

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 RO zone to an BL 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

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:

RECEIVED
BALTIMORE COUNTY
MAY 31 12 03 PM '83
COUNTY BOARD
OF APPEALS

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: CLIFTON TRUST BANK
(Type or Print Name)
c/o John A. Farley, Jr., Esq.
Address
400 Allegheny Avenue
Towson, MD 21204
City and State

Legal Owner(s):
LEROY M. MERRITT
(Type or Print Name)
[Signature]
Signature
(Type or Print Name)
Signature

Attorney for Petitioner:
S. ERIC DINENNA
(Type or Print Name)
[Signature]
Address
406 W. Pennsylvania Avenue
Towson, MD 21204
City and State

1940 Rumton Road
Address Phone No.
Baltimore, MD 21204
City and State
Name, address and phone number of legal owner, contract purchaser or representative to be contacted
S. ERIC DINENNA
Name
406 W. Pennsylvania Avenue 825-1630
Address Phone No.

Attorney's Telephone No.: 825-1630

BABC-Form 1

RE: PETITION FOR RECLASSIFICATION: BEFORE THE COUNTY BOARD OF APPEALS
from RO to BL Zone
N/S Joppa Rd. 71.50' W from
Centerline of Drumwood Rd.,
9th District
Case No. CR-83-193 (Sub 6, Cycle IV, 1982)
LEROY M. MERRITT, Petitioner

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 John W. Hession, III
Peter Max Zimmerman John W. Hession, III
Deputy People's Counsel People's Counsel for Baltimore County
Rm. 223, Court House
Towson, Maryland 21204
494-2186

I HEREBY CERTIFY that on this 25th day of January, 1983,

a copy of the foregoing Order was mailed to S. Eric DiNenna, Esquire and S. Eric DiNenna, P.A., 406 W. Pennsylvania Avenue, Towson, Maryland 21204, Attorney for Petitioner and Contract Purchaser.

[Signature]
John W. Hession, III

IN THE MATTER OF
PETITION FOR RECLASSIFICATION
N/E corner of Joppa Road
and Mylander Lane
LEROY M. MERRITT,
Petitioner
BEFORE THE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
MEMORANDUM OF LAW

The Petitioner, Leroy M. Merritt, and the contract purchaser of the subject property, Clifton Trust Bank, by S. Eric DiNenna and S. Eric DiNenna, P. A., their attorneys, respectfully request a reclassification for the above captioned subject property from an RO Zone to a BL Zone.

The property contains 0.524 acres of land, more or less, is located at the N/E corner of Joppa Road and Mylander Lane, in the 9th Election District of Baltimore County.

The Petitioners wish to submit this Petition pursuant to Bill 46-79 with specific plans showing the building, parking, etc.

The reasons for error are as follows:

1. That the subject property, during the classification and map process of 1980 was considered an issue, but the County Council erred classifying the property in the RO Zone because of the size of the property, the economic feasibility or development in the RO Zone because of the size and location, the extensive availability of office space in the general vicinity and more specifically, directly across Joppa Road from the subject property.

The Petitioner proposes, according to the plans submitted, a one story bank with drive-in facility and pursuant to Bill 46-79, and if granted by this Honorable Board, would be limited to that use.

For the above reasons the Petitioner is requesting a reclassification from a RO Zone to a BL Zone.

Respectfully submitted,

[Signature]
S. ERIC DINENNA
S. ERIC DINENNA, P. A.
406 W. Pennsylvania Avenue
Towson, Maryland 21204
825-1630
Attorneys for Petitioners

-2-

BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353
WILLIAM E. HAMMOND
ZONING COMMISSIONER

April 8, 1983

S. Eric DiNenna, Esquire
406 W. Pennsylvania Avenue
Towson, Maryland 21204

Re: Petition for Conditional Reclassification
N/S of Joppa Rd., 71.50' W from the
c/l of Drumwood Rd.
Leroy M. Merritt - Petitioner
Case No. CR-83-193 Cycle IV - Item #6

Dear Mr. DiNenna:

This is to advise you that \$359.76 is due for advertising and posting of the above property.

Please make the check payable to Baltimore County, Maryland, and remit to Arlene January, Zoning Office, Room 113, County Office Building, Towson, Maryland 21204, before the hearing.

Very truly yours,

[Signature]
WILLIAM E. HAMMOND
Zoning Commissioner

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 117604
DATE: 5/9/83 ACCOUNT: R-01-615-000
AMOUNT: \$359.76
RECEIVED: Clifton Trust Bank
FOR: Advertising & Posting Case (CR-83-193)
(Leroy M. Merritt)
6 66100003507510 8095A
VALIDATION OR SIGNATURE OF CASHIER

March 22, 1983

S. Eric DiNenna, Esquire
406 W. Pennsylvania Avenue
Towson, Maryland 21204

NOTICE OF HEARING
Re: Petition for Conditional Reclassification
N/S of Joppa Rd., 71.50' W from the c/l of
Drumwood Road
Leroy M. Merritt - Petitioner
Case No. CR-83-193 Cycle IV - Item #6

TIME: 10:00 A.M.
DATE: Tuesday, April 19, 1983
PLACE: Room 218, Courthouse, Towson, Maryland

cc: People's Counsel

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

Mrs. Ralph K. Chisworth
8694 Drummond Road
Towson, Maryland 21204

4/27/83

Mr. William Hackett
County Board of Appeals
Room 218
Court House
Towson, Maryland 21204

Dear Mr. Hackett:

I sincerely hope that my information is correct in that Mr. Leroy M. Merritt's petition to have N/S of Joppa Road, 71' W. of Drumwood Rd. zoned B.L. has not been recommended.

If it has, my husband and I strongly protest this move. We live 2 houses in from Joppa at Drumwood and even now with the current situation we are constantly being unnerved by the screaming of brakes and the crash of accidents. We even helped one person to the hospital in the ambulance. Can one possibly conceive of the additional traffic if (as we fear) a drive-in bank is added to this corner? (or anything for that matter) Mr. Merritt seems to have had his share of success so far with his property. Help us to save some semblance of gracious living in our village by denying the greed which usually precedes the downfall of those things we hold precious in our lives.

Sincerely,

[Signature]
Ralph K. Chisworth

Rec'd 4-27-83
11:45 am

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 107988
DATE: 5/1/83 ACCOUNT: 01-162
AMOUNT: \$100.00
RECEIVED: [Signature]
FOR: [Signature]
6 66100003507510 8095A
VALIDATION OR SIGNATURE OF CASHIER

APR 1 1983

8616 Drumwood Rd
Towson, Md. 21204
April 27, 1983

County Board of Appeals
Room 219 Court House
Towson, Md. 21204
Dear Sir,

I am writing to protest
the change in zoning for
the following property -
owner - Leroy M. Merritt
location NIS of Joppa Rd
71' W. of Drumwood Rd
Election district 9

This property is now
zoned RO and I would
like to see it remain
that way.

Any change would
cause increased traffic
on Drumwood + Joppa Rds.

This would also disturb
the neighbor in Loch Raven
Village.

Please do not approve
a zoning change - Keep
this property R.O.

Thank you.

Sincerely,
Anna Gancart

Rec'd 4-28-83
11:45 am

Mr. William Hackett
County Board of Appeals
Room 219 Court House
Towson, Md. 21204
Dear Mr. Hackett:

April 27, 1983

Re: Retaining Existing zoning (R.O.)
Regarding the change in zoning of property on
Joppa Road at Mylander Lane, heard very much
opposed to changing the existing zoning from
R-O to B-1 Commercial Light.
It is a corner that is accident prone due
to the amount of traffic on Joppa and
the street entering Joppa Road at this point.
Traffic from Bunkley, turning so round,
the new building back of existing building
of Bunkley, and the building of Joppa
Mylander back of Joppa Road building.
It would also demolish the homes on Joppa
Road and the streets running south from
Joppa.

I sincerely hope you and the Planning Board
will thoroughly study the situation
before taking action on changing the
zoning of this property.

PS - What about
parking? That is
quite a problem
now.

Respectfully yours,
Anna B. Gancart
Margaret E. Amoschew
Barbara D. Amoschew
Owners of above property.

Rec'd 4-28-83
12 NOON
HAND DELIVERED

County Board of Appeals
Mr. William Hackett

4-28-83

In reference to the change of
zoning in the vacant property on
Joppa Rd and Mylander Lane, my
concern is traffic hazard. We live
just 3 houses in off Joppa Rd. Have
seen a good many accident - road
our ally - road only from 3:30 on to
4:30 P.M. and coming out of that
entirely - especially going east with
more traffic - seems to us, could be
dangerous. Hope this has been considered
at this time of day - when people are
getting off from work - Thank you

The Dammers
Lena Dahl
8622 Drumwood Rd
(21204)

Rec'd. 3:30 p.m. 4/28/83

Rec'd. 4/27/83 - J.H.
William Hackett
County Board of Appeals

Warren Beaman
1407 East Joppa Rd
Towson, Md.
April 26, 1983

Mr. Hackett:
I am opposed to the rezoning
of the property at Joppa Rd and
Mylander Lane. Because of the
traffic congestion and it is already
a dangerous corner even with the
traffic lights. At the present time
there is about an accident a month
at this location. Cars running up
on intersection, knocking down sign
post.

It will also greatly reduce the
value of property on the south
side of Joppa Road on the Loch
Raven Village area.

a resident
for 21 years

Sincerely
Warren Beaman

L. P. KOLAKOWSKI
1405 E. JOPPA ROAD
BALTIMORE, MARYLAND 21204

April 25, 1983

Mr. William Hackett
County Board of Appeals
Room 219 - Court House
Towson, Maryland 21204

Re: CR-83-193

Dear Mr. Hackett:

I have recently been informed of a
proposal to rezone the property at Joppa
Road and Mylander Lane. My family and I
have lived at our present address for over
twenty years and are of the opinion that
a rezoning would not be to our best interest.
First it's our contention that there is al-
ready too much traffic on Joppa Road and
our property value would seriously be
affected by such a move.

Further, it is our feeling that area
safety, esthetics and community unity would
be impacted.

Sincerely,
L. P. Kolakowski

Rec'd. 4/27/83 - J.H.

Mr. Hackett
Board of Appeals
Rm 219 Court House
Towson, Md. 21204

April 26, 1983
Re: CR-83-193

Gentlemen:

I strongly object to the building of any
business on the above referenced land site.
It will increase traffic on an already very
busy corner. It will also increase the
possibility of more accidents. In addition,
the building of a bank is even more
ridiculous since there are at least 3 banks
within a mile - Equitable in Endowment Plaza,
Barabaldi on Loch Raven + Joppa, Maryland National
on Joppa Ave and Carrollton on Joppa Road.

The removal of the island on the corner
of Joppa + Drumwood will add to the hazards
of that corner making it very difficult to
get on to Joppa Road from Drumwood. In
the past it has prevented more serious accidents
from occurring by stopping a car out of control.

On the above basis I wish to enter my
objection. I am against the rezoning from RO to BL.

Michael P. Kolanowski
1401 East Joppa Road -
Towson, Md. 21204

Rec'd. 4/27/83 - J.H.

To: William Hackett
County Board of Appeals
Room 219, Court House
Towson, Maryland 21204
Case - CR-83-193

Leroy M. Merritt
Joppa Rd. W. Drumwood
Reclass. RO to BL

We, Residents of Loch Raven Village
strongly protest to the reclassification
from RO to BL of the above mentioned
property -- CASE # CR-83-193.

We object to the following reasons:
1) traffic would increase creating safety hazard
2) value of our property would decrease
3) removal of island would increase traffic hazard.
4) Availability of vacant business
zoned area where property could be utilized
within 3 or 4 blocks of Joppa + Mylander Rds.

1. Donald H. Beaman 1401 E. Joppa Rd.
2. Michael H. Beaman 1401 E. Joppa Rd.
3. Ralph K. Beaman 1401 E. Joppa Rd.
4. Robert L. Beaman 1403 E. Joppa Rd.
5. William R. Beaman 1403 E. Joppa Rd.
6. Helen Beaman 1401 E. Joppa Rd.
7. Warren Beaman 1401 E. Joppa Rd.
8. James Alban 1401 E. Joppa Rd.
9. M. Kathleen Alban 1401 E. Joppa Rd.
10. Edith M. Alban 1401 E. Joppa Rd.
11. E. M. Alban 1401 E. Joppa Rd.
12. M. Kathleen Alban 1401 E. Joppa Rd.

RECEIVED
APR 27 1983
12:23 PM
JH

Mr. Hackett
County Board of Appeals
Room 219 - Court House
Towson, Maryland 21204
Re: CR-83-193
Attention - Mr. William Hackett

1407 East Joppa Road
Towson, Md. 21204
April 25, 1983

Rec'd. 4/27/83 - J.H.

Dear Sir:
My husband and I wish to enter an
objection to the rezoning of the property at the
corner of Joppa Road and Mylander Lane.

We have lived here for 30 years and
expect to stay here as we are retired. Since
moving here, we have witnessed various
changes such as widening Joppa Road, the
addition of Endowment Shopping Center and
the Executive Plaza of business buildings, not
to mention Luskins and other stores plus
another shopping center with Data Processing
business to the back of the houses across the
road from us. The traffic situation is
such that I do believe it is safer to ease
the beltway instead of Joppa Road. While
still employed, one could not go into Joppa

IN THE MATTER OF
PETITION FOR RECLASSIFICATION
W/E Corner of Joppa Road
and Mylander Lane
LEROY M. MERRITT,
Petitioner
Case No.: CR 83-193

SUBMONS

MR. CLERK:
Please issue for the following witness to testify for the
Petitioner in the above entitled matter.

RICHARD MOORE
Baltimore County Department of
Traffic Engineering
Towson, Maryland 21204

DUCE TACUM - To appear and bring any and all notes,
memorandum or recommendations concerning Item #6 Cycle IV, Case
No.: CR 83-193, N/S of Joppa Road 71.50' W from the c/l of
Drumwood Road.

MAKE SAME RETURNABLE for Tuesday, the 19th of April, 1983
at 10:00 A.M. before the Board of Appeals of Baltimore County,
Court House, Towson, Maryland 21204.

S. ERIC DINENNA
S. ERIC DINENNA, P.A.
406 W. Pennsylvania Avenue
Towson, Maryland 21204
825-1630
Attorneys for Petitioner

TO BE ISSUED BY PRIVATE PROCESSOR

IN THE MATTER OF
THE APPLICATION OF
LEROY M. MERRITT
FOR REZONING
FROM R-O to B.L.
N/S of Joppa Road 71.50'
W. from c/l of Drumwood Road
9th District
Zoning File No.: R-83-193

ORDER FOR APPEAL

MR. CLERK:
Please set on appeal to the Circuit Court for Baltimore
County from the Opinion and Order of the County Board of Appeals
of Baltimore County, under date of July 1, 1983, denying a zoning
reclassification of the subject property from an R-O zone to a
B.L. zone.

S. ERIC DINENNA
S. ERIC DINENNA, P. A.
406 W. Pennsylvania Avenue
Towson, Maryland 21204
825-1630
Attorneys for Appellant

I HEREBY CERTIFY that on this 26 day of July, 1983, a copy
of the foregoing Order for Appeal was served on the Administrative
Secretary of the County Board of Appeals of Baltimore County, Rm.
200, Courthouse, Towson, Maryland 21204; and that a copy thereof
was mailed to John W. Hession, III, Esquire, People's Counsel
for Baltimore County, Rm. 223, Courthouse, Towson, MD 21204.

S. ERIC DINENNA

Received:
Edith F. Eisenhart
Administrative Secretary
Board of Appeals of Baltimore County

IN THE MATTER OF
THE APPLICATION OF
LEROY M. MERRITT
FOR REZONING
FROM R-O to B.L.
N/S of Joppa Road 71.50'
W. from c/l of Drumwood Road
9th District

BEFORE
COUNTY BOARD OF APPEALS

OF
BALTIMORE COUNTY

No. R-83-193

OPINION

This case comes before this Board on a petition for reclassification from R-O
to B.L. for a parcel of property located on the north side of Joppa Road 71.50' feet west of
Drumwood Road, in the Ninth Election District of Baltimore County. The case was heard
this day, April 19, 1983, in its entirety.

Testimony presented this day indicated that the requested zoning was
necessary so that the contract purchaser of the site could construct a branch bank building
on the site for which he submitted specific plans for this use. This site was on issue on
the 1980 Comprehensive Map process at which time the B.L. zoning was requested, but at
that time the County Council afforded the site the present R-O classification. The
Board in this opinion will only briefly summarize the testimony received and will otherwise
let the record speak for itself.

C. Richard Moore, Assistant Traffic Engineer for Baltimore County, testified
that the proposed use would not create any significant traffic problems as many normal uses
create more traffic than the proposed use as a bank. Brian D. Jones, a civil engineer,
testified that he prepared all the plans for this petition and described same. John A.
Farley, Jr., Chairman of the Board of the Clifton Trust Bank, testified as to the need for a
bank in this area and his firm's awareness that the specific plans presented must be adhered
to strictly. Frederick P. Klaus, a real estate expert, testified as to the need for the
commercial zoning and described the neighborhood in detail. Two of the residents in
nearby homes also testified in favor of the use of this parcel as a branch bank rather than
an office building, as is permitted under the present zoning. This concluded Petitioner's
case.

IN THE MATTER OF
THE APPLICATION OF
LEROY M. MERRITT
FOR REZONING
FROM R-O to B.L.
N/S of Joppa Road 71.50'
W. from c/l of Drumwood Road
9th District
Zoning File No.: R-83-193

PETITION ON APPEAL

Leroy M. Merritt, Petitioner below and Appellant herein,
by his attorneys, S. Eric Dinenna and S. Eric Dinenna, P. A., in
compliance with Maryland Rule B-2(d) files this Petition on
Appeal setting forth the grounds upon which this Appeal is
taken:

1. That the decision of the Board of Appeals to refuse to
reclassify the subject property was arbitrary, capricious and
not based on substantial and legally competent evidence.
2. That the County Council in the course of the 1980
Comprehensive Rezoning Process, provided an inappropriate zoning
classification on the subject property and did not provide for
a reasonable use.
3. The Board of Appeals in its Opinion and Order erroneously
set forth the facts as presented to the Board at the time of
hearing.

WHEREFORE, your Petitioner prays that the Order of the
Board of Appeals dated July 1, 1983 be reversed and the B.L.
Zone Petition be granted.

AND AS IN DUTY BOUND, etc.,

S. ERIC DINENNA
S. ERIC DINENNA, P. A.
406 W. Pennsylvania Avenue
Towson, Maryland 21204
825-1630
Attorneys for Appellant

Leroy M. Merritt
Case No. R-83-193

Opposition to this petition was presented by James Howell, Planner
for Baltimore County, and Ronald Baranski, a resident of the area. Mr. Howell testified
that the R.O. zoning provided a reasonable use of the property and that the requested
B.L. zoning would be spot zoning because of the proximity of the DR 5.5 homes directly
abutting this site. Mr. Baranski, who resides at 1401 E. Joppa Road, directly across
the street from the subject site, also testified in opposition to the requested rezoning.
He noted other banks in the general area and felt no need for another. He also expressed
his fear of the traffic increase the bank would generate. The Board would also note the
large number of letters in the case file from nearby residents opposing this petition.

