore County Board of Appeals and in support of this Petition state:

That Carol A. Beresh, Court Reporter for the County Board of Appeals at the time of the hearing before said Board in the above-entitled case, has informed the County Board of Appeals that due to a backlog of cases, she will be unable to prepare the transcript prior to the filing deadline of June 20, 1980, and will require an additional thirty days to do so.

THEREFORE, Appellants pray this Honorable Court to extend the time for filing the transcript of proceedings until July 21, 1980, 60 days after the Petition on Appeal was filed.

John W. Hession, III
People's Counsel for Baltimore County

Peter Max Zimmerman
Deputy People's Counsel
Rm. 223, Court House
Towson, Maryland 21204

James K. Flannery, et al
Case No. R-79-6-XA

Order of Walter A. Reiter, Jr., Chairman, County Board of Appeals, directing advertisement and posting of property - date of hearing set for June 26, 1979, at 10 a.m.

October 31, 1978 Comments of Baltimore County Zoning Advisory Committee filed

December 21, I.D.C.A. approved by Planning Board (#78-65-X)

June 7, 1979 Certificate of Publication in newspaper - filed

June 8, Certificate of Posting of property - filed

June 26, At 10 A.M. hearing held on petition

April 24, 1980 Order of County Board of Appeals granting the reclassification from D.R. 5.5 to D.R. 16 on the 6,875 sq. ft. parcel, granting the variance from Sec. 1801.2.C.6 (V.B.2) to permit side setbacks of 6'3" and 9'5" instead of the required 25' petitioned for, ordering the variance from Sec. 409.28 (5) to permit five parking spaces in lieu of the required seven spaces petitioned for be for six off-street parking spaces instead of the required seven and granting the special exception for office use petitioned for with restrictions.

May 21, Order for Appeal filed in Circuit Court for Baltimore County by John W. Hession, III, Esq., People's Counsel for Baltimore County

May 22, Certificate of Notice sent to all interested parties

May 21, Petition to accompany Order for Appeal filed in Circuit Court for Baltimore County

June 16, Petition for Extension of Time to file transcript

July 18, Transcript of testimony filed -

Petitioner's Exhibit No. 1 - Letter dated October 10, 1979, to Balto. County Council from Harry S. Shapiro

People's Counsel Exhibit No. 1a - 1g - Series of photos of area

" " " " 2 - Recommended Zoning Map containing Issue #4

" " " " 3 - Excerpts, Balto. County Planning Meeting, Nov. 18, 1975

" " " " 4 - Balto. County Public Hearing, June 14, 1976, Excerpts

" " " " 5 - County Council Meeting, Sept. 16, 1976, Excerpts

I HEREBY CERTIFY that a copy of the foregoing Petition for Extension of Time to File Transcript of Proceedings was served on the Administrative Secretary of the County Board of Appeals of Baltimore County, Room 219, Court House, Towson, Maryland 21204, prior to the presentation of the original to the Clerk of the Circuit Court for Baltimore County; and that a copy thereof was mailed to Harry S. Shapiro, Esquire, and Howard L. Frey, Suite 200 - Everett Building, 660 Kenilworth Drive, Towson, Maryland 21204.

Peter Max Zimmerman
Peter Max Zimmerman

RE: PETITION FOR RECLASSIFICATION : IN THE CIRCUIT COURT
from D.R. 5.5 to D.R. 16 :
PETITION FOR SPECIAL EXCEPTION : FOR BALTIMORE COUNTY
for Office Use :
PETITION FOR VARIANCE from Sec. : AT LAW
1801.2.C.6(V.B.2) to permit side : Misc. Docket No. 12
setbacks of 6'3" and 9'5" instead of : Folio No. 210
required 25', and Sec. 409.28 (5) : File No. 7160
to permit 5 parking spaces in lieu of :
the required 7 spaces. :
5/5 of West 307 Chesapeake Avenue, :
95' E of Florida Ave., 9th District :
James K. Flannery, et al, Petitioner :
Zoning Case No. R-79-6-XA :
John W. Hession, III, People's Counsel :
for Baltimore County, Appellant :

ORDER

Upon the foregoing Petition for Extension of Time to File Transcript of Proceedings, it is hereby ORDERED this 16 day of June, 1980, that the time for filing in Court the transcript of proceedings before the Board of Appeals is hereby extended until July 21, 1980.

JUDGE

PETITION FOR RECLASSIFICATION * IN THE
from D.R.5.5 to D.R. 16 * CIRCUIT COURT
PETITION FOR SPECIAL EXCEPTION *
for Office Use * FOR
PETITION FOR VARIANCE from Sec. * BALTIMORE COUNTY
1801.2.C.6 (V.V.2) to permit side *
setbacks of 6'3" and 9'5" instead *
of required 25', and Sec.409.28 *
(5) to permit 5 parking spaces *
in lieu of the required 7 spaces. * At Law
5/5 of West 307 Chesapeake Ave., * 12/210/7160
95' E of Florida Ave., 9th Dist. *

James K. Flannery, et al.,
Petitioner
Zoning Case No. R-79-6-XA

OPINION AND ORDER

The Court held a hearing on Appellant's appeal from the Order of the County Board of Appeals for Baltimore County dated April 24, 1980, granting the Petition for Reclassification from D.R.5.5 to D.R.16, a Special Exception for Office Use; and Variances in the above-entitled case.

The Appellant contends that the County Board of Appeals had no legally sufficient evidence upon which to base its conclusion that the present zoning on the parcel, which is the subject of this appeal, is an erroneous classification and, therefore, their Order passed herein is illegal, arbitrary and capricious.

The applicable test for determining the scope of judicial review in a zoning case alleging error in a comprehensive rezoning is:

"Where a legislative body, or a board of county officials, pursuant to authority conferred upon it, has granted a rezoning of property, the question on judicial review is whether or not such action is arbitrary and discriminatory or fairly debatable." *Poyce v. Sembly*, 25 Md. App. 43, 49, 334 A2d. 137 (1975). *Anne Arundel County, Maryland v. Maryland National Bank*, 32 Md.App. 437, 440, 361 A2d. 134 (1967). *How v. Poyd*, 42 Md.App. 527, 533, 401 A2d. 1047 (1979).

RE: PETITION FOR RECLASSIFICATION : IN THE
from D.R. 5.5 to D.R. 16 : CIRCUIT COURT
PETITION FOR SPECIAL EXCEPTION :
for Office Use : FOR
PETITION FOR VARIANCE from Sec. : BALTIMORE COUNTY
1801.2.C.6(V.B.2) to permit side :
setbacks of 6'3" and 9'5" instead of : AT LAW
required 25', and Sec. 409.28 (5) : Misc. Docket No. 12
to permit 5 parking spaces in lieu of : Folio No. 210
the required 7 spaces. : File No. 7160
5/5 of West 307 Chesapeake Avenue, :
95' E of Florida Ave., 9th District :
James K. Flannery, et al, Petitioner :
Zoning Case No. R-79-6-XA :
John W. Hession, III, Esq., People's :
Counsel for Baltimore County, Appellant :

CERTIFIED COPIES OF PROCEEDINGS BEFORE
THE ZONING COMMISSIONER AND BOARD
OF APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come Walter A. Reiter, Jr., William T. Hockett and John A. Miller, constituting the County Board of Appeals of Baltimore County, and in answer to the Order for Appeal directed against them in this case, herewith return the record of proceedings had in the above entitled matter, consisting of the following certified copies or original papers on file in the office of the Zoning Department of Baltimore County:

ZONING ENTRIES FROM DOCKET OF ZONING COMMISSIONER
OF BALTIMORE COUNTY

No. R-79-6-XA

Petition of James K. Flannery, et al, for reclassification from D.R. 5.5 to D.R. 16 zone, for special exception for office use, and for variance from Sec. 1801.2.C.6(V.B.2) to permit side setbacks of 6'3" and 9'5" instead of required 25', and Sec. 409.28 (5) to permit 5 parking spaces in lieu of the required 7 spaces, on property located on the south side of West 307 Chesapeake Avenue, 95' east of Florida Avenue, 9th district, filed

This Court has reviewed the transcript and evidence from the hearing before the County Board of Appeals and the arguments of Counsel before this Court. As a result of this review, the Court is of the opinion that the action of the Board of Appeals was fairly debatable, and there was legally sufficient evidence before the Board of Appeals to support its conclusion that the present zoning is an erroneous classification.

For the foregoing reasons, it is hereby ORDERED, that the Order of the Board of Appeals of Baltimore County under date of April 24, 1980 be and the same is affirmed.

COLLEEN M. HORMES
JUDGE

DATE 8/26/80

CHH/sh

Copy to: John W. Hession, III, Esq.
Peter M. Zimmerman, Esq.
Harry S. Shapiro, Esq.
Howard L. Frey, Esq.

RECEIVED
BALTIMORE COUNTY
SEP 23 3 41 PM '80
COUNTY BOARD
OF APPEALS
BY: E

cc: J. McNeill
Gordon Jones
✓

RE: PETITION FOR RECLASSIFICATION : BEFORE THE COUNTY BOARD OF APPEALS
FROM D.R. 5.5 TO D.R. 16
PETITION FOR SPECIAL EXCEPTION : OF BALTIMORE COUNTY
FOR OFFICE USE
FOR VARIANCE FROM SEC. 1801.2.C.6 :
(V.B.2) TO PERMIT SIDE SETBACKS OF 6/3' :
AND 9/5' INSTEAD OF REQUIRED 25', AND :
SEC. 409.2b (5) TO PERMIT 5 PARKING :
SPACES IN LIEU OF THE REQUIRED 7 SPACES :
S/S W. Chesapeake Ave. 95' :
E Florida Ave., 9th District :
JAMES K. FLANNERY, SR., et al :
Petitioners : Case No. R-79-6-XA (Item 5, Cycle IV)

ORDER TO ENTER APPEARANCE

To the Honorable, Members of Said Board:

Pursuant to the authority contained in Section 524.1 of the Baltimore County Charter, I hereby enter my appearance in this proceeding. You are requested to notify me of any hearing date or dates which may be now or hereafter designated therefore, and of the passage of any preliminary or final Order in connection therewith.

Peter Max Zimmerman
Peter Max Zimmerman
Deputy People's Counsel
John W. Hession, III
John W. Hession, III
People's Counsel
County Office Building
Towson, Maryland 21204
494-2188

I HEREBY CERTIFY that on this 16th day of May, 1979, a copy of the foregoing Order was mailed to Mr. James K. Flannery, Sr., 628 Wilton Road, Towson, Maryland 21204, Petitioner.

John W. Hession, III
John W. Hession, III

RE: PETITION FOR RECLASSIFICATION : BEFORE
FROM D.R. 5.5 TO D.R. 16 :
FOR SPECIAL EXCEPTION : COUNTY BOARD OF APPEALS
FOR OFFICE USE :
FOR VARIANCE FROM SEC. 1801.2.C.6 :
(V.B.2) TO PERMIT SIDE SETBACKS OF 6/3' :
AND 9/5' INSTEAD OF REQUIRED 25', AND :
SEC. 409.2b (5) TO PERMIT 5 PARKING :
SPACES IN LIEU OF THE REQUIRED 7 SPACES :
S/S W. Chesapeake Avenue, :
95' East of Florida Avenue :
9th District :
James K. Flannery, et al :
Petitioner :

OPINION

This case before the Board is one of original jurisdiction. The subject property is located at 307 W. Chesapeake Avenue in the west Towson area of the Ninth Election District. The subject property is basically a level rectangular lot containing approximately 6,875 sq. feet and is improved by a 2 1/2 story brick dwelling. The property is located on the south side of Chesapeake Avenue immediately west of and contiguous with the large five story office building which is known as the Chesapeake Building. The Towson Presbyterian Church is located immediately across the street from the subject property and includes all of the west side of Chesapeake Avenue from Central Avenue to Highland Avenue. The Board accepted an amended petition which now names the current owner of the property (F & S Limited Partnership) as the Petitioner. This petition seeks a reclassification from an existing DR 5.5 to a DR 16 zone, a special exception for offices and variances from the east and west side setbacks and to permit 5 off-street parking spaces instead of the required 7.

The Petitioner offered Robert E. Spellman, a registered land surveyor, as an expert witness. Mr. Spellman described the area to the Board and also the location of utilities that serve the subject property. Mr. Spellman told the Board that the petition seeks to convert the existing dwelling to office use. The present building would be used and there would be no changes to the exterior. The first floor of the existing dwelling contains approximately 1167 sq. feet and the second floor contains approximately 1145 sq. feet. The petition requests a special exception for the first and second floor of the subject

James K. Flannery, et al
Case No. R-79-6-XA

2.

property and this total area is approximately 2312 sq. feet. A plat of the subject property prepared by this witness is in the file of this case. This plat is dated September 28, 1978. Requested side yard variances would be necessary under the existing regulations to accommodate the existing structure. The existing setback on the west of the structure from the enclosed stone porch is approximately six feet three inches and the existing structure is nine feet five inches from the east property line. These two requested variances would be in lieu of the 25 foot side yard setbacks that are now required by the regulations.

