

PETITION FOR ZONING RE-CLASSIFICATION
SPECIAL EXCEPTION AND/OR VARIANCE

TO THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition (1) that the zoning status of the herein described property be re-classified, pursuant to the Zoning Law of Baltimore County, from an D.R. 5.5 zone to an R-O zone, for the reasons given in the attached statement; and (2) for a Special Exception, under the said Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property, for Residential Office zone uses

and (3) for the reasons given in the attached statement, a variance from the following sections of the Zoning Law and Zoning Regulations of Baltimore County:

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BY

Property is to be posted and advertised as prescribed by The Baltimore County Code.

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

Contract Purchaser:
(Type or Print Name)
Signature
Street or Box
City and State
Attorney for Petitioner:
WILLIAM H. ZIMMAN, ESQUIRE
(Type or Print Name)
Signature
1123 Munsey Building
Street or Box
Baltimore, Maryland 21202
City and State
Attorney's Telephone No.: (301) 727-6151

Legal Owner(s):
F & S LIMITED PARTNERSHIP
(Type or Print Name)
Signature
HOWARD L. FREY, General Partner
(Type or Print Name)
Signature
307 West Chesapeake Avenue
Street or Box
Towson, Maryland 21204
City and State
Name and telephone number of legal owner, contract purchaser or representative to be contacted
WILLIAM H. ZIMMAN, ESQUIRE
Name
(301) 727-6151
Telephone No.

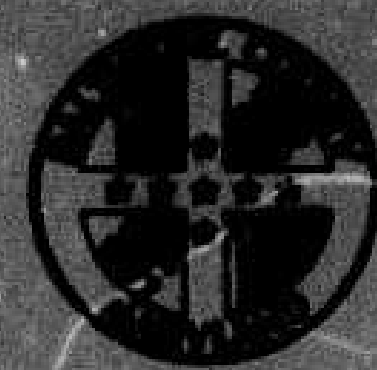
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OK
JAN 31/82

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BALTIMORE COUNTY
ZONING PLANS
ADVISORY COMMITTEE



PETITION AND SITE PLAN

EVALUATION COMMENTS

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BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

May 3, 1982

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
Project Planning
Building Department
Board of Education
Zoning Administration
Industrial Development

William H. Zimman, Esquire
1123 Munsey Building
Baltimore, Maryland 21202

RE: Item No. 9 - Cycle No. III
Petitioner - F & S Limited Partnership
Reclassification Petition

Dear Mr. Zimman:

This reclassification petition has been timely filed with the Board of appeals for a public hearing within the April - October '82 reclassification cycle (Cycle III). It has been reviewed by the zoning office as to form and content and has also been reviewed by the Zoning Plans Advisory Committee. The review and enclosed comments from the Committee are intended to provide you and the Board of Appeals with an insight as to possible conflicts or problems that could arise from the requested reclassification or uses and improvements that may be specified as part of the request. They are not intended to indicate the appropriateness of the zoning action requested.

If it has been suggested that the petition forms, descriptions, briefs, and/or the site plans be amended so as to reflect better compliance with the zoning regulations and commenting agencies' standards and policies, you are requested to review these comments, make your own judgment as to their accuracy and submit the necessary amendments to this office before May 31. In the event that any requested amendments are not received prior to this date, the petition will be advertised as originally submitted.

Located on the south side of Chesapeake Avenue east of Florida Road in the 9th Election District, the subject property is zoned D.R.5.5 and is improved with a dwelling that has been converted to office use and a detached garage. Surrounding properties to the north, west and south are similarly zoned and are improved with a church and individual dwellings, while an office building, zoned R.O., exists to the east.

This property was the subject of a previous hearing (Case #B-79-6-XA) in which a request to reclassify it to D.R.16 with a special exception and variances for office use was eventually denied.

In view of the fact that the submitted site plan does not indicate a proposed development of the subject property, the enclosed comments from this Committee are general in nature. If the requested reclassification is granted, a public hearing and Planning Board review and approval will be required prior to development. At that time, more specific comments will be provided.

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Item No. 9 - Cycle No. III
Petitioner - F & S Limited Partnership
Reclassification Petition

If you have any questions concerning the enclosed comments, please feel free to contact me at 494-1391. Notice of the specific hearing date, which will be between September 1 and December 31, 1982, will be forwarded to you in the future.

Very truly yours,

NICHOLAS B. COMODARI
Chairman
Zoning Plans Advisory Committee

NBC:bec

Enclosures

cc: Spellman, Larson & Associates, Inc.
Suite 110 - Jefferson Building
105 W. Chesapeake Avenue
Towson, Maryland 21204

MICROFILMED

BALTIMORE COUNTY
DEPARTMENT OF PUBLIC WORKS
TOWSON, MARYLAND 21204

HARRY J. PISTEL, P.E.
DIRECTOR

April 7, 1982

Mr. William T. Hackett, Chairman
Board of Appeals
Court House
Towson, Maryland 21204

Re: Item #9 Zoning Cycle III (April-October 1982)
Property Owner: F & S Limited Partnership
S/S W. Chesapeake Ave., 95' E. from centerline
of Florida Ave.
Existing Zoning: DR 5.5
Proposed Zoning: R-O
Acres: 0.16
District: 9th

Dear Mr. Hackett:

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:

The comments supplied in conjunction with the Zoning Advisory Committee review of this property for Item 5 Zoning Cycle IV (October 1978-April 1979) are referred to for your consideration.

This office has no further comment in regard to the plan submitted for Zoning Advisory Committee review in connection with this Item 9 Zoning Cycle III (April-October 1982).

Very truly yours,

ROBERT A. MORTON, P.E., Chief
Bureau of Public Services

RAM:RAM:FW:as

cc: Jack Wisbley
John Trenner (S. Poehlman)

N-W Key Sheet
38 NE 2 Pos. Sheet
NE 10A Topo
70 Tax Map

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BALTIMORE COUNTY
DEPARTMENT OF TRAFFIC ENGINEERING
TOWSON, MARYLAND 21204
494-3550

STEPHEN E. COLLINS
DIRECTOR

March 29, 1982

Mr. William Hackett
Chairman, Board of Appeals
Office of Law, Courthouse
Towson, Maryland 21204

Cycle III - 1982, Meeting of March 16, 1982
Item No. 9
Property Owner: F & S Limited Partnership
Location: S/S W. Chesapeake Avenue 95' E. from centerline
of Florida Avenue
Existing Zoning: D.R. 5.5
Proposed Zoning: R-O
Acres: 0.16
District: 9th

Dear Mr. Hackett:

This site is too small to have any major effect on traffic.

Sincerely,

Michael S. Flanagan,
Engineering Associate II

MSF/r1j

MICROFILMED

BALTIMORE COUNTY
DEPARTMENT OF HEALTH
TOWSON, MARYLAND 21204

DONALD J. ROOP, M.D., M.P.H.
DEPT. OF HEALTH OFFICER

April 7, 1982

Mr. William Hackett, Chairman
Board of Appeals
Court House
Towson, Maryland 21204

Dear Mr. Hackett:

Comments on Item #9, Cycle III Meeting, March 16, 1982, are as follows:

Property Owner: F & S Limited Partnership
Location: S/S W. Chesapeake Avenue 95' E. from centerline of Florida Avenue
Existing Zoning: D.R. 5.5
Proposed Zoning: R-O
Acres: 0.16
District: 9th

Metropolitan water and sewer exist, therefore no health hazards are anticipated.

Very truly yours,

Ian J. Forrest, Director
BUREAU OF ENVIRONMENTAL SERVICES

IJF/als

MICROFILMED

BALTIMORE COUNTY
FIRE DEPARTMENT
TOWSON, MARYLAND 21204
822-7310

PAUL H. RENCKE
CHIEF

April 6, 1982

Mr. William Hackett
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, Maryland 21204

Attention: Nick Commodari, Chairman
Zoning Plans Advisory Committee

RE: Property Owner: F & S Limited Partnership

Location: S/S W. Chesapeake Avenue 95' E. from centerline of Florida Avenue

Item No.: 9 Zoning Agenda: Meeting of March 16, 1982

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 100 feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.

() 2. A second means of vehicle access is required for the site.

() 3. The vehicle dead end condition shown at _____ EXCEEDS the maximum allowed by the Fire Department.

() 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.

(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", 1976 Edition prior to occupancy.

() 6. Site plans are approved, as drawn.

() 7. The Fire Prevention Bureau has no comments, at this time.

REVIEWED: [Signature] Noted and Approved: [Signature]
Planning Group Fire Prevention Bureau
Special Inspection Division

JR/ab/cm

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BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. William Hackett, Chairman
Board of Appeals
Date: April 6, 1982

FROM: Ted Purnham, Plans Review
Department of Permits & Licenses

SUBJECT: Reclassification Cycle III Zoning 1982
Comments "9"

Property Owners - F. & S. Limited Partnership

R. O. occupancies shall be aware a Change of Occupancy permit from Residential Use Group R-3 to Business, Use Group "B" is required. Section 103.0 requires the structure be altered to comply with the proposed new use requirements of the Baltimore County Building Code 1981, effective March 26, 1981. Table 303-2. This normally includes provisions for Building Code compliance unless waived by the State Department of Economic and Community Development.

TB:es

Legislative Policy which reads as follows:

"This R-O Zoning classification is established, pursuant to the findings stated above, to accommodate houses converted to office buildings and some small Class B office buildings in predominantly residential areas on sites that, because of adjacent commercial activity, heavy commercial traffic, or other, similar factors, can no longer reasonably be restricted solely to uses allowable in moderate-density residential zones. It is intended that buildings and uses in R-O zones shall be highly compatible with the present or prospective uses of nearby residential property. It is not the R-O classification's purpose to accommodate a substantial part of the demand for office space, it being the intent of these Zoning Regulations that office-space demand should be met primarily in C.T. districts, C.C.C. districts, and, to a lesser extent, in other commercial areas."

Under the Petition for Zoning Re-Classification in the case at hand, the Petitioner has provided detailed reasons for the re-classification, and has alleged error in connection with the 1980 Land Use Map, as well as a change in character of the neighborhood in question since the adoption of the 1980 Land Use Map.

The said reasons for re-classification provide a history of the subject property which referred to the hearing before the Board of Appeals in November, 1979 on allegations that there was an error in the Land Use Map of 1976. This hearing in November, 1979 related to the Petition of the predecessor owner of the subject property (Flannery) who sought to have the property re-classified from S.5 zoning to D.R. 16 with a special exception for office use. Subsequently, the said re-classification was granted by the Board of Appeals based upon error in the Land Use Map of 1976, which decision was confirmed by Order of the Circuit Court for Baltimore County, but was reversed by an Order of the Court of Special Appeals of Maryland on May 4, 1981. At the hearing before the Court of Special Appeals, the said Appellate Court believed that there was insufficient evidence presented before the Board of Appeals to establish error in the 1976 Land Use Map. It is important to note that there was never any issue before the Board of Appeals, the Circuit Court for Baltimore County, or the Court of Special Appeals under the prior proceedings relating to the issue of "change in the character of the neighborhood".

After the Board of Appeals' decision based on the 1976 Land Use Map, improvements were made to the property in question in order to convert same to office use under the granted D.R. 16 with special exception zoning, and an Occupancy Permit was granted by Baltimore County. These improvements

BALTIMORE COUNTY PUBLIC SCHOOLS

Robert Y. Dubel, Superintendent

Towson, Maryland - 21204

Date: 3/22/82

Mr. Walter Reiter
Chairman, Board of Appeals
Baltimore County Office Building
1111 West Chesapeake Avenue
Towson, Maryland 21204

Zoning Cycle #111

RE: Item No: 9
Property Owner: F & S Limited Partnership
Location: S/S W. Chesapeake Avenue 95' E from centerline of Florida Ave.
Present Zoning: D.R. 5.5
Proposed Zoning: R-O

School Situation

School	Enrollment	Capacity	Over/Under
Acreage too small to have an effect on student population.			

Student Yield With:

Existing Zoning	And	Proposed Zoning
Elementary		
Junior High		
Senior High		

Elementary

Junior High

Senior High

Very truly yours,
Wm. Nick Petrovich
Wm. Nick Petrovich, Assistant
Department of Planning

were substantial, and cost between \$30-\$40,000, and changed the property from its completely dilapidated condition to an attractive structure which could no longer be used in a reasonable way for residential purposes. Walls were altered, closets removed, the kitchen altered, and other changes were made legally pursuant to the prior decision of the County Board of Appeals.

The case of *Swartmore v. Kaestner*, 258 Md. 517, 206 A.2d 341, authorized the construction work and the occupancy in question pursuant to the said Court of Appeals' prior decision.

The questions now before the Board of Appeals relate to whether or not there was any error in the Land Use Map of 1980, or whether or not there was any change of character in the neighborhood in question since the Land Use Map of 1980.

Before proceeding with a factual discussion and argument relating to these issues, it might be well to describe the subject property as it relates to its immediate surroundings.

The subject property is adjacent to a large highrise office building consisting of 78,000 square feet of offices and a large parking lot located at 305 W. Chesapeake Avenue and known as the Chesapeake Building. Parking exists on the east, west and south sides of the said Chesapeake Building; and the parking to the rear of said building measures approximately several city blocks. Properties on Florida Avenue on the east side of the street have backed up to the Chesapeake Building parking lot since said building and parking lot were established.

Traveling to the east of the Chesapeake Building towards Bosley Avenue, there are only two other structures, both used for commercial purposes.

Directly west from the subject property, there is only one other property (used as a rental property for residential purposes) before the corner of Florida Avenue.

