

During the deliberations leading to the final adoption by the Baltimore County Council of the Comprehensive Zoning Map of 1984, the Office of Planning for Baltimore County recommended to the Planning Board that the parcels, both individually and collectively, be rezoned to D.R. 16. Without sequestering these issues, the Planning Board voted to recommend to the Council that these issues be granted a rezoning to D.R. 16. Although there was no contrary evidence and despite the recommendations of the Planning Staff and the Planning Board, the Baltimore County Council, voted to retain the D.R. 5.5 zoning. Subsequently, the property owners agreed to sell to a single contract purchaser. When Bancroft Homes became the contract purchaser of all of the assembled parcels, the reclassification petition based upon error/or mistake was filed.

The fundamental rule of law, applicable to a case of this nature were clearly set forth in Boyce v. Sembly (1975) 25 Md App 43, p. 137. However, it must be kept in mind that the rules set forth in Boyce have to be applied on a case by case basis, dependent on the particular facts before the Board of Appeals.

The People's Counsel (PC) appears to take the position that it is literally impossible for the Board to grant a reclassification based on mistake/error. She argues that as long as the

zoning designation of the property in question is not confiscatory, there is no error in the original zoning process. However, this is not the position of the Special Court of Appeals of Maryland.

As the Court said in the Boyce case, it is "...necessary to understand the inherent nature of the term 'mistake' or 'error' as they are used in zoning law."

The Petitioners in this case have no problem stating the general rule at the outset, because the Petitioners have clearly met their burden of proof and have provided the required probative evidence to entitle them to the reclassification they seek. Petitioners have shown by probative evidence that the assumptions or premises upon which the Baltimore County Council relied, at the time of the comprehensive rezoning, were in correct, incomplete, and invalid.

Petitioners' probative evidence established error as defined by the rules set forth in Boyce as follows:

"At the time of the comprehensive rezoning, 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."

The Petitioners' testimony, particularly as summed up by George Gavrelis, showed that the County Council was unaware of then existing facts, or projects or trends which were reasonably foreseeable of fruition in the future in this case.

However, even PC witnesses Hoswell and Klaus admitted that D.R. 16 is the most appropriate zoning classification for subject property. Their only argument appears to be that D.R.5.5 constitutes a "reasonable use" classification for the property. This is the thrust of PC's case. However, this argument misses the issue before this Board altogether, because it is based on erroneous premises.

For example, the table of "Comparable Public Works Costs" introduced through PC's witness Markle, was intended to show that projected public works costs for subject property were similar to and not substantially in excess of public works costs for similar D.R.5.5 developments in the area.

However, the projected public works costs prepared jointly by PC's witness Markle and Pet's witness Thaler pertained only to the public works costs resulting from the proposed construction of Pheasant Cross Drive and did not include the usual public works costs of all the other developments listed on PC's Exhibit No. 5 introduced through Markle. Although Exhibit No. 5 stated merely what was the SURCHARGE arising out of the projected public

works costs of Pheasant Cross Drive, this surcharge alone was equal to the total per unit public works costs of the "comparable" developments shown on PC's Exhibit No. 5.

PC's Exhibit No. 5, thus not only emphasized the logical defect in PC's argument, but it also demonstrated the opposite of what PC attempted to prove; namely, that Bancroft would face excessive, indeed confiscatory public works and land development costs, in addition to the "road surcharge". If Bancroft were to consider the development of the entire parcel as presently zoned.

The evidence is clear from Mr. Markle's response to Board-member Evans' question that the Baltimore County Council had no information from the Department of Public Works about the costs of constructing Pheasant Cross Drive, a although it was mandated as a major collector road through subject parcel at the time the Council made its determination to retain the subject parcel D.R. 5.5. Thus, the County Council could not have given any consideration to the "surcharge" of the public works costs projected to arise out of construction Pheasant Cross Drive through the subject site in his response to Mr. Evans' question. Since County Council had no information at the time of its consideration and adoption of the 1984 Comprehensive Map, it committed error.

PETITIONERS' WITNESSES

Petitioners would like to note the qualifications of each of Petitioners' witnesses and their direct familiarity with subject site and the surrounding area, giving them particularly high qualifications to support their evidentiary conclusions that the County Council erred with regard to subject property in the adoption of the 1984 Zoning Map. The witnesses were:

- (1) James Rubenstein, the President of Bancroft Homes is actively developing Jones Valley, a D.R. 16 development, which is adjacent to this site.
- (2) Samuel Crozier, the Petitioners' land and site planner, has been involved in the planning of most of the properties near the subject parcel and other substantial development in this general area of Baltimore County.

- (3) David Thaler, a civil engineer, whose family was one of the initial developers of housing in this area of Baltimore County and who has done much of the engineering work for developers in the area surrounding the subject property.

- (4) Robert Kleinpaste, a marketing expert whose company has done extensive population and marketing studies in the area surrounding the subject property.

- (5) George Gavrelis, a noted planner, was the planning director for Baltimore County when the first comprehensive zoning maps were adopted by the Baltimore County Council. He is the one of the most distinguished and experienced planning and zoning experts in Baltimore County.

All of the experts came to the same conclusion that the Baltimore County Council, under the legal definition of mistake/error, did err in failing to increase the density zoning for the site to D.R. 16.

SUMMARY OF TESTIMONY JAMES RUBENSTEIN

James Rubenstein testified about his extensive experience in residential development. Mr. Rubenstein has been developing the "Jones Valley" at Old Pimlico Road and Pheasant Cross Drive which adjoins the subject property at its northern property line. As a result, he has become familiar with this neighborhood and its development potential. He testified that because of the complexities with the development of this particular property, it can be developed only as a unified 34.5 acre development.

Mr. Rubenstein stated that in his opinion, based on his own extensive development work in this area of Baltimore County, that action of the County Council was in error because of the requirement by Baltimore County to build Pheasant Cross Drive, a major thoroughfare through the site, which in turn requires a major economic commitment, which could not be met under the D.R. 5.5 zoning.