The Petitioners also offered William H. Baldwin, a real estate consultant and appraiser. Mr. Baldwin also described the area for the Board and the underlying zoning in this area. After studying the subject area, it was the conclusion of Mr. Baldwin that the County Council erred in 1976 when they zoned the subject property DR 5.5 instead of DR 16.

Both Mr. Baldwin and Mr. Spellman reviewed Sec. 502.1 as same pertains to the requested special exception for offices in the subject instance. Both of these witnesses told the Board that in their judgments, all of the elements of Sec. 502.1 could be satisfied if the special exception for offices at the subject property were granted provided that the existing structure was utilized and special exception was limited to the subject structure in the area proposed. The property owners, Mr. Frey and Mr. Shapiro, both testified and described for the Board the planned uses if the petition is successful. All witnesses obviously stated that it would be an unreasonable hardship if the variances for the side yard setbacks were not granted, as the existing building could not be utilized if it had to meet the existing 25 foot side yard setbacks. There was also some testimony in evidence concerning the practical difficulty in placing the seven required parking places in the rear yard at the subject property.

James G. Howell, a Planner for Baltimore County, testified in opposition to the granting of this petition. While Mr. Howell was troubled by the obvious and

James K. Flannery, et al
Case No. R-79-6-XA

3.

dominating presence of the five story Chesapeake Building immediately next door to the subject property, nonetheless, in conclusion, stated that in his judgment, the County Council's 1976 choice of DR 5.5 for the subject property was not in error and was in fact an appropriate land use for the subject property. Mr. Howell did agree that the Chesapeake Building did have an adverse impact upon the utilization of the subject property. As to the location of the large church complex across the street from the subject property, Mr. Howell saw no adverse impact on the subject property because of this church facility, but he also stated that because of the location of the church facility that if the subject petition would be granted, the same would have no adverse impact upon the church utilization. During the course of Mr. Howell's testimony, both the buffer system technique of planning and the domino theory were thoroughly discussed. Three neighborhood residents also testified in opposition to the granting of the petition.

The first issue is the requested reclassification. The question in the reclassification issue is simply whether or not the County Council in 1976 erred when they zoned the subject property DR 5.5 instead of the requested DR 16 reclassification. As to this issue, the Board has carefully reviewed the testimony and evidence offered in this case. Some of this testimony and evidence has been outlined above. Nearly four years have lapsed since the Council adopted the existing land use map and in fact, the Planning Board is now at work in preparing their recommendations for the County Council which will shortly receive same and in fact adopt a new Comprehensive Land Use Map for this area in October of this year. Since October 1976, the Board has heard many zoning cases in the west Towson area. To date, no petition for a reclassification has been successful. The subject case shall be the first exception. In the judgment of this Board, based primarily upon the precise location of the subject lot immediately next and literally in the shadow of the five story Chesapeake Building, the County Council did in fact err when they did not zone the subject property DR 16.

James K. Flannery, et al
Case No. R-79-6-XA

4.

Primarily because of the proximity of the Chesapeake Building, the subject property can no longer reasonably serve as a residence and the use should be for offices in the existing structure. The Board notes with interest the new legislation which will provide a specific classification for offices in residential zones. The subject property would certainly seem to be an ideal location for this zone when this zoning classification becomes part of the regulations.

As to the Petitioners' request for a special exception for offices in the subject case, the Board is satisfied based upon the testimony and evidence that this special exception can be granted while satisfying all of the elements of Sec. 502.1. This judgment includes consideration of the restrictions that will be placed on the Order limiting the office use to the existing structure, providing that no substantial changes shall be made to the exterior of the structure so as to alter its residential appearance and the special exception for offices shall be limited to the first and second floors of this structure (i.e. approximately 2312 sq. feet). There is sufficient testimony and evidence to grant the two requested side yard setback variances as it would not doubt be an unreasonable hardship to require the removal of any parts of the existing structure. As to the requested variance concerning the parking spaces, the Board is troubled. Without question, the on-street parking in the west Towson area is horrendous during the business hours. At first impression, to grant such a variance even though it is but for two parking spaces would seem inappropriate. However, because it is but two parking spaces, if the Board does not grant the variance, the Petitioner could accomplish the seven parking spaces elsewhere on the total lot. The Board is of the opinion that the utilization of the existing structure is in keeping with the tenants of Sec. 502.1 and hence sees no practical reason to limit the office usage on the first or second floor by limiting the parking. It is also the opinion of the Board that the proper satisfaction of Sec. 502.1 would limit all of the off-street parking to the rear of the subject lot. There was some testimony in evidence that seemed to indicate to the Board that with additional study the parking layout on the rear of the subject lot could be redesigned so as to yield more than

James K. Flannery, et al
Case No. R-79-6-XA

5.

five parking spaces. Considering and reflecting upon the testimony and evidence concerning the parking variance, the Board is satisfied that it would be an unreasonable hardship to impose strict compliance with the requirement for seven parking spaces, but with the hope of providing as much off-street parking space as is possible the Board will limit the granting of the variance to six off-street parking spaces instead of the required seven. In conformity with this Opinion, an Order follows hereafter.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 24th day of April, 1980, by the County Board of Appeals, ORDERED that the reclassification from D.R. 5.5 to D.R. 16 petitioned for on the 6,875 sq. foot parcel be and the same is hereby GRANTED, and it is

FURTHER ORDERED, that the variance from Sec. 1801.2.C.6 (V.B.2) to permit side setbacks of 6/3' and 9/5' instead of the required 25' petitioned for be and the same is hereby GRANTED, and it is

FURTHER ORDERED, that the variance from Sec. 409.2b (5) to permit five parking spaces in lieu of the required seven spaces petitioned for be for six off-street parking spaces instead of the required seven, and it is

FURTHER ORDERED, that the Special Exception for office use petitioned for be and the same is hereby GRANTED with the following restrictions:

- (1) The existing structure shall be utilized for offices
- (2) The office space shall be limited to the first and second floors of the structure and shall not exceed approximately 2312 sq. feet
- (3) There shall be no substantial changes to the exterior of the existing structure so that the residential appearance of this structure will be maintained
- (4) The subject property shall be screened as proposed on the Petitioners' plat dated September 28, 1978

James K. Flannery, et al
Case No. R-79-6-XA

6.

(5) All off-street parking at the Special Exception shall be located on the rear half of the lot only

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Walter A. Reiter, Jr.
Walter A. Reiter, Jr., Chairman

William T. Hackett
William T. Hackett

John A. Miller
John A. Miller

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY
Respondent
vs.
F & S LIMITED PARTNERSHIP
Petitioner
IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
MISC. 12/210/7160

ORDER

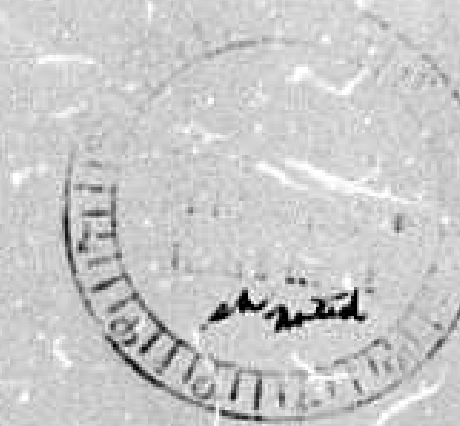
The Mandate of the Court of Special Appeals having been received by this Court, it is hereby ORDERED that the decision of the County Board of Appeals is reversed.

J. William Hinkel
J. William Hinkel
Judge

JWH:jag

cc: Peter Max Zimmerman, Esq.
Harry S. Shapiro

2-25-82
NOTE: Checked with C.D. Co.
Law Book Order
signed on 2-19-82.
Filed on 2-23-82.
JH



RECEIVED
BALTIMORE COUNTY
CIRCUIT COURT
FEB 24 1982
CLERK
A.S.

PETITION FOR ZONING VARIANCE FROM AREA AND HEIGHT REGULATIONS

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, or we, James K. Flannery, Sr. Et Al, legal owners 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 for a Variance from Section 1602.20 (V.B.2) to permit side setbacks of 6.3' and 9.5' instead of the required 25' and 49.2b(5) to permit 5 parking spaces in lieu of the required 7 spaces.

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

House built approximately 40 years ago, not requiring setback of 25' in order to maintain the aesthetic appearance of the exterior grounds, and maintain accessible parking.

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

I, or we, agree to pay expenses of above Variance 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 of Baltimore County.

Contract purchaser James K. Flannery, Sr. Legal Owner
Address 628 Wilton Road
Towson, Md. 21204
Petitioner's Attorney Nicholas B. Commodari Protestant's Attorney

ORDERED By The Zoning Commissioner of Baltimore County, this _____ day

of _____, 197____, 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 _____ day of _____, 197____, at _____ o'clock _____ M.

Zoning Commissioner of Baltimore County.
(over)

PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:
Et Al

I, or we, James K. Flannery, Sr., 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 DR-5.5 zone to an DR-16 zone; for the following reasons:

SEE ATTACHED BRIEF

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

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 of Baltimore County.

Contract purchaser James K. Flannery, Sr. Legal Owner
Address 628 Wilton Road
Towson, Md. 21204
Petitioner's Attorney Nicholas B. Commodari Protestant's Attorney

ORDERED By The Zoning Commissioner of Baltimore County, this _____ day

of _____, 197____, 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 _____ day of _____, 197____, at _____ o'clock _____ M.

Zoning Commissioner of Baltimore County.
(over)

IDCA APPLICATION FOR SPECIAL EXCEPTION AND OR SPECIAL PERMIT RECEIVED

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY

I, or we, James K. Flannery, Sr. Et Al, legal owner of the property situate in Baltimore County, the property outline of which is drawn to scale, complete with bearings and distances on a 200 FT. SCALE MAPS, which are attached hereto, hereby make application to file for a RECLASSIFICATION & ZONING EXEMPTION DR-16 ZONE TO USE THE HEREIN DESCRIBED PROPERTY FOR OFFICE USE

THE PROPERTY IS EXPECTED TO BE IMPROVED AS FOLLOWS:

GROSS SITE AREA 0.16 DEED REF. 5566.586
GRADING 0 % OF OVERALL SITE WILL REQUIRE GRADING.

BUILDING SIZE
GROUND FLOOR Varies AREA 1167 Total area 2312
NUMBER OF FLOORS 2 TOTAL HEIGHT 20'
FLOOR AREA (ACTUAL) TOTAL FLOOR AREA (CALCULATED BY SITE AREA) 14

BUILDING USE
GROUND FLOOR Office OTHER FLOORS Office

REQUIRED NUMBER OF PARKING SPACES
GROUND FLOOR 4 OTHER FLOORS 3 TOTAL 7

PAVING
AREA OF SITE TO BE PAVED TO ACCOMMODATE REQUIRED PARKING SPACES 1740 Sq. Ft.
(PAVED AREA MAY BE ESTIMATED BY MULTIPLYING REQUIRED NUMBER OF SPACES BY 340)

UTILITIES
WATER: ☒ PUBLIC ☐ PRIVATE, TYPE OF SYSTEM 6" water

SEWER: ☒ PUBLIC ☐ PRIVATE, TYPE OF SYSTEM _____

UTILITIES SECURITY APPROVAL James K. Flannery, Sr.

I CERTIFY THAT THE ABOVE INFORMATION IS TRUE AND A FAITHFUL STATEMENT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

APPLICANT, LESSEE OR CONTRACT PURCHASER James K. Flannery, Sr. Legal Owner
ADDRESS 628 Wilton Road
Towson, Md. 21204

THE PLANNING BOARD HAS DETERMINED ON 12-21-78 THAT THE PROPOSED DEVELOPMENT DOES / DOES NOT CONFORM TO THE REQUIREMENTS OF SUBSECTION 2-61.1(V) OF THE BALTIMORE COUNTY CODE, 1968.

OCT 2 78 AM
IDCA FORM NO. 2 REVISED 8-12-77

BALTIMORE COUNTY OFFICE OF PLANNING & ZONING

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

Your Petition has been received and accepted for filing as of the 30th day of January, 1978

S. Eric DiNenna
S. ERIC DINENNA
Zoning Commissioner

Petitioner Flannery
Petitioner's Attorney Nicholas B. Commodari Reviewed by Nicholas B. Commodari

Mr. James K. Flannery, Sr.
628 Wilton Road
Towson, Maryland 21204

cc: Spellman Larson & Associates
103 V. Chesapeake Avenue
Towson, Maryland 21204

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

COUNTY OFFICE BLDG.
111 W. Chesapeake Ave.
Towson, Maryland 21204

Chairman
Nicholas B. Commodari

MEMBERS
Bureau of Engineering
Department of Traffic Engineering
State Roads Commission
Bureau of Fire Prevention
Health Department
Building Department
Board of Education
Zoning Administration
Industrial Development

Mr. James K. Flannery, Sr.
628 Wilton Road
Towson, Maryland 21204

October 31, 1978

RE: Item No. 5
Petitioner - Flannery
Reclassification, Special
Exception & Variance Petitions

Dear Mr. Flannery:

The Zoning Plans 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 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 suitability of the requested zoning.