The Board will note in this Opinion, that it is well aware that the
parcel does exist with R.O. zoning assigned to it, that by way of Special Exception a
rather large Class "B" office building could be erected as of right and that use of the
parcel for a branch bank does not seem to be totally objectionable. However, to impose
B.L. zoning on this one parcel, when DR 5.5 homes abut it, would seem to be spot zoning
and could well lead to future problems. The County Council had this same issue before it
and assigned the parcel R.O. zoning, which provides a reasonable use for the parcel
when the DR 5.5 homes are considered. The Board is bound by legislation to grant
reclassification only when there has been substantial change in the neighborhood or
error by the County Council in the zoning assigned a parcel during the Comprehensive Map
process. In this case, the Board can find no error in the R.O. zoning assigned this
parcel and will so Order.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 1st day
of July, 1983, by the County Board of Appeals, ORDERED that the Petition for Reclassifi-
cation of the subject site from R.O. to B.L. be and the same is DENIED.

I HEREBY CERTIFY that on this 26 day of July, 1983, a copy
of the foregoing Petition on Appeal was served on the
Administrative Secretary of the County Board of Appeals of
Baltimore County, Rm. 200, Courthouse, Towson, Maryland 21204;
and a copy was mailed to John W. Hession, III, Esquire, People's
Counsel for Baltimore County, Rm. 223, Courthouse, Towson,
MD 21204.

Received:

Edith F. Eisenhart
Administrative Secretary
Board of Appeals of Baltimore County

Leroy M. Merritt
Case No. R-83-193

Any appeal from this decision must be in accordance with Rules B-1 thru
B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett
William T. Hackett, Chairman

Leroy M. Merritt
Leroy M. Merritt

Keith S. Franz
Keith S. Franz

IN THE MATTER OF
THE APPLICATION OF
LEROY M. MERRITT
FOR REZONING
FROM R-O to B.L.
N/S Joppa Rd., 71.50' W.
from c/l of Drumwood Rd.
9th District
Zoning File No. R-83-193

IN THE
CIRCUIT COURT

FOR
BALTIMORE COUNTY

AT LAW

Misc. Doc. No. 15

Folio No. 298

File No. 83-M-263

CERTIFICATE OF NOTICE

Mr. Clerk:
Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Proce-
dure, William T. Hackett, Leroy M. Merritt, and Keith S. Franz, 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,
Leroy M. Merritt, 1940 Ruxton Rd., Towson, Md. 21204, Petitioner; S. Eric Dinenna, Esq.,
406 W. Pennsylvania Ave., Towson, Md. 21204, Counsel for Petitioner; Clifton Trust
Bank, c/o John A. Farley, Jr., Esq., 400 Allegheny Ave., Towson, Md. 21204,
Contract Purchaser; Ronald Baranski, 1401 E. Joppa Road, Towson, Md. 21204, and
John W. Hession, 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.

John W. Hession
County Board of Appeals of Baltimore County
Rm. 200, Court House, Towson, Md. 21204
Phone 494-3180

Rec'd 7/26/83
10:40 am

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to Leroy M. Merritt, 1940 Ruxton Rd., Towson, Md. 21204, Petitioner; S. Eric DiNenna, Esq., 406 W. Pennsylvania Ave., Towson, Md. 21204, Counsel for Petitioner; Clifton Trust Bank, c/o John A. Farley, Jr., Esq., 400 Allegheny Ave., Towson, Md. 21204, Contract Purchaser; Ronald Baronski, 1401 E. Joppa Rd., Towson, Md. 21204, and John W. Hession, Esq., Court House, Towson, Md. 21204, People's Counsel for Baltimore County, on this 28th day of July, 1983.

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

IN THE MATTER OF
THE APPLICATION OF
LEROY M. MERRITT
FOR REZONING FROM
R-O TO B.L.
N/S of Joppa Rd., 71.50'
W from Centerline of
Drumwood Rd., 9th District
Zoning File No. R-83-193

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
AT LAW
Misc. 15/298/83-M-263

ANSWER TO PETITION ON APPEAL

The People's Counsel for Baltimore County, Protestant below and Appellee herein, answers the Petition on Appeal heretofore filed by the Appellant, viz:

1. That the Appellee denies the allegations made and contained in the first through third paragraphs 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.

AND AS IN DUTY BOUND, etc.,

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

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

I HEREBY CERTIFY that on this 2nd day of August, 1983, a copy of the foregoing Answer to Petition on Appeal was delivered to the Administrative Secretary, County Board of Appeals, Rm. 200, Court House, Towson, MD 21204; and a copy mailed to S. Eric DiNenna, Esquire, and S. Eric DiNenna, P.A., 406 W. Pennsylvania Ave., Towson, MD 21204.

Peter Max Zimmerman
Peter Max Zimmerman

IN THE MATTER OF
THE APPLICATION OF
LEROY M. MERRITT
FOR REZONING
FROM R-O TO B.L.
N/S of Joppa Road 71.50'
W. from c/l of Drumwood Road
9th District
Zoning File No.: R-83-193

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
Misc. 15/298/83-M-263

APPELLANT'S MEMORANDUM

Leroy M. Merritt, Petitioner below and Appellant herein, pursuant to Maryland Rule 812, files this Memorandum:

BACKGROUND

Petitioner request reclassification of 0.534 acres of land, more or less, located at the northeast corner of Joppa Road and Mylander Lane 71.50' west from the centerline of Drumwood Road in the Ninth District from an R-O zone to a B.L. zone. Pursuant to Section 2.58.1 (1) and (m) of the Baltimore County Code, 1978, as amended, the Appellant proposes a one story bank, not to exceed 2,400 square feet with a drive-in facility. Pursuant to the County Code, development of the land in question would be limited to that use, if granted. The County Council had designated the subject site in a R-O zone in the 1980 county wide map adoption. Following an evidentiary hearing, the County Board of Appeals denied Petitioner's petition for reclassification of the subject site from R-O to B.L. zoning.

The property is located on the northeast corner of Joppa Road and Mylander Lane and is shown, cross-hatched on the attached 1,000' scale zoning map.* This area of Towson includes a mix of land use and zoning. As the Planning Board observed to the west of the subject site on both sides of Joppa Road are non-residential

* The accompanying map (1"=1000') is attached

uses of M.L. - I.M. zoned land. To the east and south (across Joppa Road) of the subject site are residential areas classified in the D.R. 5.5 zone and D.R. 10.5 zone respectively.

In denying the rezoning, the Board of Appeals relied heavily upon the testimony offered by James Hoswell, Planner for Baltimore County and Ronald Baronski, a resident of the area. It also referred to a large number of letters received from nearby residents opposing the petition. The Board of Appeals commented briefly on the testimony of E. Richard Moore, Assistant Traffic Engineer for Baltimore County, Brian D. Jones, a civil engineer, John A. Farley, Jr., Esquire, Chairman of the Board of Clifton Trust Bank and Frederick P. Klaus, a real estate expert, all of whom testified as experts in favor of granting the reclassification of zoning on the subject parcel from R-O to B.L.

THE TESTIMONY

The Board, despite the preponderance of evidence introduced in favor of granting the reclassification, seemed persuaded by the testimony and conclusions offered by James Hoswell, the Planner for Baltimore County and an area resident, Ronald Baronski. The Board specifically cites Mr. Hoswell's conclusion that had the County Council, in the consideration of the 1980 comprehensive zoning process, designated the subject parcel as a B.L. zone, it would have constituted spot zoning (TR116). Mr. Hoswell admitted, however, that taking into consideration the height, parking, traffic, etc., that the most beneficial use of the subject site as between a 11,000 square foot Class B office building allowed in the R-O zone by special exception and the proposed 2,400 square foot bank, the bank would be "preferable". (TR140.)

IN THE MATTER OF
THE APPLICATION OF
LEROY M. MERRITT
FOR REZONING FROM
R-O TO B.L.
N/S Joppa Rd., 71.50' W.
from center line of Drumwood
Road, 9th District
Zoning File No. R-83-193

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW
Misc. Doc. No. 15
Folio No. 298
File No. 83-M-263

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, Leroy B. Spurrier, and Keith S. Franz 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 THE BOARD OF APPEALS OF BALTIMORE COUNTY

No. R-83-193

August 31, 1982 Petition of Leroy M. Merritt for zoning reclassification from an R-O zone to a B.L. zone on property located on the north side of Joppa Rd., 71.50' west from the center line of Drumwood Rd., 9th District - filed

Order of William T. Hackett, Chairman, County Board of Appeals directing advertisement and posting of property - date of hearing set for April 19, 1983, at 10 a.m.

November 4, 1982 Comments of Baltimore County Zoning Maps Advisory Committee

March 31, 1983 Certificate of Publication in newspaper - filed

April 2, 1983 Certificate of Posting of property - filed

April 19, 1983 At 10 a.m. hearing held on petition

July 1, 1983 Order of County Board of Appeals denying the reclassification of the subject site from R.O. to B.L. zone

July 26, 1983 Order for Appeal filed in Circuit Court for Balto. County by S. Eric DiNenna, Esq., on behalf of Petitioner.

Further, on cross-examination, he acknowledged that the land uses abutting the parcel in question, is equally divided between residential and non-residential uses (TR119-120) and that had the plan been adopted at the date of the hearing, i.e., April 19, 1983, that the requested reclassification would not be spot zoning since the proposed change to B.L. zoning would not be out of character with the neighborhood. (TR123).

Mr. Baronski testified that he wanted the vacant parcel of land "... the way it is" (TR125) because of his fear of increased traffic, loss of his property value and his belief that "they got plenty of banks around there". (TR126).

ARGUMENT

The County Board of Appeals wrongfully decided to deny Appellant's request for reclassification as there was substantial evidence of probative force introduced at the hearing to support a finding of mistake and error in the County Council classifying the subject property R-O.

The key to this appeal is found in a careful analysis of page 2 of the Opinion of the Board of Appeals. Two statements are made which reflect upon the fallacy of the Board's findings. After referencing the conclusions drawn from the testimonies of stated witnesses, the Board noted "... the large number of letters in the case filed from nearby residents opposing this petition." Secondly, with respect to finding that the County Council committed no error in designating the subject site R-O zoning, The Board observed "it is well aware that the parcel does exist with R-O zoning assigned to it, that by way of Special Exception a rather large Class "B" office building would be erected as of right and that use for a branch bank does not seem to be

July 26, 1983 Petition to accompany Order for Appeal filed in Circuit Court for Baltimore County

July 28, 1983 Certificate of Notice sent to all interested parties

August 18, 1983 Transcript of testimony filed

Petitioner's Exhibit No. 1 - Photos, 1A thru 1F

- " " " 2 - Colored plot
- " " " 3 - Environmental Impact Statement
- " " " 4 - Balto. Cty. Advisory Committee Comments
- " " " 5 - Plot
- " " " 6 - Plot
- " " " 7 - Contract of Sale between Clifton Trust and Leroy Merritt
- " " " 8 - Financial Statement, Clifton Trust

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

- " " " 2 - Balto. Co. Council Issue log (summary) sheet 1 of 6.
- " " " 3 - Public hearing, minutes June 13, '83
- " " " 4 - Zoning Maps public hearing, 9/23/82
- " " " 5 - Planning Bd. Recommendation on this petition, 4/18/83

August 18, 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 are 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
John W. Hession, County Board of Appeals
of Baltimore County

cc: S. E. DiNenna, Esq.

objectionable." It should be noted that Section 203.3B of the Baltimore County Zoning regulations require a Special Exception in the R-O zone for a "Class B Office Building". But, as the Board stated "... to impose B.L. zoning on this one parcel, when D.R. 5.5 homes abut it, would seem to be spot zoning and could lead to future problems."

A. ZONING BY PLEBISCITE OF THE NEIGHBORHOOD

The Board, by referring the "large number of letters from nearby residents opposing this petition" raises the issue of zoning by plebiscite which, in view of precedents, established by Maryland Courts, have become moot in the law of zoning. The Board was apparently swayed in its decision by the volume and content of the letters received from the residential neighbors opposing the petition. The letters addressed to and received by the Board are attached hereto and noted as Exhibits B-1 through B-11. It should be noted that they were all received after the hearing. However, this type of persuasion or "evidence" must have no bearing on the ultimate decision. While the Board of Appeals is not bound by strict rules of evidence, its decision must be supported by substantial probative evidence and supported in the record. See, for example, Montgomery County Council v. Scringsour, 21 Md. 206, 313, 127 A.3d 528, 532 (1956) wherein the Court held that "A plebiscite of the neighborhood does not determine zoning." See also Entsian vs. Prince George's County, 32 Md. App. 266, (1976); Neuman v. City of Baltimore, 22 Md. App. 13, 325 A.2d 146 (1976). Stated in a different fashion, zoning should never be allowed or disallowed on the basis of a plebiscite of the neighborhood. While not privy to the Board's deliberations, it certainly appears that such voluminous correspondence was given weight in its deliberations.

In fact, the Board of Appeals' own Rules of Practice state specifically that such letters are not to be introduced or considered as evidence. Only "prepared statements that have been read by the participants, with copies delivered to the Board and opposing counsel at least five (5) days prior to the hearing, are to be considered as evidence." Appendix G., Rule 7C. Rules of Practice and Procedures of County Board of Appeals. The rationale behind this restriction is obvious; a piece of paper cannot be subject to cross-examination.

P. "MISTAKE" OR "ERROR" IN EXISTING R-O ZONING IS FAIRLY DEBATABLE BASED UPON STRONG, SUBSTANTIAL AND PROBATIVE EVIDENCE

Pursuant to Section 2-58.1 (j) (2) of the Baltimore County Code, consideration of the petition for zoning reclassification involves a two-step analysis:

- (1) Application of the change or mistake rule; and
- (2) Consideration of whether or not the requested reclassification is warranted.

If defining "error" or mistake the courts have held that the evidence if mistake or "error" in the comprehensive zoning is strong and substantial enough to make the issue fairly debatable, a finding of error may be made. Stated differently, "... the presumption of validity accorded to a comprehensive zoning is overcome and error or mistake is established when there is probative evidence that the assumptions or premises relied upon by the Council at the time of the comprehensive rezoning were invalid." Boyce v. Sembly, 25 Md. App. 43, 50, 334 A.2d 137,144 (1975).

In the present case, the Board recognized that Appellant's request that the parcel of land would be restricted in use to a branch bank was not "objectionable" but deemed the granting of the

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615, 617-18, 620-21 (1964); Overton v. County Commissioners, 225 Md. 212, 216-17, 170 A.2d 172, 174-76 (1961); and Rohde vs. County Board of Appeals, 234 Md. 259, 267-68 A.2d 216, 218-19 (1964).

The Appellant feels the evidence presented to the Board was strong and showed error.

The Court is aware of its review, powers and authority. Stratkie v. Beauchamp, 268 Md. 643 (1973); France v. Shapiro, 243 Md. 335, (1968).

In order to justify a reversal of an administrative Board's decision, the record in the proceedings would have to show that its action was unsupported by competent material and substantial evidence. Prince George's County v. Meininger, 264 Md. 148, (1972).

The most explicit definition of "substantial evidence test" is found in the case of Board of County Commission of Prince George's County v. Oak Hill Farms, Inc., 232 Md. 274, (1963), where at page 280, the Court said:

"... substantial evidence has been held to mean more than a scintilla and was such evidence 'as a reasonable mind might accept as adequate to support a conclusion' ... and enough to justify, if the trial were to jury, a refusal to direct a verdict. ..."

Furthermore, "fairly debatable" can be defined as testimony from which a reasonable man could come to a different conclusion. In such a matter, the Court will not substitute its judgment for that of the administrative body. Edgar vs. Stove, 253 Md. 533, (1969).

It is obvious that there was "substantial evidence" of error and the issues were not "fairly debatable".

The Board's action was not supported by competent material and subelative evidence to deny the Petition.

Indeed, while the Board viewed Appellant's request for B.L. zoning based on a specific plan to erect a 2,400 square foot

-9-

B.L. classification as giving rise to spot zoning.

Mr. James Hoswell, a Planner for Baltimore County, offered in testimony a definition of spot zoning which, he observed, constituted a "fairly good definition" (TR116). He noted that spot zoning occurs when the use permitted is 1) not in character with the surrounding area and 2) would provide for uses that are provided for in other areas. (TR115). The inference cast upon Hoswell's testimony, and, indeed, the Board's opinion is that spot zoning by definition, is invalid and deleterious to the public good. As Hoswell testified: "if the Council had placed B.L. here, in my opinion, it would be a spot zone; and subsequently, I would have to say in error . . ." (TR122). This definition, however, is at variance with the definition and application of spot zoning recognized, and followed by Maryland Courts.

In the definition of the Courts, spot zoning is valid if the use provides a need for service in an area for accommodation and convenience of residents in a residential zone. Alvey vs. Michaels, 231 Md. 22, 189 A.2d 293, (1963), Trustees of McDonogh Educational Fund & Institute vs. Board of Zoning Appeals of Baltimore County, 221 Md. 550, 158 A.2d, 637 (1960). To justify spot zoning the need for service to the residents of the area must be shown and not a mere general need of the general public. In Tennison vs. Schomette, 38 Md. App 1, 382 A.2d, 1081 (1977), the Court observed that in determining whether impermissible spot zoning existed, that the size of the land in question, was not controlling. The only relevant inquiries are whether the rezoning is inconsistent with the comprehensive plan and whether it is done for the public good or private benefit. In Tennison, the mere fact that the proposed use, a motel, was somewhat different from the uses permitted under the C-1 classification in surrounding

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building as not being "totally objectionable", the Board (and presumably the County Council) felt that the petitioned B.L. classifications as constituting spot zone "would well lead to further problems". As has been shown, this "crystal ball gazing" is not supported by the facts. Whereas, both the County Council and Board of Appeals would permit Appellant to build a Class "B" office building up to 11,000 square feet under the awarded R.O. zone classification, the requested 2,400 square feet bank could not be constructed in the R.O. zone, even though it would constitute a preferred use of the parcel.

The Board, in its holding, perpetuated error in that, contrary to its stated intention, its decision works not only to the detriment of Appellant but also to the immediate neighborhood itself.

CONCLUSION

For the foregoing reasons, the Order of the Board of Appeals of Baltimore County dated July 1, 1983, should be reversed and the within petition for reclassification be granted.

78/
S. ERIC DINENNA
S. ERIC DINENNA, P.A.
406 W. Pennsylvania Avenue
Towson, Maryland 21204
825-1630
Attorneys for Appellant

I HEREBY CERTIFY that on this 19th day of April 1983, a copy of the foregoing Appellant's Memorandum was mailed to, County Board of Appeals, Courthouse, Towson, Maryland 21204.

19/
S. ERIC DINENNA, P.A.

-10-

areas did not render the use inconsistent with the comprehensive plan. In finding that the construction of the motel on a small tract of land which was zoned differently than the areas surrounding the tract, the Court observed:

"Spot zoning occurs when a small area in a district is placed in a different zoning classification than the surrounding property." Hewitt v. County Commissioners, 226 Md. 48, 151 A.2d 144, (1959); Huff v. Board of Zoning Appeals, 214 Md. 48, 133 A.2d 83 (1957). Spot zoning is not invalid per se. Rather, its validity depends on the facts of each individual case. Spaid v. Board of County Commissioners, 259 Md. 369, 269 A.2d 797 (1970). While spot zoning is illegal if it is inconsistent with an established comprehensive plan and is made solely for the benefit of private interests, it is a valid exercise of the police power where the zoning is in harmony with the comprehensive plan and bears a substantial relationship to public health, safety, and general welfare. Trustees of McDonogh Educational Fund & Institute vs. Baltimore County, 221 Md. 550, 158 A.2d 637 (1960); Hewitt vs. County Commissioners, supra; Huff vs. Board of Zoning Appeals, supra; Cassell vs. Mayor of Baltimore, 195 Md. 348, 73 A.2d 486 (1950).