He also stated that in his opinion, the Council failed to consider that when it granted substantial new zoning for the office and commercial use near the site, that the need for high density residential uses would be increased, so that the County Council's failure to increase the residential density of subject site was clearly erroneous.

Mr. Rubenstein categorically stated that he would not and is not interested in purchasing subject property as it is presently zoned.

SAMUEL CROZIER

Samuel Crozier, an expert land planner, familiar with the area, stated that he had made a detailed study and a site analysis of subject property and the surrounding area.

Crozier then described the aerial photographs showing proximity of the Jones Falls Expressway (I-83), to the subject site, to Old Pimlico Road, the Jones Valley and Falls Developments, where Old Pimlico meets Pheasant Cross, Twin Ridge and Bonnie Ridge Apartments and Bonnie View Country Club's golf course; and surrounding development of garden apartments.

Presently Pheasant Cross Drive stops at the Jones Valley project. Because the high density (D.R. 16) residential developments surrounding subject property have required of roads, and many parking areas, subject site is like an island in a sea of D.R. 16.

Mr. Crozier has studied how this site fits into the remainder of this community.

Mr. Crozier had prepared a zoning map illustrating the zoning and land use patterns throughout this area in the form of a context and land use map to demonstrate that the predominant zoning in the area is D.R. 16 zoning.

Mr. Crozier described the location of the proposed interchanges. The context map clearly shows that subject property zoned D.R. 5.5 is the only substantial underdeveloped area which has not been designated for higher density use. Crozier then described the impact of Pheasant Cross Drive by introducing an exhibit setting forth the road network. The exhibit indicates a web-like road network of minor collector roads feeding into Old Pimlico Road, the circuitous way to get to I-83, and the proposed county plan to continue Pheasant Cross Drive to Smith Avenue that the bisect the subject parcel. There are no roads to

carry this traffic. Pheasant Cross Drive is needed as a major collector road to serve the D.R. 16 developments which are completed and those D.R. 16 developments that are still under construction.

Mr. Crozier described the character of the site and the surrounding uses. Using Petitioner's Exhibit No. 7, he showed that the unassembled parcels could not be developed economically separately zoned D.R. 5.5 because of the existing physical conditions and restrictions of the site. He pointed out the 25% steep slopes as areas of non-development, the hydric soil areas that cannot be build on or developed and then pointed out the 300' set back requirement from existing houses (transition zones).

Crozier described the shape of the land, the rough topography, the two ridge lines and the deep valleys and the impact of the severe grade changes.

Mr. Crozier's slope analysis map shows the severity in the rise and fall of the land, the 25% slopes and how they adversely affect the development of the rear half of the site, the parking, the placement of roads and driveways, and the compliance with county standard road grades of in-project roadways.

Crozier then described Exhibit No. 7, existing lots as they are held by the individual property owners. This exhibit considers sight distance requirements on Smith Avenue, the effect of Pheasant Cross Drive, slope requirement, hydric soils, setbacks and impact of the adjacent DR 16 zoning. He came to the conclusion that individual parcels separately in a D.R. 5.5 zone would result in only between 108 and 125 units being developed. Although, if assembled in a single development, at least 188 units would be permitted on a parcel of 34.5 acres in a 5.5 zone.

Parcel A - No development Because of the proposed alignment of Pheasant Cross Drive, property is taken by road expansion and the impact of the set back requirements.

Parcel B - No development considering set backs and width of the site, site becomes too narrow to develop.

Parcel C - No development same as B, too narrow to develop.

Parcel D - No development Development is adversely affected by set backs from the existing house, the only access road is Smith Avenue and the sight distances prevent ingress and egress.

Parcel E - Layout indicates that this 2.5 acre lot can possibly be developed for 13 units.

Parcel F - No development The lot is totally landlocked, has no access and therefore, has no development potential.

Parcel G - The development of this lot is affected by a 300' setback, impact of Pheasant Cross Drive and hydric soils therefore, development potential is reduced but possibly 21 units can be constructed.

Parcel H - Development of this lot is affected by Pheasant Cross Drive and soil conditions, but possibly 21 units can be built.

Parcel I - Development prospects are fairly good and a possible 18 units could be constructed.

Parcel J - Development prospects are fairly good and a possible 25 units could be constructed.

Parcel K - Development of this lot is affected by its wedge shape, by 25% slopes, and by the construction of Pheasant Cross Drive but possibly 27 units could be built.

In Crozier's opinion, instead of 188 units permitted on a site of 34.5 acres developed as one parcel, only 125 units could be developed by the individual property owners, Mr. Crozier then concluded that there was error in the County Council's decision to retain the subject parcel D.R. 5.5. because the council failed to consider the topological problems of the property which made it unsuitable to low density development.

DAVID THALER

David Thaler P.E., Petitioner's expert on engineering matters, stated that he had examined the neighborhood regarding the site, analyzed site's development potential, analyzed the development costs and prepared some exhibits to demonstrate his findings.

Thaler described the Context Plan (Exhibit No. 8) which highlights the road network in vicinity of subject site. He showed the Board the developments along Smith Avenue beginning with the USF&G site (rezoned to U2 on the 1984 zoning map) which is projected to become the largest employment center in the area

and then the D.R. 16 zoned Copperridge Townhouses along Smith Avenue which face the Bonnie Ridge Apartments (Tr 115 et seq). He noted the location of the D.R. 16 areas of Jones Valley and of Falls I, II and Falls III located at Old Pimlico Road, at Rockland Hills Drive, and at Pheasant Cross Drive. He then pointed out the D.R. 16 areas of Twin Ridge Apartments and Rockland Run Apartments. The roads to the Greengate Condominiums and the Greengate development were also shown. The property to the northwest, called Falls II, is under development. Falls I and Falls III are substantially completed. Parking lots currently funnel to Old Pimlico Road and to Smith Avenue. The last remaining link to the road network is Pheasant Cross Drive. Regardless of zoning, Pheasant Cross Drive is a mandated major collector road which must be constructed as part of the development of the land owned by the various individual owners.

Thaler said that Pheasant Cross Drive will be necessary to move current heavy traffic south to Smith Avenue and the traffic to the intensive office park development of USF&G. Pheasant Cross Drive will also be necessary to move traffic north to Old Pimlico Road and he further indicated that one of two proposed interchanges, when built, will be in close proximity to subject site.