Located on the south side of Chesapeake Avenue, 95' east of Florida Avenue, in Towson, this site is presently improved with an individual brick dwelling proposed to be converted into an office building. Adjacent properties surrounding this site to the south and west are similarly zoned D.R. 5.5 and are improved with a church and individual dwellings, respectively, while an office building exists immediately to the east of the property.

The site plans must be revised to indicate a standard commercial type entrance, as indicated in the comments of the Department of Traffic Engineering.

These petitions will be 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 December 1, 1978 in order to allow time for final Committee review and advertising.

Flannery
Page 2
October 31, 1978

All changes must be accompanied by a cover letter indicating these corrections. 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 March 1, 1979 and April 15, 1979 will be forwarded to you well in advance.

Very truly yours,
Nicholas B. Commodari
NICHOLAS B. COMMODARI
Chairman
Zoning Plans Advisory Committee

NBC/af

cc: Spellman Larson & Associates
105 W. Chesapeake Avenue
Towson, Maryland 21204

Baltimore County
Department of Public Works
TOWSON, MARYLAND 21204

THORNTON M. MOURING, P.E.
DIRECTOR

October 27, 1978

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

Re: Item #5 Cycle IV (Dec. 15/78-April 1979)
Property Owner: James K. Flannery, et al
S/S W. Chesapeake Ave. 95' E. Florida Ave.
Existing Zoning: D.R. 5.5
Proposed Zoning: D.R. 16 with a Special Exception for offices (IDCA 78-65X) and Variance to permit side setbacks of 6.3' and 9.5' in lieu of the required 25' and 5 parking spaces in lieu of the required 7 spaces.
Acres: 0.16 District: 9th

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.

General:

This property is indicated as being the subject of Project IDCA 78-65X.

Highways:

Chesapeake Avenue, an existing County street, is proposed to be improved in the future as a 44-foot closed section roadway on a 72-foot right-of-way.

Highway right-of-way widening, including any necessary reversible easements for slopes, will be required in connection with any grading or building permit application.

The entrance locations are subject to approval by the Department of Traffic Engineering, and shall be constructed in accordance with Baltimore County Standards.

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.

Storm Drains:

Provisions for accommodating storm water or drainage have not been indicated on the submitted plan.

FLANNERY. # R-79-6-XA

Chesapeake

Name Address Zip Code

James K. Flannery, Jr. 1008 E. Lake Dr. 21204 PETITIONER

Mary Catherine Flannery 883 S. Washington St. 21204

Barbara D. Flannery 883 S. Washington St. 21204

R.C. Turner 618 W. Chesapeake Ave. 21204

Clara E. Grether 5 Alabama Ct. 21204

Mary E. Murray 624 W. Chesapeake Ave. (21204)

Lee M. Vanden Bliek 405 Carolina Rd. (21204)

SCOTT HAUPT 7 FLORIDA RD 21204

Terry F. Hall 30 Southland Court 21204

Mary Quinn 606 Homestead Rd 21204

JAMES K. FLANNERY, ET AL PETITIONERS

628 WILTON RD (21204)

MR. W. F. HAMMEND ZONING

MR. JEDYER

MR. S. D. SEIFFERT PLANNING

JOHN W. HESSIAN, III, ESQ. P.C.

BD OF EDUCATION

HARRY S. SHAPIRO, ESQ. } CONTRACT PURCHASERS

HOWARD L. FREY }

SUITE 200 - EVERETT BLDG

660 KATHAVORTH DR. 21204

137330

615450

Item #5 Cycle IV (Oct. 1978-April 1979)
Property Owner: James K. Flannery, et al
Page 2
October 27, 1978

Storm Drains: (Cont'd)

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.

Water and Sanitary Sewer:

Public 6-inch water main and 8-inch sanitary sewerage exist in Chesapeake Avenue.

Very truly yours,
E. Lawrence H. Diver, P.E.
Chief, Bureau of Engineering

ED: EAM: FWR: ss
cc: J. Trenner
N-W Key Sheet
38 NS 2 Pos. Sheet
NS 10 A Topo
70 Tax Map

baltimore county
office of planning and zoning
TOWSON, MARYLAND 21204
(301) 494-3211

October 31, 1978

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 #5, Zoning Cycle IV, October, 1978, are as follows:

Property Owner: James K. Flannery, et al
Location: S/S W. Chesapeake Avenue 95' E. Florida Avenue
Existing Zoning: D.R. 5.5
Proposed Zoning: D.R. 16 with Special Exception for offices (IDCA 78-65-X) and Variance to permit side setbacks of 6.3' and 9.5' in lieu of the required 25' and 5 parking spaces in lieu of the required 7 spaces

Acres: 0.16
District: 9th

This office has reviewed the subject petition and offers the following comments. These comments are not intended to indicate the appropriateness of the zoning in question, but are to assure that all parties are made aware of plans or problems with regard to development plans that may have a bearing on this petition.

The access to the property is not acceptable. The access to the site should be from the adjoining driveway.

Very truly yours,
John L. Wimbley
Planner III
Current Planning and Development

baltimore county
department of health
TOWSON, MARYLAND 21204

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

October 18, 1978

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

Dear Mr. DiNenna:

Comments on Item #5, Zoning Advisory Committee Meeting for Cycle IV, are as follows:

Property Owner: James K. Flannery, et al
Location: S/S W. Chesapeake Ave. 95' E Florida Ave.
Existing Zoning: D.R. 5.5
Proposed Zoning: D.R. 16 with a Special Exception for offices (IDCA 78-65-X) and Variance to permit side setbacks of 6.3' and 9.5' in lieu of the required 25' and 5 parking spaces in lieu of the required 7 spaces.

Acres: 0.16
District: 9th

Metropolitan water and sewer are available. Therefore, no health hazards are anticipated.

Prior to new installation/s of fuel burning equipment, the owner should contact the Division of Air Pollution Control, 194-3775, to obtain requirements for such installation/s before work begins.

Very truly yours,
Thomas H. Devlin, Director
BUREAU OF ENVIRONMENTAL SERVICES

TED/JRP/lth
cc: W. L. Phillips

baltimore county
department of traffic engineering
TOWSON, MARYLAND 21204
(301) 494-3550

STEPHEN E. COLLINS
DIRECTOR

October 16, 1978

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

Item No. 5 - ZAC - Meeting for Cycle IV
Property Owner: James K. Flannery, et al
Location: S/S W. Chesapeake Ave. 95' E Florida Ave.
Existing Zoning: D.R. 5.5
Proposed Zoning: D.R. 16 with a Special Exception for offices (IDCA 78-65-X) and Variance to permit side setbacks of 6.3' and 9.5' in lieu of the required 25' and 5 parking spaces in lieu of the required 7 spaces.
Acres: 0.16
District: 9th

Dear Mr. DiNenna:

This site is not expected to be a major traffic generator.

The existing driveway does not provide sufficient width for an office building.

Very truly yours,
Michael S. Flanigan
Engineer Associate I

MSF/hmm

baltimore county
fire department
TOWSON, MARYLAND 21204
(301) 825-7310

Paul H. Reincke
CHIEF

October 16, 1978

Office of Planning and Zoning
Baltimore County Office Building
Towson, Maryland 21204

Attention: N. Commodari, Chairman
Zoning Advisory Committee

Re: Property Owner: James K. Flannery, et al
Location: S/S W. Chesapeake Ave. 95' E Florida Ave.
Item No. 5 Zoning Agency Cycle IV

Gentlemen:

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.

(x) 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 "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.

Noted and Approved: _____
Special Inspection Division Fire Prevention Bureau

baltimore county
department of permits and licenses
TOWSON, MARYLAND 21204
(301) 494-3610

JOHN D. SEYFERT
DIRECTOR

October 5, 1978

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

Dear Mr. DiNenna:

Re: Item #5 Zoning Advisory Committee Meeting, CYCLE IV

Property Owner: James K. Flannery, et al
Location: S/S W. Chesapeake Ave. 95' E Florida Ave.
Existing Zoning: D.R. 5.5
Proposed Zoning: D.R. 16 with a Special Exception for offices (IDCA 78-65-X) and Variance to permit side setbacks of 6.3' and 9.5' in lieu of the required 25' and 5 parking spaces in lieu of the required 7 spaces.

Acres: 0.16
District: 9th

The items checked below are applicable:

X A. Structure shall conform to Baltimore County Building Code (B.C.C.C.) 1970 Edition and the 1971 Supplement, State of Maryland Code for the Handicapped and aged and other applicable codes.

X B. A building permit shall be required before construction can begin.

X C. Additional _____ permits shall be required.

D. Building shall be upgraded to new use - requires alteration permit.

E. Three sets of construction drawings will be required to file an application for a building permit.

F. Three sets of construction drawings with a registered Maryland Architect or Engineer's original seal will be required to file an application for a building permit.

X G. Wood frame walls are not permitted within 3'0" of a property line. Contact Building Department if distance is between 3'0" and 6'0" of property line.

H. Requested setback variance conflicts with the Baltimore County Building Code. See Section _____.

I. No comment.

X J. Comment: Building shall comply to Table 6 of Building Code for height allowable for proposed use waivers will not be granted. See Section 105.2 of the Building Code/ Site plan does not show compliance with the Handicapped Code.

Very truly yours,
Charles E. Surban
Charles E. Surban
Plans Review Chief

BOARD OF EDUCATION
OF BALTIMORE COUNTY

TOWSON, MARYLAND - 21204

Date: October 24, 1978

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

Z.A.C. Meeting of: Cycle IV

RE: Item No:
Property Owner: James K. Flannery, et al
Location: S/S W. Chesapeake Ave. 95' E Florida Ave.
Existing Zoning: D.R. 5.5
Proposed Zoning: D.R. 16 with a Special Exception for offices (IDCA 78-65-X) and Variance to permit side setbacks of 6.3' and 9.5' in lieu of the required 25' and 5 parking spaces in lieu of the required 7 spaces.

District: 9th
No. /Acres: 0.16

Dear Mr. DiNenna:

No adverse effect on student population.

Very truly yours,
W. Nick Petrovich
Field Representative

WNP/bp

JOSEPH H. MCGOWAN, PRESIDENT
T. BAYARD WILLIAMS, JR., VICE-PRESIDENT
MARCUS M. BOWMAN

THOMAS H. BOYER
MRS. LORRAINE F. CHIRCOUS
ROGER B. MATCOLE

ALVIN LORCKE
MR. MILTON E. SMITH, JR.
RICHARD W. RACEY, D.V.M.

ROBERT T. DUBEL, SUPERINTENDENT

"On the question of original mistake, the Court has held that when the assumption upon which a particular use is predicated proven, with the passage of time, to be erroneous, this is sufficient to authorize a re-zoning."

Judge Love, in an interesting concurring Opinion in Boyce, added the concept that "rarely has the Court even treated mistake and change as separate concepts."

Judge Love further quoted from the case of Rhode v. County Board, 234 Md. 259, 199 A.2d 216, as follows:

"The applicant produced considerable expert testimony to show that either as a result of lack of anticipation of trends in development in 1955 or as a result of changes in trend which have occurred since then, whether anticipated or not, the existing zoning was in error at the time of the hearing."

Applying Boyce to the facts in the case at bar, the County Council of 1976 failed to take into account the trends which came into fruition concerning the deterioration of the subject property. The passage of time between the 1976 Map and the 1979 hearing before the Board of Appeals provided legally sufficient evidence before the Board of Appeals and created another issue, which at the very least, was fairly debatable.

Although a view of the property currently provides an attractive picture, this preservation was accomplished in the course of the alterations and modifications for office use which were lawfully and sincerely pursued. Not only is the public interest best served by the appro-

-17-

By: 151
HARRY S. SHAPIRO,
General Partner

POINTS AND AUTHORITIES

Swarthmore Co. v. Kaestner, 258 Md. 517, 206 A.2d 341.
Bill No. 13-80 of the County Council of Baltimore County.
Rule B 12 of the Maryland Rules of Procedure.

REQUEST FOR HEARING

Now comes your Petitioner herein, and requests a hearing in this matter.

I HEREBY CERTIFY, that on this 2 day of October, 1981, a copy of the foregoing Petition was mailed to Peter Max Zimmerman, Esquire, Deputy People's Counsel, Room 223, Court House, Towson, Maryland 21204.

By: 151
HARRY S. SHAPIRO

private application of the legal principles relating to the administrative review in this case, but the public interest is also served by the preservation of the property in accordance with the current characteristics of the location.