Directly across the street from the subject property is the Church property which is used for commercial parking for the Chesapeake Building. This commercial parking was even admitted to by one of the witnesses for the People's Counsel who admitted that contributions were being made to the Church for assigned parking spaces, which commercial activity was also being duplicated at the Masonic Lodge Building further to the west of the

RE: PETITION FOR RECLASSIFICATION : BEFORE THE COUNTY BOARD OF APPEALS
from D.R. 5.5 to R.O. Zone
S/S of W. Chesapeake Ave.,
95' E of Florida Ave., 9th District : OF BALTIMORE COUNTY

F & S LIMITED PARTNERSHIP,
Petitioner : Case No. R-83-62 (Item 9, Cycle III)

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 therefor, 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 for Baltimore County
Rm. 223, Court House
Towson, Maryland 21204
494-2138

I HEREBY CERTIFY that on this 5th day of August, 1982, a copy of the foregoing Order was mailed to William H. Zimman, Esquire, 1123 Munsey Building, Baltimore, Maryland 21202, Attorney for Petitioner.

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COUNTY BOARD
OF APPEALS
BY

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

subject property.

Traveling in an easterly direction from the said Church are several other buildings which are being used for commercial purposes, or have been granted such right recently. The property at 312 W. Chesapeake Avenue (the corner of Chesapeake and Central Avenue) was zoned R-O by the Land Use Map of 1980, but was not converted to office use until recent procedures followed before the Planning Office. Prior to this recent conversion for office use, the property was used as a fraternity house and a rooming house. The change to office use for said property is clearly an element of a change in character of the neighborhood near the subject property as it is directly across the street (slightly to the east) from the subject property.

Additionally, properties along Central Avenue between Chesapeake and Pennsylvania Avenues have been, and are being, converted to office use under the R-O classification. Examples of these properties, as well as the aforesaid 312 W. Chesapeake Avenue, were graphically indicated in the photographs provided in evidence.

Numerous other photographs were introduced in evidence to show office use in the surrounding neighborhood that has taken place since the Land Use Map of 1980. These changes under the R-O zoning to the office use character have been significant and substantial since 1980. Finally, some of such properties are currently in stages of construction toward converting same to office use under the R-O zone.

Mr. Howard L. Frey and Mr. William H. Baldwin, the witnesses for the Petitioner, clearly indicated that there was a change in character of the neighborhood in question due to these conversions to office use since the Land Use Map of 1980.

None of the witnesses for the People's Counsel could deny that such changes, in significant number, have occurred. There was some controversy suggested by some of the witnesses for the People's Counsel relating to signage, but there was no denying that office use under the R-O zone has been introduced for the first time since the 1980 Map.

The witness from the Planning Office of the County admitted that he was not fully cognizant with reference to the conversions to R-O office use in that his responsibilities in the Planning Office did not include conversions

PETITION FOR RE-CLASSIFICATION
FROM D.R. 5.5 TO R.O.

F & S LIMITED PARTNERSHIP
Petitioner

BEFORE THE
COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Case No. R-83-62

MEMORANDUM OF PETITIONER

A hearing was held before the County Board of Appeals on November 4, 1982 on the Petition of F & S Limited Partnership (the owner of 307 W. Chesapeake Avenue) for a change in classification from D.R. 5.5 to the R.O. Zone.

The R.O. Zone came into being in Baltimore County for the first time under Bill No. 13-80 of the Baltimore County Council, and said law took practical effect at the time of the adoption of the Land Use Map of 1980.

Under the said R-O Zone, a non-residential use for a property does not come into effect until a preliminary development plan is processed through the Office of Planning and Zoning, and considerations given by the Planning Board of Baltimore County. This means that the granting of the R-O Zone by the Land Use Map of 1980, or by the Board of Appeals under re-classification powers given to it, does not create an automatic change in use, or an automatic change in character of the R-O property. The R-O property does not change in use, or character, until the aforesaid procedure and requirements are followed in accordance with Bill No. 13-80 and an Occupancy Permit being granted by the County.

Also, under 203.1 of the said Bill No. 13-80, there exists a Declaration of Findings whereby it is found under said statute that:

"Residential use of certain sites may not be economically feasible in some predominantly moderate-density residential areas that are within or near town centers, are near C.C.C. districts, or lie along commercial motorways; that neither business zoning nor high-density residential zoning of those sites is appropriate; and that, with appropriate restrictions, houses converted to offices and, in some cases, small Class B office buildings and similar buildings are suitable, economically feasible uses of such sites".

Under 203.2 of said Bill No. 13-80, there is a Statement of

to office use.

The photographs clearly revealed that substantial improvements have been made to the properties that have been converted to office use under the R-O zone, and there are before and after pictures showing the conversion of property located at 406 W. Pennsylvania Avenue. Also, the property located at 400 W. Pennsylvania Avenue (directly across from the subject property by viewing across the commercial Church parking lot) was made subsequent to the 1980 Land Use Map, and clearly indicates a more attractive property than existed prior to such conversion.

Many of the other photographs also reveal more attractive conditions under the office use conversions than existed previously when such properties were used strictly for residential purposes even after obtaining R-O zoning, but before the conversion to office use under the established procedures.

The examples in the photographs revealed changes to office use to the east, west, south and north of the subject property.

On the issue of error in the Land Use Map of 1980, the Petitioner submits and avers that there was some evidence to show such error. However, the evidence was not as strong as the evidence relating to change in the character of the neighborhood. The evidence relating to change in the character of the neighborhood was, in our humble opinion, overwhelming.

The error evidence related to commercial parking that has developed near the subject property, and the error in the zoning line which traveled down the middle of Central Avenue and into the parking lot and driveway of the Chesapeake Building. The gentleman from the Planning Office admitted that there was an error in connection with the line in Central Avenue, but he indicated that he was not "uncomfortable with the problem".

The real strength of the Petitioner's case lies with the change in character issue. We believe that the testimony and evidence in this case was uncontroverted to the effect that there was a substantial change in the character of the neighborhood since the 1980 Land Use Map.

No real evidence was offered by the People's Counsel to dispute the office changes since 1980. On the other hand, some of the witnesses for the People's Counsel merely attempted to indicate that the zoning of the subject property to R-O would be detrimental to the neighborhood. One witness testified

that he believed that zoning to R-O in this case might affect properties on Florida Avenue. It is important to note that the properties on the east side of Florida Avenue have backed up to the Chesapeake Building parking lot for many, many years. The zoning of the subject property to R-O would not create any kind of change in character to the building, or site, at 307 West Chesapeake Avenue. Actually, as admitted by the Planning Office witness, the architecture of the subject property would be frozen by a change to the R-O zone. This would mean that there could not be any changes to the exterior of the structure.

If the property remained in the S.5 state, the property could be converted to apartments, or rooming house status, with changes in the exterior as well as the interior of the property. Under the S.5 zone, there is no protection to the community with reference to the interior, or exterior, of the property. As has been established by the photographs in evidence, and as established by the uncontroverted testimony, zoning to R-O for the subject property would not only not create a threat to the community, but would become more of an asset to the community in that the architecture would be frozen.

The subject property is small, and any office use that might be allowed under the R-O zone would be minimal and would not create any problem for the community.

In previous reports filed by the Planning Office, the said Planning Office has admitted that there is sewer at the property, that there is water at the property, and that the use of the property for office use would not create any traffic problems which would detrimentally affect the neighborhood.

It is important to further note that there has not been any prior consideration of the subject property for the R-O zone by any Board of Appeals, or even by the County Council under the 1980 Land Use Map. The log of issues presented in evidence in this case which related to the 1980 Land Use Map indicated that the only issue before the County Council was the request by Flannery to have the property zoned from S.5 to D.R. 16 with a special exception for office use. Actually, at the time of the adoption of the 1980 Land Use Map, the property was already zoned D.R. 16 with a special exception under the prior Board of Appeals' decision.

The log of issues becomes somewhat relevant in that under Section

the "Residential Office" zoning was never an issue in the prior Board of Appeals and Court proceedings.

At the time of the consideration of the 1980 Land Use Map by the County Council, no issue was before the County Council relating to "Residential Office" zoning for the subject property. Therefore, and in view of the complexity of the legal proceedings, the County Council merely established the prior D.R. S.5 zoning for the property.

The complex chronology of events surrounding the legal proceedings relating to this property has left same in a position where it was converted to residential-office type use and cannot be used for any residential purposes under the D.R. S.5 zoning. The conversion which was accomplished pursuant to a valid decision of the Court of Appeals of Maryland in the case of *Swarthmore v. Kaestner*, 258 Md. 517, 206 A.2d 341, has left the property without any practical ability to accommodate residential purposes.

Additionally, since the adoption of the "Residential Office" zoning in the Fall of 1980, numerous properties farther to the west of the subject property have been re-zoned for the "Residential Office" zoning creating a change in character of the neighborhood in the several blocks west of Bosley Avenue. These properties have been changed on the inside, outside and have been occupied for residential-office uses.

None of the properties zoned for "Residential Office" use in the west Towson area had the commercial impact that the subject property has at this time. In addition to the large office building (Chesapeake Building) adjacent to the subject property, there is a large active commercial parking lot directly across the street from the subject property.

Another error in connection with the 1976 and 1980 Land Use Maps relates to the zoning line established along Central Avenue. This zoning line was erroneously drawn and even intruded upon the commercial use at the Chesapeake Building. In other words, part of the Chesapeake Building property was erroneously zoned D.R. S.5 when no such zoning line could have been intended based upon the history of the use at the location.

22-22 of the Baltimore County Code, any change or amendment to be made in a zoning Map, as proposed by the Planning Board shall, before final adoption of such Map, be brought to further public hearing, advertised, etc. In view of the fact that there had never been any request for the R-O zone before the County Council, there had never been any advertising, or hearing, relating to such zone for such property.

As a further note, your Petitioner well understands that some citizens are always fearful of any change from the status quo. However, we sincerely and respectfully see no detrimental effect upon the community if this property is zoned R-O. On the other hand, because of the freezing of the architectural structure and the experience of other properties converted to office use in the neighborhood, we believe that the change for the subject property would be truly positive and beneficial for the community.

Although one of the witnesses identified the subject property as being in Southland Hills, it is important to note that the Chesapeake Building is also in Southland Hills as well as many of the other properties referred to in the testimony that have been converted to office use since 1980.

When one reads the aforementioned Declaration of Findings and the Statement of Legislative Policy in the aforesaid Bill No. 13-80, a sincere conclusion is realized that the subject property fits into the real purposes and intent of the R-O zone. The residential use of the subject site is not economically feasible, or feasible in any way, without further deterioration to the property and a reversion to the former blight that existed. The subject property is not only near a towncenter, but is only four structures from the Court House door and the major commercial motorway that is known as Bosley Avenue.

The real purpose as set forth in said Legislative Language is "to accommodate houses converted to office buildings and some small Class B office buildings in predominantly residential areas on sites that, because of adjacent commercial activity, heavy commercial traffic, or other similar factors, can no longer reasonably be restricted solely to uses allowable in moderate-density residential zones. It is intended that buildings and uses in R-O zones shall be highly compatible with the present or prospective uses of nearby residential property."

The errors in the Land Use Map as it relates to the subject property, as well as the changes in the character of the area since the 1980 Land Use Map, are substantial and provide a strong foundation for support for the re-classification to the "Residential Office" zone for the subject property.

In addition to the foregoing issues of error and changes in the neighborhood, the Petitioner submits that a great burden presently exists upon the subject property if it is allowed to remain in the D.R. S.5 zoning. Prior to the 1979 hearing before the Board of Appeals, the subject property was in shambles as deterioration had reduced the property to a slum. The property was used for a communal-type boarding house with transients coming and going. 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, 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 and flooding conditions existed in the basement, shabby was overgrown, rainpouts were bent, cracked and falling from the property, and the property was generally crumbling in a state of disrepair.

In reliance upon the 1979 Board of Appeals proceedings, the property was converted as aforesaid and improved at a substantial expense to the Petitioner. The present physical structure strongly supports a residential-office use, and would be appropriate for the surroundings and an asset to the community in that a residential-office use would be limited under the law and provide a quiet and peaceful atmosphere in direct contrast to the noise and disruption to the community caused by the prior transients when a boarding house existed at the property.

No reasonable and appropriate residential use can be made of the property in view of its proximity to the Chesapeake Building and the other commercial uses in the block in question, because of the commercial parking lot across the street from the subject property and because of the changes in the character of the neighborhood due to the new "Residen-

This direct language from the statute in question clearly describes, defines and covers the subject property.

The re-classification of the subject property from S.5 to the R-O zone would be completely compatible with the neighborhood, and accomplish a proper, just, and equitable zoning. The property would still be subject to the scrutiny of the procedures that exist for conversion to office use, and no office use can be maintained of the said property in any event until the planning procedures are followed.

We respectfully submit that a substantial case has been made for the Petitioner's position, and respectfully request your consideration in this matter.

Respectfully submitted,

WILLIAM H. ZIMMERMAN
1123 Mansey Building
Baltimore, Maryland 21202
Telephone (301) 727-6151
Attorney for Petitioner

I HEREBY CERTIFY, that on this 12 day of November, 1982, a copy of the foregoing was mailed to Peter Max Zimmerman, Deputy People's Counsel, Old Court House, Towson, Maryland 21204.

William H. Zimmerman
Attorney for Petitioner

RECEIVED
BALTIMORE COUNTY
NOV 17 11 06 AM '82
COUNTY CLERK
OFFICE

Residential-Office" zone. It is important to further note that the subject property is only four properties from the corner of Bosley Avenue where the County Courthouse exists, and the "Residential-Office" zoning appears to be the logical and reasonable zoning for the property.

Under Bill No. 13-80 which adopted the "Residential-Office" classification (referred to as R-O), a statement of legislative policy was set forth under Section 203.2. This Section states in part as follows:

"This R-O zoning classification is established, pursuant to the findings stated above, to accommodate houses converted to office buildings and some small Class B office buildings in predominantly residential areas on sites that, because of the adjacent commercial activity, heavy commercial traffic, or other similar factors, can no longer reasonably be restricted solely to uses allowable in moderate-density residential zones. It is intended that buildings and uses in R-O zones shall be highly compatible with the present or prospective uses of nearby residential property."