Thaler further testified that Pheasant Cross Drive is required to have a 70' right of way for four moving lanes.

Thaler reviewed the sight distances required on Smith Avenue at the intersection with Pheasant Cross Drive. Major improvements will be required to Smith Avenue. A relocation of Smith Avenue will result in further loss of developable land. The northern location of Pheasant Cross Drive has been fixed and it cannot be moved. Because of the sight distance requirements at Smith and the fixed location of Pheasant Cross Drive where it begins at northern end of subject property, the location of Pheasant Cross Drive through subject property is almost fixed by topography to the location shown on Petitioner's plat.

Thaler's development cost estimates (Exhibit 10) include paving, curb, gutter, street lights, sidewalks, water lines, on site sanitary sewer lines and off site storm drains, excavation, storm water management and erosion control for Pheasant Cross Drive only. Markle and Thaler have agreed that an estimated \$870,000 will be the surcharge for the construction of Pheasant Cross Drive. Thaler's estimate of the surcharge for 188 units zoned D.R. 5.5 is \$4,636.00 per unit and 548 units zoned D.R. 16 is \$1,589.00.

Thaler testified that in addition to the cost of the construction of Pheasant Cross Drive shown in Exhibit 10, the developer will incur the costs of paving, water lines, sewer lines, storm drains, sediment control and storm water

management. All of these costs have to be borne by the developer because Pheasant Cross Drive is a major collector road. No direct access is allowed from single family homes because driveways cannot be constructed to collector roads.

Thaler said that most of the individual parcel owners could not develop at all because individual parcels cannot get access to Smith Avenue, the storm water management is too expensive, and the sediment control is too expensive.

Thaler concluded that the County Council in adopting the 1984 Zoning Map was in error because the Council failed to consider the extraordinarily high cost of Pheasant Cross Drive, and that could not be developed and road could not be constructed if the zoning of the property remained at D.R. 5.5.

Since the County Council had no knowledge of the costs of Pheasant Cross Drive and knew nothing about a relocation of Smith Avenue at the time of the adoption of the 1984 Zoning Map, the County Council erred further by failing to recognize that Pheasant Cross Drive must be built; that it is too expensive to construct, and that these factors make development even of the assembled parcels uneconomical if zoning remained D.R. 5.5.

ROBERT KLEINPASTE

Robert Kleinpaste examined in detail the population and household trends, extent and nature of market demand and the consistency of the present zoning, D.R. 5.5, with those trends.

Mr. Kleinpaste considered the site, examined the site's basic characteristics, traffic, availability of support services, residential support services and facilities, demographic characteristics, population, population growth, household growth, housing units growth, historic and projected, age characteristics of market area, housing unit characteristics, and other demographics.

After consideration of the aforesaid factors, Mr. Kleinpaste examined the competitive market area for the markets for rental housing, the market for condominium and residential sales and sales of housing in newly constructed developments.

Mr. Kleinpaste, after studying this area extensively, knows of no market study for this area of Baltimore County performed by or for Baltimore County and that available population studies and market trends available at the time of the adoption of the 1984 Zoning Map were out of date of altogether erroneous.

Kleinpaste then, determined that the Baltimore County Council erred in retaining D.R. 5.5 zoning for subject site because the Council had no knowledge of the great demand for housing in the area, and had ignored the tremendous growth in employment opportunities created by the rezoning of the USF&G complex. He also noted that subject site is an in-fill parcel, in which all utilities and infrastructure are present.

Further, the condo market has captured an ever increasing share of the rental housing stock. The rental housing stock lost to condominium conversions has not been replaced. There is a serious shortage of rental housing. In evaluating housing forecasts for this area used by Baltimore County, it is clear that these forecasts seriously underestimated the strength of the housing market and that the forecasts upon which the County relied were in error.

Mr. Kleinpaste observed that three of the most successful projects in Baltimore region are in this market and are very close to subject property. He further noted that the conversion of apartments to condominiums has resulted the removal of large numbers of rental units from the rental stock in this market area so significantly that almost all Class A rental units have been removed from the rental market in the area.

He also explained that he had examined the elderly housing market for the area. Statistics show that this market area has the greatest percentage of persons aged 55 or older in the entire region. It was error on the part of the Baltimore County Council not to provide opportunities for housing to satisfy this need. Only D.R. 16 zoning will provide the high level service housing that the existing elderly population in this market needs. The fact the demand for such housing is significant is evident from the success of current construction and the extremely low vacancy rate in the area.

Kleinpaste noted that there was significant growth in employment opportunities as the result of the creation of the 0-2 rezoning at USF&G site on the 1984 Zoning Map. He estimated that USF&G, site which consists of 41.76 acres, will result in approximately 3,000 new jobs. It is his opinion that the County Council could not have considered this impact and kept D.R. 5.5 zoning of subject site. The Council may have been misled because Round II population figures which were available to the Council showed only a possible increase of 700 jobs, thus clearly an error.

GEORGE GAVRELIS

The Petitioner closed its direct case with the testimony of George Gavrelis as a planner and zoning expert. Mr. Gavrelis was the director of the Office of Planning and Zoning when the current cycle zoning system was devised. In addition, he was director when the current density residential (D.R.) zoning was developed.

Mr. Gavrelis heard all the prior testimony in the case before testifying. He had met with Baltimore County Department of Traffic Engineering to review traffic implications and the need for Pleasant Cross Drive and whether its construction would solve traffic problems or cause traffic problems in this area. He had reviewed the 1979 county-wide Master Plan to determine its bearing on this case. He had discussed needs and the economics of Pleasant Cross Drive with Department of Public Works. Mr. Gavrelis had series of meetings with planning staff members who played a role in the preparations of maps as related to this site and he had reviewed all available files and issue logs bearing on this case.