Respectfully submitted,

James H. Cook
HERBERT R. O'CONNOR III
210 Allegheny Avenue
Towson, Maryland 21204
Telephone (301) 824-4111
Attorneys for Petitioners-Appellees

I HEREBY CERTIFY, that on this 19 day of June, 1981, a copy of the foregoing Petition for Writ of Certiorari was mailed to John W. Hession, III, Esquire, People's Counsel for Baltimore County; and to Peter Max Zimmerman, Esquire, Deputy People's Counsel, Room 223, Court House, Towson, Maryland 21204. Attorneys for Appellant.

James H. Cook
JAMES H. COOK

-18-

Mr. W. E. Hammond, Zoning Commissioner March 4, 1982
Edith T. Eisenhart, Board of Appeals
Case #R-79-6-XA - James K. Flannery (F & S Limited Partnership)

The above entitled case was closed and returned to your office on September 23, 1981. However, on October 2, 1981, a petition for rehearing was filed in the Circuit Court for Baltimore County, and on February 19, 1982, Judge J. William Hinkel signed the final order in this matter.

Attached hereto are the additional papers to be included in the file.

Edith T. Eisenhart
Edith T. Eisenhart, Administrative Secretary

PEOPLE'S COUNSEL OF
BALTIMORE COUNTY

Plaintiff

vs.

F & S LIMITED PARTNERSHIP

Defendant

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
At Law
12/210/7160



Case # R-79-6-XA

Re: Flannery Case PETITION

The Petition of F & S Limited Partnership respectfully represents:

1. The Petitioner is the owner of property located at 307 West Chesapeake Avenue in Towson, Maryland.
2. On April 24, 1980, the Baltimore County Board of Appeals granted the Petition of your Petitioner for reclassification of said property from residential to office use with the change to D.R. 16 with a special exception for offices, said reclassification Order limited the office use to 2312 square feet of space for office use with no changes to the exterior of the existing structure.
3. Subsequently, an Appeal was taken to the Circuit Court for Baltimore County in the within matter by the People's Counsel for Baltimore County, and the Order of the said Circuit Court sustained the aforesaid Order of the Baltimore County Board of Appeals.
4. Thereafter, the People's Counsel filed an Appeal to the Court of Special Appeals of Maryland, which decision remanded the case back to the Circuit Court for the purpose of entering an Order relating to reversing the decision of the Board of Appeals as aforesaid.
5. After the Order of the Board of Appeals of April 24, 1980, your Petitioner occupied the property for its business offices in accordance with lawfully issued occupancy permits that were issued in accordance with the case of Swarthmore Co. v. Kaestner, 258 Md. 517, 206 A.2d 341.
6. Since the decision of the Board of Appeals of Baltimore County as aforesaid, the County Council of Baltimore County has enacted Bill No. 13-80 which became effective after said decision of the Board

CASE NO. R-79-6-XA

JAMES K. FLANNERY, ET AL
S/S W. Chesapeake Ave. 95' E. of Florida Ave.
9th District

Reclassification from D.R. S.3 to D.R. 16 zone
Special Exception for Offices
Variance - Side Yard Setbacks

ASSIGNED FOR:

TUESDAY, JUNE 26, 1979 at 10 a.m.

of Appeals, a copy of said Bill No. 13-80 being attached hereto and prayed to be considered a part hereof.

7. That as a result of the complications relating to the legal proceedings in the within matter, the said "Residential-Office" classification authorized by Bill No. 13-80 was not an issue relating to 307 West Chesapeake Avenue, and the County Council of Baltimore County did not have such issue before it at the time of the 1980 Land Use Map.

8. That under Rule B 12 of the Maryland Rules of Procedure, the Trial Court has various powers including the power to remand the case to the agency for further proceedings.

9. That, obviously, one of the powers the Trial Court must comply with is the Order of the Court of Special Appeals with reference to an Order from the Trial Court for reversing the decision of the Board of Appeals.

10. That your Petitioner believes and avers that the Trial Court could, in the interest of justice, reverse the decision of the Board of Appeals and remand the case to the Board of Appeals for further proceedings in view of the change of law brought about by Bill No. 13-80.

11. That the remanding of the case for further proceedings would bring about a more prompt consideration of the "Residential-Office" classification for the subject property, and prevent the undue hardship related to moving of the office of your Petitioner to temporary quarters.

12. That no one would be harmed, or prejudiced, by the remand requested in this proceeding, and same would accomplish substantial justice in view of the unusual and extraordinary facts and circumstances in this case.

WHEREFORE, your Petitioner prays that this Honorable Court shall enter an appropriate Order in accordance with the foregoing.

F & S LIMITED PARTNERSHIP

By: 151
HOWARD L. FREY,
General Partner

FLANNERY AND COMPANY		No. 14
Pay to the order of	<u>James K. Flannery, Et Al</u>	10/2 1979 \$50.00
SUBURBAN TRUST COMPANY		Dollars
MEMPHIS OFFICE		
TIMONUM, MARYLAND		
Memo		
10550-0201-44 2822 B		

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

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

Your Petition has been received * this 2nd day of October 1978. Filing Fee \$ 50.00 Received ☒ Check ☐ Cash ☐ Other

S. Eric Dillman
S. Eric Dillman,
Zoning Commissioner

Petitioner James K. Flannery, Et Al Submitted by James K. Flannery, Et Al
Petitioner's Attorney Howard L. Frey Reviewed by Dan H. Hinkel

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

BALTIMORE COUNTY
CIRCUIT COURT
OCT 5 11 01 AM '81
BY: 151

BALTIMORE COUNTY, MARYLAND
JOURNAL ENTRY VOUCHER

DATE June 29, 1979 JOURNAL ENTRY NO. JE 6-241

EXPLANATION: To charge Planning & Zoning Acct. 01-662 CASH RECEIPTS NO. CR
And credit Returned check Acct. 01-6287 PAYROLL ENTRY NO. PR
Uncollectable check \$50.00

Flannery & Company (James K. Flannery & Co.)
filing fee for case # R-79-6-XA
Peoples Council - Board of Appeals

DEBITS				CREDITS			
ACCOUNT NUMBER	EXP. CODE	AMOUNT	T.C.	ACCOUNT NUMBER	EXP. CODE	AMOUNT	T.C.
R 01-662-000		50.00	12	G 01-6287-00		50.00	11
C.C. County Council Planning & Zoning file							
PREPARED	TYPED	PROOF READ	VERIFIED	APPROVED	KEY PUNCHED	POSTED	NUMBER

FLANNERY AND COMPANY No. 14

RETURNED NOT PAID

BALTIMORE COUNTY, MARYLAND

Pay to the order of

Signature

Amount \$50.00

DATE 6/1/79

MEMO

0550-0201: 49 2822 B

0000005000

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

No. 78690

DATE May 28, 1979 ACCOUNT 01-662

AMOUNT \$50.00

RECEIVED Flannery and Company

FOR Filing Fee for Case No. R-79-6-XA

280078690 50.00

VALIDATION OR SIGNATURE OF CASHIER

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO Planning & Zoning - Peoples Council Date June 29, 1979

FROM Helene Tracy

SUBJECT Bad Check

Flannery & Company (James K. Flannery & Co.)
Filing fee for Case #R-79-6-XA

Misc. cash receipt #78690 \$50.00

A check (copy attached) has been returned to this office by the bank for the following reason:

- A. No funds
B. Account closed
C. Other State Data

We have been unable to collect this amount and have therefore charged your account No. 01-662-000 for the amount of the check. Please take whatever steps are necessary to re-establish this charge on your records which should also include a \$10 bad check penalty. When this item is collected, please report the penalty (\$10) as a separate item crediting account No. 01-308-000.

Please notify me of any bad check penalties that are collected in order that I may mark my records accordingly.

LF:mm
Enclosure

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION

TOWSON, MARYLAND 21204

James K. Flannery & Co.
628 Wilton Road
Towson, Md. 21204

June 7, 1979

Your check in the amount of \$ 50.00 in payment of

Filing Fee for case # R-79-6-XA

has been returned by the bank marked:

- A. No funds
B. Account Closed
C. Other State Data

Please settle this matter at once. A penalty of \$10.00 must be included in your replacement check in order for us to clear your account. Please mail your remittance to my attention at:

Office of Finance - Revenue Division
Room 149 Court House
Towson, Maryland 21204

Should you have any questions concerning this matter, call me at 494-2412.

Sincerely,

Helene Tracy
for
Loretta Fowler
Cashier II

LF:mm

Baltimore County
Office of Planning and Zoning
TOWSON, MARYLAND 21204
(301) 494-2351

June 19, 1979

Mr. James K. Flannery
628 Wilton Road
Towson, Maryland 21204

RE: Petition for Reclassification,
Special Exception & Variance
5/5 West Chesapeake Ave., 95' E of
Florida Ave., 9th District
Case No. 79-6-XA

Dear Sir:

This is to advise you that \$242.15 is due for advertising and posting of the above property.

Please make check payable to Baltimore County, Maryland and remit to Mrs. Campagna, Room 113, County Office Building, Towson, Maryland 21204, before the hearing/

Very truly yours,

WILLIAM E. HAMMOND
Zoning Commissioner

WEH/mc

June 22, 1979

Board of Appeals
Baltimore County
Court House
Towson, Md. 21204

Gentlemen:

RE: Reclassification and Variance Waivers
307 West Chesapeake Ave., Towson, Md.

Inasmuch as I am out of town, I will be unable to attend the hearing on Tuesday, pertaining to our request for a change in the zoning to permit the use of this house for offices.

Since this property has been on the market for a number of months, the only interest has been where the house can be utilized as offices. Due to its location next to the large office building, known as the Chesapeake Building, at 305 West Chesapeake Ave. this property is not suitable as a residence, based on the experience of my Mother, and my sister, Mrs. J. W. Mahoney, who lived there with her 3 children. After her daughter was hit by an automobile, it was then decided that it would be safer to live elsewhere.

It was at that time that efforts should have been made for the rezoning of the property. Unfortunately, the property was in my father's estate, handled by a Baltimore bank, who felt inclined to do nothing regarding the property, even when asked to look into the matter.

Efforts were made to have the changes in the Comprehensive Maps, and we felt that we would succeed, when the Counselman from our District made a statement at a public meeting supporting our position.

Quite frankly, having lived in the house from 1941 thru 1952, excluding my time in the Army, I am not proud of the overall appearance of this property. The exterior needs considerable work, including painting, and overall general appearance. However, the revenue from the rents, versus the expenses, and the real estate tax assessments, discourage any effort to maintain the property as it should be, in the same standards which Towson enjoys.

We have seen property on Chesapeake Ave, Pennsylvania Ave., and Allegheny Aves. converted to office use, and maintain a clean attractive appearance. A good example of utilization without changes which would be disturbing to others, is the property located on Pennsylvania Ave. across from the new court house, utilized as law offices.

An example of speculating for the future, could be best described by that property recently torn down at York Road and Seminary Ave. Such an appearance in Towson proper would not be too pleasing to the other residents of Southland Hills.

After the Comprehensive Maps were passed by the County, I requested the President of the Southland Hills Association to meet with me, so that we could then discuss this property. I realized that they were fighting for the down grading of any property west of Bosley, so any agreement to offer a lesser classification could have been considered a sign of weakness. However, since that battle was over, we could sit down, and work this problem out together, and going to the county with an agreed upon solution. Their reply was more or less, "go to hell", they were opposed to any changes in Zoning for the DR 5.5 classification for any property west of Bosley Ave. 305 West Chesapeake Ave, the Chesapeake Building, would make one big house!

307 West Chesapeake Ave., cont'd.:

Having been through the Comprehensive Maps hearings, having heard the Counselman reverse himself, having seen some tenants of the house, and the results of their having lived there, I fear the future. We have had any number of suggestions, but having lived in this house for many years, I hate to see it deteriorate to a point where I would not want our family names associated with it.

When considering this property, I ask that you consider it alone. The Comprehensive Maps really did not clarify the positions of the DR 16 zoning. A fair definition would have been the office use classification on the south side of West Chesapeake Ave., meaning that this zoning would not have gone down Florida Ave., meaning only those properties facing West Chesapeake Ave. This places a natural barrier with the Presbyterian Home so located.

I fail to understand the opposition to the practical utilization of 307 West Chesapeake Ave., when those same people showed no opposition to the new construction at the Presbyterian Home. They must have dual standards.

In evaluating the opposition, I recall the petitions being solicited when the petitions were made to convert a home at 305 West Chesapeake Ave. from a residence to a Funeral Home was made. While this property was zoned for apartment use, those soliciting the petitions failed to give that information to the neighbors. Their claim was that the funeral home would cause traffic problems. Could it be these same people are the ones who have suggested that if Towson Elementary School is closed, it should be leveled so that there would be an "open" space in Towson? I know the problems of the Fire Department, being closed to this school building, and their possible utilization of it.

I personally favor converting property to taxable income for the County, or reducing the expenditure for new construction whenever possible. Open spaces do not pay taxes.....