Analysis of the facts at bar reveals that Appellant's plan is in accordance with the Schomette Court findings.

Mr. Frederick P. Klaus, a real estate expert, testified that B.L. zoning classification would not be detrimental to the health, safety and general benefit of the neighborhood involved (TR87). Further, Mr. Klaus suggested that there was no additional use for office buildings in that area (TR85), a use which the R. O. classification represents. It is stipulated that single family dwellings, and zoned D.R.5.5 and D.R.10.5 are situated west and south of the parcel, respectively. (TR74). That industrial uses are contiguous to the parcel and due north and that Bendix Corporation and office buildings are situated along Joppe Road, east of this site. (TR74). James Hoswell, on cross-examination,

-7-

I HEREBY CERTIFY that, on this 19th day of April 1983, a copy of the foregoing Appellant's Memorandum was mailed to, The Peoples Counsel, John W. Hessian, III, and, Peter Max Zimmerman, Esquires, Room 223, Courthouse, Towson, Maryland 21204.

18/
S. ERIC DINENNA, P.A.

-11-

had to concede that the parcel in question is surrounded by mixed uses - approximately one-half residential, the other commercial and industrial. (TR120-121).

While the Board is desirous to retain the small "pocket" of D.R.5.5 homes, the fact remains that the neighborhood wouldn't be adversely impacted by the operation of a small branch bank, but rather its existence would compliment the area, by establishing a use compatible to the needs of the neighborhood. As such, this use would be consonant with the requirements enunciated by the Tennison Court.

The fear of increased traffic engendered by an office building via a branch bank was well documented by a neighbor Mrs. Irma Bradford, who testified in favor of a bank. She recognized that the bank, unlike another office building, would have limited business hours and a decreased traffic impact. (TR 92-93). Even Mr. Hoswell was forced to admit that a branch bank as detailed, Appellant's plan would be "preferable" (T140), as against an office building. The fact remains, however, that the "preference" notwithstanding, the preferred use of the tract, would be of no avail since the present R.O. classification precludes the construction of a bank. This "catch 22" restriction has been recognized by Maryland Courts which have held that "... error can be established by showing that at the time of the comprehensive zoning the Council failed to take into account then existing facts, or projects or trends which were reasonably foreseeable of fruition in the future, so that the Council's action was premised initially on a misapprehension." Boyce v. Sembly, 25 Md. App. at 51. See also Bonnie View Club vs. Glass, 252 Md. 46, 52-53, 217 A.2d 647, 651 (1966); Jobar Corp. vs. Rodgers Forge Community Ass'n., 236 Md. 106, 112, 116-18, 121-22, 202 A.2d 613,

CIRCUIT COURT FOR BALTIMORE COUNTY

CATEGORY APPEAL

ATTORNEYS

IN THE MATTER OF THE APPLICATION OF LARRY M. HENRIFF FOR REZONING FROM R-O TO B.L.

S. Eric Dinenna
406 W. Penna. Ave. (04) 825-1630

1/3 of Joppe Rd. 71.50°
V. from c/l of Issued Md. 9th District
Zoning File No. 883-193

E

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

John W. Hessian, III
Peter Max Zimmerman
Rm. 223, Court House/Deputy People's
Towson, MD 21204
Counsel

3/5/84
D/E

- (1) July 26, 1983 - Petitioner's Order for Appeal from the Order of the County Board of Appeals of Baltimore Co., and Petition for Appeal.
- (2) July 28, 1983 Certificate of Notice.
- (3) August 2, 1983 - App. of John W. Hessian, III & Peter Max Zimmerman as attorneys for the Petitioner and same day Answer to Petition on Appeal.
- (4) Aug. 18, 1983 Transcript of Record.
- (5) Aug. 18, 1983 Two notices of filing sent.
- (6) Sept. 19, 1983 Appellant's Memorandum.
- (7) Oct. 3, 1983 - Appellee's Memorandum.

Dec. 29, 1983 Hon. A. Owen Hennegar. Hearing had. Ruling held sub-curia. Opinion to be filed.

- (8) Mar. 2, 1984 - Memorandum Opinion of the Court that the decision of the Board of Appeals is reversed and the case remanded for a new hearing and that the Board of Appeals of Baltimore Co. pay the costs of these proceedings.

(ACK)

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IN THE MATTER OF
THE APPLICATION OF
LEROY M. MERRITT
FOR REZONING
FROM R-O TO B. L.
W/S of Joppa Road 71.50'
W. from c/l of Drumwood Road
9th District
Zoning File No.: R-83-193

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW
Case No. 83-M-263/15/298

MEMORANDUM OPINION AND ORDER

This is an administrative appeal from the Baltimore County Board of Appeals, brought pursuant to §604 of the Baltimore County Charter, by Leroy M. Merritt, Petitioner below, who was denied a zoning reclassification. The Court has reviewed the entire record below, together with the transcripts, exhibits and memoranda.

The subject property consists of 0.534 acres of land located at the northeast corner of Joppa Road and Mylander Lane in the Ninth District. The property is currently zoned R-O, and the Appellant petitioned the Board to have it reclassified to B.L., thus allowing him to construct a one-story bank with drive-in facilities. After a hearing at which there was much evidence presented in favor of the reclassification, as well as some evidence and testimony in opposition, the Board of Appeals denied the Petition.

The Appellant came before this Court arguing not only the merits of his Petition, but also the basis upon which the Board made its decision. Appellant draws the Court's attention to page two (2) of the Board's Opinion where it states: "The Board would also note the large number of letters in the case file from nearby residents opposing this Petition." Most notable is the fact that these letters were received by the Board after the hearing of the case. It cannot be questioned that the Board took the letters into consideration before denying the Petition. The issue, then, is whether this was proper.

Rule 7(c) of the Rules of Practice and Procedure of County Board of Appeals permits participants to read prepared statements into the record, so long as the statements contain only factual material, and provided that copies of the statements have been delivered to the Board and opposing counsel at least five (5)

FILED MAR 21 1984

IN THE MATTER OF
THE APPLICATION OF
LEROY M. MERRITT
FOR REZONING
FROM R-O TO B. L.
W/S of Joppa Road 71.50'
W. from c/l of Drumwood Road
9th District
Zoning File No.: R-83-193

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW
Case No. 83-M-263/15/298

ORDER

It having come to the Court's attention that there is a dispute over the original order entered in this case, and that there is a need for clarification as to the Court's intent with respect to the disposition of this appeal, it is this 28th day of March, 1984, by the Circuit Court for Baltimore County,

ORDERED that the decision of the Board of Appeals be and is hereby reversed and the case remanded to the Board for reconsideration of the matter without reference to the letters from the protestants, and with the option of allowing further argument of counsel; and it is further

ORDERED that the Board issue a new Opinion and Order after such reconsideration; and it is further

ORDERED that the Board of Appeals of Baltimore County pay the costs of these proceedings.

A. Owen Hennigan, Judge

days prior to the hearing. The rule further provides that:

"Prepared statements" within the meaning of this section shall not include factual reports, written examinations, letters, expert opinions of professional expert witnesses and other such similar documents (emphasis added).

Rules of Practice and Procedure of County Board of Appeals, 7(c).

Baltimore County Code, Appendix C (1978 and 1983 Ord. App.).

It follows that if these letters would not have been admissible and could not have been introduced into the record at the hearing, then any consideration of them as matters outside the record was not proper. Surely the Appellant has been denied due process of law if the Board's decision was in any way influenced by ex parte written communications which he was unable to cross-examine. It is not necessary to reach the merits of the Petition since a rehearing is in order.

For the above reasons, it is this 2nd day of March, 1984, by the Circuit Court for Baltimore County,

ORDERED that the decision of the Board of Appeals be and is hereby reversed and the case remanded for a new hearing; and it is further

ORDERED that the Board of Appeals of Baltimore County pay the costs of these proceedings.

A. Owen Hennigan, Judge

COPIES SENT

IN THE MATTER OF
THE APPLICATION OF
LEROY M. MERRITT
FOR REZONING
FROM R-O TO B. L.
W/S of Joppa Road 71.50'
W. from c/l of Drumwood Road
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Zoning File No.: R-83-193

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
15/298/83-M-263

APPELLANT'S MEMORANDUM

Leroy M. Merritt, Petitioner below and Appellant herein, pursuant to Maryland Rule 812, files this Memorandum:

BACKGROUND

Petitioner request reclassification of 0.534 acres of land, more or less, located at the northeast corner of Joppa Road and Mylander Lane 71.50' west from the centerline of Drumwood Road in the Ninth District from an R-O zone to a B.L. zone. Pursuant to Section 2.58.1 (1) and (m) of the Baltimore County Code, 1978, as amended, the Appellant proposes a one story bank, not to exceed 2,400 square feet with a drive-in facility. Pursuant to the County Code, development of the land in question would be limited to that use, if granted. The County Council had designated the subject site in a R-O zone in the 1980 county wide map adoption. Following an evidentiary hearing, the County Board of Appeals denied Petitioner's petition for reclassification of the subject site from R-O to B.L. zoning.

The property is located on the northeast corner of Joppa Road and Mylander Lane and is shown, cross-hatched on the attached 1,000' scale zoning map.* This area of Towson includes a mix of land use and zoning. As the Planning Board observed to the west of the subject site on both sides of Joppa Road are non-residential

* The accompanying map (1" = 1000') is attached

CATHOBY AFFAIR

IN THE MATTER OF THE APPLICATION OF LEROY M. MERRITT FOR REZONING FROM R-O TO B.L.

W/S of Joppa Rd. 71.50'
W. from c/l of Drumwood Rd. 9th District
Zoning File No. 83-193

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

2. Side Hillman
486 W. Fawn. Ave. (84) 683-0830

John V. Hennigan, III
Peter Max Zimmerman
Rm. 223, Court House/County People's
Towson, MD 21204
Counsel

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- (8) Mar. 2, 1984 - Memorandum Opinion and Order of Court that the decision of the Board of Appeals is reversed and the case remanded for a new hearing and that the Board of Appeals of Balto. Co. pay the costs of these proceedings.
 - (9) March 28, 1984 - Amended Order of Court that the decision of the Board of Appeals be and is hereby reversed and the case remanded to the Board for reconsideration of the matter without reference to the letters from the protestants, and with the option of allowing further argument of counsel; and that the Board issue a new Opinion and Order after such reconsideration and that the Board of Appeals of Baltimore County pay the costs of these proceedings.

DOCKET 15 PAGE 298 CASE NO. 83-M-263

uses of M.L. - I.M. zoned land. To the east and south (across Joppa Road) of the subject site are residential areas classified in the D.R. 5.5 zone and D.R. 10.5 zone respectively.

In denying the rezoning, the Board of Appeals relied heavily upon the testimony offered by James Howell, Planner for Baltimore County and Ronald Baronski, a resident of the area. It also referred to a large number of letters received from nearby residents opposing the petition. The Board of Appeals commented briefly on the testimony of E. Richard Moore, Assistant Traffic Engineer for Baltimore County, Brian D. Jones, a civil engineer, John A. Farley, Jr., Esquire, Chairman of the Board of Clifton Trust Bank and Frederick P. Klaus, a real estate expert, all of whom testified as experts in favor of granting the reclassification of zoning on the subject parcel from R-O to B.L.

THE TESTIMONY

The Board, despite the preponderance of evidence introduced in favor of granting the reclassification, seemed persuaded by the testimony and conclusions offered by James Howell, the Planner for Baltimore County and an area resident, Ronald Baronski. The Board specifically cited Mr. Howell's conclusion that had the County Council, in the consideration of the 1980 comprehensive zoning process, designated the subject parcel as a B.L. zone, it would have constituted spot zoning (TR116). Mr. Howell admitted, however, that taking into consideration the height, parking, traffic, etc., that the most beneficial use of the subject site as between a 11,000 square foot Class B office building allowed in the R-O zone by special exception and the proposed 2,400 square foot bank, the bank would be "preferable". (TR140.)

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IN THE
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ORDERED that the Board issue a new Opinion and Order after such reconsideration; and it is further

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A. Owen Hennigan, Judge

COPIES SENT

FILED MAR 28 1984

Further, on cross-examination, he acknowledged that the land uses abutting the parcel in question, is equally divided between residential and non-residential uses (TR119-120) and that had the plan been adopted at the date of the hearing, i.e., April 19, 1983, that the requested reclassification would not be spot zoning since the proposed change to B.L. zoning would not be out of character with the neighborhood. (TR123).

Mr. Baronski testified that he wanted the vacant parcel of land "... the way it is" (TR125) because of his fear of increased traffic, loss of his property value and his belief that "they got plenty of banks around there". (TR126).

ARGUMENT

The County Board of Appeals wrongfully decided to deny Appellant's request for reclassification as there was substantial evidence of probative force introduced at the hearing to support a finding of mistake and error in the County Council classifying the subject property R-O.

The key to this appeal is found in a careful analysis of page 2 of the Opinion of the Board of Appeals. Two statements are made which reflect upon the fallacy of the Board's findings. After referencing the conclusions drawn from the testimonies of stated witnesses, the Board noted "... the large number of letters in the case filed from nearby residents opposing this petition." Secondly, with respect to finding that the County Council committed no error in designating the subject site R-O zoning. The Board observed "it is well aware that the parcel does exist with R-O zoning assigned to it, that by way of special exception a rather large Class "B" office building would be erected as of right and that use for a branch bank does not seem to be

objectionable." It should be noted that Section 203.3B of the Baltimore County Zoning regulations require a Special Exception in the R-O zone for a "Class B Office Building". But, as the Board stated "... to impose B.L. zoning on this one parcel, when D.R. 5.5 homes abut it, would seem to be spot zoning and could lead to future problems."

A. ZONING BY PLEBISCITE OF THE NEIGHBORHOOD

The Board, by referring the "large number of letters from nearby residents opposing this petition" raises the issue of zoning by plebiscite which, in view of precedents, established by Maryland Courts, have become moot in the law of zoning. The Board was apparently swayed in its decision by the volume and content of the letters received from the residential neighbors opposing the petition. The letters addressed to and received by the Board are attached hereto and noted as Exhibits B-1 through B-11. It should be noted that they were all received after the hearing. However, this type of persuasion or "evidence" must have no bearing on the ultimate decision. While the Board of Appeals is not bound by strict rules of evidence, its decision must be supported by substantial probative evidence and supported in the record. See, for example, Montgomery County Council v. Scrimgeour, 211 Md. 206, 313, 127 A.2d 528, 532 (1956) wherein the Court held that "A plebiscite of the neighborhood does not determine zoning." See also Entsian vs. Prince George's County, 32 Md. App. 266, (1976); Neuman v. City of Baltimore, 22 Md. App. 13, 325 A.2d 146 (1976). Stated in a different fashion, zoning should never be allowed or disallowed on the basis of a plebiscite of the neighborhood. While not privy to the Board's deliberations, it certainly appears that such voluminous correspondence was given weight in its deliberations.

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had to concede that the parcel in question is surrounded by mixed uses - approximately one-half residential, the other commercial and industrial. (TR120-121).

While the Board is desirous to retain the small "pocket" of D.R.5.5 homes, the fact remains that the neighborhood wouldn't be adversely impacted by the operation of a small branch bank, but rather its existence would compliment the area, by establishing a use compatible to the needs of the neighborhood. As such, this use would be consonant with the requirements enunciated by the Tennison Court.

The fear of increased traffic engendered by an office building vis a vis branch bank was well documented by a neighbor Mrs. Irma Bradford, who testified in favor of a bank. She recognized that the bank, unlike another office building, would have limited business hours and a decreased traffic impact. (TR 92-93). Even Mr. Roswell was forced to admit that a branch bank as detailed, Appellant's plan would be "preferable" (T140), as against an office building. The fact remains, however, that the "preference" notwithstanding, the preferred use of the tract, would be of no avail since the present R.O. classification precludes the construction of a bank. This "catch 22" restriction has been recognized by Maryland Courts which have held that "... error can be established by showing that at the time of the comprehensive zoning the Council failed to take into account then existing facts, or projects or trends which were reasonably foreseeable of fruition in the future, so that the Council's action was premised initially on a misapprehension." Boyce v. Sembly, 25 Md. App. at 51. See also Bonnie View Club vs. Glass, 252 Md. 46, 52-53, 217 A.2d 647, 651 (1966); Johar Corp. vs. Rodgers Forge Community Ass'n., 236 Md. 106, 112, 116-18, 121-22, 202 A.2d 613,

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In fact, the Board of Appeals' own Rules of Practice state specifically that such letters are not to be introduced or considered as evidence. Only "prepared statements that have been read by the participants, with copies delivered to the Board and opposing counsel at least five (5) days prior to the hearing, are to be considered as evidence." Appendix G., Rule 7C. Rules of Practice and Procedures of County Board of Appeals. The rationale behind this restriction is obvious; a piece of paper cannot be subject to cross-examination.

B. "MISTAKE" OR "ERROR" IN EXISTING R-O ZONING IS FAIRLY DEBATABLE BASED UPON STRONG, SUBSTANTIAL AND PROBATIVE EVIDENCE

Pursuant to Section 2-58.1 (j)(2) of the Baltimore County Code, consideration of the petition for zoning reclassification involves a two-step analysis:

- (1) Application of the change or mistake rule; and
- (2) Consideration of whether or not the requested reclassification is warranted.

If defining "error" or mistake the courts have held that the evidence if mistake or "error" in the comprehensive zoning is strong and substantial enough to make the issue fairly debatable, a finding of error may be made. Stated differently, "... the presumption of validity accorded to a comprehensive zoning is overcome and error or mistake is established when there is probative evidence that the assumptions or premises relied upon by the Council at the time of the comprehensive reasoning were invalid." Boyce v. Sembly, 25 Md. App. 43, 50, 334 A.2d 137,144 (1975).

In the present case, the Board recognized that Appellant's request that the parcel of land would be restricted in use to a branch bank was not "objectionable" but deemed the granting of the

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615, 617-18, 620-21 (1964); Overton v. County Commissioners, 225 Md. 212, 216-17, 170 A.2d 172, 174-76 (1961); and Rohde vs. County Board of Appeals, 234 Md. 259, 267-68 A.2d 216, 218-19 (1964).

The Appellant feels the evidence presented to the Board was strong and showed error.

The Court is aware of its review, powers and authority. Stratikis v. Beauchamp, 268 Md. 643 (1973); France v. Shapiro, 248 Md. 335, (1968).

In order to justify a reversal of an administrative Board's decision, the record in the proceedings would have to show that its action was unsupported by competent material and substantial evidence. Prince George's County v. Meininger, 31 Md. 148, (1972).

The most explicit definition of "substantial evidence test" is found in the case of Board of County Commission of Prince George's County v. Oak Hill Farms, Inc., 232 Md. 274, (1963), where at page 290, the Court said:

"... substantial evidence has been held to mean more than a scintilla and was such evidence 'as a reasonable mind might accept as adequate to support a conclusion' ... and enough to justify, if the trial were to jury, a refusal to direct a verdict. ..."