Mr. Gavrelis testified that as a result of all of this preliminary work, he came to the conclusion that there was very little information in the files; that the issues did not create any serious interest; that there had been no great public input

on the issues; only one speaker had provided input on all issues at the Planning Board's Public Hearing and no one had provided any comments at the County Council's Public Hearings. Further, no prepared detailed statements had been provided by anyone as why or why not that D.R. 16 should be placed on these properties. In reviewing the issues, he noted that the Planning Staff had recommended D.R. 16 for the individual parcels; had added one parcel and then provided a combined issue for all parcels assembled. He observed further, that the Planning Board had accepted the Planning Staff's recommendation of D.R. 16 zoning, without the sequestration of any of the issues pertaining to subject site so that the issues before the County Council were uncontradicted recommendations to rezone the subject property to D.R. 16. There were questions about whether an overall plan had been submitted and that only the Planning Staff had appeared to recommend a unified approach to zone the lots as if they had been assembled into a single parcel.

Mr. Gavrelis noted that error was more likely when there was no extensive discussion and debate about all facets and ramifications of the zoning issues as there had been in the Greenspring Quarry case. The Council appeared to have no knowledge of the consequences of the requirement to construct Pleasant Cross

Drive; that Pleasant Cross Drive is to be the mandated extension of a 70' right of way through subject properties by the Department of Public Works and that it is absolutely needed as a major collector road linking the high density D.R. 16 area to the north of subject property with Smith Avenue. The Council was unaware of economic costs and conditions of the extension, that it was developer implemented, and the costs would be exceedingly high. All existing streets within nearby D.R. 16 areas are interconnected parking lots with speed bumps which provide no connection between Smith Avenue and Old Pimlico Road. The various D.R. 16 developments have no road connections. There is an absolute need for a coherent and rational pattern of circulation in this high density area which require Pleasant Cross Drive as a major collector street.

GEORGE GAVRELIS' SUMMARY OF FACTS PERTAINING TO ERROR

Petitioner's witnesses had earlier testified that subject site had many topological conditions which would require very costly solutions. Because of these conditions, a large part and much of the land of the thirty-four point five (34.5) acre site cannot be utilized as building sites. The required setbacks from Pleasant Cross Road and other setbacks as well the hydric soils eliminate further acreage.

Gavrelis noted that Mr. Thaler had testified that the total land costs for the site are extraordinarily high and that the grading costs are above average because of the rough contours of the land. The rough topography and rock problems of the subject site are similar to the adjoining property, which has been developed as "Bonnie Ridge Apartments".

Gavrelis concluded that there was error on the part of the County Council with respect to this parcel in the adoption of the 1984 Zoning Map because:

1. Pheasant Cross Drive, a mandated major collector road.

The Council was unaware of or ignored the mandated extension and construction of Pleasant Cross Drive through subject property, as the missing link to connect all the D.R. 16 developments. This road makes the subject site a part and component of the current D.R. 16 zoning area which now exists immediately to the east and to the north, so that current 5.5 zoning is an incorrect residential zone. It is erroneous to place a lower density residential category at the entrance along a major collector road that serves essentially high density residential development. The 1984 Zoning Map failed to take these consequences into consideration. (Tr 81)

2. Economic Aspects of Pleasant Cross Drive Construction.

The Council was unaware of or ignored the fact that the construction of Pleasant Cross Drive places a surcharge on development costs, which must be borne by the developer of the parcel. The road has been part of the planned County road network for years, the need for Pleasant Cross Drive and the impact should have been foreseen by the County Council. (Tr 82)

3. The Employment Center at USF&G.

The Council was unaware of the consequences of zoning changes in the area and their effect on existing and future employment opportunities. The property is near two major centers: the established industrial corridor between I-83 and Falls Road and the newly developed and rezoned (0-2) USF&G Complex. The Planning staff had made an estimate of potential buildings, square footages and arrived at a maximum of between 800,000 to one million square feet of office use for USF&G. Until the 1984 Zoning Map changes, USF&G was D.R. 2 on the map. Forty-six (46) acres of D.R. 2 were removed and rezoned 0-2. Three thousand (3,000) new jobs will be created. This will result in a demand for housing which should be met in close proximity to the site. There is already a scarcity of rental housing in the area and almost no vacancy rate in the area.

4. In-fill requirements and energy conservation.

The Council was unaware or ignored its own policy. The purposes as they are set forth in the Zoning Regulations for O-2 zoning and the Development Regulations under 22-104 state that land in an O-2 zone will be used with careful regard as to energy conservation and energy efficiency. This means that there should be a reasonable relationship between employment activities within the O-2 zone and with housing opportunities nearby to minimize the home-distance relationships. The 1984 map failed to recognize the logic and inevitable consequence of creating a very significant employment center without evaluating the consequential demand for housing. The Council failed to recognize that growth in employment would create housing demand in the area where the prospective employees could live at convenient distances to the site.

It was error on the part of the County Council not to create the D.R. 16 on subject site because these underdeveloped parcels are the only properties near USP&G.

5. Planning errors due to irrational zone boundaries.

The 1984 Zoning Map was in error because it did not provide a rational boundary that should have extended high density zoning westerly from its current boundary at Bonnie Ridge Apartments over to the boundary afforded by Broadview Road and Bonnie View Country Club.

6. Master Plan - in-fill and existing infrastructure.

The master plan provides that maximum use is to be made of in-fill parcels. D.R. 16 should provide consistency with the county wide master plan. The Broadview tract (subject property) is situated in an area of existing communities. Residential development is to be encouraged where appropriate to preserve and strengthen the character and identity of existing communities. New development should be compatible with the present character of these communities and county services, facilities. Infrastructures are adequate to accommodate the growth resulting from D.R. 16 zoning of subject property.

7. Availability of Public Services.

The Board of Education states that there is foreseeable capacity surplus for all schools in the area. The Department of Public Works has stated that water and sewer are available to serve this site. There are no deficiencies on any basic services maps affecting this site and extension of Pheasant Cross Drive will be accomplished if the site is zoned D.R. 16. D.R. 16 is not out of context with character and identity of the existing community and in fact affirms that character as established. The master plan, in fact, defines this area as the

Rockland-Mt. Washington community and has projected for this defined area a 123% increase in dwelling units which adds more than 3,000 units through 1995, thus projecting extensive growth for this community.