We are now faced with some decisions based on your findings. The Peoples Council would created to help the residents fight the large developers, with their unlimited sources of money. However, we now find ourselves being fought by that "big county government", with the county's unlimited source of money. We are now faced with fighting for our rights, fighting the professional lawyer, who is using our money. Had this been in the Zoning Commissioners' hearing room, as originally scheduled, we would not yet be facing the Peoples Council, since I have been told, he never attended the first hearing. The citizens appealing for a rezoning only heard from him at the second round, which involved a considerable expense to them. I sincerely recommend that the County Council look again at the position of the Peoples Council, because in the future they will be called to task, due to the lack of a tax base in Baltimore County, but still with the demand for services.

May I ask that you place yourself in my place, and that of my sisters and brother, as owners of a piece of property in Towson? What shall we do with it? The responsibility now rests with you.

Any consideration you give us will be appreciated.

RECEIVED
BALTIMORE COUNTY
JUN 27 1979
COUNTY BOARD
OF APPEALS
TOWSON, MD. 21204

LAW OFFICES

SHAPIRO AND BARN

SUITE 200 - EVERETT BUILDING

680 PENNSYLVANIA DRIVE

TOWSON, MARYLAND 21204

(301) 825-0110

BALTIMORE, MARYLAND OFFICE
733 EQUITABLE BUILDING

October 10, 1979

The Baltimore County Council
County Courts Building
Towson, Maryland 21204

Dear Members:

I wish to advise the County Council that I, and one Howard L. Frey, are contract purchasers of 301 West Chesapeake Avenue in Towson, Maryland. The owners of said property have proceedings pending before the Board of Appeals for a change in zoning in order to allow office use for this property.

As I intend to participate in this proceeding on my own behalf, as aforementioned, I believe that it is appropriate that I make this disclosure to you in view of my position as an Assistant County Solicitor.

I am sending a copy of this letter to Mr. Leonard S. Jacobson, Mr. John Hessian, and the Board of Appeals.

Very truly yours,

HARRY S. SHAPIRO

RECEIVED
BALTIMORE COUNTY
OCT 16 3 42 PM '79
COUNTY BOARD
OF APPEALS

cc: Mr. Leonard S. Jacobson
Mr. John Hessian
The Board of Appeals

FISCO Financial Institutions
Supply Co.

County Board of Appeals
Room 219, Court House
Towson, Maryland 21204

April 9, 1979 (May 7, 1979)

CASE NO. R-79-6-XA

JAMES K. FLANNERY, ET AL

5/5 of West Chesapeake Avenue 95'
E. of Florida Avenue

9th District

for reclassification from D.R. 5.5
to D.R. 16
for SE - Office Use (IDCA 78-65-X)
for variance from Section 1801.2.C.6
(V.B.2) to permit side setbacks of 6/3'
and 9/5' instead of required 25', and
Section 409.2b (5) to permit 5 parking
spaces in lieu of the required 7 spaces

ASSIGNED FOR: TUESDAY, JUNE 26, 1979 at 10 a.m.

Continued and limited

cc: Mr. J. Dyer, Zoning

Mr. James K. Flannery, Sr., et al

Petitioners

John W. Hession, III, Esquire

People's Counsel

RTM

November 7, 1979

Board of Appeals
Old Court House
Towson, Maryland 21204

RE: 307 W. Chesapeake Avenue
Towson, Maryland

Gentlemen:

In connection with the hearing scheduled for 10 A.M. on
Tuesday, November 13, 1979 in the Flannery case, I would
appreciate your entering the appearance of F & S Limited
Partnership, which has recently taken title to the
property in question.

Very truly yours,

F & S LIMITED PARTNERSHIP

Howard L. Frey
General Partner

cc: John W. Hession
RECEIVED
BALTIMORE COUNTY
MAY 14 12 45 PM '79
COUNTY BOARD
OF APPEALS
BY:

*Hand delivered by Mr. Frey
Sent cc to J. Hession*

November 7, 1979

Board of Appeals
Old Court House
Towson, Maryland 21204

RE: 307 W. Chesapeake Avenue
Towson, Maryland

Gentlemen:

In connection with the hearing scheduled for 10 A.M. on
Tuesday, November 13, 1979 in the Flannery case, I would
appreciate your entering the appearance of F & S Limited
Partnership, which has recently taken title to the
property in question.

Very truly yours,

F & S LIMITED PARTNERSHIP

Howard L. Frey
General Partner

cc: John Hession

RECEIVED
BALTIMORE COUNTY
MAY 9 2 08 PM '79
COUNTY BOARD
OF APPEALS
BY:

County Board of Appeals
Room 219, Court House
Towson, Maryland 21204

April 24, 1980

Harry S. Shapiro, Esq. and
Howard L. Frey
Suite 200 - Everett Building
660 Kenilworth Drive
Towson, Maryland 21204

Re: Case No. R-79-6-XA
James K. Flannery, et al

Gentlemen:

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

Very truly yours,

June Holmen
June Holmen, Secretary for the

Encl.

cc: James K. Flannery, et al
James K. Flannery, Jr.
Mary C. Mahoney
Annmarie F. Kilcullen
K. C. Turner
Clara E. Grether
Mary E. Murray
George E. VandenBrink
Scott Haupt
Terry F. Hall
Mary Ginn
W. E. Hammond
J. E. Dyer
J. Howell
John W. Hession, III, Esq.
Board of Education

County Board of Appeals
Room 219, Court House
Towson, Maryland 21204

May 22, 1980

Harry S. Shapiro, Esq.
Howard L. Frey
Suite 200, Everett Bldg.
660 Kenilworth Drive
Towson, Md. 21204

Gentlemen:

Re: James K. Flannery, et al
Case No. R-79-6-XA

Notice is hereby given, in accordance with the Rules
of Procedure of the Court of Appeals of Maryland, that an appeal has
been taken to the Circuit Court for Baltimore County from the decision
of the County Board of Appeals rendered in the above matter.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

June Holmen
June Holmen, Secretary

Encl.

cc: James K. Flannery, et al
James K. Flannery, Jr.
Mary C. Mahoney
Annmarie Kilcullen
K. C. Turner
Clara E. Grether
Mary E. Murray
George E. VandenBrink
Scott Haupt
Terry F. Hall
Mary Ginn
W. E. Hammond
J. E. Dyer
J. D. Seyffert
John W. Hession, Esq.
Bd. of Education

County Board of Appeals
Room 219, Court House
Towson, Maryland 21204

May 22, 1980

John W. Hession, III, Esq.
People's Counsel for Baltimore County
Court House
Towson, Md. 21204

Re: James K. Flannery, et al
Case No. R-79-6-XA

Dear Mr. Hession:

In accordance with Rule 8-7 (a) of the Rules of Procedure of
the Court of Appeals of Maryland, the County Board of Appeals is required
to submit the record of proceedings of the zoning appeal which you have
taken to the Circuit Court for Baltimore County in the above matter within
thirty days.

The cost of the transcript of the record must be paid by you.
Certified copies of any other documents necessary for the completion of
the record must also be at your expense.

The cost of the transcript, plus any other documents, must be
paid in time to transmit the same to the Circuit Court not later than thirty
days from the date of any petition you might file in court, in accordance
with Rule 8-7 (a).

Enclosed is a copy of the Certificate of Notice; also invoice
covering the cost of certified copies of necessary documents.

Very truly yours,

June Holmen

Encls.

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Mr. W. E. Hammond, Zoning Commissioner
Office of Planning and Zoning

Date: May 23, 1980

TO: Walter A. Reiter, Jr., Chairman
FROM: County Board of Appeals

SUBJECT: Certified copies of zoning documents:
Case No. R-79-6-XA -- James K. Flannery, et al

Attached please find the necessary documents from the

Zoning Commissioner's file which, for the Circuit Court, must be

certified as True Test Copies in the above captioned appeal.

Please certify these documents and return same to this

office.

Very truly yours,

Walter A. Reiter, Jr.
Walter A. Reiter, Jr., Chairman
County Board of Appeals

WAR:z

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1352

September Term, 1980

#R-79-6-XA

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY

v.

HOWARD L. FREY, ET AL.
FLANNERY

Liss
Wilner
Weant,

JJ.

PER CURIAM

Filed: May 4, 1981



RECEIVED
BALTIMORE COUNTY
MAY 5 12 32 PM '81
COUNTY BOARD
OF APPEALS
BY:

WILLIAM E. HAMMOND
ZONING COMMISSIONER

April 1, 1982

Southland Hills Improvement Association
of Baltimore County, Inc.
320 Dixie Drive
Towson, Maryland 21204

Attention: Mr. Ronald G. Dilonardo
President

RE: Case No. R-79-6-XA
307 West Chesapeake Avenue -
9th Election District
F & S Limited Partnership -
Petitioner

Dear Mr. Dilonardo:

In keeping with our telephone conversation of this date, enclosed here-
with please find Mr. Shapiro's letter to me, dated March 26, 1982, and a copy
of my reply, dated March 30, 1982.

If anything further is desired, please advise.

Very truly yours,

WILLIAM E. HAMMOND
Zoning Commissioner

WEH/srl

Enclosures

SOUTHLAND HILLS IMPROVEMENT ASSOCIATION
OF BALTIMORE COUNTY, INC.

TOWSON, MARYLAND 21204

March 22, 1982

William E. Hammond
Zoning Commission
Room 113
County Office Building
Towson, Maryland 21204

Attention: William E. Hammond

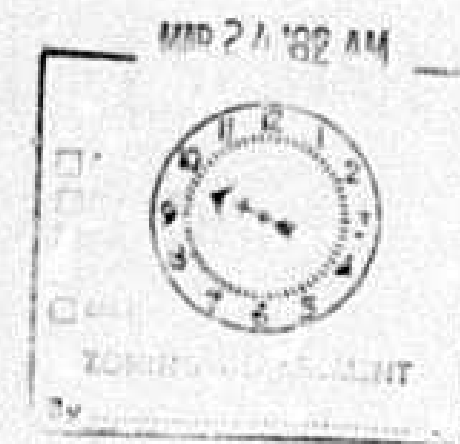
Dear Bill:

Pursuant to the recent rulings of the court of special appeals
and the circuit court as to the return of 307 W. Chesapeake to resi-
dential property of DR 5.5, our community requests a date of final
disposition of this zoning matter.

Please send any correspondence to my attention at 320 Dixie
Drive, Towson, Maryland 21204. I appreciate your assistance and
cooperation in this matter.

Sincerely,

RONALD G. DILONARDO,
PRESIDENT



WILLIAM E. HAMMOND
ZONING COMMISSIONER

March 30, 1982

Harry S. Shapiro, Esquire
307 West Chesapeake Avenue
Towson, Maryland 21204

RE: Case No. R-79-6-XA
307 West Chesapeake Avenue -
9th Election District
F & S Limited Partnership -
Petitioner

Dear Mr. Shapiro:

With reference to your letter of March 26th, this is to advise that the
contents thereof were not in keeping with our conversation of March 18th. At
that time, it was my understanding you had secured other space and would
vacate the premises within two weeks if you were unable to determine that
your reclassification petition would be heard within ninety days. In the eight-
day period between our conversation and your letter, it appears you have been
unable to determine when the Board of Appeals will hear your case.

While I understand you will be on vacation for two weeks beginning
March 31st, it is the purpose of this letter to advise you that the premises
must be vacated on or before April 30th; otherwise, I will be compelled to
proceed with a zoning violation case. I am sorry it is necessary to assume
this posture, but I now feel that the delay in resolving this problem has been
calculated and I am not willing to become a party to such a procedure.

Very truly yours,

WILLIAM E. HAMMOND
Zoning Commissioner

WEH/srl

BALTIMORE, MARYLAND OFFICE
255 EQUITABLE BUILDING

March 26, 1982

William E. Hammond, Esquire
Zoning Commissioner
County Office Building
Towson, Maryland 21204

RE: F & S LIMITED PARTNERSHIP
307 W. Chesapeake Avenue
R-79-6-XA

Dear Mr. Hammond:

I wish to bring you current concerning the above matter. As
I previously advised you, the Partnership which owns the property is
being represented by William Zinnman, Esquire. Since my last conver-
sation with you, my partner and I have made tentative arrangements for
other space in the event that a prompt hearing cannot be arranged with
the Board of Appeals by Mr. Zinnman in connection with the Petition for
Re-classification to the R-0 zoning.

Additionally, my partner, Mr. Howard L. Frey, who is a general
partner in F & S Limited Partnership, has a scheduled meeting with Mr.
Lombardo of the Southland Hills Association in an attempt to explore a
resolution with the community in view of the complications at the site
in question, which complications include the commercial parking at the
Church property, as well as the use of residential property for commer-
cial purposes by the Chesapeake Building.

It seems to us that an overall solution might be beneficial for
everyone concerned.