Furthermore, "fairly debatable" can be defined as testimony from which a reasonable man could come to a different conclusion.

In such a matter, the Court will not substitute its judgment for that of the administrative body. Edgar vs. Stove, 253 Md. 533, (1969).

It is obvious that there was "substantial evidence" of error and the issues were not "fairly debatable".

The Board's action was not supported by competent material and substantive evidence to deny the Petition.

Indeed, while the Board viewed Appellant's request for B.L. zoning based on a specific plan to erect a 2,400 square foot

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B.L. classification as giving rise to spot zoning.

Mr. James Roswell, a Planner for Baltimore County, offered in testimony a definition of spot zoning which, he observed, constituted a "fairly good definition" (TR116). He noted that spot zoning occurs when the use permitted is 1) not in character with the surrounding area and 2) would provide for uses that are provided for in other areas. (TR115). The inference cast upon Roswell's testimony, and, indeed, the Board's opinion is that spot zoning by definition, is invalid and deleterious to the public good. As Roswell testified: "If the Council had placed B.L. here, in my opinion, it would be a spot zone; and subsequently, I would have to say in error. ...". (TR122). This definition, however, is at variance with the definition and application of spot zoning recognized, and followed by Maryland Courts.

In the definition of the Courts, spot zoning is valid if the use provides a need for service in an area for accommodation and convenience of residents in a residential zone. Alvey vs. Michaels, 231 Md. 22, 188 A.2d 293, (1963), Trustees of McDonogh Educational Fund & Institute vs. Board of Zoning Appeals of Baltimore County, 221 Md. 550, 158 A.2d 637 (1960). To justify spot zoning the need for service to the residents of the area must be shown and not a mere general need of the general public. In Tennison vs. Schomette, 38 Md. App. 1, 302 A.2d, 1081 (1977), the Court observed that in determining whether impermissible spot zoning existed, that the site of the land in question, was not controlling. The only relevant inquiries are whether the re-zoning is inconsistent with the comprehensive plan and whether it is done for the public good or private benefit. In Tennison, the mere fact that the proposed use, a motel, was somewhat different from the uses permitted under the C-1 classification in surrounding

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building as not being "totally objectionable", the Board (and presumably the County Council) felt that the petitioned B.L. classifications as constituting spot zone "would well lead to further problems". As has been shown, this "crystal ball gazing" is not supported by the facts. Whereas, both the County Council and Board of Appeals would permit Appellant to build a Class "B" office building up to 11,000 square feet under the awarded R.O. zone classification, the requested 2,400 square foot bank could not be constructed in the R.O. zone, even though it would constitute a preferred use of the parcel.

The Board, in its holding, perpetuated error in that, contrary to its stated intention, its decision works not only to the detriment of Appellant but also to the immediate neighborhood itself.

CONCLUSION

For the foregoing reasons, the Order of the Board of Appeals of Baltimore County dated July 1, 1983, should be reversed and the within petition for reclassification be granted.

S. ERIC DINENNA
S. ERIC DINENNA, P.A.
406 W. Pennsylvania Avenue
Towson, Maryland 21204
825-1630
Attorneys for Appellant

I HEREBY CERTIFY that on this _____ day of _____, 1983, a copy of the foregoing Appellant's Memorandum was mailed to, County Board of Appeals, Courthouse, Towson, Maryland 21204.

S. ERIC DINENNA, P.A.

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areas did not render the use inconsistent with the comprehensive plan. In finding that the construction of the motel on a small tract of land which was zoned differently than the areas surrounding the tract, the Court observed:

"Spot zoning occurs when a small area in a district is placed in a different zoning classification than the surrounding property." Hewitt v. County Commissioners, 220 Md. 48, 151 A.2d 144, (1959); Huff v. Board of Zoning Appeals, 214 Md. 48, 133 A.2d 83 (1957). Spot zoning is not invalid per se. Rather, its validity depends on the facts of each individual case. Spaid v. Board of County Commissioners, 259 Md. 369, 269 A.2d 797 (1970). While spot zoning is illegal if it is inconsistent with an established comprehensive plan and is made solely for the benefit of private interests, it is a valid exercise of the police power where the zoning is in harmony with the comprehensive plan and bears a substantial relationship to public health, safety and general welfare. Trustees of McDonogh Educational Fund & Institute vs. Baltimore County, 221 Md. 550, 158 A.2d 637 (1960); Hewitt vs. County Commissioners, supra; Huff vs. Board of Zoning Appeals, supra; Cassel vs. Mayor of Baltimore, 195 Md. 348, 73 A.2d 486 (1950).

Analysis of the facts at bar reveals that Appellant's plan is in accordance with the Schomette Court findings.

Mr. Frederick P. Klaus, a real estate expert, testified that B.L. zoning classification would not be detrimental to the health, safety and general benefit of the neighborhood involved (TR87). Further, Mr. Klaus suggested that there was no additional use for office buildings in that area (TR85), a use which the R. O. classification represents. It is stipulated that single family dwellings, and zoned D.R.5.5 and D.R.10.5 are situated west and south of the parcel, respectively. (TR74). That industrial uses are contiguous to the parcel and due north and that Bendix Corporation and office buildings are situated along Joppa Road, east of this site. (TR74). James Roswell, on cross-examination,

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IN THE MATTER OF THE APPLICATION OF LEROY M. MERRITT FOR REZONING FROM R-O TO B.L. N/S of Joppa Rd. 71.33' W from Centerline of Drumwood Rd., 9th District Zoning File No. R-83-193	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW Misc. #83-M-263
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APPELLEE'S MEMORANDUM

People's Counsel for Baltimore County, Appellee herein and Protestant below, files this Memorandum pursuant to the provisions of Maryland Rule B12.

Following an evidentiary hearing, the County Board of Appeals of Baltimore County reviewed the testimony and exhibits and issued a thorough Opinion and Order denying Petitioner's request to reclassify the subject property from R-O (residential-office) to B.L. (business light) with a requested bank use. At the conclusion of its Opinion, dated July 1, 1983, the Board said,

"However, to impose B.L. zoning on this one parcel, when DR 5.5 homes abut it, would seem to be spot zoning and could well lead to future problems. The County Council had this same issue before it and assigned the parcel R.O. zoning, which provides a reasonable use for the parcel when the DR 5.5 homes are considered. The Board is bound by legislation to grant reclassifications only when there has been substantial change in the neighborhood or error by the County Council in the zoning assigned a parcel during the Comprehensive Map process. In this case, the Board can find no error in the R.O. zoning assigned this parcel and will so Order."

In Boyce v. Sembly, 25 Md. App. 43, 51-52, 334 A.2d 137, 143 (1975), Judge Elm Davidson comprehensively analyzed the "error" standard in piecemeal rezoning cases:

"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 these 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 to nation); by adducing testimony on the part of those preparing the plan that then existing facts were not taken into account, *Oswen*, 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. 116-17, 202 A.2d 617-18 (need for apartments). See *Rohde*, supra, at 234 Md. 267-68, 199 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. Daub*, 258 Md. 263, 272, 265 A.2d 447, 451 (1970); *Anderson v. Sawyer*, 23 Md. App. 612, 618, 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. *Statakis*, supra, at 268 Md. 855, 304 A.2d 250; *Coppolino v. County Board of Appeals of Baltimore County*, 23 Md. App. 358, 371-72, 328 A.2d 35, 62 (1974), *aff'd*, 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*, 236 Md. 106, 120, 202 A.2d 612, 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

LEROY MERRITT - #R-83-193 (#83-M-263)

2.

Any appeal from this decision must be in accordance with Rules B-1 thru B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Harkett
William T. Harkett, Chairman

Kevin S. Evans
Kevin S. Evans

Leroy B. Spurrer
Leroy B. Spurrer

5:00:bk
6-18-84
#82-36

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 *Coppolino v. County Board of Appeals of Baltimore County*, 23 Md. App. 358, 369-70, 328 A.2d 35, 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."

Given the limited scope of judicial review in the present case, the Petitioner nevertheless asks the Court to reject the combined judgments of the County Council, Planning Board, and County Board of Appeals. He suggests, first of all, that the Board Opinion amounted to "zoning by plebiscite of the neighborhood" (Memorandum, page 4) but this is not substantiated by the record. A review of the administrative decision in its entirety proves that the denial was based upon and supported by testimony and exhibits in the record. In any event, the Court is bound to affirm the Board where supported by any competent or substantial evidence.

Secondly, the Petitioner suggests that "mistake or error in existing R-O zoning is fairly debatable based upon strong, substantial and probative evidence." (Memorandum, page 5) But this argument turns the proper scope of judicial review on its head. The question here is not whether the Petitioner presented sufficient evidence to make rezoning on the basis of error fairly debatable. Rather, he must show that the record absolutely required a finding

*The petition process is now codified in Section 2-58.1 of the Baltimore County Code (1978, 1981 Supp.).

IN THE MATTER OF THE APPLICATION OF LEROY M. MERRITT FOR REZONING FROM R-O TO B.L.	*	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY
N/S of Joppa Road 71.50'	*	AT LAW
W. from C/L of Drumwood Road 9th District	*	No. R-83-193 Circuit Court No. 83-M-263/15/298
Zoning File No. R-83-193	*	

PETITION ON APPEAL

Leroy M. Merritt Petitioner below and Appellant herein, by his attorneys, S. Eric DiNenna and S. Eric DiNenna, P.A., in compliance with Maryland Rule B-2(e) file this Petition on Appeal setting forth the grounds upon which this appeal is taken:

1. That a prior timely Appeal filed in this matter by your Appellant from Order of the County Board of Appeals dated July 1, 1983, the Honorable A. Owen Hennegan, Judge of the Circuit Court for Baltimore County, in his Memorandum Opinion and Order dated March 2, 1984 and in his Amended Order dated March 28, 1984, remanded the case to the Board of Appeals "...for reclassification of the matter without reference to the letters from the protestants, and with the option of allowing further argument of counsel;..." That as a result of said reclassification by the Board and after argument of counsel, the Board rendered an Opinion and Decision dated June 15, 1984 denying the Petition for reclassification from an R-O zone to a B.L. zone.
2. That the decision of the Board of Appeals to refuse to reclassify the subject property was arbitrary, capricious and not based on substantial and legally competent evidence.
3. That the County Council in the course of the 1980 Comprehensive Rezoning Process, placed an inappropriate zoning classification on the subject property and did not provide for a reasonable use.
4. The Board of Appeals in its Opinion and Order erroneously set forth the facts as presented to the Board at the time of hearing.

of error, and that no other conclusion is reasonable or fairly debatable.

In the present case, as Petitioner acknowledges, the Planning Board recommendation and the testimony of James Howell all substantiated the judgment of the Board that the existing zoning provided for a reasonable use and was in character with the neighborhood, and that the requested zoning would be a deviation with potential for future problems. Moreover, Ronald Barsnauki, who resides directly across the street, gave detailed testimony concerning the traffic and parking problems reasonably to be anticipated, and added that there was no need for another bank in the neighborhood.

It comes down to the point that Petitioner wants the B.L. zoning for bank use, and suggests that it would not be hurtful to the community. Even if we accept *arguendo* this latter premise, this is far short of the showing required to prove a legislative error in judgment. The County Council will take up the issue again in 1984, and the parties are best advised to resume their controversy in that forum.

For the foregoing reasons, it is respectfully submitted that the Order of the County Board of Appeals denying the reclassification sought by the Appellants was correct and should be sustained.

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

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

I HEREBY CERTIFY that on this 3rd day of October, 1983, a copy of the foregoing Appellee's Memorandum was mailed to S. Eric DiNenna, Esquire and S. Eric DiNenna, P.A., 406 W. Pennsylvania Avenue, Towson, MD 21204.

Peter Max Zimmerman
Peter Max Zimmerman

WHEREFORE, your Petitioner prays that the Order of the Board of Appeals dated June 15, 1984 be reversed and the B.L. Zone Petition be granted.
AND AS IN DUTY BOUND, etc.,

S. ERIC DINENNA
S. ERIC DINENNA, P.A.
406 W. Pennsylvania Avenue
Towson, Maryland 21204
296-6820
Attorneys for Appellant

I HEREBY CERTIFY that on this 21st day of June, 1984, a copy of the foregoing Petition on Appeal was served on the Administrative Secretary of the County Board of Appeals of Baltimore County, Courthouse, Towson, Maryland 21204; and a copy was mailed to Phyllis C. Friedman, Attorney at Law, People's Counsel for Baltimore County, Courthouse, Towson, Maryland 21204.

Received:

Edith T. Eisenhart Date
Administrative Secretary
Board of Appeals of Baltimore County

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-2-

ON REMAND
BEFORE

IN THE MATTER OF THE APPLICATION OF LEROY M. MERRITT FOR REZONING FROM R-O TO B.L. N/S OF JOPPA ROAD 71.50' W. FROM C/L OF DRUMWOOD ROAD 9th DISTRICT

COUNTY BOARD OF APPEALS

OF

BALTIMORE COUNTY

NO. R-83-193

Circuit Court No. 83-M-263/15/298

OPINION

This case comes before the Board of Appeals on remand from an appeal to the Circuit Court for Baltimore County, Judge A. O. Hennegan. This remand ordered "...that the decision of the Board of Appeals be and is hereby reversed and the case remanded to the Board for reconsideration of the matter without reference to the letters from the protestants, and with the option of allowing further argument of counsel; and it is further ORDERED that the Board issue a new Opinion and Order after such reconsideration;..."

A hearing was held before the Board and argument and Memoranda were received from both parties. Mr. DiNenna, counsel for petitioner, presented a very persuasive argument that the proposed use would not be detrimental to the neighborhood. However, the same request for a B.L. classification was before the County Council during the last comprehensive map process and the Council elected to retain the R-O classification. The proposed bank would seem a reasonable use of the property but the B.L. zoning necessary for its existence, when directly abutting the D.R. 5.5 existing zoning, would be spot zoning.

The Board can see no evidence that there has been any change in the neighborhood or that there was any error by the County Council on the last comprehensive maps which by law would permit us to grant this reclassification.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 15th day of June, 1984, by the County Board of Appeals, ORDERED that the petition for reclassification of the subject site from R-O to B.L. be and the same is hereby DENIED.

IN THE MATTER OF THE APPLICATION OF LEROY M. MERRITT FOR REZONING FROM R-O TO B.L.	*	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY
1/5 of Joppa Road 71.50'	*	AT LAW
W. from C/L of Drumwood Road 9th District	*	No. R-83-193 Circuit Court No. 83-M-263/15/298
Zoning File No. R-83-193	*	

ORDER FOR APPEAL

MR. CLERK:

Please note an appeal to the Circuit Court for Baltimore County from the Opinion and Order of the County Board of Appeals of Baltimore County, under date of June 15, 1984, denying a zoning reclassification of the subject property from an R-O zone to a B.L. zone.

S. ERIC DINENNA
S. ERIC DINENNA, P.A.
406 W. Pennsylvania Avenue
Towson, Maryland 21204
296-6820
Attorneys for Appellant

I HEREBY CERTIFY that on this 21st day of June, 1984, a copy of the foregoing Order for Appeal was served on the Administrative Secretary of the County Board of Appeals of Baltimore County, Courthouse, Towson, Maryland 21204; and that a copy thereof was mailed to Phyllis C. Friedman, Attorney at Law, People's Counsel for Baltimore County, Courthouse, Towson, Maryland 21204.

S. ERIC DINENNA
S. ERIC DINENNA

Received:

Edith T. Eisenhart Date
Administrative Secretary
Board of Appeals of Baltimore County

RECEIVED
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JUN 25 P 2 45

IN THE MATTER OF
THE APPLICATION OF
LEROY M. MERRITT
FOR REZONING FROM
R-O TO B.L.
N/S OF JOPPA ROAD 71.50'
W. FROM C/L OF
DRUMWOOD ROAD
9th DISTRICT
No. R-83-193

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW
Circuit Court No. 83-M-263/15/298

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, William T. Hackett, Leroy B. Spurrier and Keith S. Franz, 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, Leroy M. Merritt, 1940 Ruxton Rd., Towson, Md. 21204, Petitioner; S. Eric DiNenna, Esq., 406 W. Pennsylvania Ave., Towson, Md. 21204, Counsel for Petitioner; Clifton Trust Bank, c/o John A. Farley, Jr., Esq., 400 Allegheny Ave., Towson, Md. 21204, Contract Purchaser; Ronald Baranski, 1401 E. Joppa Rd., Towson, Md. 21204; Associates of Loch Raven Village, Inc., Eudawood P. O. Box 9721, Towson, Md. 21204, Attention Wayne Skinner; and Phyllis C. Friedman, 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.

John Holman
John Holman
County Board of Appeals of Baltimore County

Leroy M. Merritt
Case No. R-83-193

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to Leroy M. Merritt, 1940 Ruxton Rd., Towson, Md. 21204, Petitioner; S. Eric DiNenna, Esq., 406 W. Pennsylvania Ave., Towson, Md. 21204, Counsel for Petitioner; Clifton Trust Bank, c/o John A. Farley, Jr., Esq., 400 Allegheny Ave., Towson, Md. 21204, Contract Purchaser; Ronald Baranski, 1401 E. Joppa Rd., Towson, Md. 21204; Associates of Loch Raven Village, Inc., Eudawood P. O. Box 9721, Towson, Md. 21204, Attention Wayne Skinner; and Phyllis C. Friedman, Court House, Towson, Md. 21204, People's Counsel for Baltimore County, on this 24th day of June, 1984.

John Holman
John Holman
County Board of Appeals of Baltimore County

IN THE MATTER OF
THE APPLICATION OF
LEROY M. MERRITT
FOR REZONING
FROM R-O TO B.L.
N/S of Joppa Road 71.50'
W. from c/l of Drumwood Road
9th District
Zoning File No.: R-83-193

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW
Case No.: 83-M-263/15/298

JOINT STIPULATION

Now comes, Leroy M. Merritt, Appellant, by S. Eric DiNenna and S. Eric DiNenna, P.A., and People's Counsel for Baltimore County, by Phyllis C. Friedman, and Peter Max Zimmerman, Deputy People's Counsel for Baltimore County, and says jointly:

1. That an Appeal has been filed by the Appellant before this Circuit Court from an Opinion and Order of the County Board of Appeals dated June 15, 1984.
2. That the parties hereto, agree and consent that memoranda do not have to be filed pursuant to Maryland Rule B12 of the Annotated Code of Maryland.
3. That the parties hereto, consent to an Order of the Court waiving same.

Phyllis C. Friedman
Phyllis C. Friedman
People's Counsel
Peter Max Zimmerman
Peter Max Zimmerman
Deputy People's Counsel
S. Eric DiNenna
S. Eric DiNenna, P.A.
406 W. Pennsylvania Avenue
Towson, Maryland 21204
296-6820
Attorneys for Appellant

IN THE MATTER OF
THE APPLICATION OF
LEROY M. MERRITT
FOR REZONING
FROM R-O TO B.L.
N/S of Joppa Road 71.50'
W. from c/l of Drumwood Road
9th District
Zoning File No.: R-83-193

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW
Case No.: 83-M-263/15/298

ORDER

Upon the foregoing it is Ordered this ____ day of _____, 1984, by the Circuit Court for Baltimore County, that the parties hereto are relieved of the obligation of filing memoranda pursuant to Rule B12.