There is therefore no inconsistency between the Baltimore County Master Plan and the petition to rezone subject property. Infrastructure requisite to support the anticipated growth exists. The area is projected for growth. D.R. 16 is consistent with the master plan and is an ideal in-fill site and D.R. 16 satisfies a master plan objective of preventing leapfrogging of development throughout the County. Adequate water, sewer & solid waste disposal facilities exist. The school recreational facilities for the area already exist. As the result of D.R. 16 rezoning of this site, an additional eight acres or 24% of the site would be set aside for recreational or open space activities, either passive or active.

It was Mr. Gavrelis's opinion that the D.R. 5.5 zoning for subject property is unreasonable, inappropriate and in error.

CONCLUSION

It is Petitioner's contention that he has made a clear case of error in the adoption of the 1984 Zoning Map by the Baltimore County Council, in that the subject parcel was retained

at D.R. 5.5 zoning despite contrary recommendation of the Planning Staff and the Baltimore County Planning Board to rezone the parcel to D.R. 16. Petitioner contends that the Baltimore County Council failed to take into account then existing facts, projects or trends which were reasonable of fruition so that the Council's action was premised initially on a misapprehension. Not only was the testimony of Petitioner's witnesses unambiguous in showing the Council's lack of knowledge of "existing facts and trends", but even the testimony of People's Counsel's witnesses do not contradict any part of the Petitioner's case. Mr. Hoswell, who has been the People's Counsel's key witness, conceded that he had written the Planning Board recommendations of D.R. 16 zoning for the subject site, and the Planning Board recommendation to the County Board of Appeals recommending D.R. 16 zoning. Hoswell stated that in his judgement, D.R. 16 was the preferred zoning for subject property. His only reservation was that he also considered D.R. 5.5 a "reasonable" use of the property. This reservation was seriously undermined by the testimony of Mr. Markle, who conceded, with the aid of the testimony of Mr. Thaler, that the County Council had no knowledge of the construction costs of Pheasant Cross Drive and that Pheasant Cross Drive unit "surcharges", due to the construction of the road, were estimated to equal or exceed total public works unit costs for many similar projects.

Mr. Klaus' testimony also supported the testimony of Petitioner's witnesses that D.R. 16 is the preferred and best use of subject property. After stating on direct examination, D.R. 5.5 was reasonable, he had great difficulty in responding to People's Counsel's questions on whether he considered D.R. 5.5 error, until he finally responded that he did not consider the Council's actions erroneous. However, none of the People's Counsel's witnesses dispute that the preferred and most appropriate use for the parcel is D.R. 16.

There is no need for citation of a great deal of law because the law of this case is not really in dispute. In a letter dated March 4, 1986, Deputy People's Counsel has furnished Petitioners with copies of certain unpublished Court of Special Appeals decisions which had been cited in the course of oral argument before the Board. The copies were sent to the Chairman of the Baltimore County Board of Appeals.

I am certain that the Board, as well as People's Counsel, are aware of Rule 1092-c of the Maryland Rules of Procedure which specifically provides that "an unreported opinion of this Court is not a precedent within the Rule of stare decisis, and shall not be cited by a Court or a party for any purpose, in any

unrelated action or proceeding". Its use is limited to proceedings dealing with the same defendant or the same respondent. For these reasons, we will not discuss these cases which are very different on the facts and presume that People's Counsel will not do so either.

Petitioner relies on the case of Boyce v. Sembly, which has been previously cited, and the rules stated therein. Petitioner also relies on the case of Bonnie View Country Club v. Glass (1965) 242 Md 46 which is particularly appropriate because it pertains to the Bonnie Ridge Apartments, which adjoin subject property on the east, and the reclassification based on error in the original zoning. There is an obvious similarity in the facts, particularly as noted in 242 Md p. 50, because "the topography makes the development for R. 10 and R. 20 impractical; the rock and previous mining operation make it undesirable for housing;...."

In Missouri Realty v. Raner (1958) 216 Md 442, the Court of Appeals said: "It should be noted that this case involves an application for reclassification from one residential sub-category to another; not the removal of the land from the use category in which it was placed when originally zoned, as was the situation in many of the cases presented to this Court. In this respect, the situation is, to a certain degree, different from the application to reclassify property zoned as residential to

commercial or industrial." In reviewing this case, the Maryland Law Review (1966) 23 MLR 48, the commentator concluded, "Thus, the court seems to adopt a more liberal attitude when reviewing amendments from one use to a similar use." Id. at 51

The Board of Appeals in this case has had before it the classic case of zoning error as defined by the Court of Appeals and the Court of Special Appeals. The evidence provided Petitioner's expert witnesses and the supporting documentation clearly indicates that the County Council acted by inadvertence or ignorance.

Although, People's Counsel argued that D.R. 5.5 offers a reasonable opportunity of development to the individual property owners or to the developer of the assembled property, the evidence of Petitioner's expert witnesses clearly shows that this is not the case and that economic and topographical factors absolutely negate a basis for development of the property in its present zoning classification.

In view of the recommendations of the Planning Staff, and the Planning Board during the map process and its recommendations to the Board of Appeals in this case, and the testimony of even People's Counsel's witnesses that the zoning of the property to D.R. 16 is appropriate and the highest and best use, there is substantial and uncontradicted evidence entitling Petitioner to

an increase in the density for subject property, supporting a finding that the Petitioner's burden of proof has been met. Petitioner has provided substantial, clear and uncontradicted probative evidence to support each and every one of its allegations of error and mistake on the part of the Baltimore County Council in the adoption of the 1984 Zoning Map. Supporting facts cited by Petitioner's expert witnesses were sound and substantial and prove that the County Council's zoning decision were made without "taking into account then existing facts, or projects, or trends which were reasonable foreseeable of fruition in the future, to that the Council's action was premised initially on a misapprehension" as stated in Bonnie View Country Club v. Glass, 242 Md 46, 52-53 and in Boyce v. Sembly, 25 Md App 43.