This statement of legislative policy clearly covers the subject property as all the elements set forth in the said policy relate here. The re-classification of the subject property to the R-O zone would be completely compatible with the neighborhood, and accomplish a just and equitable zoning. The error in the Land Use Map of 1980 and the changes in the character of the neighborhood substantially support the re-classification requested.

REASONS FOR RE-CLASSIFICATION

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 as a beltway around Towson) where the County Courts Building exists. Every property (except one) has had office or commercial use in said block, and the property located directly adjacent to the subject property at 305 W. Chesapeake Avenue is a high-rise office building consisting of 78,000 square feet of offices and a large parking lot, the 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.

In November, 1979, a hearing was concluded by the Baltimore County Board of Appeals relating to a change in classification to D.R. 16 with a special exception for office use for the subject property. Subsequently, the said re-classification was granted by the Board of Appeals based upon error in the Land Use Map of 1976.

Improvements were made to the property converting same to office use, and an Occupancy Permit was granted by Baltimore County.

Thereafter, an Appeal was taken by the People's Counsel for Baltimore County to the Circuit Court for Baltimore County, and the Circuit Court for Baltimore County confirmed the decision of the Board of Appeals with reference to the D.R. 16 with a special exception for office use zoning.

After the said decision of the Circuit Court for Baltimore County, the People's Counsel for Baltimore County further appealed the case to the Court of Special Appeals of Maryland, which Court reversed the ruling of the Circuit Court for Baltimore County on grounds that there was insufficient evidence before the Board of Appeals as to the error in the Land Use Map of 1976.

At the time of the hearing before the Board of Appeals in November, 1979, no "Residential Office" zone existed in Baltimore County as said new zone was not adopted until the Fall of 1980. Therefore,

IN THE MATTER OF
THE APPLICATION OF
F & S LIMITED PARTNERSHIP
FOR REZONING FROM
D.R. S.5 TO R-O
ON PROPERTY LOCATED ON THE
SOUTH SIDE OF WEST CHESAPEAKE
AVENUE, 95 FT. EAST OF THE CENTER
LINE OF FLORIDA AVENUE
9TH DISTRICT
BEFORE THE BOARD OF APPEALS
OF BALTIMORE COUNTY

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY

12/14/83-m-29

ORDER OF APPEAL

MR. CLERK:

Please enter an Appeal on behalf of F & S Limited Partnership from the Order of the Baltimore County Board of Appeals dated January 4, 1983.

HARRY S. SHAPIRO
400 W. Pennsylvania Avenue
Towson, Maryland 21204
Telephone (301) 825-0110
Attorney for Appellant

I HEREBY CERTIFY, that on this 14 day of January, 1983, a copy of the within Order of Appeal was served, in accordance with Maryland Rule 8-12, upon the Board of Appeals of Baltimore County, Room 219, Old Court House, Towson, Maryland 21204; and Peter Max Zimmerman, Deputy People's Counsel, Old Court House, Towson, Maryland 21204.

Harry S. Shapiro
Attorney for Appellant

RECEIVED
BALTIMORE COUNTY
JAN 19 3 37 PM '83
COUNTY CLERK
OFFICE

IN THE MATTER OF
THE APPLICATION OF
F & S LIMITED PARTNERSHIP
FOR REZONING FROM
D.R. 5.5 to R-O
on property located on the
south side of West Chesapeake
Avenue, 95 ft. east of the
center line of Florida Avenue
9th District
BEFORE THE BOARD OF APPEALS
OF BALTIMORE COUNTY

PETITION OF APPEAL

The Petition of Appeal of F & S Limited Partnership, Appellant
herein, by Harry S. Shapiro, its attorney, respectfully says:

- The proceeding before the Baltimore County Board of Appeals related to the application of F & S Limited Partnership for a zoning reclassification from D.R. 5.5 to the R-O zone on property located at 307 West Chesapeake Avenue in Towson, Maryland.
- The grounds assigned in the Petition for Reclassification were as follows:
 - Error in the 1980 Land Use Map.
 - Change in character of the neighborhood since the 1980 Land Use Map.
- That the decision of the Board of Appeals was against the weight of the evidence in connection with both grounds for the change in the classification as aforesaid.
- That, as a matter of fact, no legally admissible and sufficient evidence was presented by the opposition to the reclassification relating to the issue that there was a change in character of the neighborhood since the Land Use Map of 1980.
- That the Board of Appeals failed to properly apply the facts to the facts in this proceeding.
- That the Board of Appeals further erred in its rulings preventing certain evidence to be introduced by the Appellant herein to show error in the 1980 Land Use Map.
- That the decision of the Board of Appeals in this matter was dated January 4, 1983, and the Appellant herein has appealed from such decision.

8. That the Appellant seeks a reversal of the said decision of the Baltimore County Board of Appeals in accordance with Rule 8-12 of the Maryland Rules of Procedure.

HARRY S. SHAPIRO
400 W. Pennsylvania Avenue
Towson, Maryland 21204
Telephone (301) 825-0110
Attorney for Appellant

I HEREBY CERTIFY, that on this 19 day of January, 1983, a copy of the foregoing Petition for Appeal was mailed to Board of Appeals for Baltimore County, Old Court House, Towson, Maryland 21204; and to Peter Max Zimmerman, Deputy People's Council, Old Court House, Towson, Maryland 21204.

Attorney for Appellant

REQUEST FOR HEARING

Now comes the Appellant and requests a hearing on the within Appeal.

Attorney for Appellant

IN THE MATTER OF
THE APPLICATION OF
F & S LIMITED PARTNERSHIP
FOR REZONING FROM
D.R. 5.5 to R-O
on property located on the
south side of West Chesapeake
Avenue, 95 ft. east of the
center line of Florida Avenue
9th District

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. R-83-63

OPINION

The above captioned matter came before the Board for hearing on a Petition for Reclassification from D.R. 5.5 to R-O zoning.

The testimony and evidence submitted can be briefly summarized. The Petitioner produced evidence by and through Howard L. Frey to demonstrate the character of the surrounding neighborhood, particularly the high rise office building directly adjacent to the subject property, the extensive restoration and improvements to the subject property and the various surrounding properties presently being utilized as offices. William H. Baldwin, a real estate appraiser, testified that the subject property was in poor condition when purchased by the Petitioner, that the Petitioner has engaged in extensive renovation of the property, and that, in his opinion, the neighborhood, since 1980, has changed in character, from a predominantly residential area to an area consisting primarily of offices. People's Counsel produced Mr. Lillianardo, representing Southland Hills Community Association and Mary Ginn, representing the West Towson Neighborhood Association, both of whom testified that it was the desire of their particular associations to maintain the integrity of the residential character of the neighborhood and to resist any further encroachment thereon. Finally, James Howell, a Planner for Baltimore County, testified that as a Planner, he has observed no substantial change in the character of the neighborhood and believes that the D.R. 5.5 zone, presently existing, is an appropriate zone for the subject property.

The Board is cognizant of the consternation experienced by the Petitioner. Of course, it is particularly difficult for the Petitioner to reconcile the fact that his

F & S Limited Partnership
Case No. R-83-62

property is directly adjacent to a high rise office building, yet his own property is precluded, by law, from converting from a residential property to a residential property with offices, an apparent aesthetically appropriate use. Indeed, the Board is sympathetic to the plight of the Petitioner.

Nevertheless, the Board is persuaded that the Petitioner has not sustained the very heavy burden of demonstrating that there has occurred a substantial change in the character of the neighborhood in which the property is located since the property was last classified, or that the last classification of the property was established in error. (Sec. 2-58.1 (j) (1) Baltimore County Code)

The subject property enjoys a long history of litigation. The Board believes that the County Council, in 1980, was aware of this property's history, including the prior decision of this Board and did, notwithstanding said knowledge, chose not to provide office zoning for the subject property. The County Council chose to establish the line of demarcation between residential and office zoning at the Chesapeake Building driveway, a point of particular concern to the Petitioner. This Board cannot state, and does not believe, the evidence demonstrates that the legislative judgment of the County Council was in error or that the character of the neighborhood has substantially changed.

For the reasons stated above, the Petition for Reclassification shall be denied.

ORDER

For the reasons stated above, it is this 4th day of January, 1983, by the County Board of Appeals, ORDERED that the Petition of F & S Limited Partnership for reclassification from D.R. 5.5 to R-O, be and hereby is DENIED.

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

F & S Limited Partnership
Case No. R-83-62

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett
William T. Hackett, Chairman

William R. Evans

Patricia Phipps
Patricia Phipps

IN THE MATTER OF
THE APPLICATION OF
F & S LIMITED PARTNERSHIP
FOR REZONING FROM
D.R. 5.5 to R-O
on property located on the
south side of West Chesapeake
Avenue, 95 ft. east of the
center line of Florida Avenue
9th District

Zoning File No. R-83-63

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW

Misc. Doc. No. 15
Folio No. 64
File No. 83-M-29

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule 8-2(d) of the Maryland Rules of Procedure, William T. Hackett, William R. Evans, and Patricia Phipps, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the appeal to the representative of every party to the proceeding before it; namely, Howard L. Frey, F & S Limited Partnership, 307 W. Chesapeake Ave., Towson, Maryland 21204, Petitioner; Harry S. Shapiro, Esq., 400 W. Pennsylvania Ave., Towson, Md. 21204, Counsel for the Petitioner; William H. Zinman, Esq., 1123 Munsey Bldg., Baltimore, Md. 21202, Counsel for the Petitioner; Mrs. Mary Ginn, W.T.N.A., 606 Homcrest Road, Towson, Md. 21204; and John W. Hassler, III, Esq., Court House, Towson, Md. 21204, People's Counsel for Baltimore County, a copy of which Notice is attached hereto and prayed that it may be made a part thereof.

June Holman
County Board of Appeals of Baltimore County
Rm. 200, Court House, Towson, Md. 21204
494-3180

F & S LIMITED PARTNERSHIP
Case No. R-83-63

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to Howard L. Frey, F & S Limited Partnership, 307 W. Chesapeake Ave., Towson, Md. 21204, Petitioner; Harry S. Shapiro, Esq., 400 W. Pennsylvania Ave., Towson, Md. 21204, Counsel for the Petitioner; William H. Zinman, Esq., 1123 Munsey Bldg., Baltimore, Md. 21202, Counsel for the Petitioner; Mrs. Mary Ginn, W.T.N.A., 606 Homcrest Rd., Towson, Md. 21204; and John W. Hassler, III, Esq., Court House, Towson, Md. 21204, People's Counsel for Baltimore County, on this 20th day of January, 1983.

June Holman
County Board of Appeals of Baltimore County

IN THE MATTER OF
THE APPLICATION OF
F & S LIMITED PARTNERSHIP
FOR REZONING FROM
D.R. 5.5 to R-O
on property located on the
south side of West Chesapeake
Ave., 95' east of the
center line of Florida Ave.
9th District

F & S Limited Partnership,
Petitioner-Appellant
Zoning File No. R-83-63

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW

Misc. Doc. No. 15
Folio No. 64
File No. 83-M-29

CERTIFIED COPIES OF PROCEEDINGS BEFORE
THE BOARD OF APPEALS OF BALTIMORE
COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come William T. Hackett, William R. Evans, and Patricia Phipps, 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 Board of Appeals of Baltimore County:

ENTRIES FROM DOCKET OF BOARD OF APPEALS OF BALTIMORE
COUNTY

No. R-83-63

- | | |
|--------------------|---|
| February 16, 1982 | Petition of F & S Limited Partnership for reclassification from a D.R. 5.5 zone to an R-O zone on property located on the south side of West Chesapeake Ave., 95' east of the center line of Florida Ave., 9th District - filed |
| May 3, 1982 | Order of William T. Hackett, Chairman, County Board of Appeals, directing advertisement and posting of property - date of hearing set for October 13, 1982 |
| September 23, 1982 | Comments of Balto. County Zoning Plans Advisory Committee |
| September 24, 1982 | Certificate of Publication in newspaper - filed |
| | " " Posting of property - filed |

October 13, 1982 At 10:00 a.m. hearing held on petition

January 4, 1983 Order of County Bd. of Appeals denying the petition for reclassification

January 19, 1983 Order for Appeal filed in the Cir. Ct. for Baltimore County by Harry S. Shapiro, Esq., on behalf of Petitioner

January 19, 1983 Petition to accompany Order for Appeal filed in Circuit Court

January 20, 1983 Certificate of Notice sent to all interested parties

February 9, 1983 Transcript of testimony filed

Petitioner's Exhibit No. 1A - 1J --Photos of area

" " " 2 --Staff Prelim. Recommendations for 1980 Comp. Zoning Maps

People's Counsel's Exhibit No. 1A-K --Photos

" " " 2 - Planning Bd. Recommendations

" " " 3 - Letter, 6/4/82, from D. Krien

" " " 4 - Annual Authorization, 4/4/82

" " " 5 - Annual Zoning Authorization, 5/3/82

" " " 6 - Letter of Bd. of Appeals from Berkeley Matthews, 11/3/82

" " " 7 - To Whom It May Concern by Berkeley Matthews, 11/3/82

February 9, 1983 Record of proceedings filed in the Circuit Ct. for Baltimore County

Record of proceedings pursuant to which said Order was entered

and said Board acted on permanent records of the Board of Appeals of Baltimore County

and your respondents respectively suggest that it would be inconvenient and inappropriate to file the same in this proceeding, but your respondents will produce any and all such rules and regulations whenever directed to do so by this Court.

Respectfully submitted,

John W. Hession, III
John W. Hession, III
County Board of Appeals of Baltimore County

cc: Wm. H. Zinman, Esq.
J. Hession, Esq.
Harry S. Shapiro, Esq.