Judge

-2-

IN THE MATTER OF
THE APPLICATION OF
LEROY M. MERRITT
FOR REZONING FROM
R-O TO B.L.
N/S OF JOPPA ROAD 71.50'
W. FROM C/L OF
DRUMWOOD ROAD
9th DISTRICT
LEROY M. MERRITT,
PETITIONER-APPELLANT
File No. R-83-193

ON REMAND FROM THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW
Misc. File No. 15
File No. 298
File No. 83-M-263

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, Keith S. Franz, and Leroy B. Spurrier, 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 of 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-83-193

March 2, 1984 Order of Judge A. Owen Hennegan of the Circuit Ct. of Baltimore County Ordering that the decision of the Board of Appeals be reversed and the case remanded for a new hearing.

March 29, 1984 Amended Order of Judge A. Owen Hennegan of the Circuit Court for Baltimore County

May 17, 1984 Remand hearing before the Board of Appeals of Balto. County

June 15, 1984 Order of the County Board of Appeals that the petition for reclassification of the subj. site from R-O to B.L. be and the same is DENIED

June 25, 1984 Order for Appeal filed in the Circuit Ct. for Balto. County by S. Eric DiNenna, Esq., on behalf of Petitioner.

June 25, 1984 Petition to accompany Order for Appeal filed in Circuit Ct. for Balto. County

June 26, 1984 Certificate of Notice sent to all interested parties

July 24 Transcript of testimony filed

Leroy M. Merritt
Case No. R-83-193

July 25, 1984 Record of proceedings filed in the Circuit Court for Baltimore County

Record of proceedings pursuant to which said Order was entered and said Board acted are 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 Holman
John Holman
County Board of Appeals of Baltimore County

cc: S. Eric DiNenna, Esq.
People's Counsel

CIRCUIT COURT FOR BALTIMORE COUNTY

CATEGORY APPEAL

IN THE MATTER OF THE APPLICATION OF LEROY M. MERRITT
FOR REZONING FROM R-O TO B.L.

N/S of Joppa Rd. 71.50'
W. from c/l of Drumwood Rd. 9th District
Zoning File No. R83-193

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY
Protestant

ATTORNEYS

S. Eric DiNenna
406 W. Penna. Ave. (04) 825-1630

Phyllis Cole Friedman
John W. Hennegan, III
Peter Max Zimmerman
Rm. 223, Court House/Deputy People's
Towson, MD 21204 Counsel

John W. Hennegan, III
John W. Hennegan, III
3-5-84 - 3-28-84
NE + order to hold/stop

- (1) July 26, 1983 - Petitioner's Order for Appeal from the Order of the County Board of Appeals of Balto. Co., and Petition for Appeal fd.
- (2) July 28, 1983 Certificate of Notice fd.
- (3) August 2, 1983 - App. of John W. Hennegan, III & Peter Max Zimmerman as attorneys for the Dept & same day Answer to Petition on Appeal fd.
- (4) Aug. 18, 1983 Transcript of Record fd.
- (5) Aug. 18, 1983 Two notices of filing sent.
- (6) Sept. 19, 1983 Appellant's Memorandum fd.
- (7) Oct. 3, 1983 - Appellee's Memorandum fd.
- Dec. 29, 1983 Hon. A. Owen Hennegan. Hearing had. Ruling held sub-curia. Opinion to be filed.
- (8) Mar. 2, 1984 - Memorandum Opinion and Order of Court that the decision of the Board of Appeals is reversed and the case remanded for a new hearing and that the Board of Appeals of Balto. Co. pay the costs of these proceedings fd. (AOH)
- (9) March 29, 1984 - Amended Order of Court that the decision of the Board of Appeals be & is hereby reversed & the case remanded to the Board for reconsideration of the matter without reference to the letters from the protestants, & with the option of allowing further argument of counsel; & that the Board issue a New Opinion & Order after such reconsideration & that the Board of Appeals of Baltimore County pay the costs of these proceedings fd. (AOH)
- (10) April 3, 1984 - Correspondence to Judge Hennegan fd.

DOCKETS
MISC 8263
L-CLM 5.00
CHEN 71 65.00
811731 COPI 202 11:00
07/26/84

IN THE MATTER OF THE
APPLICATION OF
LEROY M. MERRITT
FOR REZONING
FROM R-O TO B.L.

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW
Case No.: 83-46-263/15/298

INTERIM ORDER

This is an appeal from the Baltimore County Board of Appeals brought pursuant to Maryland Rule 8-2(e). The Court has reviewed the record and considered counsel's argument. The Court feels the County Council placed an inappropriate zoning classification on the subject property. As a result of this error, the finding of the Board of Appeals to refuse to reclassify the subject property was arbitrary. Because there is a public hearing scheduled for this matter on October 23, 1984, the Court will issue the following Interim Order and will render its written opinion at a later date. Therefore, it is this 20th day of September, 1984, by the Circuit Court for Baltimore County,

ORDERED that the decision of the Board of Appeals be and is hereby reversed and the subject property be reclassified as B.L. zone.

A. O. Hennegan, Judge
A. O. HENNEGAN, JUDGE

COPIES SENT:

FILED SEP 20 1984

County Board of Appeals of Baltimore County

Room 200 Court House
Towson, Maryland 21204
(301) 494-3180
June 26, 1984

S. Eric DiNenna, Esq.
406 W. Pennsylvania Ave.
Towson, Md. 21204

Dear Mr. DiNenna:

Re: Case No. R-83-193
Leroy M. Merritt

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

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

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

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

Very truly yours,

Jane Holman
Jane Holman, Secretary

Encls.
cc: Leroy M. Merritt

MANDATE
Court of Special Appeals of Maryland

PGC No. 722 September Term, 1984

People's Counsel for Baltimore County

Leroy M. Merritt

November 23, 1984 - Voluntary Dismissal treated as a Line of Dismissal filed by counsel for appellant. Appeal Dismissed.

November 23, 1984 - Mandate Issued.

STATEMENT OF COSTS:

In Circuit Court: Baltimore County

(Law No. 83-M-263)

Record
Surveyor's Costs

In Court of Special Appeals:

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

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

STATE OF MARYLAND, Sei:

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 twenty-third day of November A.D. 1984.

James W. Holman
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.

County Board of Appeals of Baltimore County

Room 200 Court House
Towson, Maryland 21204
(301) 494-3180
June 26, 1984

Mrs. Phyllis C. Friedman
People's Counsel of Baltimore County
Court House
Towson, Md. 21204

Dear Mrs. Friedman:

Re: Case No. R-83-193
Leroy M. Merritt

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,

Jane W. Holman
Jane Holman, Secretary

Encl.
cc: Clifton Trust Bank
Ronald Baranski
Associates of Loch Raven Village, Inc.
A. Jablon
J. Dyer
N. Garber
J. Howell
Board of Education

LEROY M. MERRITT

CR-83-193

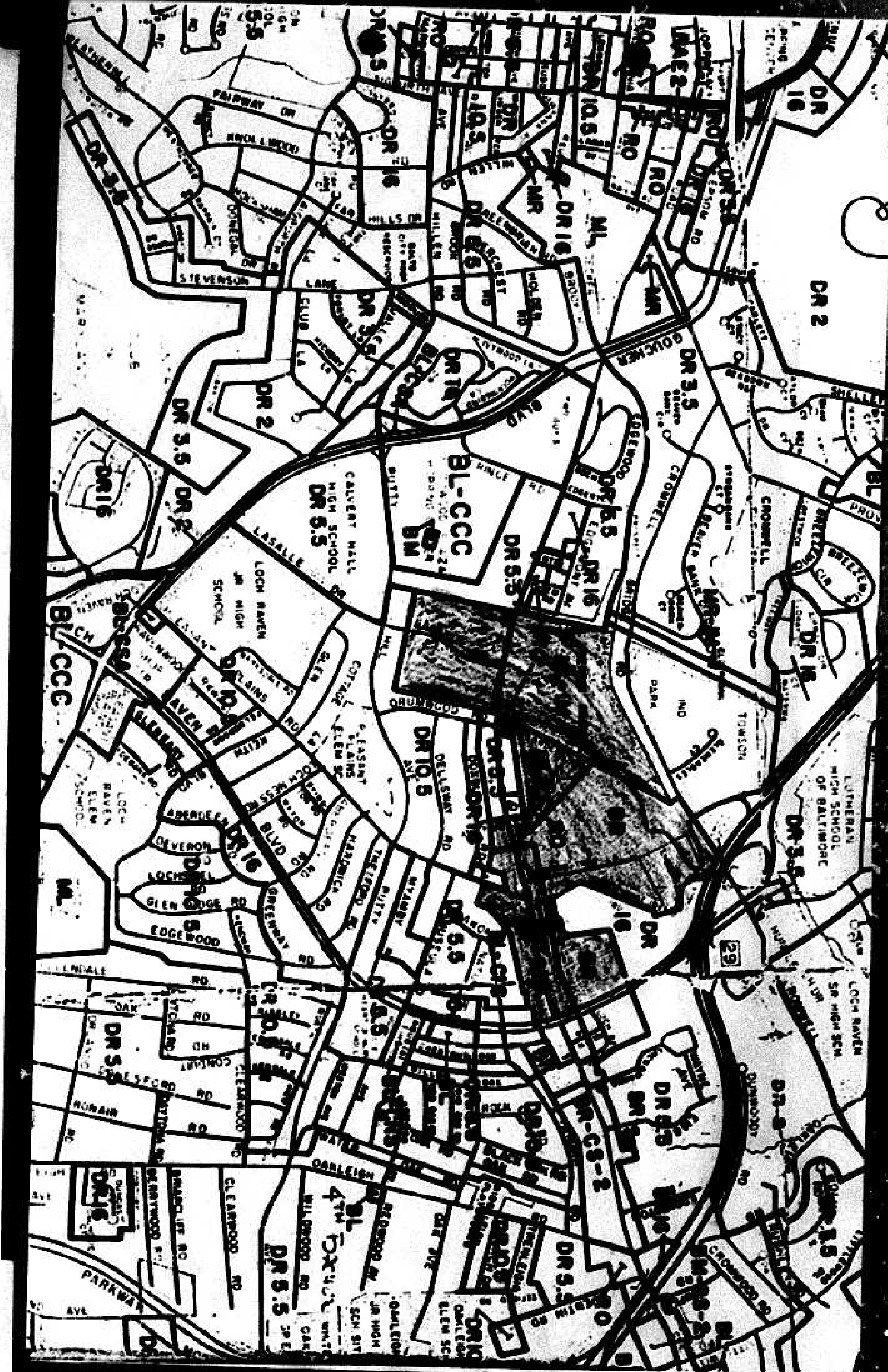
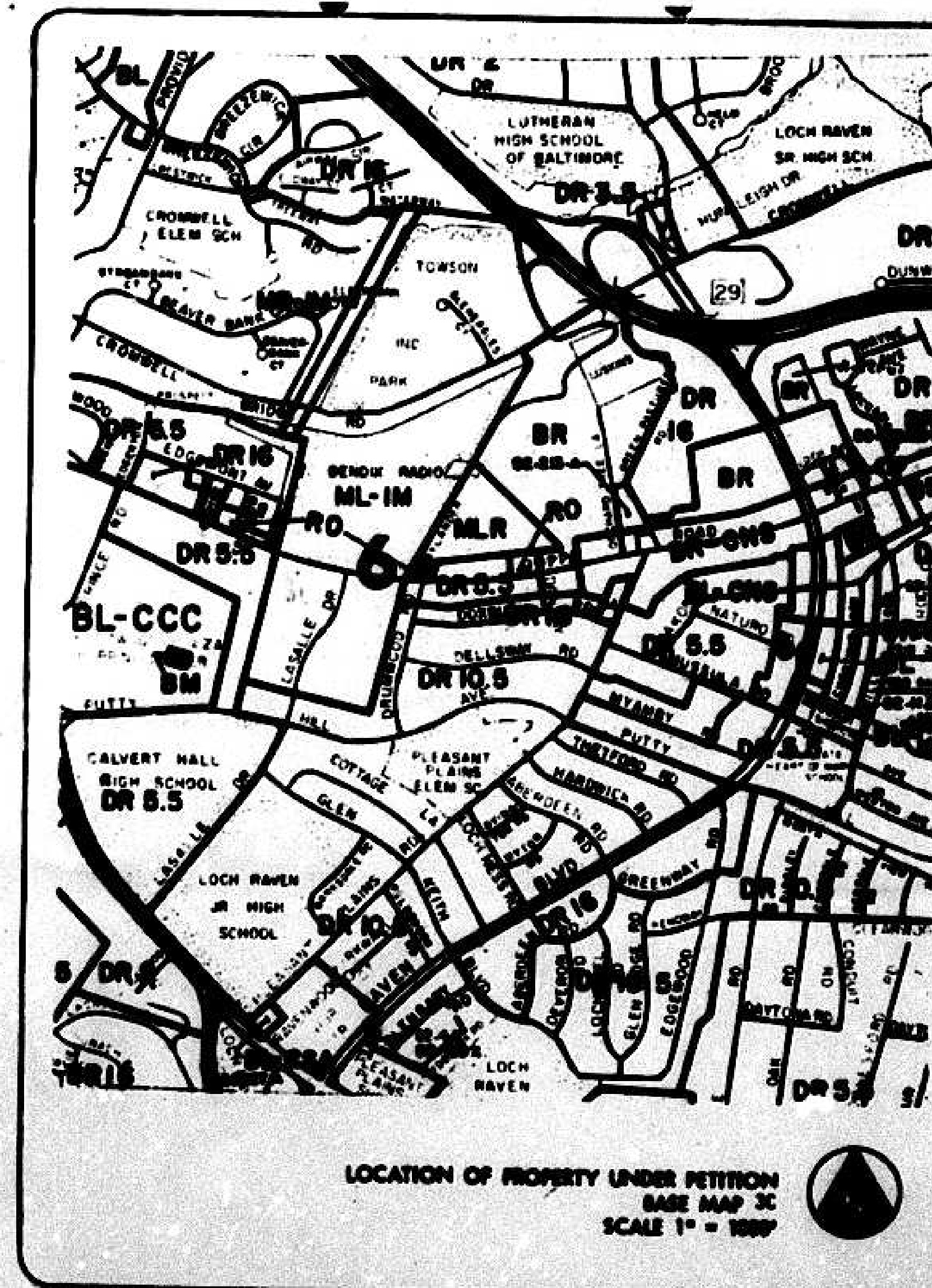
N/S Joppa Rd. 71.50' W from
c/l of Drumwood Rd.

9th District

R-O to B.L.

0.334 acres

Aug. 31, 1982 Petition filed
April 19, 1983 Hearing before the Bd.
July 1, " Order of the Board denying the reclassification
July 26, " Order for Appeal filed in Cir. Ct. by Eric DiNenna, Esq., on behalf of Petitioner
Aug. 18, " Record of proceedings filed in Circuit Court 83-M-263
Mar. 2, 1984 Board REVERSED, and case REMANDED for a new hearing. Judge A. O. Hennegan 3/6/84 - cc: A. Jablon, J. Howell
Mar. 28 Amended Order of the Court that the decision of the Board of Appeals be and is hereby reversed and the case remanded to the Board for consideration of the matter without reference to the letters from the protestants, and with the option of allowing further argument of counsel; and that the Board issue a New Opinion and Order after such reconsideration and that the Board of Appeals of Baltimore County pay the cost of these proceedings (d. A.O. Hennegan) 6/3/84 - cc: A. Jablon, A. January, J. Howell
May 17 Hearing held before the Board (H.F.S.)
June 15 Board DENIED reclassification
June 23 Order for Appeal filed in the Circuit Court by Mr. DiNenna for Petitioner (83-M-263)
July 25 Record of proceedings filed in the Circuit Court
Sept. 20 Board REVERSED by Judge A. Owen Hennegan (property reclassified to BL) 9/24/84 - cc: A. Jablon, A. January, J. Howell
Oct. 15 Order for Appeal filed in the Court of Special Appeals by People's Counsel 10/1/84 - cc: A. Jablon, A. January, J. Howell
Nov. 20 Voluntary Dismissal filed by People's Counsel (case moot due to new maps)
Nov. 23 Case dismissed in Court of Special Appeals
Mandate issued



140 East Joppa Road
Towson, Md. 21204
April 25, 1983

Wm. Blackett
County Board of Appeals
Room 219 - Court House
Towson, Maryland 21204
Re: CR-83-193
Attention - Mr. William Blackett

Dear Sir:

My husband and I wish to enter an objection to the rezoning of the property at the corner of Joppa Road and McPender Lane. We have lived here about (20) years and expect to stay here as we are retired. Since moving here, we have witnessed various changes such as widening Joppa Road, the addition of Endowment Shopping Center and the Executive Plaza of business buildings, not to mention Lusk's and other stores plus another shopping center with Data Processing business to the back of the house across the road from us. The traffic situation is such that I do believe it is safer to pass the Beltway instead of Joppa Road. While still employed, one could not go into Joppa

Read from Drumwood Road for long periods of time, sometimes 15 or 20 minutes. The noise of the trucks along with cars at all hours of the night plus the dirt they create have caused us to have Central air installed so we can keep windows closed. This expense we did not need. The debris on the lawns are terrible from trash paper to broken bottles. Cars have come through our lawns and the trees we have planted have been uprooted. This last is probably a blessing because the tree kept the cars from coming into our living room. We do not need any more banks, gas stations, fast foods or office buildings. Having made the road into 5th floor to accommodate a turning lane have made all lanes so narrow we are constantly having the speed limit signs down.
May I suggest building, whatever, out in the Dulane Valley area where the space is and probably the Swankers for anything to be created. Please protect the elderly. Thank you. Sincerely, Wilbur R. Coleman
Ruth A. Coleman

1568 Glen Keith Blvd.
Towson, Md. 21204
May 10, 1983

Mr. William Hackett
County Board of Appeals
Room 219 Courthouse
Towson, Md. 21204

Dear Sir:

The Associates of Loch Raven Village, Inc. is opposed to rezoning the property of Leroy M. Merritt described as M/S of Joppa Road, 71' West of Drumwood Road so that a bank can be built there. We believe, with the Planning Board, that it would be ill-advised "to establish the beginnings of strip commercial development here." It is clear that changes in the zoning of that property and the nearby properties of houses on the same side of Joppa Road will have a major impact on inhabitants of homes in Loch Raven Village, on the opposite side of Joppa Road. Although the zoning of these properties may raise questions, they are questions which should be dealt with in a comprehensive manner by the County Council when it next considers the zoning maps, not in a piecemeal fashion.

We would like to further point out that, even in the event a bank was to be built on the property, the proposed pattern of entrances and exits is illogical and unsafe. The proposed cluster of driveways and streets, all usable as entrances or exits and all within about 100 feet of each other would invite confusion, frustration, impatience, and accidents. Even now, it is very difficult to make a left-hand turn from Duxbury Road onto Joppa Road. Removing the existing island from Joppa Road and allowing cars to turn left from Joppa into the bank property a few feet east of Duxbury will make the problem even worse. Although cars could be allowed to turn right at that point, all eastbound traffic turning in to the bank should have to turn left onto Mylander Lane and then onto bank property. It should be remembered that the east side of Mylander Lane immediately north of the Joppa Road intersection is already the entrance to a parking lot. The bank lot would actually be a part of this same parking lot.