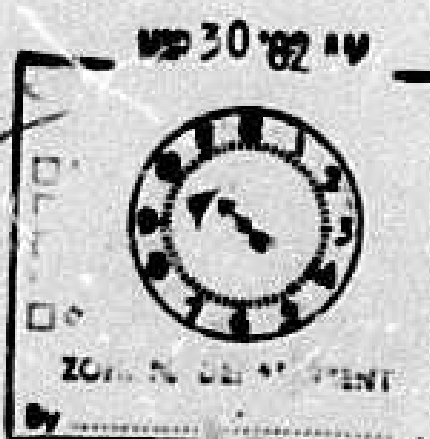
The meeting in question with Mr. Lombardo is presently scheduled
for April 1, 1982.

As I am going on a two-week vacation, I shall communicate with
you when I return in order to bring you current on the above developments.

Very truly yours,

HARRY S. SHAPIRO

HSS/ll
cc: William Zinnman, Esquire



Mr. William E. Hammond
Zoning Commissioner
Room 109, County Office Building
Towson, Maryland 21204

August 1, 1980

RE: Case No. R-79-6-XA (R-79-6-XA)
Building Permit Application
No.
9th Election District

Dear Mr. Hammond:

We, the undersigned, being the owner of the above mentioned property
and the applicant for the above referenced occupancy permit, do hereby acknowl-
edge that we are fully aware of our Order being subject to a thirty (30) day
appeal period, but wish to go ahead with the construction of improvements on
the property prior to the expiration of said appeal period.

We hereby relieve our builder, Baltimore County Maryland and you
from any liability or responsibility in this matter and agree to assume any
and all financial responsibility for any consequences which might arise during
the appeal period if an appeal is filed after construction has begun.

Very truly yours,

Howard L. Frey
General Partner
F & S Limited Partnership
Harry S. Shapiro
General Partner
F & S Limited Partnership

DOUG
MICROFILMED
I APPROVED THE CBO PERMIT ON 4/6/80
Keep THIS WITH OUR FILE ON

PETITION FOR RECLASSIFICATION, SPECIAL EXCEPTION AND VARIANCE

9th District

ZONING: Petition for Reclassification from a D.R.5.5 Zone to a D.R.16 Zone
with a Special Exception for offices and Variance for side yard
setbacks and parking

LOCATION: South side of West Chesapeake Avenue, 95 feet East of Florida Avenue

DATE & TIME: Tuesday, June 26, 1979 at 10:00 A.M.

PUBLIC HEARING: Room 218, Courthouse, Towson, Maryland

The County Board of Appeals for Baltimore County, by authority of the Baltimore County
Charter will hold a public hearing:

Present Zoning D.R.5.5
Proposed Zoning: D.R.16 with a Special Exception for offices
(D.R. 78-65-X) and Variance to permit side yard setbacks of
6.3 feet and 9.5 feet in lieu of the required 25 feet and 5
parking spaces in lieu of the required 7 spaces

The Zoning Regulation to be excepted as follows:

Section 1B02.2B (V.B.2) - side yard setbacks
Section 1B09.2B(5) - parking for offices

All that parcel of land in the Ninth District of Baltimore County

Being the property of James K. Flannery, et al, as shown on plat plan filed with
the Zoning Department

Hearing Date: Tuesday, June 26, 1979 at 10:00 A.M.
Public Hearing: Room 218, Courthouse, Towson, Maryland

BY ORDER OF
WALTER A. REITER, JR., CHAIRMAN
COUNTY BOARD OF APPEALS OF
BALTIMORE COUNTY

PETITION FOR
RECLASSIFICATION
SPECIAL EXCEPTION
AND VARIANCE
9th DISTRICT

ZONING: Petition for Reclassification from a D.R.5.5 Zone to a D.R.16 Zone with a Special Exception for offices and Variance for side yard setbacks and parking

LOCATION: South side of West Chesapeake Avenue, 95 feet East of Florida Avenue

DATE & TIME: Tuesday, June 26, 1979 at 10:00 A.M.

PUBLIC HEARING: Room 218, Courthouse, Towson, Md.

The County Board of Appeals for Baltimore County, by authority of the Baltimore County Charter will hold a public hearing:

Present Zoning D.R.5.5
Proposed Zoning: D.R.16 with a Special Exception for offices (D.R. 78-65-X) and Variance to permit side yard setbacks of 6.3 feet and 9.5 feet in lieu of the required 25 feet and 5 parking spaces in lieu of the required 7 spaces

The Zoning Regulation to be excepted as follows:

Section 1B02.2B (V.B.2) - side yard setbacks
Section 1B09.2B(5) - parking for offices

All that parcel of land in the Ninth District of Baltimore County

Being the property of James K. Flannery, et al, as shown on plat plan filed with the Zoning Department

Hearing Date: Tuesday, June 26, 1979 at 10:00 A.M.
Public Hearing: Room 218, Courthouse, Towson, Md.

BY ORDER OF
WALTER A. REITER, JR., CHAIRMAN
COUNTY BOARD OF APPEALS OF
BALTIMORE COUNTY

CERTIFICATE OF PUBLICATION

TOWSON, MD. June 7, 1979

THIS IS TO CERTIFY, that the annexed advertisement was
published in THE JEFFERSONIAN, a weekly newspaper printed
and published in Towson, Baltimore County, Md., on one time
one time before the 26th
day of June, 1979, the 8th publication
appearing on the 7th day of June,
1979.

THE JEFFERSONIAN

L. Lusk Struth

Cost of Advertisement, \$

PETITION FOR
RECLASSIFICATION
SPECIAL EXCEPTION
AND VARIANCE
9th DISTRICT

ZONING: Petition for Reclassification from a D.R.5.5 Zone to a D.R.16 Zone with a Special Exception for offices and Variance for side yard setbacks and parking

LOCATION: South side of West Chesapeake Avenue, 95 feet East of Florida Avenue

DATE & TIME: Tuesday, June 26, 1979 at 10:00 A.M.

PUBLIC HEARING: Room 218, Courthouse, Towson, Md.

The County Board of Appeals for Baltimore County, by authority of the Baltimore County Charter will hold a public hearing:

Present Zoning D.R.5.5
Proposed Zoning: D.R.16 with a Special Exception for offices (D.R. 78-65-X) and Variance to permit side yard setbacks of 6.3 feet and 9.5 feet in lieu of the required 25 feet and 5 parking spaces in lieu of the required 7 spaces

The Zoning Regulation to be excepted as follows:

Section 1B02.2B (V.B.2) - side yard setbacks
Section 1B09.2B(5) - parking for offices

All that parcel of land in the Ninth District of Baltimore County

Being the property of James K. Flannery, et al, as shown on plat plan filed with the Zoning Department

Hearing Date: Tuesday, June 26, 1979 at 10:00 A.M.
Public Hearing: Room 218, Courthouse, Towson, Md.

BY ORDER OF
WALTER A. REITER, JR., CHAIRMAN
COUNTY BOARD OF APPEALS OF
BALTIMORE COUNTY

OFFICE OF
THE TIMES
NEWSPAPERS

TOWSON, MD. 21204 June 7 1979

THIS IS TO CERTIFY, that the annexed advertisement of
Petition for Reclassification, Special Exception
& Variance - James K. Flannery, et al
was inserted in the following:

- ☐ Catonsville Times ☐ Towson Times
☐ Dundalk Times ☐ Arbutus Times
☐ Essex Times ☐ Community Times
☐ Suburban Times East ☐ Suburban Times West

weekly newspapers published in Baltimore County, Maryland,
once a week for one successive weeks before the
8th day of June, 1979, that is to say, the same
was inserted in the issues of June 7, 1979.

STROMBERG PUBLICATIONS, INC.

By Esther Burge

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCIAL SERVICES DIVISION
MISCELLANEOUS CASH RECEIPT

DATE May 28, 1979 ACCOUNT 91-62

AMOUNT \$50.00

RECEIVED Flannery and Company

FOR Filing Fee for Case No. R-79-6-XA

800 072 28

500000

VALIDATION OR SIGNATURE OF CASHIER

R-79-6-XA

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
 Towson, Maryland

District 9th Date of Posting June 8, 1979
 Posted for: PETITION FOR RECLASSIFICATION, SPECIAL EXCEPTION, VARIANCE
 Petitioner: JAMES K. FLANNERY, ET AL
 Location of property: S/S WEST CHESAPEAKE AVE. 95' E OF FLORIDA AVE.
 Location of Sign: FRONT 307 WEST CHESAPEAKE AVE.
 Remarks: _____
 Posted by Thomas B. Roland Date of return JUNE 15, 1979
 Signature

3-SIGNS

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

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

Your Petition has been received * this 2nd day of
October 1978. Filing Fee \$ 50.00 . Received ☒ Check
☐ Cash
☐ Other

S. Eric DiNenna
 S. Eric DiNenna,
 Zoning Commissioner

Petitioner James K. Flannery Sr Submitted by Jim Flannery Jr
 Petitioner's Attorney _____ Reviewed by Dan

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

BALTIMORE COUNTY OFFICE OF PLANNING & ZONING

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

Your Petition has been received and accepted for filing
 this 14th day of December, 1978.

S. Eric DiNenna
 S. ERIC DINENNA
 Zoning Commissioner

Petitioner Flannery
 Petitioner's Attorney _____ Reviewed by Nicholas B. Commodari

Nicholas B. Commodari
 Chairman, Zoning Plans
 Advisory Committee

Mr. James K. Flannery, Sr.
 623 Wilton Road
 Towson, Maryland 21204

cc: Spellman, Larson & Assoc.
 105 W. Chesapeake Avenue
 Towson, Maryland 21204

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

No. 83067

DATE July 30, 1979 ACCOUNT 1 601-663AMOUNT \$242.15

RECEIVED FROM Flannery and Company
 FOR Advertising and Publicity for Case R-79-6-XA

4830683L 30

2421500

VALIDATION OR SIGNATURE OF CASHIER

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

No. 83092

DATE August 3, 1979 ACCOUNT 601-663AMOUNT \$50.00

RECEIVED FROM Flannery and Company
 FOR Filing Fee for Case R-79-6-XA

48020848 6

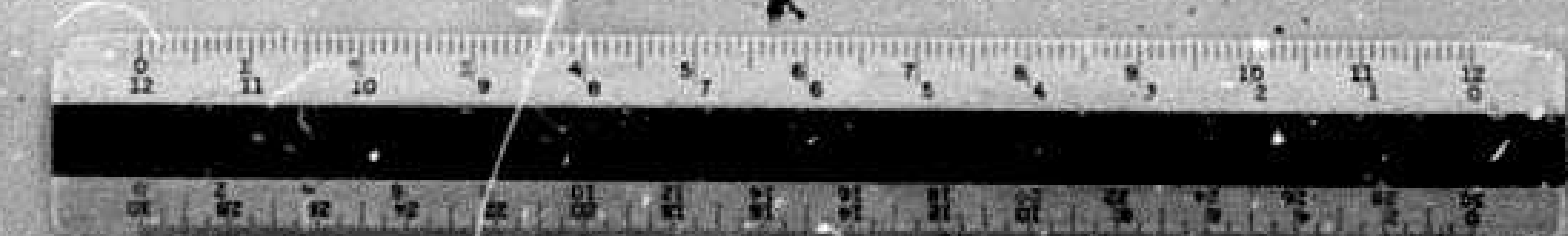
50.00000

VALIDATION OR SIGNATURE OF CASHIER



O-NE M-NW
S-SE R-SW

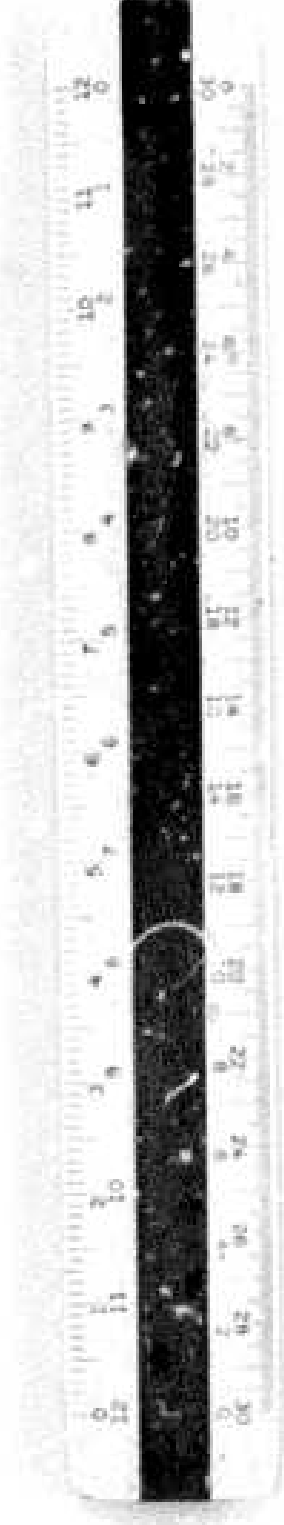
PHOTOGRAMMETRIC MAP OF BALTIMORE COUNTY METROPOLITAN AREA



REVISIONS		SCALE	LOCATION	SHEET
BY	DATE	1" = 200'	TOWSON	NE 10-A
Topographic	MAPS 4-11-70 NC			
		DATE OF PHOTOGRAPHY APRIL 1953		
Topography Compiled By Photogrammetric Methods AERO SERVICE CORPORATION-PHILADELPHIA, PA				