CIRCUIT COURT FOR BALTIMORE COUNTY

CATEGORY

F & S LIMITED PARTNERSHIP
Appellant

ATTORNEYS

Harry S. Shapiro
400 W. Penna. Ave. (04)
825-0110

IN THE MATTER OF THE APPLICATION OF F & S LIMITED PARTNERSHIP FOR REZONING FROM D.R. 5.5 to R-O on property located on the south side of West Chesapeake Ave. 95 ft. east of the center line of Florida Ave. 9th District

THE PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, ROLAND DILONARDI, SOUTHLAND HILLS IMPROVEMENT ASSOCIATION, MRS. MARY GINN, MRS. KAY TURNER

Protestants - Appellees
BALTIMORE COUNTY BOARD OF APPEALS

E

John W. Hession, III
Peter Max Zimmerman
Rm. 223 Court House (04) 494-2188

COSTS

- (1) Jan. 19, 1983 - Appellants Order for Appeal from the Order of the Baltimore Co. Board of Appeals fd.
- (2) Jan. 19, 1983 - Petition for Appeal fd.
- (3) Jan. 20, 1983 - Certificate of Notice
- (4) Feb. 1, 1983 - App. of John W. Hession, III and Peter Max Zimmerman for Protestants and Same Day Answer fd.
- (5) Feb. 9, 1983 Transcript of Record fd.
- (6) Feb. 9, 1983 Two notices of filing sent.
- (7) March 11, 1983 - Appellant's Memorandum fd.
- (8) March 26, 1983 - Appellee's Memorandum fd.
- (9) May 6, 1983 - Appellant's Reply Memorandum fd.
- (10) May 10, 1983 Opinion & Order of Court that the decision of the County Board of Appeals of Baltimore County is AFFIRMED fd. (VRB)

MISC # 8329
L-CLIK 40.00
B LBY 5.00
CHEN - TL 45.00
#01532 C001 #02 108:38
01/20/83

IN THE MATTER OF
THE APPLICATION OF
F & S LIMITED PARTNERSHIP
FOR REZONING FROM
D.R. 5.5 to R-O on property
located on the south side of
West Chesapeake Ave., 95'
east of the center line of
Florida Ave., 9th District

Zoning File No. R-83-63

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
AT LAW
Misc. 15/64/83-M-29

ANSWER TO PETITION OF APPEAL

The People's Counsel for Baltimore County, Roland Dilonardi and Southland Hills Improvement Association, Mrs. Mary Ginn, and Mrs. Kay Turner, Protestants below and Appellees herein, answer the Petition of Appeal heretofore filed by the Appellant, viz:

1. That the Appellees admit Paragraphs 1-2 and 7-8 of the Petition of Appeal and deny Paragraphs 3-6 of said Petition.
2. That the decision of the Board herein was proper and justified by the evidence before it and that the decision of the Board should therefore be sustained as being properly and legally made.

RECEIVED
BALTIMORE COUNTY
JAN 31 3 01 PM '83
COUNTY CLERK
OF APPEALS

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

Peter Max Zimmerman
Peter Max Zimmerman
Deputy People's Counsel
Rm. 223, Court House
Towson, Maryland 21204
494-2188

I HEREBY CERTIFY that on this 31st day of January, 1983, a copy of the foregoing Answer to Petition of Appeal was delivered to the Administrative Secretary, County Board of Appeals, Room 200, Court House, Towson, MD 21204; and a copy was mailed to Harry S. Shapiro, Esquire, 400 W. Pennsylvania Avenue, Towson, MD 21204.

Peter Max Zimmerman
Peter Max Zimmerman

IN THE MATTER OF
THE APPLICATION OF
F & S LIMITED PARTNERSHIP
FOR REZONING FROM D.R. 5.5
to R-O

Zoning File No. P-83-63

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
AT LAW
15/64/83-M-29

NOTICE OF APPEAL

MR. CLERK:

Please enter an Appeal on behalf of F & S Limited Partnership to the Court of Special Appeals of Maryland from the decision dated May 10, 1983 of the Circuit Court for Baltimore County, which decision affirmed the decision of the County Board of Appeals of Baltimore County.

I HEREBY CERTIFY, that on this 17 day of May, 1983, a copy of the foregoing Notice of Appeal was mailed to Peter Max Zimmerman, Deputy People's Counsel, old Court House, Towson, Maryland 21204.

Harry S. Shapiro
Harry S. Shapiro
Attorney for F & S Limited Partnership

Filed 5-23-83 4:15 PM

MANDATE Court of Special Appeals of Maryland

No. 1352, September Term, 19 80

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY
v.

HOWARD L. FREY ET AL

5/4/81: Judgment reversed; case remanded for entry of an order reversing the decision of the County Board of Appeals; appellees to pay the costs.

6/3/81: Mandate issued.

STATEMENT OF COSTS:

In Circuit Court: Baltimore County

Record \$30.00
Stenographer's Costs NONE

In Court of Special Appeals:

Filing Record on Appeal \$ 30.00
Printing Brief for Appellant \$963.00
Reply Brief
Portion of Record Extract - Appellant
Printing Brief for Cross-Appellee

Printing Brief for Appellee \$154.88
Portion of Record Extract - Appellee
Printing Brief for Cross-Appellant

STATE OF MARYLAND, Set:

I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Court of Special Appeals.

In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Special Appeals, this third day of June A.D. 1981.

James E. Quisenberry
Clerk of the Court of Special Appeals of Maryland.

Costs shown on this Mandate are to be settled between counsel and NOT THROUGH THIS OFFICE.

IN THE MATTER OF THE APPLICATION OF F & S LIMITED PARTNERSHIP FOR REZONING FROM D.R. 5.5 to R-O

Zoning File No. R-83-63

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
AT LAW
15/64/83-M-29

OPINION

This is an appeal by F & S Limited Partnership from a decision of the County Board of Appeals concerning rezoning of property from D.R. 5.5 to R-O zoning. The property is located on the south side of West Chesapeake Avenue, 95 feet east of the center line of Florida Avenue in the 9th Election District.

On May 9, 1983, counsel for the parties were heard in open court and after reading the transcript, reviewing the exhibits, and in examining the conclusion reached by the Board upon the facts in this case, the Court does not find that the Board was erroneous in the interpretation and finding of fact and conclusions from the facts or any application of the law to the facts, as it had before it evidence legally sufficient to support its decision.

Therefore, the decision of the County Board of Appeals of Baltimore County is AFFIRMED.

May 10, 1983

William R. Buchanan, Sr.
William R. Buchanan, Sr.
JUDGE

Filed 5-12-83 11:01 AM
DB
10 SKM

FILED MAY 10 1983

In the
Court of Appeals
of Maryland

HOWARD L. FREY, et al.

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.

/s/ Robert C. Murphy
Chief Judge

Date: September 9th, 1981.

MANDATE

Court of Special Appeals of Maryland

No. 676, September Term, 19 83

F & S Limited Partnership

v.

People's Counsel for Baltimore County et al

February 10, 1984 - Per Curiam filed. Judgment affirmed. Costs to be paid by appellant.
March 12, 1984 - Mandate issued.

STATEMENT OF COSTS:

In Circuit Court: for Baltimore County

Record 30.00
Stenographer's Costs None

In Court of Special Appeals:

Filing Record on Appeal 30.00
Printing Brief for Appellant 681.60
Reply Brief
Portion of Record Extract - Appellant
Printing Brief for Cross-Appellee

Printing Brief for Appellee 124.80
Portion of Record Extract - Appellee
Printing Brief for Cross-Appellant

STATE OF MARYLAND, Set:

I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Court of Special Appeals.

In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Special Appeals, this Twelfth day of March A.D. 1984.

James E. Quisenberry
Clerk of the Court of Special Appeals of Maryland

Costs shown on this Mandate are to be settled between counsel and NOT THROUGH THIS OFFICE.

Feb. 16, 1982	Petition filed
Oct. 13, "	Hearing held on petition
Jan. 4, 1983	Order of the Board denying the petition
Jan. 19, 1983	Order for appeal filed in the Cir. Ct. by Harry S. Shapiro, Esq., on behalf of Petitioner (53-M-29)
Jan. 20, "	Certificate of Notice sent to interested parties
Feb. 9, 1983	Record of proceedings filed in the Circuit Ct. for Baltimore County
May 10	Board AFFIRMED - Judge Wm. R. Buchanan, Sr. cc: J. January J. Poswell
" 17	Order for Appeal filed in the Court of Special Appeals by Shapiro cc: January Haswell } 5/27
Feb. 10, 1984	Board AFFIRMED by Court of Special Appeals cc: A. January (2/13/84) J. Poswell
Mar. 12	Mandate filed
" 27	Petition for Writ of Certiorari filed
June 7	Writ of Certiorari DENIED by Court of Appeals

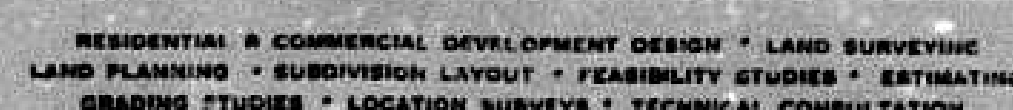
LT/24/JTC

WHZ/sz

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

BY ORDER OF
WILLIAM T. HACKETT, CHAIRMAN
COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

11-4-81



Wm. H. Zirman, Esq.
Howard L. Frey
John W. Hession, Esq.
Mrs. Mary Ginn

Harry S. Shapiro, Esq.

WILLIAM E. HAMMOND
Zoning Commissioner

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

DATE 10/10/83 COUNTY R-01-610-000

AMOUNT 2198.27

RECEIVED FROM F & S Limited Partnership
FOR Advertising & Posting Cash (R-03-63)

① 27000001002710 #100A

VALIDATION OR SIGNATURE OF CASHIER

3d. per phone call *order*
10/15/82

October 1, 1982

William T. Hackett, Chairman
County Board of Appeals
Room 215, Court House
Towson, Maryland 21204

Re: Case No. R-83-62
F&S Limited Partnership

Dear Mr. Hackett:

Responding to your letter of September 23, 1982, I would like the record to indicate that I have a pending homicide case titled, State vs Johnson, scheduled for trial before the Supreme Bench of Baltimore City and a jury in Baltimore on October 7. It is a three day case which is not likely to go that day because of the unusual backlog of cases. If I do not get reached until the following Monday, it will invariably spill over to October 13.

Also, on October 13, I have a civil jury case titled, Mayles vs GM, which does not present a problem because it will not go on the 13th.

I mention this to you because both of these matters were scheduled prior to the zoning matter, and because the Court of Appeals has set priorities for previously scheduled cases.

I would appreciate your taking this matter up with counsel for the Board. If a conflict does develop, I would appreciate your indicating the name of counsel for the Board so that I may have the presiding Judge contact him.

In the meantime, I will prepare this matter for hearing in the sincere hope that there will be no conflict and the hearing may proceed as scheduled.

Respectfully yours,

WILLIAM H. ZINMAN

WHZ/sz
CC: John W. Hessian, III, Esq.

September 23, 1982

William H. Zinman, Esquire
1123 Mumsey Building
Baltimore, Maryland 21202

Re: Case No. R-83-62
F & S Limited Partnership

Dear Mr. Zinman:

In regard to your request for a postponement of case No. R-83-62, the Board must deny this request. The property in question has been posted and duly advertised, and the Board has absolutely no way of knowing how many Protestants there are, or how much time, effort and money they may have expended in preparation for this case as scheduled. Since there is no way to contact any of these interested parties it is patently unfair to grant any postponements on reclassification cases. There have been occasions, because of extreme circumstances, in which the Board has granted a continuance of a case, but only in open hearing affording all interested parties the opportunity to become parties of record. The Board feels this would apply in the instant case.

For the reasons stated above, the Board will grant a continuance of this case but only in open hearing on the advertised and posted date, which is Wednesday, October 13, 1982 at 10 a.m.

Very truly yours,

William T. Hackett, Chairman

September 17, 1982

Honorable William T. Hackett, Chairman
County Board of Appeals
Old Court House
Towson, Maryland 21204

Re: Petition of F&S Limited
Partnership
Case # R-83-62, Cycle III,
Item #9

Dear Mr. Hackett:

Please be advised that on this date I received a notice of hearing scheduled for October 13, 1982 at 10:00 a.m. before the Board in the above captioned case.

I was promptly called by Mr. Harry S. Shapiro, one of the partners and also an attorney, who advised that he has a previously scheduled case that day, and suggested that I request a postponement.

As it turns out, I also have a jury trial scheduled for that week.

We contacted the Zoning Board and were tentatively advised that this matter could be postponed, but that somebody from my office should appear on the above date to make a formal request.

I would appreciate someone in authority contacting me regarding the postponement, and also scheduling this matter on a new date convenient to all parties.

Very truly yours,

WILLIAM H. ZINMAN

WHZ/sz
CC: People's Counsel
Harry S. Shapiro, Esq.

William H. Zinman, Esq.
1123 Mumsey Building
Baltimore, Md. 21202

Re: Case No. R-83-62
F & S Limited Partnership

Dear Mr. Zinman:

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,

John Holman, Secretary

Encl.

cc: Howard L. Frey
J. W. Hessian, Esq.
Mrs. Mary Ginn
W. Hammond
J. Dyer
N. Gerber
J. Howell
Bd. of Education

Baltimore County, Maryland

PEOPLE'S COUNSEL
RM. 223, COURT HOUSE
TOWSON, MARYLAND 21204

November 16, 1982

The Honorable
William T. Hackett, Chairman
County Board of Appeals
Room 200 Court House
Towson, Maryland 21204

RE: Petition for Reclassification, F&S
Limited Partnership - Case No.
R-83-62

Dear Mr. Hackett:

This is the response of the People's Counsel to the Memorandum of the Petitioner in the above case.