The Petitioner has met its burden of proof. People's Counsel has been unable to contradict by any probative evidence, any of Petitioner's conclusion that error occurred by failure on the part of the Baltimore County Council to take into account the following items:

1. Economic problems arising out of the surcharge and the construction of Pheasant Cross Road.
2. The rezoning of USP&G to O-2, creating a employment opportunity for 3,000 people without providing farther residential uses on subject property; the topographical problems

inherent in the site; the relocation of Smith Avenue and the recognition that this was an in-fill parcel which had all the necessary infrastructure and school support system as to entitle it to preferred development status.

- The recommendations of rezoning by the Planning Staff and the Planning Board were ignored.
- The argument by People's Counsel that the use of D.R. 5.5 was a reasonable use was unsupported by any probative evidence and therefore there is no basis for People's Counsel's opposition to the reclassification to D.R. 16.

For all the foregoing reasons, Petitioners respectfully request the Board to reclassify the subject property to D.R. 16 zoning.

Respectfully submitted,

Arnold Fleischmann
Arnold Fleischmann

Leslie M. Pittler

34

CERTIFICATE OF SERVICE

This is to certify that on this 26th day of March, 1985, a copy of Petitioners' Memorandum was provided by hand delivery to the Office of People's Counsel for Baltimore County, Towson, Maryland 21204.

Arnold Fleischmann
Arnold Fleischmann

"DUPLICATE" CERTIFICATE OF PUBLICATION

TOWSON, MD., August 22, 1985
THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., appearing on August 22, 1985.

THE JEFFERSONIAN,

18 Kentz
Publisher

Cost of Advertising

33.00

PETITION FOR RECLASSIFICATION 3rd Election District

LOCATION: North side of Smith Avenue at Broadview Road
1250 feet East of the centerline of Edenvale

PUBLIC HEARING: Tuesday, September 10, 1985 at 10:00 a.m.

The County Board of Appeals for Baltimore County, by authority of the Baltimore County Charter, will hold a public hearing:
Present Zoning: D.R. 5.5 and D.R. 3.5
Proposed Zoning: D.R. 16

All that parcel of land in the 3rd District of Baltimore County

34.3 ± ACRE PARCEL, NORTH SIDE SMITH AVENUE AT BROADVIEW ROAD,

3RD ELECTION DISTRICT, BALTIMORE COUNTY, MARYLAND.

BEGINNING FOR THE SAME at the intersection of the centerlines of Smith Avenue and Broadview Road, 1250 ± East of the centerline of Edenvale Road, running thence along the centerline of Broadview Road, two courses: (1) N 06° 45' E 265 feet, more or less, and (2) N 03° 30' E 1566 feet, more or less, thence leaving Broadview Road and running the following three courses: (3) S 85° 15' E 314 feet, more or less, (4) S 56° E 749 feet, more or less, (5) S 09° W 1420 feet, more or less, to the centerline of Smith Avenue, thence along the centerline of Smith Avenue (6) N 87° W 822 feet, more or less, to the place of beginning, saving and excepting that portion of the property now zoned "DR 16".

Being the property of Paul Gambrell, et ux
as shown on the plat plan filed with the Zoning Department.

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



MEMORANDUM TO ACCOMPANY PETITION FOR RECLASSIFICATION OF PROPERTY AT SMITH AVENUE & BROADVIEW ROAD

The subject tract comprises several parcels of land under separate ownerships located on the north side of Smith Avenue and the east side of Broadview Road in the Second Councilmanic District of Baltimore County.

DR 3.5 &
The subject property is currently zoned DR 5.5 with DR 16 zoning along the east property line which is the existing Bonnie Ridge Apartments; DR 16 along the north property line which is now being developed in townhouses and along the west property line DR 3.5 which is the Bonnie Ridge Golf Course.

This property is now an island or pocket of low density land surrounded essentially by high density zoned land except for the Bonnie Ridge Golf Course which acts as a natural buffer between the subject parcel and the developed low density land located at Old Pimlico Road and Smith Avenue.

The subject property has public utilities either existing in the public streets or abutting the north and east property lines.

The subject property also enjoys frontage on Smith Avenue, a major thoroughfare running generally east and west from Mt. Washington in Baltimore City to Park Heights Avenue east of Pikesville.

From the north, Pheasant Cross Drive abuts the property from Old Pimlico Road. The granting of this reclassification to DR 16 will encourage development to its highest and best use thus making Pheasant Cross Drive a north-south artery linking Smith Avenue to Old Pimlico Road, thereby providing easier, more efficient traffic access for the residents of this area to the Jones Falls Expressway and the Baltimore Beltway.

As a matter of fact, during its last review the Planning Board and the Planning Staff recommended a change to higher density for these parcels of land, recommending DR 16 zoning under Items 2-6, 2-7, 2-14, 2-15, 2-16 and Item 2-59 during the 1984 Comprehensive Zoning Map Review.

In conclusion, the aforesaid facts clearly demonstrate that error was committed during the Comprehensive Zoning Map Process, denying a change of zoning from DR 5.5 to DR 16.

10404 STEVENSON ROAD • STEVENSON, MARYLAND 21153 • (301) 653-0292



DESCRIPTION

34.3 ± ACRE PARCEL, NORTH SIDE SMITH AVENUE AT BROADVIEW ROAD,
3RD ELECTION DISTRICT, BALTIMORE COUNTY, MARYLAND.

This Description is for DR 16 Reclassification from DR 5.5 & 3.5

BEGINNING FOR THE SAME at the intersection of the centerlines of Smith Avenue and Broadview Road, 1250 ± East of the centerline of Edenvale Road, running thence along the centerline of Broadview Road, two courses: (1) N 06° 45' E 265 feet, more or less, and (2) N 03° 30' E 1566 feet, more or less, thence leaving Broadview Road and running the following three courses: (3) S 85° 15' E 314 feet, more or less, (4) S 56° E 749 feet, more or less, (5) S 09° W 1420 feet, more or less, to the centerline of Smith Avenue, thence along the centerline of Smith Avenue (6) N 87° W 822 feet, more or less, to the place of beginning, saving and excepting that portion of the property now zoned "DR 16".

Containing 34.3 acres, more or less.