Thank you for your consideration of our arguments on this matter.

Sincerely,
Ken Allen
President
Associates of Loch Raven Village, Inc.

Rec'd 5/11/83
3:20 PM
Hand del.

1568 Glen Keith Blvd.
Towson, Md. 21204
4/28/83

William Hackett
County Board of Appeals
Room 219 Courthouse
Towson, Md. 21204

Dear Mr. Hackett:

This letter concerns the proposed rezoning to B.L. of the property owned by Leroy M. Merritt M/S of Joppa Road, 71' west of Drumwood Road. The proposed erection of a bank on that property initially aroused little interest among the Associates of Loch Raven Village, Inc. We consequently gave no testimony at the Board of Appeals' recent hearing. However, issues raised by homeowners near the property who are members of the Association as well as by the Planning Board have made it evident that the proposed rezoning may have serious implications for the Village. I refer, in particular, to the prospect that this rezoning might "establish the beginnings of strip commercial development here."

The Associates of Loch Raven Village, Inc., have had no opportunity to fully discuss the issue or formally adopt a position on it since its potential seriousness was brought to our attention. Consequently, I would like to request that you extend the period during which you will accept and consider communications on the issue to May 11, the day following our next scheduled meeting. We will submit testimony at that time.

Thank you for your consideration.

Sincerely,
Ken Allen
President,
Associates of Loch Raven Village, Inc.

Rec'd 4-29-83
12:20 pm

494-3100

County Board of Appeals
Room 219, Court House
Towson, Maryland 21204
July 1, 1983

S. Eric DiNenna, Esq.
406 W. Pennsylvania Ave.
Towson, Md. 21204

Re: Case No. R-63-193
Leroy M. Merritt

Dear Mr. DiNenna:

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

Very truly yours,

John Holman, Secretary

Encl.
cc: Leroy M. Merritt
Clifton Trust Bank
J. W. Hanson, Esq.
W. Hammond
J. Dyer
N. Garber
J. Howell
Board of Education
Ronald Baronski

494-3100

County Board of Appeals
Room 219, Court House
Towson, Maryland 21204
July 28, 1983

S. Eric DiNenna, Esq.
406 W. Pennsylvania Ave.
Towson, Md. 21204

Re: Case No. R-63-193
Leroy M. Merritt

Dear Mr. DiNenna:

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,

John Holman, Secretary

Encl.
cc: Leroy M. Merritt

July 28, 1983

BILLED TO: S. Eric DiNenna, Esq.
406 W. Penna. Ave. (21204)

Cost of certified documents filed
In Case No. R-63-193 \$ 27.00

Leroy M. Merritt
N/s Joppa Rd. 71.50' W. from
c/ of Drumwood Rd.
9th District

MAKE CHECKS PAYABLE TO: Baltimore County, Maryland

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

494-3100

County Board of Appeals
Room 219, Court House
Towson, Maryland 21204
July 28, 1983

John W. Hession, Esq.
People's Counsel
Court House
Towson, Md. 21204

Re: Case No. R-63-193
Leroy M. Merritt

Dear Mr. Hession:

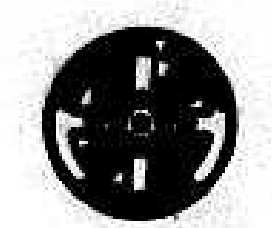
Notice is hereby given, in accordance with the Rules of Procedure of the Court of Appeals of Maryland, that an appeal has been taken to the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

John Holman, Secretary

Encl.
cc: Clifton Trust Bank
Ronald Baronski
W. Hammond
J. Dyer
N. Garber
J. Howell
Board of Education



Baltimore County, Maryland
PEOPLE'S COUNSEL
OLD COURT HOUSE
TOWSON, MARYLAND 21204

PYLLIS COLE FREEMAN
People's Counsel
PETER MAX ZIMMERMAN
Deputy People's Counsel

March 28, 1984

The Honorable
A. Owen Hennegan, Judge
Circuit Court for Baltimore County
Courts Building
Towson, Maryland 21204

RE: Application of Leroy M. Merritt
Ckt. Ct. Misc. No. 83-2-283

Dear Judge Hennegan:

In reference to the letter of S. Eric DiNenna dated March 23, 1984, it is this office's view that upon remand by the Court, jurisdiction reverts to the County Board of Appeals. At that point, the Board has discretion to review the matter in order that a decision be rendered independently of any post-hearing correspondence. If the Board chooses to hear further testimony, that would be a matter of discretion within the jurisdiction of the Board.

It is our view, as a matter of jurisdiction as well as a reasonable inference of the Court's intent, that it is up to the Board to conduct such further proceedings as it deems appropriate, not inconsistent with the judicial decision.

Therefore, no Amended Order is necessary. The Board may proceed upon the basis of the Court's Opinion and Order of March 7, 1984.

Very truly yours,

Peter Max Zimmerman
Deputy People's Counsel

RECEIVED
COUNTY BOARD OF APPEALS
MAR 28 1984

P.S.: I received a copy of the Amended Order following dictation, but before transmittal, of this letter. It is my understanding that the Court's contemplation of argument of counsel includes the right to argue for reopening the hearing to gather evidence from the Protestants. In any event, it seems to me this is a matter within the Board's jurisdiction.

cc: S. Eric DiNenna, Esquire

CIRCUIT COURT FOR BALTIMORE COUNTY

John Adams - 404-3888
Chief Assignment Commissioner
Baltimore County

ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 Stoley Avenue
P.O. Box 8754
Towson, Maryland 21204-0754

County Building - 404-3888
Assignment - Jury - 404-3888
Assignment - Civil Trial - 404-3888
Assignment - Criminal Trial - 404-3888
Assignment - Probate - 404-3888
Assignment - Family - 404-3888
Assignment - Juvenile - 404-3888
Assignment - Mental Health - 404-3888
Assignment - Traffic - 404-3888
Assignment - Other - 404-3888

RE: DON JURY - 83 M 263 - LEROY M. MERRITT VS COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

HEARING DATE: Thursday, December 29, 1983, @ 9:30 a.m.
ON THE FOLLOWING: Appeals 1 hour

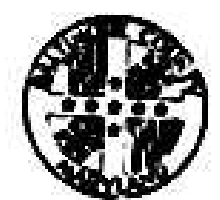
UPON RECEIPT OF THIS NOTICE: Counsel shall contact each other immediately to confirm calendars. Claim of not receiving notice will not constitute reason for postponement.

POSTPONEMENTS: If the above date is not acceptable to any counsel, a request for a postponement MUST BE MADE IN WRITING TO THE Assignment Office AS SOON AS POSSIBLE, with a copy to all counsel involved. POSTPONEMENTS WITHIN 15 DAYS OF TRIAL must be made to the attention of the Director of Central Assignments - Joyce Grimm - 404-3887.

SETTLEMENT CONFERENCES: All counsel must secure the attendance of all parties necessary to effect a binding settlement, including clients and insurance representatives. THERE WILL BE NO EXCEPTIONS PER ORDER OF JUDGE FRANK E. COONE. Please direct all inquiries to the attention of John Adams.

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

1200-11/19/83



County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180
June 15, 1984

S. Eric DiNenna, Esquire
406 W. Pennsylvania Avenue
Towson, MD 21204

Re: Case No. R-83-193
Leroy M. Merritt

Dear Mr. DiNenna:

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

Very truly yours,

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

Encl.

cc: Leroy M. Merritt
Clifton Trust Co.
Phyllis C. Friedman
Mr. A. Jablon
Mr. J. E. Dyer
Mr. N. E. Gerber
Mr. J. C. Howell
Board of Education
Ronald Baronski
The Associates of Loch Raven Village, Inc.

S. Eric DiNenna, P.A.
Attorney at Law
406 W. Pennsylvania Avenue
Towson, Maryland 21204

301-423-1630
301-290-6020

April 9, 1984

County Board of Appeals
Room 200, Court House
Towson, Maryland 21204

RE: Leroy M. Merritt
Case No. 83-M-263/15/298

Dear Mr. Chairman:

I assume you are in receipt of the Order and Amended Order of the Court dated March 28, 1984 from the Circuit Court for Baltimore County.

Accordingly, I would request that you have your office contact Mr. Zimmerman and myself to set up a hearing, if the Board wishes to hear argument from counsel, at its first open date.

The three Board members who originally heard this matter were Messrs. Hackett, Chairman, Spurrier and Franz.

Thank you for your cooperation.

Very truly yours,

S. Eric DiNenna
S. ERIC DINENNA

SED:bk
cc: Peter Max Zimmerman, Esquire
John Farley, Esquire

RECEIVED
COUNTY BOARD OF APPEALS
MAY 10 10 40 AM '84



Baltimore County, Maryland
PEOPLE'S COUNSEL
OLD COURT HOUSE
TOWSON, MARYLAND 21204

Tel. 494-3180

PHYLLIS COLE FRIEDMAN
People's Counsel
PETER MAX ZIMMERMAN
Deputy People's Counsel

March 28, 1984

The Honorable
A. Owen Hennegan, Judge
Circuit Court for Baltimore County
Courts Building
Towson, Maryland 21204

RE: Application of Leroy M. Merritt
Ckt. Ct. Misc. No. 83-M-263

Dear Judge Hennegan:

In reference to the letter of S. Eric DiNenna dated March 23, 1984, it is this office's view that upon remand by the Court, jurisdiction reverts to the County Board of Appeals. At that point, the Board has discretion to review the matter in order that a decision be rendered independently of any post-hearing correspondence. If the Board chooses to hear further testimony, that would be a matter of discretion within the jurisdiction of the Board.

It is our view, as a matter of jurisdiction as well as a reasonable inference of the Court's intent, that it is up to the Board to conduct such further proceedings as it deems appropriate, not inconsistent with the judicial decision.

Therefore, no Amended Order is necessary. The Board may proceed upon the basis of the Court's Opinion and Order of March 7, 1984.

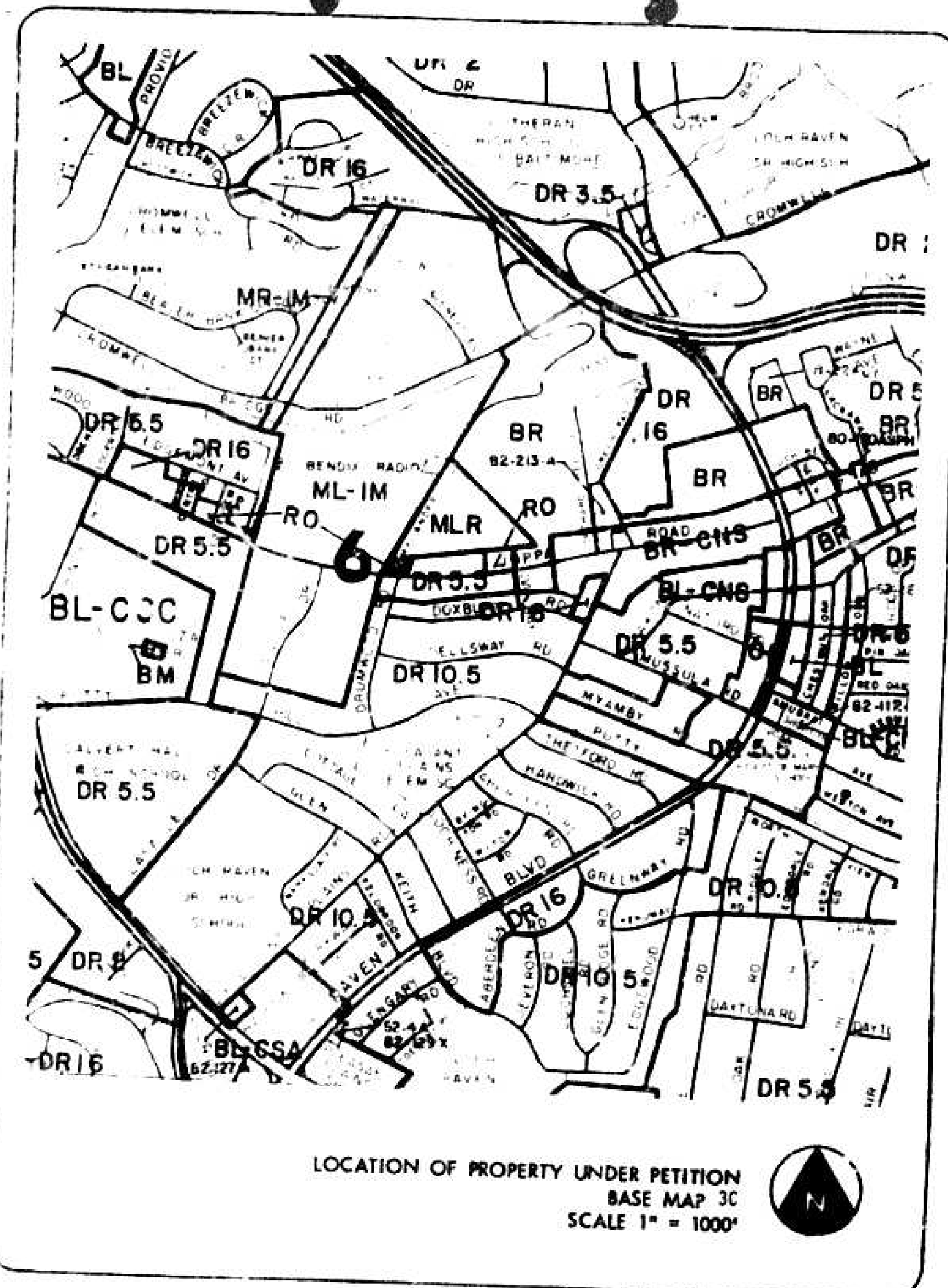
Very truly yours,

Peter Max Zimmerman
Peter Max Zimmerman
Deputy People's Counsel

RECEIVED
COUNTY BOARD OF APPEALS
MAY 28 10 32 AM '84

P.S.: I received a copy of the Amended Order following dictation, but before transmittal, of this letter. It is my understanding that the Court's contemplation of argument of counsel includes the right to argue for reopening the hearing to gather evidence from the Protestants. In any event, it seems to me this is a matter within the Board's jurisdiction.

cc: S. Eric DiNenna, Esquire



S. Eric DiNenna, P.A.
Attorney at Law
406 W. Pennsylvania Avenue
Towson, Maryland 21204

301-423-1630
301-290-6020

July 9, 1984

Mr. Phyllis C. Friedman
People's Counsel
Courthouse
Towson, Maryland 21204

Mr. Peter Max Zimmerman
People's Counsel
Courthouse
Towson, Maryland 21204

RE: Merritt Property
Case No. 83-M-263/15/298

Dear Phyllis and Peter:

As per my discussion with Mr. Zimmerman, enclosed herewith please find the Joint Stipulation and a copy of the Order which I respectfully request you affix your signature to the Joint Stipulation.

Upon doing so, please return same to me at which time I will ask Judge Hennegan to sign the Order.

If there are any questions concerning this, do not hesitate to call upon me.

Very truly yours,

S. Eric DiNenna
S. ERIC DINENNA

SED:bk
Enclosures
P. S. Enclosed please find a copy for your file. ERIC

RECEIVED
COUNTY BOARD OF APPEALS
JUL 17 10 59 AM '84

494-3180

County Board of Appeals
Room 219, Court House
Towson, Maryland 21204
April 24, 1984
NOTICE OF ASSIGNMENT
ARGUMENT ONLY

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). ABSOLUTELY NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL #108

CASE NO. R-83-193 LEROY M. MERRITT

N/s Jappa Rd., 71.50' W. from c/l of Drumwood Rd.

9th District

3/2/84 - Judge A. Owen Hennegan Ordered the decision of the Board of Appeals be Reversed and the case remanded for a new hearing

ASSIGNED FOR: THURSDAY, MAY 17, 1984, at 9 A.M.

cc: S. Eric DiNenna, Esq. Counsel for Petitioner

Leroy M. Merritt Petitioner

Clifton Trust Bank Contract Purchaser

Ronald Baronski People's Counsel

Phyllis C. Friedman People's Counsel

A. Jablon

J. Dyer

N. Gerber

J. Howell

Bd. of Education

June Holman, Secretary

In the matter of Leroy M. Merritt

IN THE CIRCUIT COURT

FOR

Vs.
Co. Bd. of Appeals

BALTIMORE COUNTY

People's Counsel

Docket 15 Folio 299

Case No. 83M263

NOTICE OF FILING OF RECORD

TO: S. Eric DiNenna

June Holman
Mail Stop 2205

Phyllis Cole Friedman
Mail Stop 2206

406 W. Penna. Ave.

Towson, Md. 21204

In accordance with Maryland Rule of Procedure B12, you are notified that the record in the above entitled case was filed on July 25, 1984

Clara H. Kahline
Clerk

RECEIVED
COUNTY BOARD OF APPEALS
JUL 26 10 22 AM '84

IN THE MATTER OF
THE APPLICATION OF
LEROY M. MERRITT
FOR REZONING FROM
R-O TO B.L.
N/S of Joppa Rd. 71.50'
W. from Centerline of
Drumwood Rd.,
9th District
Zoning File No. R-83-193

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
AT LAW
Misc. No. 83-M-263

ANSWER TO PETITION ON APPEAL

People's Counsel for Baltimore County, Protestant below and
Appellee herein, answers the Petition on Appeal heretofore filed by
the Appellant, viz:

1. That the Appellee admits the allegations made and contained
in the first paragraph of said Petition.
2. That the Appellee denies the allegations made and contained
in the second, third, and fourth paragraphs of said Petition.
3. Further answering, Appellee states affirmatively that the
decision of the County Board of Appeals 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.

Phyllis Cole Friedman
People's Counsel for Baltimore County

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

I HEREBY CERTIFY that on this _____ day of June, 1984, a copy
of the foregoing Answer to Petition on Appeal was mailed to S. Eric
DiNenna, Esquire, and S. Eric DiNenna, P.A., 406 W. Pennsylvania Ave.,
Towson, MD 21204.

Peter Max Zimmerman

RECEIVED
COUNTY BOARD OF APPEALS
FRI AUG 14 1984

CIRCUIT COURT FOR BALTIMORE COUNTY
ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 Bayview Avenue
P.O. Box 874
Towson, Maryland 21204-0744
July 31, 1984.

TO: S. Eric DiNenna, Esq.
The Honorable A. Owen Eganagan
County Board of Appeals of Baltimore Co.
Phyllis Cole Friedman, Esq.
Peter Max Zimmerman, Esq.

RE: NEW JURY - 83 M 263 - IN THE MATTER OF LEROY M. MERRITT FOR REZONING FROM R-O TO B.L.

HEARING DATE: Friday, September 14, 1984, @ 9:30 a.m.
ON THE FOLLOWING: Appeals 1 hour

UPON RECEIPT OF THIS NOTICE: Counsel shall contact each other immediately to confer and determine Chain of not receiving notice will not constitute
reason for postponement.

PORTIONMENTS: If the above date is not agreeable to any counsel, a request for a postponement MUST BE MADE IN WRITING to the Assignment
Office AS SOON AS POSSIBLE, with a copy to all counsel involved. PORTIONMENTS WITHIN 15 DAYS OF TRIAL must be made to the attention of the
Director of Central Assignments - Joyce Griffin - 484-3897.