In the prior case of People's Counsel v. Howard Frey, No. 1352, September Term, 1980, the Court of Special Appeals held that there was no error in the 1976 comprehensive zoning of this subject property. There is nothing new in West Towson which calls for a different result on this repeat effort of Petitioner to challenge the 1980 comprehensive zoning designation of D.R. 5.5.

No amount of language can obscure the principal issue which is, and has been for a number of years, the appropriate line of demarcation between residential and office zoning. The precise line of demarcation remains a matter of legislative judgment. The D.R. 5.5 designation on the subject property was and is part of a justifiable effort of the County Council to preserve the residential character of an established neighborhood. The piecemeal reclassification of the subject property would again set off a potential chain reaction which could destroy community life.

The office zoning classification to which Petitioner aspires is now, of course, R-O, rather than the traditional D.R. 16 with special exception. This does not affect the question of error or change in the neighborhood. The area to the east and north of the subject property had generally been zoned D.R. 16 in recognition of the substantial number of residences converted to office use as well as the Chesapeake Building. According to the testimony of residents, many of the conversions referred to by Petitioner were based on past or existing special exceptions. Such additional conversion as may have occurred since 1980 within the R-O classification would be well understood and anticipated by the legislative body.

The Honorable
William T. Hackett, Chairman
County Board of Appeals

November 16, 1982

Turning more specifically to the legal criteria, we find, upon close examination of the testimony, that the only direct testimony on error came from James Haswell. He stated that the existing zoning is appropriate. He also made the obvious point that some additional office conversion in the nearby area zoned R-O does not involve a change in the character of the neighborhood from a planning perspective. In this context, Petitioner failed to cite any change pertaining to the established residential neighborhood which could possibly make "change" a viable issue.

As to Petitioner's contention that the property could be developed reasonably within the R-O classification, this amounts to no more than a "special exception-type" argument, similar to the argument made for D.R. 16 with a special exception in the previous case.

The bottom line is that Petitioner purchased the property for \$90,000 in 1979 with the understanding that it was zoned D.R. 5.5. The property continues in residential use. The church parking across the street (an apparent violation insofar as incidental to office use) remains unchanged. The inclusion of the Chesapeake Building driveway within the D.R. 5.5 classification involves a reasonable extension of the Central Avenue zoning line and, in any event, has not provoked any concern from the owners of that building. Contrary to Petitioner's suggestion, there was no admission of error on this or any other aspect of the case by Mr. Haswell.

The County Council in 1980 was well aware of the prior history of the property, including the then prevailing decision of the County Board of Appeals approving the D.R. 16 with special exception. The Council had the option to provide office zoning, whether or not Petitioner specifically requested it. The Council chose to include a substantial area (west of Basile Avenue) within the R-O classification, but drew the line at the subject property, among others. It was bound to go no further.

According to the established law, the legislative judgment was not in error. Howard County v. Dorsey, 293 Md. 351 (1982). Nor does the gradual development of office use in the area so zoned, both before and after 1980, involve such a change as would support a finding of a substantial change in the character of the neighborhood. Prince George's County Council v. Prestwick, Inc., 263 Md. 217 (1971).

Very truly yours,
Peter Max Zimmerman
Deputy People's Counsel

cc: William H. Zinman, Esquire
PMZ:sh

Baltimore County, Maryland

PEOPLE'S COUNSEL
RM. 223, COURT HOUSE
TOWSON, MARYLAND 21204

November 16, 1982

The Honorable
William T. Hackett, Chairman
County Board of Appeals
Room 200, Court House
Towson, Maryland 21204

RE: Petition for Reclassification, F&S
Limited Partnership - Case No.
R-83-62

Dear Mr. Hackett:

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The Honorable
William T. Hackett, Chairman
County Board of Appeals

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The bottom line is that Petitioner purchased the property for \$90,000 in 1979 with the understanding that it was zoned D.R. 5.5. The property continues in residential use. The church parking across the street (an apparent violation insofar as incidental to office use) remains unchanged. The inclusion of the Chesapeake Building driveway within the D.R. 5.5 classification involves a reasonable extension of the Central Avenue zoning line and, in any event, has not provoked any concern from the owners of that building. Contrary to Petitioner's suggestion, there was no admission of error on this or any other aspect of the case by Mr. Haswell.

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Very truly yours,
Peter Max Zimmerman
Deputy People's Counsel

cc: William H. Zinman, Esquire
PMZ:sh



Baltimore County, Maryland

PEOPLE'S COUNSEL
RM. 223, COURT HOUSE
TOWSON, MARYLAND 21204

JOHN W. HESSIAN, III
People's Counsel
PETER MAX ZIMMERMAN
Deputy People's Counsel

TEL 484-2188

November 16, 1982

The Honorable
William T. Hackett, Chairman
County Board of Appeals
Room 200, Court House
Towson, Maryland 21204

RE: Petition for Reclassification, F&S
Limited Partnership - Case No.
R-83-62

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The Honorable
William T. Hackett, Chairman
County Board of Appeals

November 16, 1982

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Very truly yours,
Peter Max Zimmerman
Deputy People's Counsel

cc: William H. Zinman, Esquire
PMZ:th

494-3180

County Board of Appeals

Room 219, Court House
Towson, Maryland 21204
January 20, 1983

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

Dear Mr. Hessian:

Re: Case No. R-83-63
F & S Limited Partnership

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 Holman, Secretary

Encl.
cc: Mrs. Mary Ginn
Board of Education
W. E. Hammond
J. E. Dyer
N. Gerber
J. Haswell

County Board of Appeals

Room 219, Court House
Towson, Maryland 21204
January 20, 1983

Harry S. Shapiro, Esq.
400 W. Penna. Ave.
Towson, Md. 21204

Dear Mr. Shapiro:

Re: Case No. R-83-63
F & S Limited Partnership

In accordance with Rule B-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 B-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 Holman, Secretary

Encl.
cc: W. H. Zinman, Esq.
Howard L. Frey

January 20, 1983

BILLED TO: Harry S. Shapiro, Esq.
400 W. Penna. Ave.
Towson, Md. 21204

Cost of certified documents filed
in Case No. R-83-63 \$ 18.00

F & S Limited Partnership
S/S west Chesapeake Ave. 95'
east of the center line of
Florida Ave.
9th District

MAKE CHECKS PAYABLE TO: Baltimore County, Maryland

REMIT TO: County Board of Appeals
Rm. 200, Court House
Towson, Md. 21204

494-3180

County Board of Appeals

Room 200, Court House
TOWSON, MARYLAND 21204

August 12, 1983

Mr. Julius A. Romano
Clerk of the Court of Special Appeals of Maryland
Annapolis, Maryland 21404

Re: F. & S. Limited Partnership
Circuit Court File 15/68/83-M-20

Dear Mr. Romano:

Please forward to this office a copy of the opinion in the above entitled case when it is filed by the Court of Special Appeals. We would appreciate it if you would note our request in your file on this case. Thank you.

Very truly yours,

Edith T. Eisenhart
Edith T. Eisenhart, Adm. Secretary

UNREPORTED IN THE COURT OF SPECIAL APPEALS OF MARYLAND

No. 676

September Term, 1983

F & S LIMITED PARTNERSHIP

v.

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY,
et. al.

Gilbert, C.J.
Alpert
Bell
JJ.

PER CURIAM

Filed: February 10, 1984

R-83-63

Rec'd 2-13-84
10:30 AM

Form 100
CIRCUIT COURT FOR BALTIMORE COUNTY
ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 Basley Avenue
P.O. Box 6734
Towson, Maryland 21204-0734
February 14, 1983.

RE: R-83-63 - F & S LIMITED PARTNERSHIP ET AL VS THE PEOPLE'S COUNSEL FOR BALTIMORE COUNTY ET AL
HEARING DATE: Monday, May 9, 1983, @ 9:30 a.m.
ON THE FOLLOWING: Appeals 14 June

THOSE RECEIVING OF THIS NOTICE: (Court shall contact each of them immediately to confirm attendance. Chair of any meeting shall be notified by return mail.)
JAMES E. ROMANO - 444-2880
Chief Assignment Commissioner
Circuit Court
JAMES E. ROMANO - 444-2880
James E. Romano, Esq.
Medical Records
JAMES E. ROMANO, Esq.
John V. Romano, III, Esq.
Peter Max Zimmerman, Esq.
Baltimore County Board of Appeals

SETTLEMENT CONFERENCE: All parties must secure the attendance of all parties necessary to effect a binding settlement, including claims and insurance representatives. THERE WILL BE NO EXCEPTIONS PER ORDER OF JUDGE FRANK E. CIONE. Please direct all inquiries to the attention of the Settlement Conference Office at 401 Basley Avenue, Towson, Maryland 21204-0734. (410) 326-7000.

SETTLEMENTS: If a settlement is reached prior to the hearing date, the Assignment Office must be notified immediately. All settlements must be put in the record if no order of satisfaction is filed prior to trial.

RECEIVED
BALTIMORE COUNTY
CIRCUIT COURT
FEB 15 10 54 AM '84
BY: COURT CLERK

The Baltimore County Board of Appeals denied F & S Limited Partnerships' (F & S) Petition for Zoning Reclassification of 307 West Chesapeake Avenue from D.R.5.5 (density residential) to R-0 (residential office.) The Circuit Court for Baltimore County affirmed.

On appeal, F & S asks us to consider (1) whether the court erred in affirming the Board's decision that the 1980 Land Use Map was not in error and that there was not a substantial change in the character of the neighborhood which would warrant a reclassification; and (2) whether the court erred in affirming the Board's decision to disallow certain testimony concerning information before the County Council. We hold the court did not err and affirm.

FACTS

307 West Chesapeake Avenue, located on the south side of West Chesapeake Avenue, lies between Florida Avenue on the west and Bosley Avenue on the east. The property is situated just west of the line between D.R.5.5 and R-0 zoning, comprises .16 acre, and is presently occupied by a residential dwelling. The residential neighborhood of West Towson lies to the west and south of the property. To the north is a church with a parking lot. To the east, the land consists primarily of dwellings converted into offices. The Chesapeake Building, a five story office building, is adjacent to the subject pro-

in classifying the property as D.R.5.5 in the Land Use Map of 1980, Mr. Frey was questioned about his conversation with Barbara Bachur, a council member. Mr. Frey stated:

I asked her if she was aware of the fact there was commercial parking across the street from our office building, and she indicated -

People's Counsel, representing Baltimore County, objected. The Board sustained the objection stating:

Mr. Frey has already testified that there was a church across the street that has a parking lot, and that this parking lot is commercially used.

Now he has testified that in the fall of 1981 he made this knowledge available to Miss Bachur.

If you want to tell us what Miss Bachur thought, did, or knew about, you are going to have to bring her in because the fact is now he has testified as to the existence of the church and parking lot and commercial use, and he has made this knowledge available to Miss Bachur.

William H. Baldwin, a real estate appraiser, related to the Board that the subject property was in poor condition when purchased by F & S and that F & S had engaged in extensive renovation of the property. In his opinion, the neighborhood had changed in character from a predominately residential area to an area consisting primarily of offices.

Ronald DiLorenzo, past president of Southland Hills Community Association, and Mary Ginn, president of West Towson

I. Land Use Map - Character of Neighborhood

F & S contends the trial court did not address the issues presented before the Board of Appeals, but merely affirmed the Board's conclusions that there was no error in the Land Use Map of 1980; and that there was not a substantial change in character of the neighborhood so as to warrant rezoning. F & S admits that if the Board was correct in sustaining the objection to Frey's testimony about information before the County Council, then the Board did not err in concluding the Land Use Map of 1980 was not in error. See Issue II, *infra*. F & S maintains, however, that the Petition should not have been denied because its evidence of change in the character of the neighborhood was uncontroverted by any legally sufficient evidence produced at the hearing.

To sustain a reclassification, there must be strong evidence of mistake in the comprehensive zoning map or evidence of substantial change in the character of the neighborhood. *Anne Arundel County v. Maryland National Bank*, 32 Md. App. 437, 361 A.2d 134 (1976). A finding of substantial change in the character of the neighborhood or a mistake in zoning merely permits the legislative body to grant the requested zoning, but does not require it to do so. *Hardesty v. Dunphy*, 259 Md. 718, 271 A.2d 152 (1970). The burden of demonstrating change or mistake is always upon the applicant. *Agneslane v.*

Section 22-21(a) et seq. This Court in *Coppolino v. County Board of Appeals of Baltimore Co.*, 23 Md. App. 358, 328 A.2d 55 (1974), upheld the presumption in favor of this system because:

the system will enhance the stability and permanence of zoning classifications by assuring that the majority of zoning classifications are determined in accordance with a carefully integrated plan of development, based upon a full understanding of the present and future needs of a broad area, rather than a piecemeal review of a limited scope. 23 Md. App. at 369-370.

Judge Davidson, in *Boyce v. Sembly*, 25 Md. App. 43, 334 A.2d 137 (1975), comprehensively set out the standard for the court's review of evidence upon which the Board based its decision regarding the zoning map:

It is presumed ... 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 ... Thus, unless there is probative evidence to show that there were then existing facts which the Council, in fact, failed to take into account, or a subsequently occurring event which the Council could not have taken into account, the presumption of validity

9.

b. Change in Character of Neighborhood

Since there was no error in the Land Use Map of 1980, to obtain reclassification, F & S was required to show that there was a substantial change in the character of the neighborhood after adoption of the map. Md. Code (1978 Repl. Vol.) Art. 66B §4.05(a). Even if there is some significant evidence of substantial change, the change does not compel a rezoning absent probative evidence that no reasonable use can be made of the property in its current zoning classification. *Prince George's County v. Prestwick*, 263 Md. 217, 228, 282 A.2d 491 (1971); *Wright v. McCubbin*, 260 Md. 11, 271 A.2d 365 (1970).