JJJ/kjr

Feb. 27 1985

10404 STEVENSON ROAD • STEVENSON, MARYLAND 21153 • (301) 653-0292

LEGAL NOTICE

PETITION FOR RECLASSIFICATION 3rd Election District

LOCATION: North side of Smith Avenue at Broadview Road, 1250 feet East of the centerline of Edenvale Road

PUBLIC HEARING: Tuesday, September 10, 1985 at 10:00 a.m.

The County Board of Appeals for Baltimore County, by authority of the Baltimore County Charter, will hold a public hearing:
Present Zoning: D.R. 5.5 and D.R. 3.5
Proposed Zoning: D.R. 16

All that parcel of land in the 3rd District of Baltimore County

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3RD ELECTION DISTRICT, BALTIMORE COUNTY, MARYLAND.

BEGINNING FOR THE SAME at the intersection of the centerlines of Smith Avenue and Broadview Road, 1250 ± East of the centerline of Edenvale Road, running thence along the centerline of Broadview Road, two courses: (1) N 06° 45' E 265 feet, more or less, and (2) N 03° 30' E 1566 feet, more or less, thence leaving Broadview Road and running the following three courses: (3) S 85° 15' E 314 feet, more or less, (4) S 56° E 749 feet, more or less, (5) S 09° W 1420 feet, more or less, to the centerline of Smith Avenue, thence along the centerline of Smith Avenue (6) N 87° W 822 feet, more or less, to the place of beginning, saving and excepting that portion of the property now zoned "DR 16".

Being the property of Paul Gambrell, et ux
as shown on the plat plan filed with the Zoning Department.

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

CERTIFICATE OF PUBLICATION

Pikesville, Md., Aug. 21, 1985

TO CERTIFY, that the annexed advertisement was published in the NORTHWEST STAR, a weekly newspaper published in Pikesville, Baltimore

Maryland before the 10th day of

1985

publication appearing on the

day of Aug., 1985

publication appearing on the

day of Aug., 1985

publication appearing on the

day of Aug., 1985

THE NORTHWEST STAR

John H. Hall
Manager

Cost of Advertisement \$26.00

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. James E. Dyer
Office of Planning and Zoning
Edith T. Eisemann, Adm. Secretary
County Board of Appeals

FROM: _____

SUBJECT: Item #2, Cycle I - 1985; Paul Gambrell, et al

Please include the following name in the above entitled file for notification when the case is set for hearing:

Smith-Greenspring Association, Inc.
c/o Robert Coldman
6601 Pimlico Road
Baltimore, MD 21209
(486-5396)

Thank you.

Edith T. Eisemann
Edith T. Eisemann, Adm. Secretary

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. William Hackett
CHAIRMAN, BOARD OF APPEALS

DATE: March 20, 1985

FROM: Ian J. Forrest

SUBJECT: Reclassification Petitions

Cycle I - 1985

Meeting of March 6, 1985

The Baltimore County Department of Health has reviewed the following Reclassification Petitions and does not anticipate any health hazards at this time regarding these Petitions.

- Item #1 - Helena D. Gibbons
- Item #2 - Paul Gambrell, et al
- Item #3 - Nelson L. Bond, Jr., et al
- Item #4 - Conservation Associates
- Item #5 - Greater Baltimore Medical Center
- Item #6 - Josef of Vienna, Inc.
- Item #7 - John W. Ruppert, et al

Ian J. Forrest
Ian J. Forrest, Director
BUREAU OF ENVIRONMENTAL SERVICES

RECEIVED
COUNTY BOARD OF APPEALS
MAY 25 P 1:00 E

PAUL GAMBRILL, ET AL.
(Bancroft Homes, C.P. & Melvin Verger, C.P.)
N/S Smith Avenue 1250'
E. from C/ Edenville Road
3rd District
DR 5.5 & DR 3.5 to DR 16
34.3 Acres

Feb. 28, 1985 Petition filed

Arnold Fleischman, Esq.
408 Bosley Avenue (21204)
" " "
Leslie M. Pittler, Esq.
Suite 508
28 Allegheny Ave. (21204)

Paul & Henrietta Gambrill
6719 Broadview Rd. (21209)
" "
Joseph Cary & Barbara L. Mueller
2020 Smith Ave. (21209)

Edward Weitzel
4008 Biddison Lane, Apt. E
Baltimore, MD 21206

Martin P. & Minna F. Scheff
3840 Elmcroft Road
Randallstown, MD 21133

John T. Coady
Guardian of the Estate of
Joseph Lochte
400 Allegheny Avenue (21204)

Linda Cunningham
Route 1, Box 65
Graysonville, MD 21638

Edward A. Feustle
802 Walker Ave. (21212)

James Rubenstein, President
Bancroft Homes, Inc.
10404 Stevenson Road
Stevenson, MD 21153

Melvin Verger
16 Bosley Road
Randallstown, MD 21133

Robert Goldman
Smith-Greenspring Assn., Inc.
6601 Pimlico Road (21209)

Arnold Jablon
Jen M. H. Jung
James E. Dyer
Norman E. Gertner
James G. Hoswell

Phyllis Cole Friedman
People's Counsel

Arthur Chelack
James Earl Kraft
D.C. Board of Education

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 reclassified, pursuant to the Zoning Law of Baltimore County, from an DR5.5 + 0.814 zone to an DR16 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 Error in the original zoning. The County Council committed error in failing to rezone the subject property from DR5.5

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: DR16 on the 1984 Baltimore County Zoning Map. The property is bounded by DR16 zones. Topographically and economically the property cannot be utilized or developed as presently zoned.

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COUNTY BOARD OF APPEALS
MAY 13 1985

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: BANCROFT HOMES, INC. Legal Owner(s):

By: James Rubenstein (Type or Print Name) James Rubenstein (Type or Print Name) President
Signature: [Signature] Signature: [Signature]

10404 Stevenson Road
Address
Stevenson, Maryland 21153
City and State

Attorneys for Petitioner:
Arnold Fleischman (Type or Print Name) 408 Bosley Ave. (Type or Print Name) 21204 (City and State) 410-4957 (Phone No.)
Signature: [Signature] Signature: [Signature]

Requested Notification
Arnold Fleischman (Type or Print Name) Baltimore, Maryland 21204 (City and State)
Signature: [Signature]

408 Bosley Ave.
Address
Towson, Md. 21204
City and State

Attorney's Telephone No. 337-7600 Name
Address
Phone No.