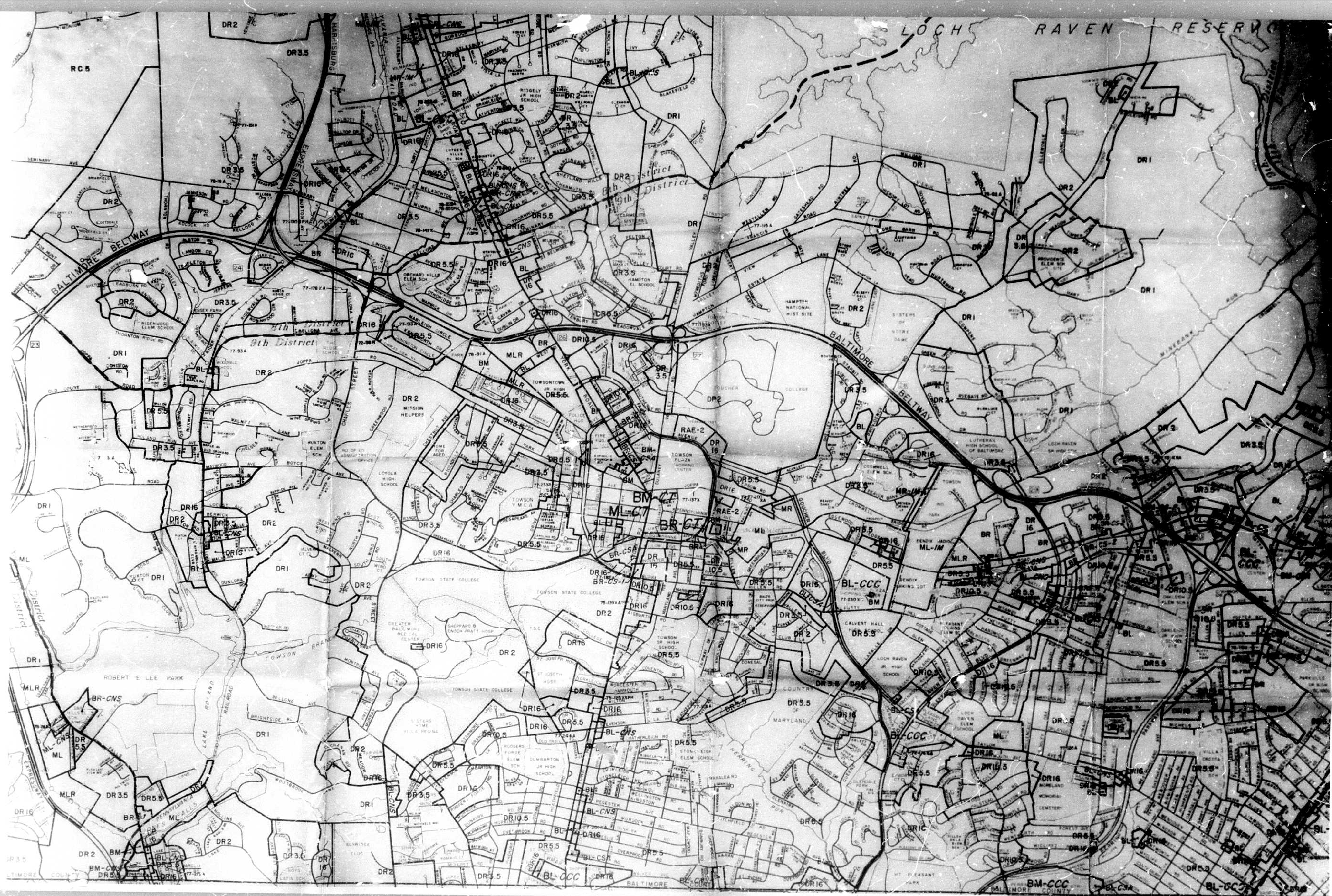
238

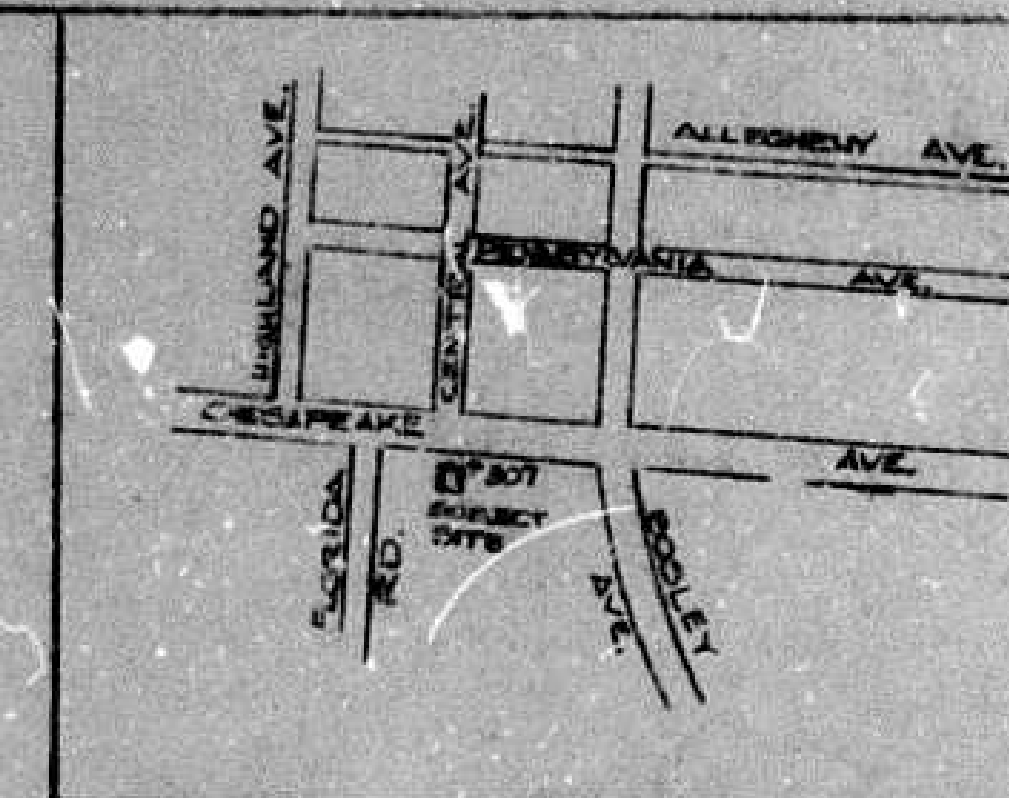
4



15-4 NW







VICINITY MAP
SCALE: 1" = 500'

PLANS APPROVED
OFFICE OF PLANNING & ZONING
BY: *[Signature]*
DATE: 11/12/80
ZONING COMMISSIONER
DATE: 11/12/80
79-195 VA
C 871-57

GENERAL NOTES

EXISTING ZONING: D.R. 18 WITH A SPECIAL
EXCEPTION FOR OFFICE USE, SIDE
YARD AND PARKING VARIANCES
EXISTING USE: DWELLING
PROPOSED USE: OFFICE BUILDING
AREA OF EXISTING BLDG: 1ST FLOOR: 1167.0 SQ. FT.
2ND FLOOR: 1145.00 SQ. FT.
TOTAL: 2312.00 SQ. FT.
PARKING REQUIRED: OFFICES -
1ST FLOOR: 1 PARKING SPACE FOR EVERY
300 SQ. FT. 1167/300 = 3 SPACES
2ND FLOOR: 1 PARKING SPACE FOR EVERY
500 SQ. FT. 1145/500 = 3 SPACES
TOTAL SPACES REQUIRED: 7 SPACES
PARKING PROPOSED: 8 SPACES
AREA OF TRACT: 6875 SQ. FT. = 0.16 AC.

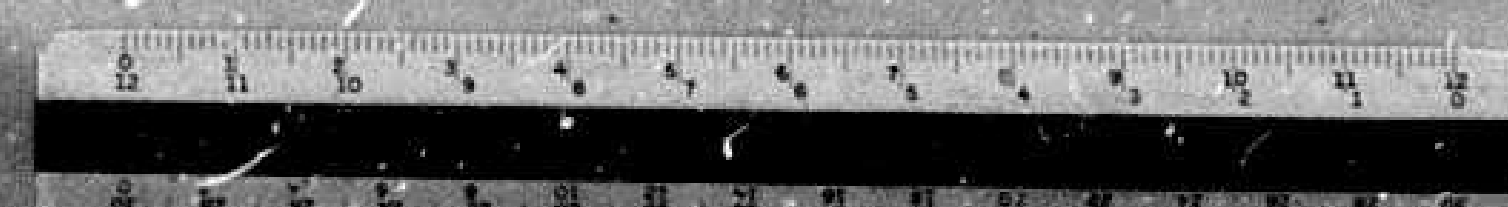
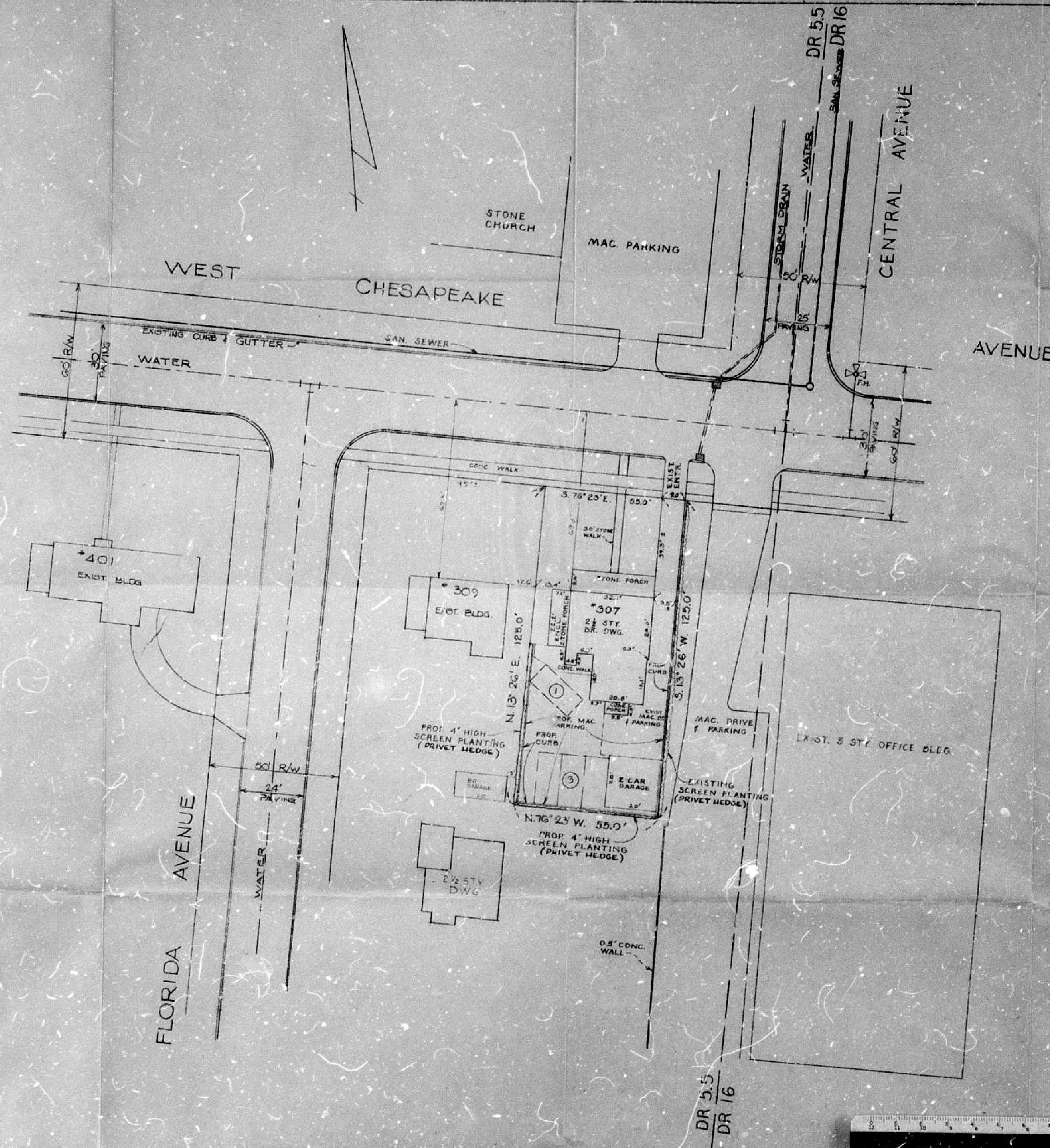
THE EXISTING STRUCTURE SHALL BE UTILIZED FOR OFFICES.
THE OFFICE SPACE SHALL BE LIMITED TO THE FIRST AND SECOND
FLOORS OF THE STRUCTURE AND SHALL NOT EXCEED APPROX-
IMATELY 2312 SQ. FT.
THERE SHALL BE NO SUBSTANTIAL CHANGES TO THE EXTERIOR
OF THE EXISTING STRUCTURE SO THAT THE RESIDENTIAL
APPEARANCE OF THIS STRUCTURE WILL BE MAINTAINED.
THE SUBJECT PROPERTY SHALL BE SCREENED AS SHOWN.
ALL OFF-STREET PARKING SHALL BE LOCATED ON THE REAR
HALF OF THE LOT ONLY.