SETTLEMENT CONFERENCE: All counsel must secure the attendance of all parties necessary to effect a binding settlement. Including clients and
insurance representatives. THERE WILL BE NO EXCEPTIONS PER ORDER OF JUDGE FRANK E. CUDDE. Please direct all inquiries to the attention
of John Adams.

SETTLEMENTS: If a settlement is reached prior to the hearing date, the Assignment Office must be notified immediately. All settlements must be put on
the record if an order of substitution is filed prior to trial.

RECEIVED
COUNTY BOARD OF APPEALS
FRI AUG 14 1984

CIRCUIT COURT FOR BALTIMORE COUNTY
ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 Bayview Avenue
P.O. Box 874
Towson, Maryland 21204-0744
August 9, 1984.

TO: S. Eric DiNenna, Esq.
The Honorable A. Owen Eganagan
County Board of Appeals of Baltimore Co.
Phyllis Cole Friedman, Esq.
Peter Max Zimmerman, Esq.

RE: NEW JURY - 83 M 263 - IN THE MATTER OF LEROY M. MERRITT FOR REZONING FROM R-O TO B.L.

HEARING DATE: Tuesday, September 18, 1984, @ 9:30 a.m.
ON THE FOLLOWING: Appeals 1 hour

UPON RECEIPT OF THIS NOTICE: Counsel shall contact each other immediately to confer and determine Chain of not receiving notice will not constitute
reason for postponement.

PORTIONMENTS: If the above date is not agreeable to any counsel, a request for a postponement MUST BE MADE IN WRITING to the Assignment
Office AS SOON AS POSSIBLE, with a copy to all counsel involved. PORTIONMENTS WITHIN 15 DAYS OF TRIAL must be made to the attention of the
Director of Central Assignments - Joyce Griffin - 484-3897.

SETTLEMENT CONFERENCE: All counsel must secure the attendance of all parties necessary to effect a binding settlement. Including clients and
insurance representatives. THERE WILL BE NO EXCEPTIONS PER ORDER OF JUDGE FRANK E. CUDDE. Please direct all inquiries to the attention
of John Adams.

SETTLEMENTS: If a settlement is reached prior to the hearing date, the Assignment Office must be notified immediately. All settlements must be put on
the record if an order of substitution is filed prior to trial.

PETITION FOR CONDITIONAL RECLASSIFICATION

9th Election District

ZONING: Petition for Conditional Reclassification

LOCATION: North side of Joppa Road, 71.50 ft. West from the
centerline of Drumwood Road

DATE & TIME: Tuesday, April 19, 1983 at 10:00 A.M.

PUBLIC HEARING: Room 218, Courthouse, Towson, Maryland

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

Petition for Conditional Reclassification from an R-O zone
to a B.L. zone

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

Being the property of Leroy M. Merritt, as shown on plat plan filed with the
Zoning Department.

Hearing Date: Tuesday, April 19, 1983 at 10:00 A.M.
Public Hearing: Room 218, Courthouse, Towson, Maryland

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

JAMES PETRICA, P.E.
BRIAN D. JONES, P.E.

JAMES PETRICA AND ASSOCIATES, INC.
Consulting Engineers
408 JEFFERSON BUILDING
TOWSON, MARYLAND 21204

November 22, 1982

DESCRIPTION OF PROPERTY
TO ACCOMPANY PETITION FOR ZONING
RECLASSIFICATION FROM R.O. TO B.L.

All that parcel of land in the Ninth Election District of
Baltimore County,
Beginning for the same at a point on the north side of Joppa Road,
located N 57°26'13"W, 71.50 feet from the intersection of the
centerline of Joppa Road and the centerline of Drumwood Road;
thence from said place of beginning, binding on the cut-off
leading to the southeast side of Mylander Lane, (1) N 38°12'58"W,
20.74 feet to said southeast side of Mylander Lane, thence
binding on said side of said lane the three following lines
viz: (2) northeasterly by a curve to the right having a
radius of 324.68 feet for the distance of 71.15 feet, said
arc being subtended by a chord bearing N 24°11'23"E, 71.01
feet, (3) northeasterly by a curve to the right having a radius
of 30.00 feet for a distance of 31.42 feet, said arc being
subtended by a chord bearing N 60°28'03"E, 30.00 feet, (4)
northeasterly by a curve to the left having a radius of 50.00
feet for the distance of 45.30 feet, said arc being subtended
by a chord bearing N 64°30'48"E, 43.76 feet, thence leaving
Mylander Lane and running along the M.L.R./R.O. zoning line,
(5) N 87°31'1"E, 133.42 feet, thence leaving the aforesaid

RECEIVED PLANS
Item #6
cycle 10 DEC 6 RECD

Description of Property to
Accompany Petition for Zoning
Reclassification from R.O.
to B.L.

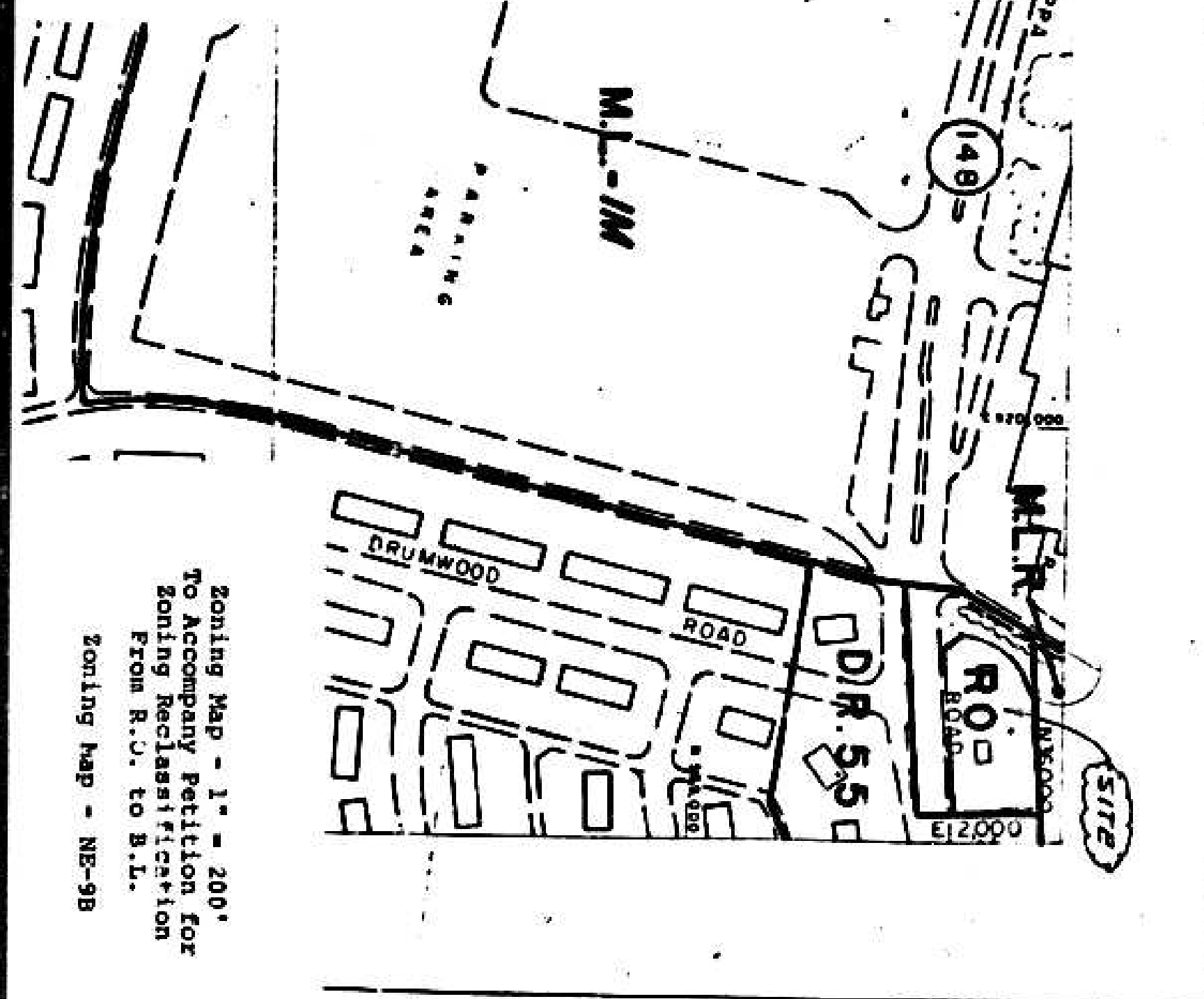
- 2 -

November 22, 1982

zone line and running the following two lines viz: (6) southerly
by a curve to the left having a radius of 160.74 feet for the
distance of 48.81 feet said arc being subtended by a chord
bearing S 05°26'21"W, 48.62 feet, (7) S 3°15'36"E, 73.30 feet
to the north side of Joppa Road, thence binding on the north
side of Joppa Road, of variable width the two following lines
viz: (8) westerly by a curve to the right having a radius of
3182.67 feet for the distance of 17.39 feet, said arc being
subtended by a chord bearing S 86°25'00"W, 17.39 feet, and
(9) westerly by a curve to the right having a radius of
3153.66 feet for the distance of 191.30 feet said arc being
subtended by a chord bearing S 88°18'39"W, 191.27 feet to
the place of beginning.

Containing 0.558 acres more or less.

JAMES PERICA & ASSOCIATES, INC.
CONSULTING ENGINEERS
407 JAMESON ROAD
TOWSON, MARYLAND 21204



Zoning Map - 1" = 200'
To Accompany Petition for
Zoning Reclassification
From R.O. to B.L.
Zoning Map - NE-9B

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, IN THE COURT OF SPECIAL APPEALS
Appellant : OF MARYLAND
v. : PHC No. 722, September Term, 1984
LEROY M. MERRITT, :
Appellee :

VOLUNTARY DISMISSAL

People's Counsel for Baltimore County, Appellant, hereby voluntarily
dismisses the above-entitled appeal. The reason for the voluntary dismissal
is that on November 13, 1984, the County Council for Baltimore County enacted
B'11 136-84, a comprehensive zoning ordinance, and the said ordinance roots
this appeal.

Phyllis Cole Friedman
Phyllis Cole Friedman
People's Counsel for Baltimore County

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

RECEIVED
COUNTY BOARD OF APPEALS
NOV 20 A 11:22 E

I HEREBY CERTIFY that on this 20th day of November, 1984, a
copy of the foregoing Voluntary Dismissal was mailed to S. Eric DiNenna,
Esquire, 406 W. Pennsylvania Avenue, Towson, Maryland 21204.

Peter Max Zimmerman
Peter Max Zimmerman

IN THE WRITER OF THE : IN THE
APPLICATION OF :
LEROY M. MERRITT : CIRCUIT COURT
FOR REZONING :
FROM R-O TO B.L. : FOR
N/S of Joppa Road 71.50' : BALTIMORE COUNTY
W. from c/i of Drumwood Road : AT LAW
9th District :
Zoning File No. R-83-193 : Case No.: 83-M-263/15/298

ORDER FOR APPEAL

MR. CLERK:
Please note an appeal to the Court of Special Appeals of Maryland
from the decision of the Circuit Court for Baltimore County in the above-
entitled case, under date of September 20, 1984, and forward all papers
in connection with said case to the Clerk of the Court of Special Appeals
of Maryland in accordance with the Maryland Rules.

Phyllis Cole Friedman
Phyllis Cole Friedman
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

RECEIVED
COUNTY BOARD OF APPEALS
NOV 15 A 10:22 E

I HEREBY CERTIFY that on this 15th day of October, 1984, a copy
of the foregoing Order for Appeal was mailed to S. Eric DiNenna, Esquire,
406 W. Pennsylvania Avenue, Towson, Maryland 21204.

Peter Max Zimmerman
Peter Max Zimmerman



Baltimore County, Maryland

PEOPLE'S COUNSEL
RM. 223, COURT HOUSE
TOWSON, MARYLAND 21204
494-2188

PHYLLIS COLE FRIEDMAN
People's Counsel

PETER MAX ZIMMERMAN
Deputy People's Counsel

October 15, 1984

The Honorable
A. Owen Hennegan, Judge
Circuit Court for Baltimore County
Courts Building
Towson, Maryland 21204

RE: People's Counsel v. Leroy M.
Merritt, Case No. 83-M-263

Dear Judge Hennegan:

In reference to your letter dated September 24, 1984, we appreciate and respect your statement that the Interim Order dated September 20, 1984 is not a final Order.

However, because of the unconditional language in the body of the Interim Order, we have found it necessary to prevent any question concerning the timeliness of an appeal. Therefore, we are filing an appeal from your Interim Order dated September 20, 1984.

At such time as you enter an Opinion and Order, we will then file another appeal. We hope that this will insure absolutely against any procedural questions.

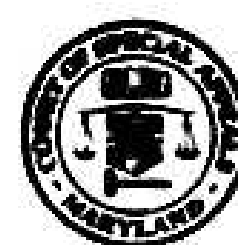
Very truly yours,

Peter Max Zimmerman
Peter Max Zimmerman
Deputy People's Counsel

PMZ:sh

cc: S. Eric DiNenna, Esquire

RECEIVED
COUNTY BOARD OF APPEALS
NOV 15 A 10:23 E



**Court of Special Appeals
of Maryland**

Annapolis, Md. 21401-1698

(301) 269-3646 (DIRECT LINE)
(301) 261-2920 (WASHINGTON AREA)

TOLL FREE FOR DEAF
(301) 269-2809 (DIRECT LINE)
(301) 585-0450 (WASHINGTON AREA)

November 23, 1984

Elmer H. Kahline, Jr., Clerk
Circuit Court for Baltimore County
Courthouse
Towson, Maryland 21204

Re: People's Counsel for Baltimore County v. Leroy M. Merritt
PHC No. 722, September Term, 1984
Your Law No. 83-M-263

Dear Mr. Kahline:

Enclosed find a Voluntary Dismissal treated as a Line of Dismissal that was filed with this Court on November 23, 1984. We are taking a copy for our files and sending the original to you for docketing.

Also, find enclosed the original mandate of this Court, reflecting this dismissal, which together with the Line should be placed in the record.

Very truly yours,

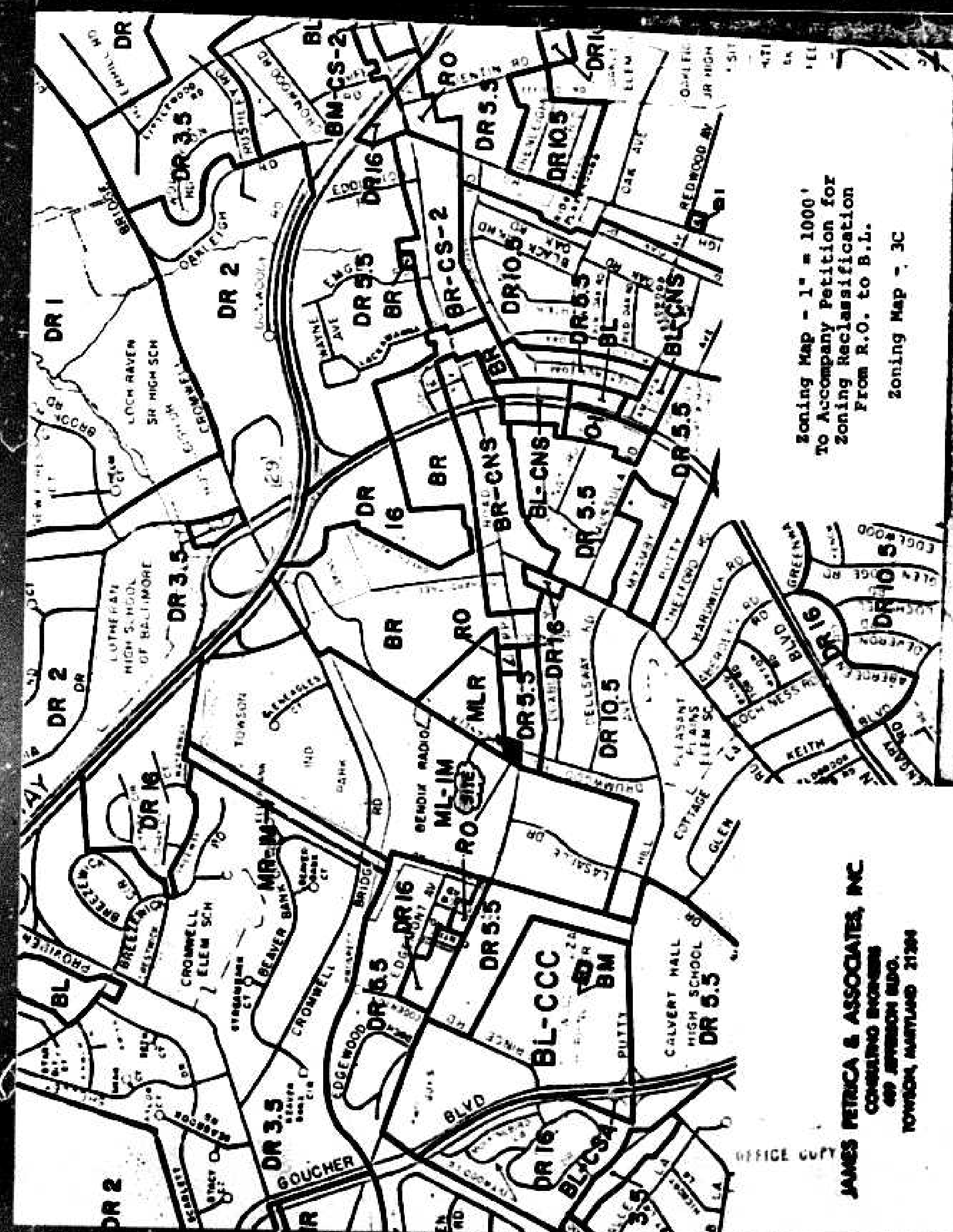
Howard E. Friedman
Howard E. Friedman
Clerk

HEF:cdq

Enclosure

cc: Phyllis Cole Friedman, Esquire
Peter Max Zimmerman, Esquire
S. Eric DiNenna, Esquire

RECEIVED
COUNTY BOARD OF APPEALS
NOV 26 P 10:28 E



Zoning Map - 1" = 1000'
To Accompany Petition for
Zoning Reclassification
From R.O. to B.L.
Zoning Map - 3C

JAMES PERICA & ASSOCIATES, INC.
CONSULTING ENGINEERS
407 JAMESON ROAD
TOWSON, MARYLAND 21204

CERTIFICATE OF PUBLICATION

TOWSON, MD. March 31, 1983

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 the
day of April, 1983, the said publication
appearing on the 31st day of March,
1983.

THE JEFFERSONIAN
L. Frank Smith
Manager

Cost of Advertisement, \$.....

Per Mr. Hackett -- Both parties have 10 days to submit a letter to
become a part of the file evidencing their views on the petition.

P.E.
P.E.