F & S submitted evidence of recent office development near the subject property, but it failed to prove that a reasonable use of the property could not be made in its current zoning classification. Although the property is run-down, it is currently rented to a student, and the firm has made no effort to sell the building. Furthermore, some of the evidence produced by F & S to illustrate a change in the character of the neighborhood consists of conversions of residential property to office property either pursuant to a special exception under the prior D.R.16 zoning or pursuant to the new R-0 zoning. These conversions do not represent a sufficient change in the character of the neighborhood to warrant a rezoning because, as the Court of Appeals recognized in

11.

bers and other city officials may not testify as to the motives actuating council action, as recorded in its minutes, nor may they testify as to what was intended or meant by an adopted measure.

The record reveals that the Board permitted Howard Frey to describe the information he related to the council members; the Board properly limited Frey's description of the council member's reaction to what he told her. To admit such testimony would have invaded the legislative province.

JUDGMENT AFFIRMED.

COSTS TO BE PAID BY APPELLANT.

F & S LIMITED PARTNERSHIP

In the
Court of Appeals
of Maryland

v.

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY et al.

Petition Docket No. 64

September Term, 1984

(No. 676, September Term, 1983
Court of Special Appeals)

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of
and the answer filed thereto,
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.

/s/ Robert C. Murphy
Chief Judge

Date: June 7, 1984

7.

Court of Appeals of Maryland PETITION DOCKET

No. 64 September Term, 1984

F & S LIMITED PARTNERSHIP
v.
PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY et al.

Harry S. Shapiro, Esq.
Attorney for petitioner
Peter Max Zimmerman, Esq.
Attorney for respondent

Date: March 27, 1984

STATE OF MARYLAND, ss:
Receipt is hereby acknowledged of a petition for writ of certiorari filed in the above
entitled case.

Alexander L. Cummings
Clerk
Court of Appeals of Maryland

perty on the east.

Prior to 1980, office development in residential areas was authorized as a special exception under the D.R.16 zoning classification. In 1980, at the time the Comprehensive Zoning Map process was being completed, the R-0 classification replaced the D.R.16 special exception. It established more specific standards for the development of offices in residential areas.

The basic issues before the County Board of Appeals under the Petition for Reclassification were: (1) was there error in the Land Use Map of 1980; and (2) was there a change in the character of the neighborhood in question since the Land Use Map of 1980?

For purposes of this appeal, the testimony and evidence before the Board of Appeals can be briefly summarized as follows:

F & S Partnership produced evidence through its general partner, Howard L. Frey, to demonstrate the change in character of the surrounding neighborhood. He informed the Board that a high rise office building existed directly adjacent to the subject property; that the subject property had undergone extensive restoration; and that various surrounding properties were presently being utilized as offices. During his testimony relating to the alleged error by the Council

Neighborhood Association appeared to protest the reclassification. They both testified that it was the desire of their particular association to maintain the integrity of the residential character of the neighborhood and to resist any further encroachment. DiLorenzo acknowledged that people parked at the church and at the Masonic Lodge, but stated they had a "contribution-type system" where they donated "X" amount of dollars to the non-taxable organization for the use of the parking lot.

James Hoswell, a planner for Baltimore County also related that he observed no substantial change in the character of the neighborhood. He believed the D.R.5.5 zoning was appropriate.

The County Board of Appeals denied the Petition for Reclassification stating:

The Board believes that the County Council, in 1980, was aware of this property's history ... and ... chose not to provide office zoning for the subject property. The County Council chose to establish the line of demarcation between residential and office zoning as the Chesapeake Building Driveway, a point of particular concern to the Petitioner. This Board cannot state, and does not believe, the evidence demonstrates that the legislative judgment of the County Council was in error or that the character of the neighborhood has substantially changed.

The Circuit Court for Baltimore County affirmed.

Lucas, 247 Md. 612, 233 A.2d 757 (1967). The applicant must present sufficient evidence to overcome the strong presumption of correctness accorded to original and comprehensive zoning. Stratakis v. Beauchamp, 268 Md. 643, 304 A.2d 244 (1973). A decision of the zoning board based upon substantial evidence will be deemed "fairly debatable" and a court will not then substitute its judgment for that of the zoning board, even if the court would have reached a different decision on the same evidence. Montgomery County v. National Capital Realty Corp., 267 Md. 364, 297 A.2d 675 (1972); Eger v. Stone, 253 Md. 533, 253 A.2d 372 (1969). The 'fairly debatable' test is analogous to the 'clearly erroneous' standard applied under Md. Rules 886 and 1086. Sedney v. Lloyd, 44 Md. App. 633, 410 A.2d 616 (1980). In an appeal non-jury, from the circuit court, the Court of Special Appeals may only reverse if it finds the trial court 'clearly erroneous'.

The issue before this Court is therefore whether the trial court was clearly erroneous in affirming the Board's determinations. Considering the evidence before us, and applying the above principles to the facts of this case, we hold the court did not err.

a. Land Use Map

The Baltimore County Council is required to adopt a county-wide zoning map every fourth year. Baltimore County Code,

accorded to comprehensive zoning is not overcome and the question of error is not 'fairly debatable'. ... (Emphasis supplied).

24 Md. App. at 51-52.

In this case, the subject property and the surrounding areas were considered in the 1980 map process. It was within the Council's discretion to decide that the line of demarcation should remain the same as it was in 1976, with the substitution of R-0 for D.R.16 zoning. Dahl v. County Board of Appeals of Baltimore County, 258 Md. 157, 265 A.2d 227 (1970). The County Council classified the subject property as D.R.5.5 in 1976 and reaffirmed that classification in 1980. The determination is presumed correct unless F & S proved the Council failed to take into account existing facts. Boyce v. Sombly, supra. F & S attempted to produce testimony to indicate the Council was mistaken in the use of the church property, and that the Council erred in establishing the line between D.R.5.5 zoning and R-0 zoning at the Chesapeake Building. As will be discussed in Issue II, infra, this testimony was properly precluded. The testimony produced by F & S was not sufficient to overcome the presumption of correctness which attaches with the adoption of a comprehensive zoning map by the County Council. Thus, there was not sufficient evidence of mistake to warrant the trial court substituting its judgment for that of the Board.

Prince George's County v. Prestwick, supra.

the development of an area along the lines contemplated in the original comprehensive zoning is not such a change as would support the finding of a substantial change in the character of the neighborhood. 263 Md. at 228.

The court was correct in not substituting its judgment for that of the Board because there was substantial evidence that a reasonable use could still be made of the property under D.R.5.5 zoning.

II. Testimony concerning information before County Council

F & S proffered testimony, through Howard Frey, which allegedly would have revealed that the County Council was mistaken about the use of the church property; and that the Council erred in establishing the line between D.R.5.5 and R-0 zoning at the Chesapeake building. The Board sustained the county's objection to the testimony. The circuit court affirmed.

The testimony was properly precluded because inquiry into the state of mind and motivations of a member of the legislative body is not permitted. The Court of Appeals in Montgomery County Council v. District Land Corp., 274 Md. 691, 337 A.2d 712 (1975), set forth the rule on p. 705:

As a general rule, the motives, wisdom, or propriety of a municipal governing body are not subject to judicial inquiry. ... In addition, individual council men-

CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY Towson, Maryland

R 83-63

District 9th Date of Posting September 24, 1982
Posted for: Reclassification
Petitioner: F & S Limited Partnership
Location of property: 25 W. Chesapeake Avenue, 9.5' E. of the intersection of Florida Road
Location of Sign: On front of 307 West Chesapeake Avenue
Remarks:
Posted by: A. Q. Smith Date of return: October 1, 1982
Number of Signs: 1

PETITION FOR RECLASSIFICATION
9th Election District
ZONING: Petition for Reclassification
LOCATION: South side of W. Chesapeake Avenue, W. E. East of the intersection of Florida Road
DATE & TIME: Wednesday, October 13, 1982 at 10:00 A.M.
PUBLIC HEARING: Room 215, Courthouse, Towson, Maryland
The County Board of Appeals for Baltimore County, by authority of the Baltimore County Charter will hold a public hearing: Public Hearing: Room 215, Courthouse, Towson, Maryland
Present Zoning: D.R. 5.5
Proposed Zoning: R-0
All that parcel of land in the Ninth District of Baltimore County beginning for the same at a point on the south side of West Chesapeake Avenue, 80 feet wide, at the distance of 36 feet more or less from the easterly side of the south side of West Chesapeake Avenue South 74 Degrees 21 Minutes East 120.00 feet thence leaving the south side of West Chesapeake Avenue South 74 Degrees 21 Minutes East 120.00 feet thence leaving the south side of West Chesapeake Avenue South 74 Degrees 21 Minutes East 120.00 feet thence leaving the south side of West Chesapeake Avenue South 74 Degrees 21 Minutes East 120.00 feet to the place of beginning.
Containing 0.16 acres of land, more or less.
Noting the property of F & S Partnership, as shown on plat filed with the Zoning Department, Hearing Date: Wednesday, October 13, 1982 at 10:00 A.M.
Public Hearing: Room 215, Courthouse, Towson, Maryland.
By Order of:
WILLIAM T. HACKETT,
Chairman
County Board of Appeals of Baltimore County
Sept. 22.

CERTIFICATE OF PUBLICATION

TOWSON, MD., September 23, 1982

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~~ at one time ~~before~~ before the 13th day of September, 1982, the 23rd publication appearing on the 23rd day of September, 1982.

THE JEFFERSONIAN
D. Leach Simpson
Manager.

Cost of Advertisement, \$.....

IN THE COURT OF SPECIAL APPEALS OF MARYLAND

SEPTEMBER TERM, 1983

NO. 675

F & S LIMITED PARTNERSHIP,
Appellant
v.

BOARD OF APPEALS OF BALTIMORE COUNTY, et al.,
Appellees

APPEAL FROM THE CIRCUIT COURT
FOR BALTIMORE COUNTY
(WILLIAM R. BUCHANAN, SR., Judge)

APPELLEE'S BRIEF AND APPENDIX

JOHN W. HESSIAN, III
People's Counsel for
Baltimore County
PETER MAX ZIMMERMAN
Deputy People's Counsel
Room 223, Court House
Towson, Maryland 21204
Attorneys for Appellee

BALTIMORE COUNTY, MARYLAND OFFICE OF FINANCIAL & REVENUE DIVISION MISCELLANEOUS CASH RECEIPT		DATE: Jan. 31, 1983 AMOUNT: \$12.00 No. 85116	
RECEIVED BY: Henry S. Smith, Esq., 400 W. Penna. Ave. (21204) FOR: Certified Documents, Case No. R-83-63, F & S Limited Partnership		DATE: March 23, 1982 AMOUNT: \$20.00 No. 109828	
RECEIVED BY: F & S Limited Partnership FOR: Filing Fee for F & S Limited Partnership Re-0/16 DATE: 11/11/82		DATE: March 23, 1982 AMOUNT: \$1.65 No. 109828	



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IN THE
COURT OF SPECIAL APPEALS
OF MARYLAND

SEPTEMBER TERM, 1983

NO. 576

F & S LIMITED PARTNERSHIP,

Appellant

v.

BOARD OF APPEALS OF BALTIMORE COUNTY, et al.,

Appellees

APPEAL FROM THE CIRCUIT COURT
FOR BALTIMORE COUNTY
(WILLIAM R. BUCHANAN, SR., Judge)

APPELLEE'S BRIEF AND APPENDIX

STATEMENT OF THE CASE

On January 4, 1983, the County Board of Appeals of Baltimore County denied Appellant's petition for piecemeal zoning reclassification from D.R. 5.5 (density residential) to R-O (residential-office). (E. 121) The Circuit Court for Baltimore County on May 10, 1983 affirmed.¹

¹The Opinion is not reproduced in our copy of the Appellant's Brief and Appendix; it is, therefore, included in the Appendix to this brief. (App. 1)

The present petition involves a challenge to the action of the County Council for Baltimore County in the 1980 Comprehensive Zoning Map process. The Court of Specials had occasion to consider the same property in a challenge by the same Petitioner in a case involving the 1976 Comprehensive Zoning process. The Petitioner has referred to that case in its presentation to the County Board of Appeals and to the courts. So that there is no misunderstanding, a copy of the Opinion in the case entitled People's Counsel for Baltimore County v. Howard L. Frey, et al., No. 1352, September Term, 1980, is included in the Appendix to this brief. (App. 2)

QUESTIONS PRESENTED

1. Whether the Circuit Court was right to affirm the denial by the County Board of Appeals of a petition for piecemeal zoning reclassification where there was substantial evidence to support the administrative finding that the comprehensive zoning was not in error and provided a reasonable use for the property, that there was no change in the character of the neighborhood, and that the land use issues presented, involving the demarcation of residential and office use in West Towson, were properly matters of legislative judgment to be addressed in the countywide comprehensive zoning process?

2. Whether the Board of Appeals properly sustained objections when Petitioner attempted to probe the motives and state of mind of the legislature; whether, in so doing, the Board was correct to limit the Petitioner to showing what information was provided to any County Council members? Whether, assuming arguendo any error, it was harmless in view of the entire record?

STATEMENT OF FACTS

The property in question lies on the south side of Chesapeake Avenue, between Florida Road on the west and Bosley Avenue (a six-lane Towson bypass) on the east (E. 121)² The address is 307 West Chesapeake Avenue.

It is situated just west of the line between D.R. 5.5 and R-O zoning, comprises .16 acre and is occupied by an attractive colonial dwelling.

To the west, north and south lies the traditional residential neighborhood of West Towson. The dwelling at the corner of Chesapeake and Florida neighbors to the west. To the north is a church with its parking lot.

To the east toward Bosley, the newer land use is primarily light office, with dwellings converted previously by special exception or under R-O process. The Chesapeake Building, a five-story office building established by some quirk in the zoning past of Baltimore County, deviates from the character of the neighborhood.