PLAT FOR
CHANGE OF OCCUPANCY

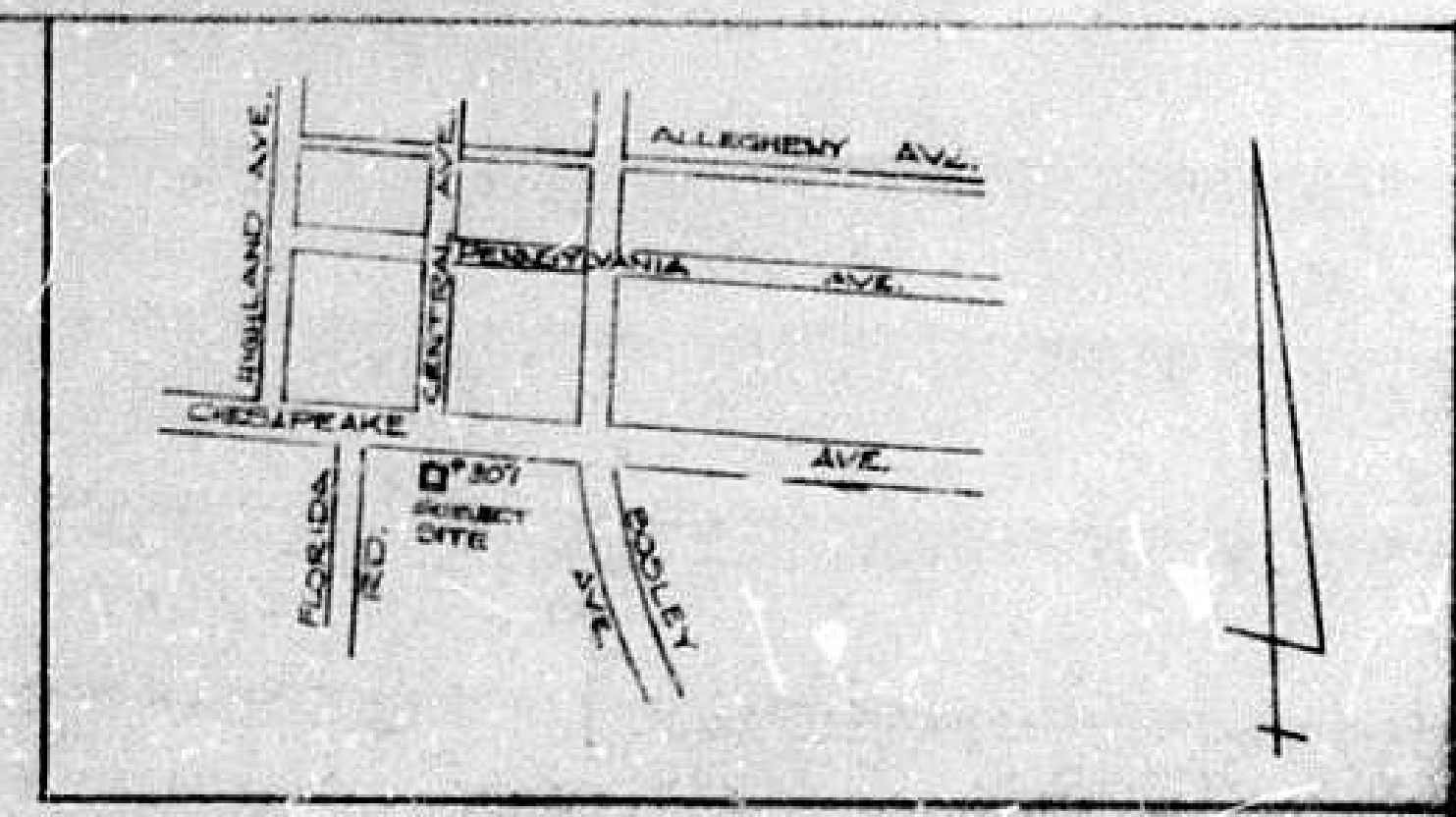
307 W. CHESAPEAKE AVE.
9TH ELECTION DISTRICT
BALTIMORE COUNTY, MARYLAND
SCALE: 1" = 20'

SEPT. 28, 1978
REVISED OCT. 10, 1980
REVISED NOV. 6, 1980

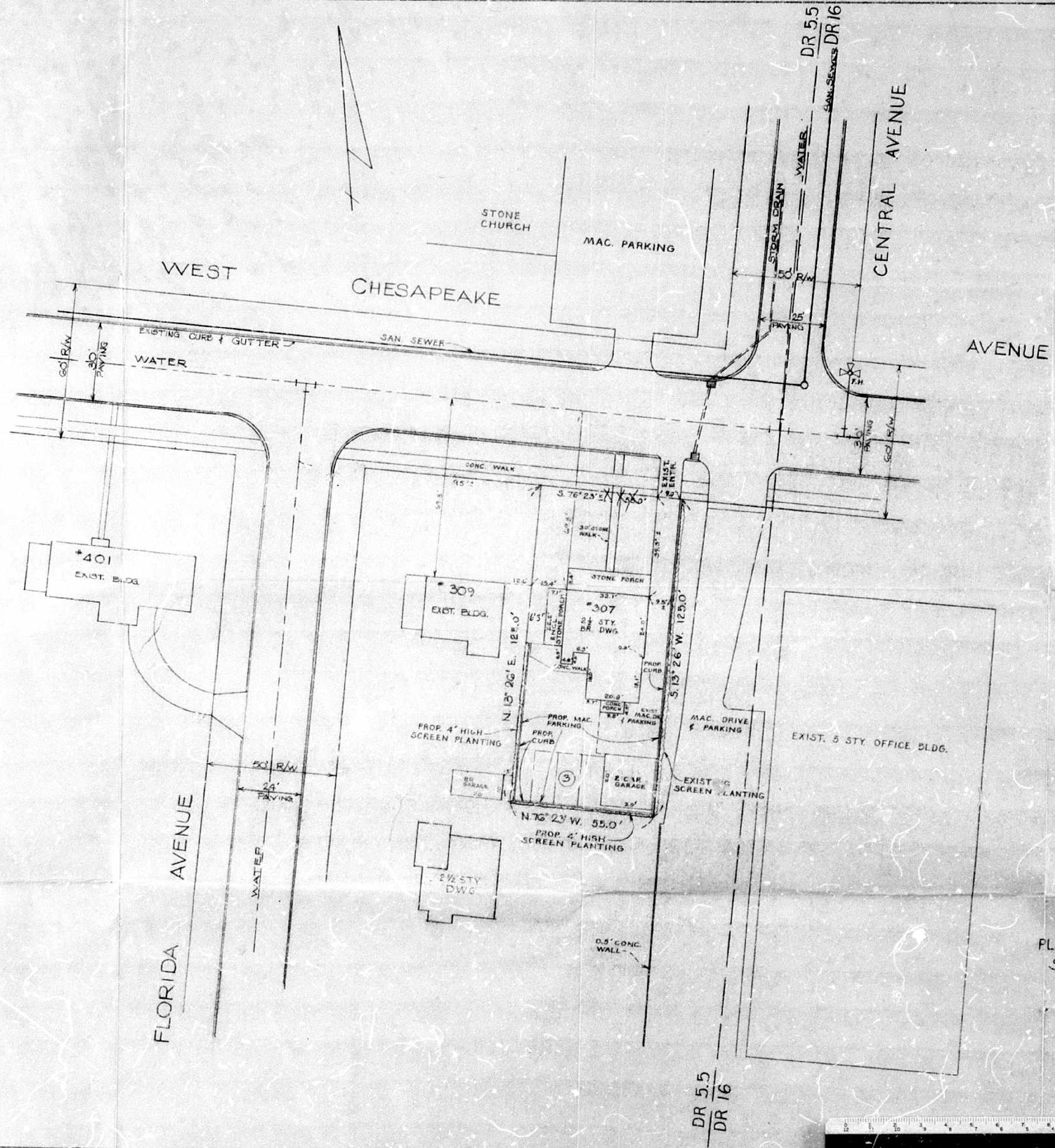
Revised
871-80
11/10/80



STELLMAN, LARSON & ASSOCIATES INC.
Towson, Maryland 21204
823-3535



VICINITY MAP
SCALE: 1" = 500'



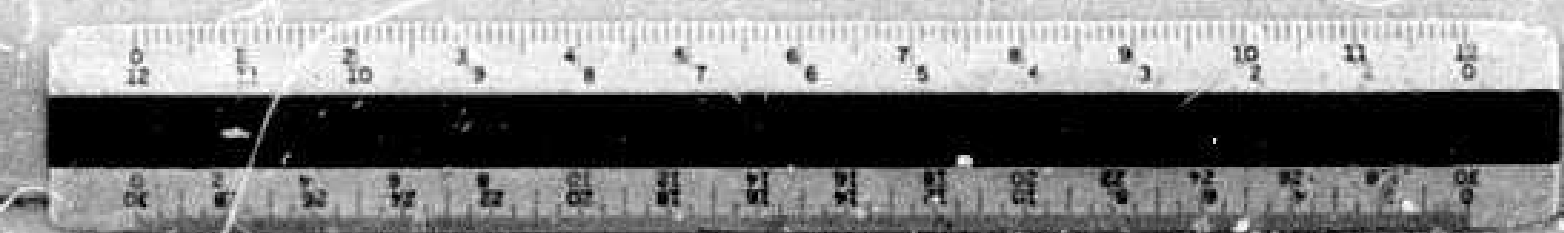
GENERAL NOTES

EXISTING ZONING: D.R. 5.5
 PROPOSED ZONING: D.R. 16 WITH A SPECIAL EXCEPTION FOR OFFICE USE, SIDE YARD AND PARKING VARIANCES
 EXISTING USE: DWELLING
 PROPOSED USE: OFFICE BUILDING
 AREA OF EXISTING BLDG.: 1ST FLOOR: 1167.00 SQ. FT.
 2ND FLOOR: 1145.00 SQ. FT.
 TOTAL: 2312.00 SQ. FT.
 PARKING REQUIRED: OFFICES -
 1ST FLOOR: 1 PARKING SPACE FOR EVERY 300 SQ. FT. 1167/300 = 4 SPACES
 2ND FLOOR: 1 PARKING SPACE FOR EVERY 300 SQ. FT. 1145/300 = 3 SPACES
 TOTAL SPACES REQUIRED: 7 SPACES
 PARKING PROPOSED: 5 SPACES
 AREA OF TRACT: 6875 SQ. FT. = 0.16 AC.

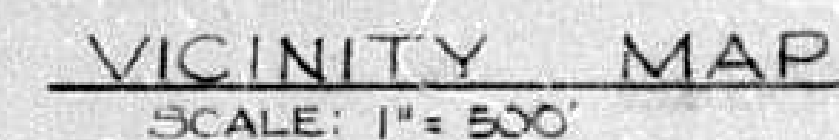
PLAT FOR REZONING, VARIANCES AND SPECIAL EXCEPTION TO ZONING
 307 W. CHESAPEAKE AVE.
 9TH ELECTION DISTRICT
 BALTIMORE COUNTY, MARYLAND
 SCALE: 1" = 20' SEPT. 28, 1978



SPELLMAN LARSON & ASSOCIATES, INC.
 Town, Maryland 21204
 823-1535



MAP: 307 W. CHESAPEAKE AVE.
 SECTION: 9
 DATE: 9/28/78
 BY: [Signature]
 FOR: [Signature]



2371-37

THERE SHALL BE NO SUBSTANTIAL CHANGES TO THE EXTERIOR OF THE EXISTING STRUCTURE SO THAT THE RESIDENTIAL APPEARANCE OF THIS STRUCTURE WILL BE MAINTAINED. THE SUBJECT PROPERTY SHALL BE SCREENED AS SHOWN. ALL OFF-STREET PARKING SHALL BE LOCATED ON THE REAR HALF OF THE LOT ONLY.

REVISED OCT 10, 1980
REVISED NOV. 6, 1980