BBB-0000

JAMES PETRICA AND ASSOCIATES, INC.
Consulting Engineers
405 JEFFERSON BUILDING
TOWSON, MARYLAND 21204

December 1, 1982

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

Attention: Mr. Nicholas Commadari

Re: Item No. 6 - Cycle No. IV
Reclassification Petition
Clifton Bank
Leroy Merritt-Petitioner
N/S Joppa Road, 71.50' West
from centerline of
Drumwood Road

Gentlemen:

In accordance with our discussion of November 29, 1982, concerning the impact of the proposed development of this project upon the parking for the Towson Business Center, located immediately to the north, we submit herewith the parking data for the Towson Business Center.

Parking Spaces Required: 258

45,206 s.f. office use @ 1 space/300 s.f.	= 151
110,944 s.f. warehouse use @ 1 space/3,000 s.f.	= 37
18,900 s.f. court club (15 courts) @ 3 spaces/ct.	= 45
1,200 s.f. lounge on mezzanine @ 1 space/50 s.f.	= 24
240 s.f. beauty shop on mezzanine @ 1 space/300 s.f.	= 1
*176,490 s.f.	Total Parking Spaces Required 258

*includes 9,090 s.f. of mezzanine use as follows:

8,250 s.f. office
1,200 s.f. lounge
240 s.f. beauty shop

Parking Spaces Provided: 277

Parking Spaces lost to Proposed Dev.: 3

Total Parking Spaces Remaining: 274

Baltimore County
Office of Planning & Zoning - 2 -

December 1, 1982

The uses and areas enumerated above have been verified by the owner.

We trust this information will complete the requirements needed for processing the referenced reclassification petition.

Thank you for your assistance in this regard.

Very truly yours,

Brian D. Jones, P.E.

BDJ:mv

cc: Mr. S. Eric DiNenna

CERTIFICATE OF PUBLICATION

TOWSON, MD. 4/4 1983

THIS IS TO CERTIFY, that the annexed advertisement was published in THE TOWSON TIMES, a weekly newspaper distributed in Towson, Baltimore County, Md., once a week for 1 successive weeks, the first publication appearing on the 30th day of March 1983.

THE TOWSON TIMES

Margaret Argilla

Cost of Advertisement, \$ 37.80

CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 9 Date of Posting: 4/1/83
Posted for: Clifton Bank Reclassification
Petitioner: Leroy Merritt
Location of property: N/S Joppa Rd., 71.50' West from E/S of Drumwood Rd.
Location of Sign: Along E/S of Joppa Rd. at Alexander Rd.
Remarks: _____
Posted by: Margaret Argilla Date of return: 4/8/83
Number of Signs: 1

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

No. 85129

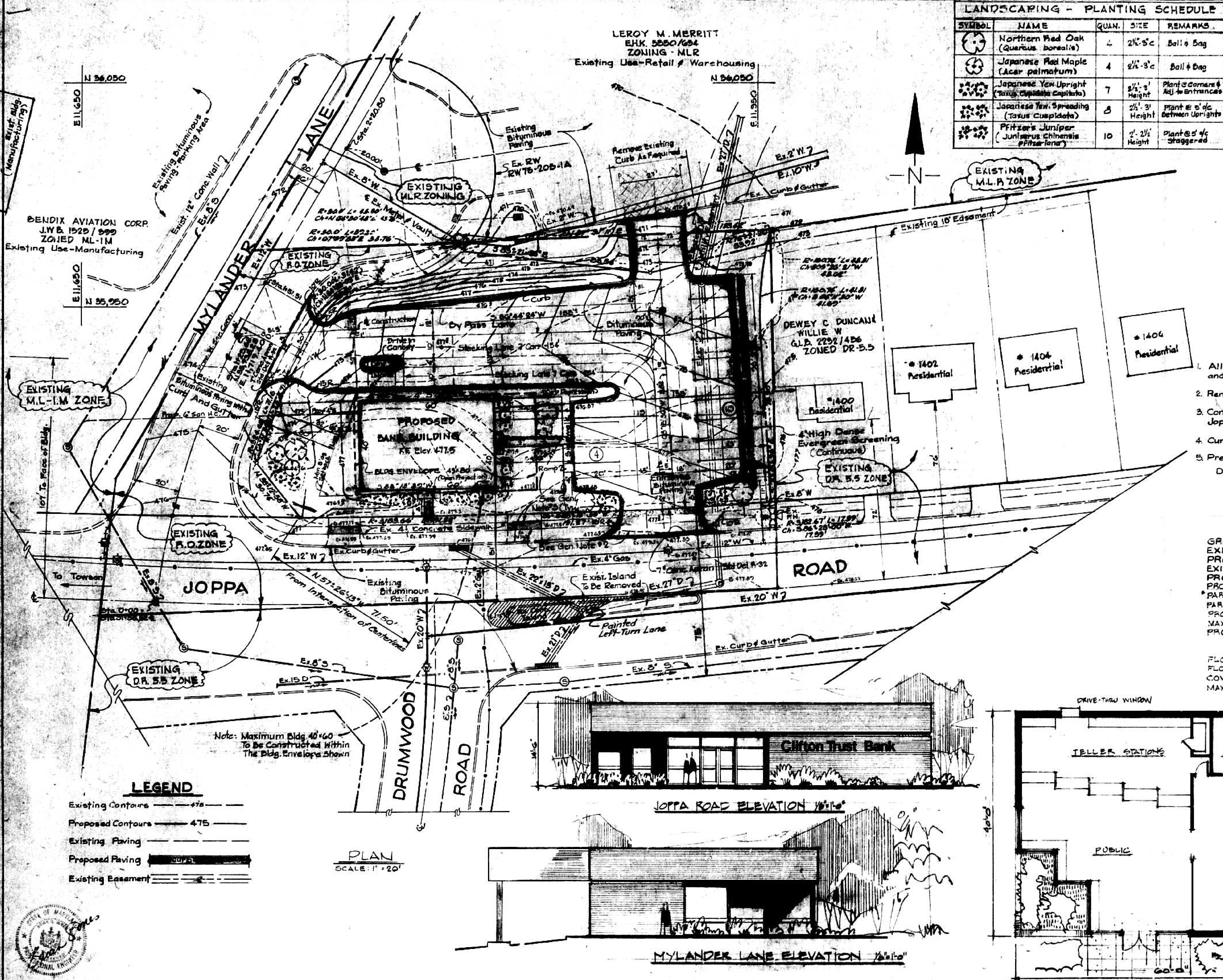
DATE Sept. 8, 1983 ACCOUNT 01.712

AMOUNT \$5.50

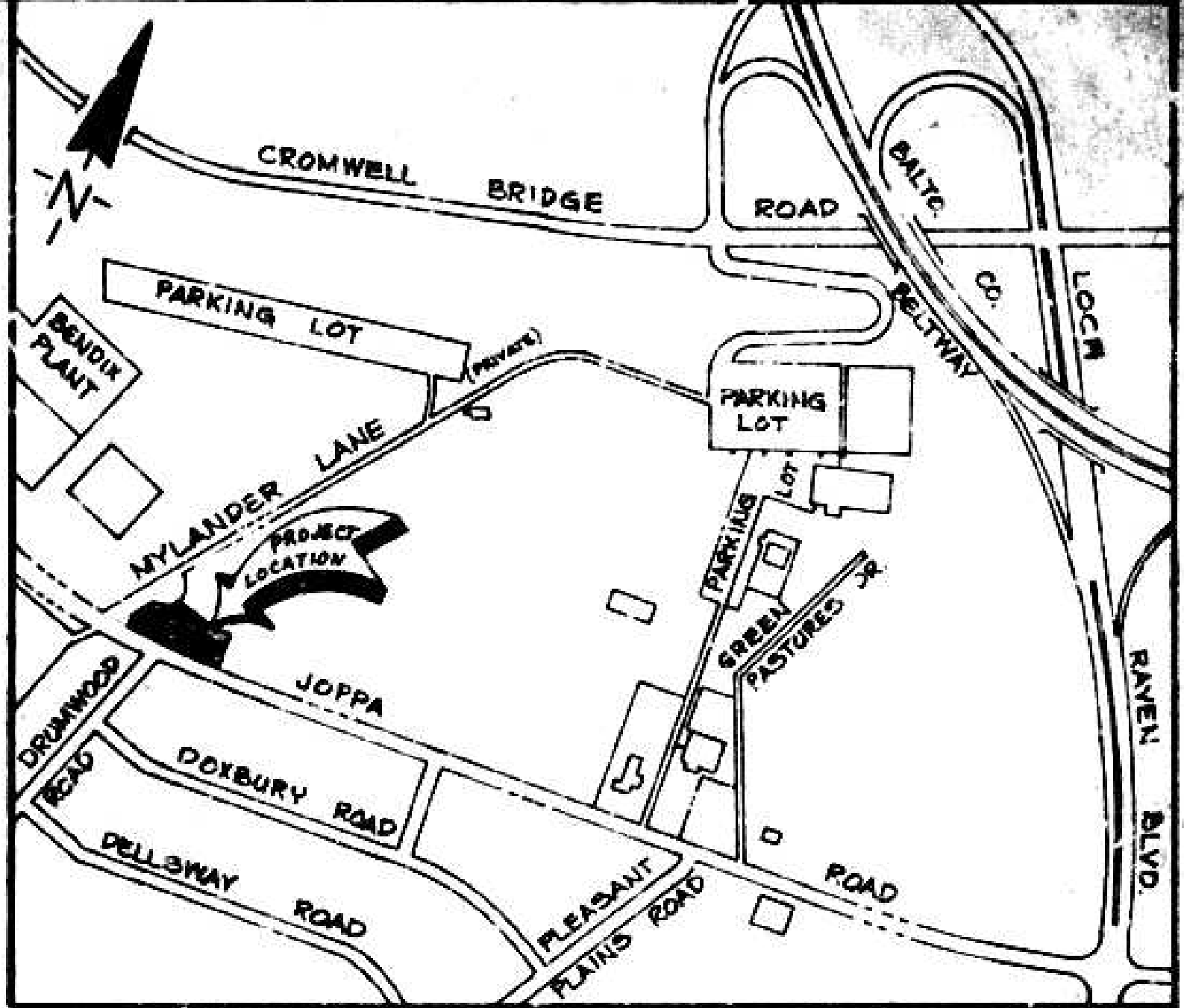
RECEIVED FROM S. Eric DiNenna, Esq., 406 W. Panna. Ave. (21204)
FOR copies from case no. 8-83-193, Leroy M. Merritt

8 255*****5501a 8088F

VALIDATION OR SIGNATURE OF CASHIER



LANDSCAPING - PLANTING SCHEDULE				
SYMBOL	NAME	QUAN.	SIZE	REMARKS
	Northern Red Oak (Quercus borealis)	4	2 1/2' - 3' c	Ball & Bag
	Japanese Red Maple (Acer palmatum)	4	2 1/2' - 3' c	Ball & Bag
	Japanese Yew Upright (Taxus cuspidata)	7	3' - 3' Height	Plant @ Corners & Adj. to Entrances
	Japanese Yew Spreading (Taxus cuspidata)	8	2 1/2' - 3' Height	Plant @ 5' c/c Between Uprights
	Pfitzer's Juniper (Juniperus chinensis pfitzeriana)	10	2' - 2 1/2' Height	Plant @ 5' c/c Straggled



GENERAL NOTES

1. All Parking Spaces shall have a minimum dimension of 9'x20' and Handicapped Parking Space shall be 12'x20'.
2. Remove existing concrete driveways (Three Places) as shown.
3. Construct standard 4' wide concrete sidewalk and curb along Joppa Road (Three Places) as shown.
4. Curbs shall be Baltimore County Standard Type 'A' Curb.
5. Present Property Owner: LEROY M. MERRITT
Deeds: Date - 7/25/75 - E.H.K.Jr. 5550/634
Date - 4/28/76 - E.H.K.Jr. 5627/832

SUMMARY INFORMATION

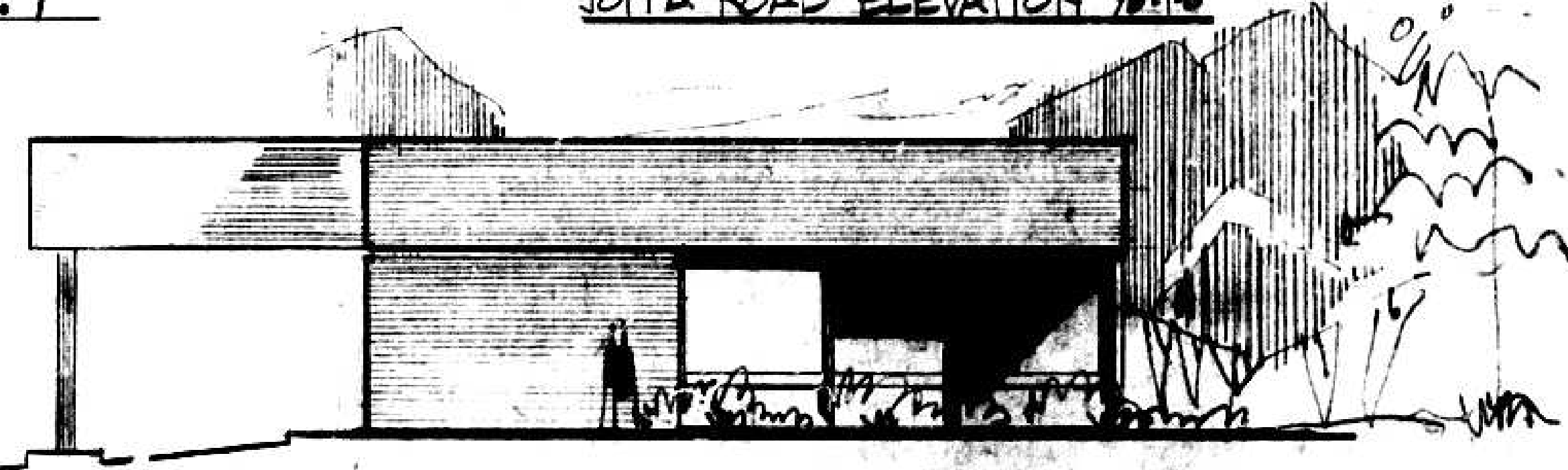
GROSS AREA OF PROPERTY:	0.550 Ac.
EXISTING ZONING:	R-O
PROPOSED ZONING:	B.L.
EXISTING USE OF PROPERTY:	VACANT
PROPOSED USE OF PROPERTY:	BANK
PROPOSED FLOOR AREA:	1400 sq. ft.
PARKING REQUIRED:	8 SPACES
PARKING PROVIDED:	14 SPACES
PROPOSED BUILDING HEIGHT:	14.5 FEET
MAXIMUM NUMBER OF EMPLOYEES:	10 PERSONS
PROPOSED HOURS OF OPERATION:	Mon-Thurs: 9 am - 5 pm Friday: 9 am - 3 pm Saturday: 9 am - 1 pm
FLOOR/AREA RATIO ALLOWABLE (B.L. ZONE):	3.0
FLOOR/AREA RATIO ACTUAL:	0.105
COVERAGE:	105%
MAXIMUM LEVELS OF EMANATIONS:	

Sound:	41.0 Decibel
Odor:	Negligible
Gas:	
CO:	11.0 lbs/day
HC:	1.5 lbs/day
NOx:	1.9 lbs/day
Dust:	Negligible
Heat:	Negligible
Light:	Negligible

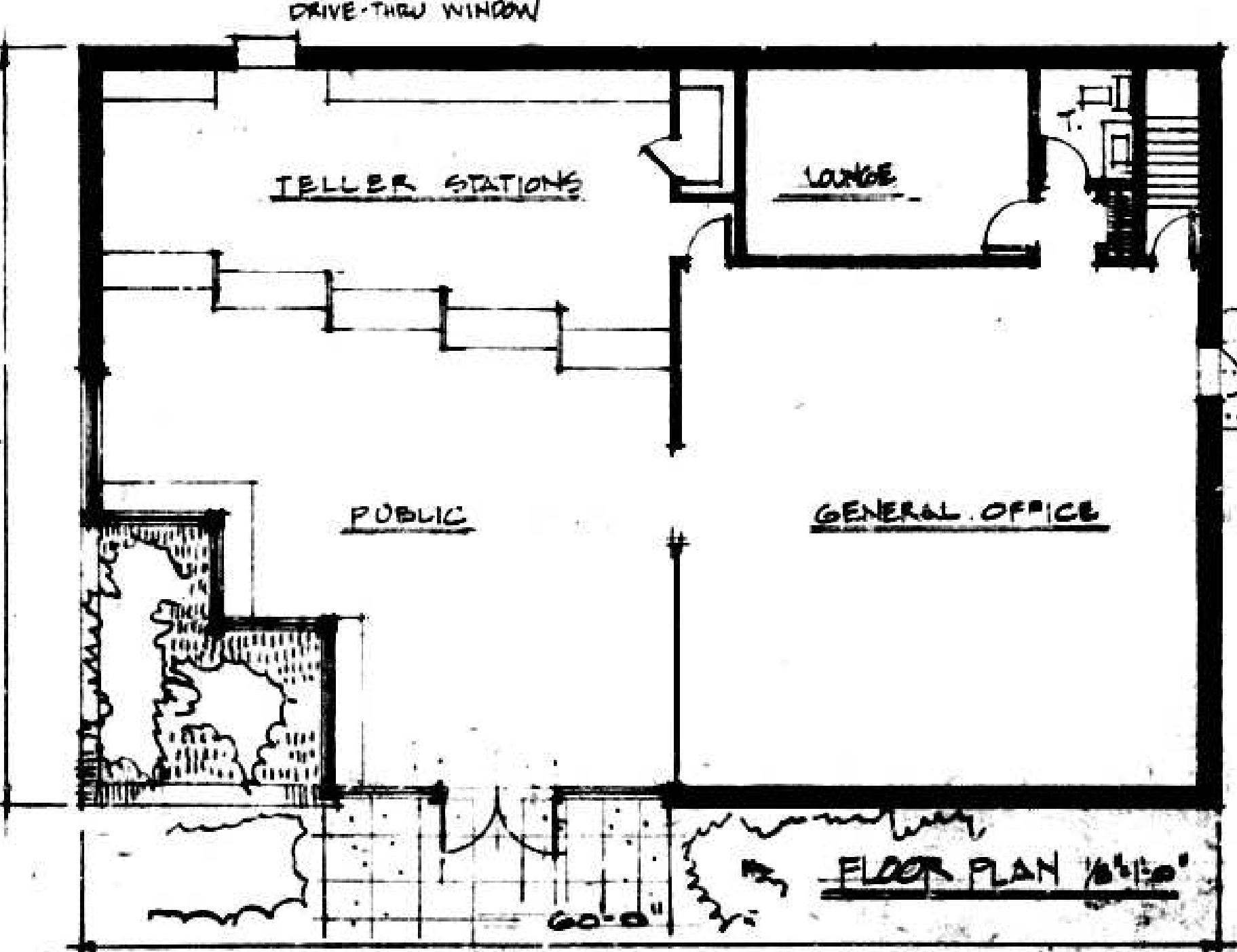
* Off Street Parking Required:
2400 sq. ft. / 300 = 8 spaces



JOPPA ROAD ELEVATION 1/8"=1'-0"



MYLANDER LANE ELEVATION 1/8"=1'-0"



FLOOR PLAN 1/8"=1'-0"

REVISED PLANS
DEC 6 RECD
JPM 46
CYL 14

Revised November 24, 1977
Revised November 2, 1977
Revised October 25, 1977
Revised August 27, 1977
Revised July 14, 1977
Revised March 29, 1977