The subject property is the closest residential neighbor of the Chesapeake Building. The contiguity of these two properties has understandably been a focus of attention.

The County Council, with a number of comprehensive zoning issues in West Towson in 1980, was familiar with the neighborhood. The legislative judgment was to maintain the area west of the Chesapeake Building in low-density residential zoning, including the subject property.

²The area is shown on the "1000' scale" zoning map accompanying the Planning Board recommendation. (E. 116-17) The subject property is cross-hatched.

In this context, it is helpful to explain the evolution of legislation on office zoning in Baltimore County and its impact on West Towson. Prior to 1960, the legislature had authorized offices as special exceptions under the D.R. 16 (density residential) classification. A review of the prior Court of Special Appeals decision reflects the previous line of demarcation between the part of West Towson closest to Bosley Avenue and the residential neighborhood to the west zoned for lower density.

In 1980, the new R-O classification was enacted, by Bills 13-80 and 167-80, establishing more specific standards and procedures for development of offices in residential areas. At the same time, the office special exception under D.R. 15 was eliminated. These enactments, particularly the latter, were concurrent with the concluding stages of the 1980 Comprehensive Zoning Map process. It was obvious, in view of the new classification scheme, that some adjustment would have to be made to the existing D.R. 5.5 - D.R. 16 zoning pattern in West Towson. The logical response was to take the area zoned D.R. 16 and place it into the new R-O classification, preserving the D.R. 5.5 zoning in the residential area, so that the line of demarcation simply divided the D.R. 5.5 from the R-O. This was, in fact, done.

The Petitioner's Case

Howard Frey, one of the partners sponsoring Petitioner's proposed office development, gave his description of the area, remarked on the poor condition of the property when purchased in 1979, and commented on the earlier zoning case. (E. 1-9) He said that a student was currently renting it, and that it was not attractive as a family home. (E. 9-10) He added that he had made no effort to sell the building. (Ibid.)

Frey then testified that he told one of the County Council members, Barbara Bachur, that there was commercial parking at the church across the street, and, separately, that the immediately adjacent driveway was split between D.R. 5.5 and R-O. At the same time, the Board sustained the objection to testimony concerning Mrs. Bachur's response on the ground that it invaded the area of legislative motivation. (E. 10-16)

Frey further claimed that there was a change in the character of the neighborhood because many houses had been converted into office use under the R-O guidelines. (E. 17-41) He produced a number of photographs, and commented on each one in turn. (Ibid.) On cross-examination, he acknowledged that the purchase price for the property was approximately \$90,000, and the property is currently leased. (E. 42-43) He did not know how many people were living there, but he was aware of a complaint that the property was being used as a boarding house. As to the house next door to the west, Frey acknowledged that it was occupied by a family. (E. 47)

The next witness, William H. Baldwin, a real estate man, brought up-to-date the examination he had begun in the earlier petition case. (E. 48-55) He commented on the conversion of properties to office use under the R-O zoning, as well as the use of part of the church parking space for commercial use, which was "totally illegal." In his view, there was a substantial change in the neighborhood because of the conversion of buildings on Highland Avenue to office use. On cross-examination he acknowledged that those properties on Highland Avenue were developed in accordance with the R-O classification enacted by the County Council in the 1980 Map process. (E. 52-53)

People's Counsel's Case

Ronald DiLanardo, immediate Past President of the Southland Hills Community Association, and a resident on Dixie Drive, outlined the boundaries of this well known West Towson

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"community of approximately 226 homes." (E. 56-57, 62) After confirming that the subject site is included in this area, he said,

"...behind it is residential homes going down Florida, which is all residential; and to the west of the residential homes, if you go all the way down Chesapeake, it is all residential with the exception of the Temple, which is over two blocks.

"The community itself, and the community association have been in existence for forty-two years, and it has been maintained, the integrity of the residential community, for that time." (E. 52-63)

He recognized the existence of "offices across from our neighborhood to the north, and accepted that existence as it is today," but was opposed to the "encroachment of office improvements" in the well-defined residential area. (E. 53)

Then, in great detail, DiLanardo controverted Frey's claims of change. He particularly addressed the office use which Frey had identified as R-O at 503 W. Chesapeake, in Southland Hills, as being a home occupation, properly there under D.R. 5.5. (E. 66) He also describe the compatible use of the Towson Presbyterian Church, along with the light office parking in the area behind the church and to the north zoned R-O. In giving his main point of objection to the request for reclassification, he said,

"You know, if 307 is allowed to be an office, why not 309, and on down the road that way and go on back down Florida.

"Pretty soon you don't have a community anymore. (E. 67)

* * * * *

"It is just a matter of you got to draw the line somewhere, and this is where we draw the line.

"We have been fighting this thing hard for the last three years, and every time we win, we still have to fight harder.

"I am here to say that we will continue to fight because it is a strong neighborhood community, and it has its integrity; and we want to maintain that integrity." (E. 68)

Mary Ginn, a longtime resident and President of the West Towson Neighborhood Association, followed DiLanardo and itemized a great number of errors in the testimony produced by Petitioner. (E. 81-85)

The thrust of her testimony was that the area to the north zoned R-O included a number of light residential office uses which predated the 1980 comprehensive zoning and did not intrude into the recognized Southland Hills community. She also identified the two office conversions in process in the R-O zone, both of which involved moderate renovations subject to County control.

Turning to the residential character of the West Towson neighborhood, including Southland Hills, she concluded:

"It is an old community. They have been paying taxes for a long time.

"Speaking for everyone in the community, we feel that our rights have to be observed too, our right to live in peace and quiet and harmony." (E. 85)

A fair review of their testimony shows merely that an area of primarily light residential office use exists to the north and east of Southland Hills. The County Council has recognized this area by providing R-O zoning (previously D.R. 16, with permitted special exceptions for office use) and drawing the zoning line which runs along Highland Avenue and then across to Central Avenue and down. Otherwise stated, there is a strong residential community to one side of this line, and a light residential office community to the other.

James Hoewell, the County Planner, was "familiar with the property for quite some time." (E. 96) He testified unequivocally that D.R. 5.5 zoning is appropriate and provides for reasonable use of the property, and further described the specific consideration of the site in 1980 by the County Council. (E. 96-101)

He put to rest the concern expressed over the location of the zoning line extending down from Central Avenue through the center of the alley used as a driveway for the adjacent office building, (E. 101-03) and particularly addressed the claim of "change" in the neighborhood, (E. 103-06) concluding,

"THE WITNESS: As a planner, my professional opinion is that there has been no change in the neighborhood.

"Q (By Mr. Zimmerman) What is that based on?

"A The designation of R-O properties, of the application of the then new R-O zone to a series of individual properties that were zoned D.R. 16, many of which were already in office use, the application of D.R. 16 zone in 1976 for those same properties provided for that at that time by special exception office usage.

"Some of the conversions have been converted under the new R-O regulations. Some of the conversions that are attested to were converted by the plans that were -- or zoning that was approved by special exception.

"Surely the application of the R-O zone in 1980 envisions the usage of the R-O zone, an office use with certain conditions and criteria permitted in the R-O zone.

"The application of the R-O zone, I assume, means that uses permitted in the R-O zone would be expected to be there or to go there.

"I don't see the utilization of the zone placed there by Council as change in the neighborhood from the 1980 map.

"I find that rather preposterous."

The Petitioner has unfairly taken Hoswell's cross-examination (E. 106-110) out of context and claimed that he "dodged" the issue and "deviated from the truth."

The Board of Appeals' Opinion

The County Board of Appeals had before it the Planning Board recommendation and accompanying map (E. 116-17); evidence that the property was specifically addressed by

the County Council; testimony from the Petitioner, neighboring Protestants, and the County Planning Staff; and briefs. After a careful review, the Board concluded,

"The Board believes that the County Council, in 1980, was aware of this property's history, including the prior decision of this Board and..., notwithstanding said knowledge, chose not to provide office zoning for the subject property. The County Council chose to establish the line of demarcation between residential and office zoning at the Chesapeake Building driveway, a point of particular concern to the Petitioner. This Board cannot state, and does not believe, the evidence demonstrates that the legislative judgment of the County Council was in error or that the character of the neighborhood has substantially changed."

On appeal to the Circuit Court, the judge found that the administrative decision was reasonable and based on "legally sufficient" evidence. (App. 1)

ARGUMENT

- I. THE CIRCUIT COURT WAS RIGHT TO AFFIRM THE DENIAL BY THE COUNTY BOARD OF APPEALS OF A PETITION FOR PIECEMEAL ZONING RECLASSIFICATION WHERE THERE WAS SUBSTANTIAL EVIDENCE TO SUPPORT THE ADMINISTRATIVE FINDING THAT THE COMPREHENSIVE ZONING WAS NOT IN ERROR AND PROVIDED A REASONABLE USE FOR THE PROPERTY, THAT THERE WAS NO CHANGE IN THE CHARACTER OF THE NEIGHBORHOOD, AND THAT THE LAND USE ISSUES PRESENTED, INVOLVING THE DEMARCATION OF RESIDENTIAL AND OFFICE USE IN WEST TOWSON, WERE PROPERLY MATTERS OF LEGISLATIVE JUDGMENT TO BE ADDRESSED IN THE COUNTYWIDE COMPREHENSIVE ZONING PROCESS.
- II. THE BOARD OF APPEALS PROPERLY SUSTAINED OBJECTIONS WHEN PETITIONER ATTEMPTED TO PROBE THE MOTIVES AND STATE OF MIND OF THE LEGISLATURE; IN SO DOING, THE BOARD WAS CORRECT TO LIMIT THE PETITIONER TO SHOWING WHAT INFORMATION WAS PROVIDED TO ANY COUNTY COUNCIL MEMBERS. ASSUMING ARGUENDO ANY ERROR, IT WAS HARMLESS IN VIEW OF THE ENTIRE RECORD.

- I. In Boyce v. Sembly, 25 Md. App. 43, 51-52, 334 A.2d 137, 143 (1975), Judge Rita Dr. 'dson comprehensively set out the basis for the Court's review of the evidence upon which the Board based its decision:

...

"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. Bonnie View Club, *supra*, at 242 Md. 48-49, 52, 217 A.2d 649, 651 (mineshaft and subsurface rock formation); by adducing testimony on the part of those preparing the plan that then existing facts were not taken into account, Overtan, *supra* at 225 Md. 216-17, 170 A.2d 174-75 (topography); 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, Jobar Corp., *supra*, at 236 Md. 115-17, 202 A.2d 617-18 (need for apartments). See Rohde, *supra*, at 234 Md. 267-68, 179 A.2d 221. 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 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.'

Moreover, in reviewing the evidence before the Board, it must also be noted that the opinion or conclusion of an expert or lay witness is of no greater probative value than that warranted by the soundness of his underlying reasons or facts. Surkovich v. Doub, 258 Md. 263, 272, 265 A.2d 447, 451 (1970); Anderson v. Sawyer, 23 Md. App. 512, 513, 329 A.2d 716, 720. The Court of Appeals and this Court have stated that an opinion, even that of an expert, is not evidence strong or substantial enough to show error in a comprehensive rezoning unless the reasons given by the witness as the basis for his opinion, or other supporting facts relied upon by him, are themselves substantial and strong enough to do so. Stratakis, *supra*, at 268 Md. 655, 304 A.2d 250; Cappolino v. County Board of Appeals of Baltimore County, 23 Md. App. 358, 371-72, 328 A.2d 55, 62 (1974)...." Id. at 50-53.

As to the scope of judicial review of the administrative decision in a reclassification case, the Court succinctly stated in Jobar v. Rodgers Forge, 235 Md. 106, 120, 202 A.2d 512, 520 (1964),

"It is only where there is no room for reasonable debate or where the record is devoid of substantial, supporting facts that the courts are justified in reversing a decision of the Board or declaring its actions arbitrary or capricious."

The provisions of Title 22 of the Baltimore County Code require that the County Council adopt a "complete county-wide zoning map" every fourth year. See Section 22-21(a), *et seq.* So far as our research and experience have disclosed, this County is unique among political subdivisions because of the short period of time between comprehensive zoning map reviews. Under this format, the County Council can - and does - rechart the course of the comprehensive maps to meet newly perceived trends or needs every fourth year, in a process which conjoins and coordinates the Capital Budget, the Master Water and Sewer Plan, the State Highway Commission's annually revised construction projects, and the myriad of other detail pertaining to utilities, highways, and other necessary services appertinent to major zoning classification, that is necessary for calm, rational and effective placement of major zones. Judge Davidson has separately underlined the strong presumption in favor of this system in Cappolino v. County Board of Appeals of Baltimore County, 23 Md. App. 358, 369-70, 328 A.2d 55, 61 (1974):

"We see nothing in the 'cyclical' zoning scheme adopted by the Council which impels a modification of this rule. The fact that comprehensive rezoning may occur in Baltimore County with greater frequency than has been the case in the past does not alter the fact that it will result from careful study of changes occurring in wide areas and an assessment of future public needs and purposes. Indeed, in our view, the system will enhance the stability and permanence of zoning classifications by assuring that the majority of zoning classifications are determined in accordance

with a carefully considered integrated plan of development, based upon a full understanding of the present and future needs of a broad area, rather than upon a piecemeal review of limited scope."³

In the present case, the subject property and surrounding area were in issue in the 1930 Map process. The character of the West Towson residential neighborhood and the continuing controversy attending the control of office development west from Bosley Avenue came again to the Council's attention. The judgment was then made that the line of demarcation should remain the same, with the substitution of R-O for the previously existing D.R. 16 area.

The Petitioner here has again claimed that the rezoning of the subject property to R-O might provide a logical buffer, but such judgments necessarily involve the exercise of legislative discretion. Dahl v. County Board of Appeals of Baltimore County, 258 Md. 157, 164, 263 A.2d 227, 231 (1970). "Zoning inevitably involves the drawing of lines...." Montgomery County v. Pleasants, 266 Md. 462, 467, 295 A.2d 215, 219 (1972). Moreover, even the rezoning of an adjoining property would not require the rezoning of the property under consideration. Messenger v. Board of County Commissioners, 259 Md. 693, 703, 271 A.2d 166, 171 (1970).

At the same time that Petitioner failed to show any error, the testimony of DiLonardo, Ginn and Hoswell demonstrated that the existing zoning is appropriate and provides for a reasonable use, and that the request for R-O raises a genuine specter of "domino effect." There was certainly nothing in the record to warrant a departure from the zoning pattern

³The petition process is now codified in Section 2-58.1 of the Baltimore County Code (1978, 1991 Supp.).

recognized in 1976 and maintained in 1980.

In an effort to differentiate the prior rezoning case, the Petitioner devoted considerable attention to the issue of "change in the character of the neighborhood." But this claim rested on the false premise that there had been recent office development of properties to the north zoned R-O since 1980. It turned out that most of the properties were either home occupations, or special exceptions acquired under residential zoning before 1980. None of them affected the residential character of West Towson. And the couple of residential office conversions to the north were in accordance with the 1980 comprehensive zoning. It is settled that such development does not, as a matter of law, constitute a "change in the neighborhood" to support administrative rezoning. As the Court of Appeals put it, in Prince George's Co. v. Prestwick, 263 Md. 217, 228, 282 A.2d 491 (1971),

"This Court has frequently recognized that the development of an area along the lines contemplated in the original comprehensive zoning is not such a change as would support the finding of a substantial change in the character of the neighborhood."

Petitioner has furthermore neglected the statement of the Court of Appeals in that same case that proof of substantial change in the neighborhood would not, in any event, compel the Board of Appeals to rezone the property. Citing the earlier decision in Wright v. McCubbin, 260 Md. 11, 271 A.2d 363 (1970), Judge Finan underlined, at page 228:

"* * * Even if there had been some significant evidence of substantial change in the character of the neighborhood it is established that change which would support a rezoning does not compel it absent probative evidence that no reasonable use can be made of the property in its current zoning classification."

Petitioner also has neglected to mention that the existing zoning provides for an adequate and reasonable use of the property. Stratakis v. Beauchamp, 268 Md. 643, 304 A.2d 244 (1973).

Frey reluctantly admitted that Petitioner willingly purchased the property for \$90,000 and that it was currently under lease. Moreover, the D.R. 5.5 zoning classification provides for a number of potential uses, including home occupation.

Mary Ginn testified that residences in West Towson have appreciated in recent years, so that \$120,000 is a typical price. The Petitioner, therefore, got a good price and apparently had the idea that it is more profitable to use the property for other than the purposes of the existing zoning. As Judge Smith stated, in Cabin John Ltd. Partnership v. Montgomery County Council, 259 Md. 661, 271 A.2d 174 (1970),

"if that were the criterion of confiscation, zoning restrictions would collapse like a house of cards."

II. Petitioner further complains that the Board failed to permit testimony pertaining to "admissions" of one member of the County Council. But such testimony, however characterized, is objectionable because it invades the state of mind and motivation of a member of the legislative body. Montgomery County Council v. District Land Corp., 274 Md. 691, 337 A.2d 712 (1975); Mears v. Town of Oxford, 52 Md. App. 407, 413, 449 A.2d 1165 (1982), Footnote 3. A careful review of the record shows that Howard L. Frey, a partner, was allowed to describe the contentions which he made to the member, but was properly limited in describing her reaction. In any event, Petitioner made no proffer as to what was intended to be proven, and failed to suggest the nature of any "admission." There is no cause, therefore, for distraction from the main point, the prerogative of the County Council, as a body, to exercise its legislative function.

POSTSCRIPT

After completion of the body of this brief but before printing, the Court of Special Appeals' decision in Cardon Investments v. Town of New Market, No. 1704, September Term, 1982, Reported, was filed. The decision reiterates the Maryland case law on zoning error and contains a particularly thorough review of the law on change in the character of the neighborhood. The finding there was that "evidence of road building, available sewage facilities and extensions of commercial zoning since 1971" did not warrant a finding of "such a change in the character of the neighborhood that it requires the rezoning." (Slip Opinion, page 21) The suggested extensions of office zoning in the present case are certainly no better than those referred to in New Market. Indeed, the record here shows but the limited extension of office zoning since 1980, a development to be anticipated in the area designated for office use. In New Market, the development since 1971 of additional public facilities and commercial uses appears to have been more substantial. The bottom line principle in both cases is the same, that "change" is a zoning term of art which is not to be confused with the mere physical fact of land development under existing law.

CONCLUSION

For the foregoing reasons, the Orders of the Circuit Court dated May 10, 1983, and the County Board of Appeals dated January 4, 1983, should be affirmed, and the petition for zoning reclassification of the subject property in this case denied.

Respectfully submitted,

JOHN W. HESSIAN, III
PETER MAX ZIMMERMAN

Attorneys for Appellees

App. 1

IN THE MATTER OF THE APPLICATION • IN THE CIRCUIT COURT
OF F & S LIMITED PARTNERSHIP
FOR REZONING FROM D.R. 5.5 to • FOR BALTIMORE COUNTY
R-0

Zoning File No. R-83-63

AT LAW

• 15/64/83-M-29

OPINION

This is an appeal by F & S Limited Partnership from a decision of the County Board of Appeals concerning rezoning of property from D.R. 5.5 to R-0 zoning. The property is located on the south side of West Chesapeake Avenue, 95 feet east of the center line of Florida Avenue in the 9th Election District.

On May 9, 1983, counsel for the parties were heard in open court and after reading the transcript, reviewing the exhibits, and in examining the conclusion reached by the Board upon the facts in this case, the Court does not find that the Board was erroneous in the interpretation and finding of fact and conclusions from the facts or any application of the law to the facts, as it had before it evidence legally sufficient to support its decision.

Therefore, the decision of the County Board of Appeals of Baltimore County is AFFIRMED.

May 10, 1983



William R. Buchanan, Sr.
JUDGE

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UNREPORTED

IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1352

September Term, 1980

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY

v.

HOWARD L. FREY, ET AL.

Liss
Wilner
Weant,

JJ.

PER CURIAM

Filed: May 4, 1981

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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 8, 1976?"

The standards which control our review of this case have been stated often. See Boyd v. Boyd, 42 Md.App. 527 (1979), Boyd 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

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

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.

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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

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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

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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 ten 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

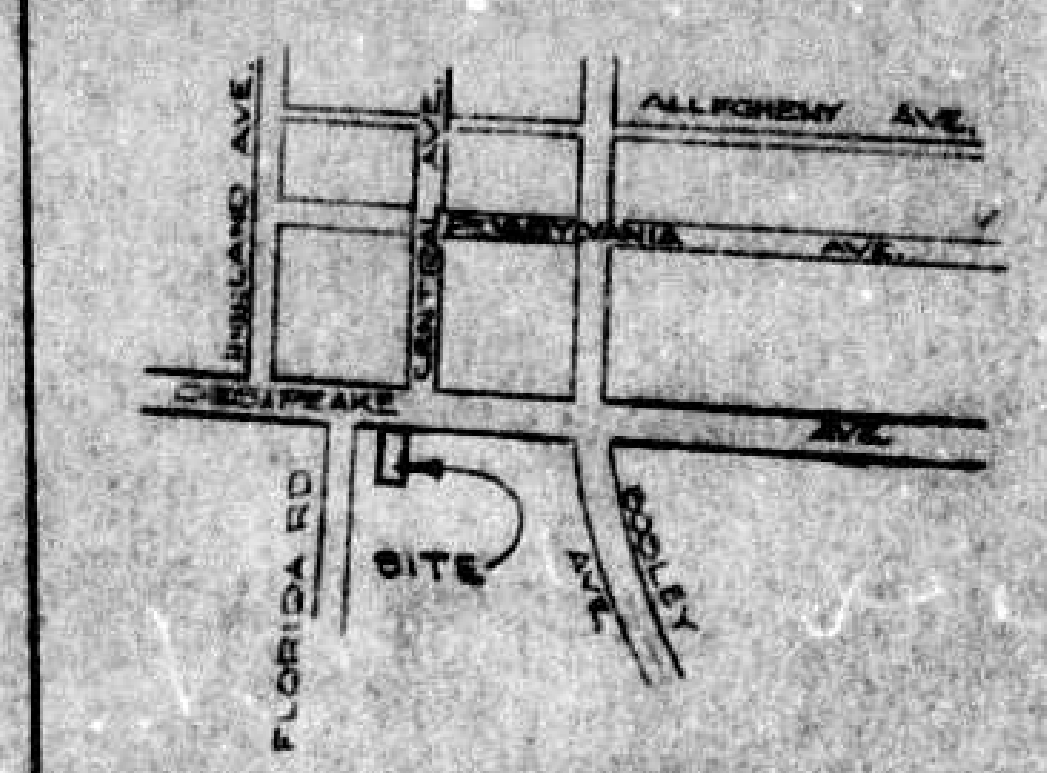
Appeals found so compelling. ^{APP. 9} Obviously, the Council had found these same facts less persuasive. That the Board disagreed with the Council's conclusion and believed that a buffer zone would be more appropriate does not mean that the Council made a "mistake," as that term is traditionally defined.¹ Boyce v. Sarnby, 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.

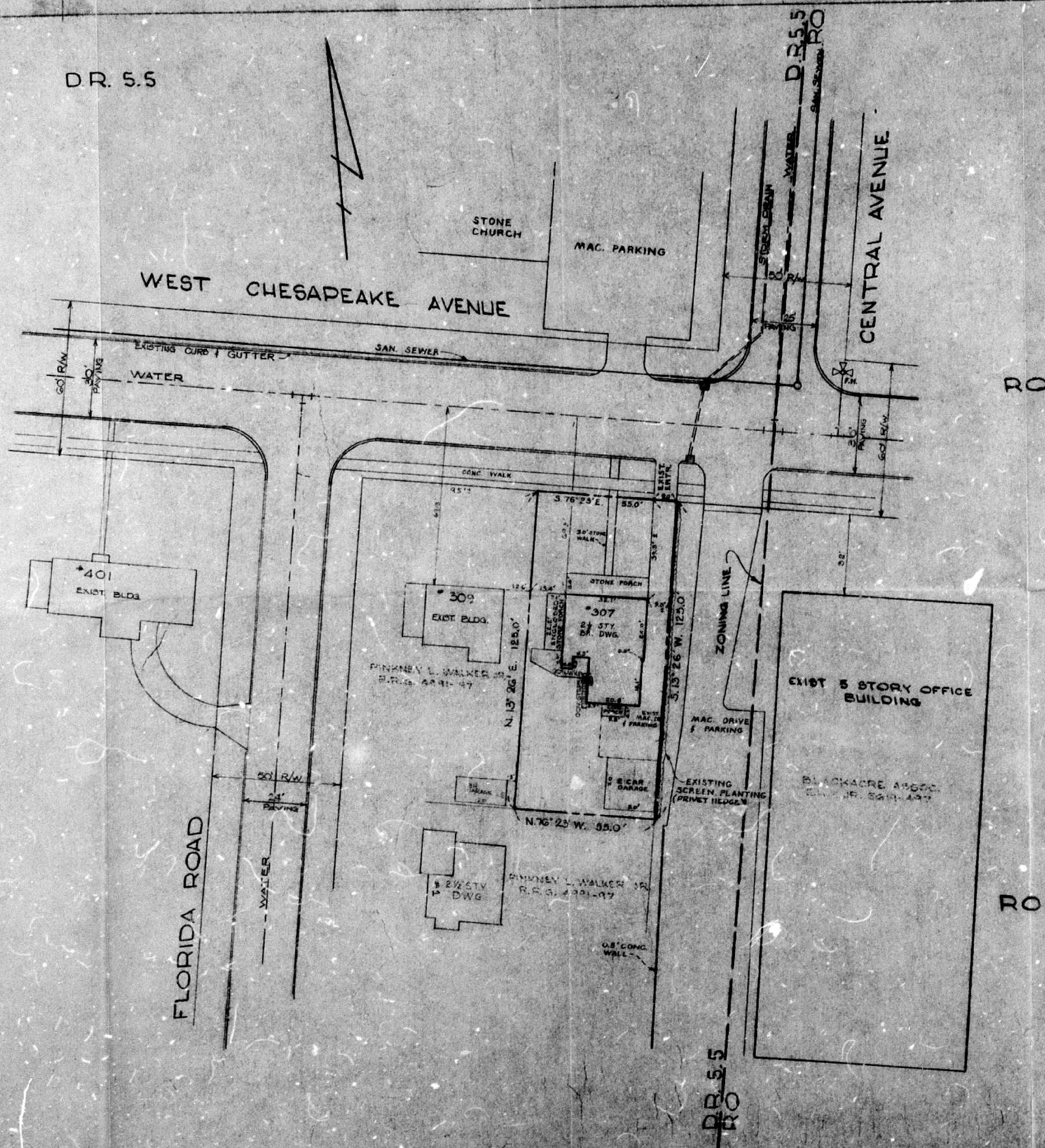
JUDGMENT REVERSED; CASE REMANDED FOR ENTRY OF AN ORDER REVERSING THE DECISION OF THE COUNTY BOARD OF APPEALS; APPELLEES TO PAY THE COSTS.

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 "cure" occupancy permit.

D.R. 5.5



VICINITY MAP
SCALE: 1" = 500'



GENERAL NOTES

EXISTING ZONING: D.R. 5.5
PROPOSED ZONING: R.O.
EXISTING USE: DWELLING

D.R. 5.5

R.O.

PLAT FOR
REZONING
307 W. CHESAPEAKE AVE.
9TH ELECTION DISTRICT
BALTIMORE COUNTY, MARYLAND
SCALE 1"=20' FEB. 12, 1982

John W. G. Gable III



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