LESLIE M. PITTIER
Suite 508
28 Allegheny Avenue
Towson, Maryland 21204
296-9220

BAFO-Form 1
LESLIE M. PITTIER
Suite 508
28 Allegheny Avenue
Towson, Maryland 21204
296-9220

CIRCUIT COURT FOR BALTIMORE COUNTY CIVIL GENERAL

DOCKET 27 PAGE 249 CASE NO. 86CG2109 CATEGORY APPEAL

IN THE MATTER OF THE APPLICATION OF PAUL GAMBRILL, ET AL. FOR ZONING RECLASSIFICATION FROM DR 5.5 and DR 3.5 to DR 16 ON PROPERTY LOCATED ON THE NORTH SIDE OF SMITH AVENUE, 1250 FEET EAST FROM THE CENTER LINE OF EDENVILLE ROAD - 3rd District ZONING FILE NO R-86-108

Phyllis Cole Friedman
Peter Max Zimmerman
Room 223, Court House (04)
494-2188

Jeffrey H. Scherr
Philip M. Andrews
Kramon & Graham
Sun Life Bldg.
Charles Center (01) 752-6030
Arnold Fleischman
408 Bosley Ave. (04) 337-7600
Leslie M. Pittler
Ste 508
28 Allegheny Ave. (04) 296-9220

BANCROFT HOMES, INC.
PAUL AND HENRIETTA GAMBRILL
JOSEPH GARY
BARBARA MUELLER
EDWARD WEITZEL
MARTIN AND MINNA SCHEFF
JOHN T. COADY
LINDA CUNNINGHAM
EDWARD A. FEUSTLE
MELVIN VERGER

(1) June 2, 1986 - People's Counsel for Balto. Co.'s Order for Appeal from the Order of the County Board of Appeals of Balto. Co. and Petition for Appeal fd.

(2) June 2, 1986 - Certificate of Notice fd.

(3) July 1, 1986 - App. of Jeffrey H. Scherr, Philip M. Andrews for Appellees and Same day Answer fd. (and app. of Arnold Fleischman and Leslie Pittler)

(4) July 1, 1986 - Certificate of Service fd.

(5) July 2, 1986 - Transcript of Record fd.

(6) July 2, 1986 - Notice of Filing of Record fd.

(7) July 2, 1986 App. of Jeffrey M Scherr and Phillip M Andrews and Arnold Fleischman and Leslie M Pittler as attorneys for the appellee Melvin Verger same day answer fd.

(8) July 2, 1986 Certificate of service fd.

(9) July 1, 1986 Plaintiff's memorandum fd.

(10) Sept. 5, 1986 - Stipulation fd.

(11) Sept 18, 1986 - Stipulation fd.

(12) Sept. 30, 1986 = Appellees Response to People's Counsel's Memorandum fd.

October 20, 1986 Hon. J. William Hinkel. Hearing had. Case held Sub Curia Opinion to be filed.

(13) Dec. 2, 1986 = Memorandum Opinion and Order that case be remanded to the County Board of Appeals fd. (JWH)

DOCKET 27 PAGE 249 CASE NO. 86CG2109

Paul Gambrill et al
Case No. R-86-108

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.

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to Arnold Fleishman, Esq., 408 Bosley Ave., Towson, Md. 21204, Counsel for Petitioner; Leslie M. Pittler, Esq., Suite 508, 28 Allegheny Ave., Towson, Md. 21204, Counsel for Petitioner; Paul & Henrietta Gambrill, 6719 Broadview Rd., Baltimore, Md. 21209, Petitioners; Joseph and Barbara Mueller, 2020 Smith Ave., Baltimore, Md. 21209, Petitioners; Edward Weitzel, 4008 Biddison Lane, Apt. E, Baltimore, Md. 21206, Petitioner; Martin and Minna Scheff, 3840 Elmcroft Rd., Randallstown, Md. 21133, Petitioners; John T. Coady, Guardian of the Estate of Joseph Lochte, 400 Allegheny Ave., Towson, Md. 21204, Petitioner; Linda Cunningham, Route 1, Box 65, Graysonville, Md. 21638, Petitioner; Edward A. Feustle, 802 Walker Ave., Baltimore, Md. 21212, Petitioner; James Rubenstein, President, Bancroft Homes, Inc., 10404 Stevenson Rd., Stevenson, Md. 21153, Contract Purchaser; Robert Goldman, Smith-Greenspring Assn., Inc., 6601 Pimlico Rd., Baltimore, Md. 21209; Jeffrey Scherr, Bancroft Homes, Inc., 10404 Stevenson Rd., Stevenson, Md. 21153; James Earl Kraft, Board of Education, 212 Alghurth Rd., Towson, Md. 21204; and Phyllis Cole Friedman, Court House, Towson, Md. 21204, People's Counsel for Baltimore County, on this 2nd day of June, 1986.

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

NOTICE OF FILING OF RECORD

TO: Phyllis Cole Friedman, Esq. Jeffrey H. Scherr, Esq. Arnold Fleishman, Esq.
Peter Max Zimmerman, Esq. Philip M. Andrews, Esq. 408 Bosley Ave. (04)
Room 223 Court House, Towson, Md. 21204 Sun Life Bldg. Ste. 508
Charles Center (01) 28 Allegheny Ave. (04)

June Holmen Mail Stop 2205

In accordance with Maryland Rule of Procedure B12, you are notified that the record in the above entitled case was filed on July 2, 1986

Clerk

RECEIVED
COUNTY BOARD OF APPEALS
MAY 13 1985

Phyllis Cole Friedman, Esq. Jeffrey H. Scherr, Esq. Arnold Fleishman, Esq.
Peter Max Zimmerman, Esq. Philip M. Andrews, Esq. 408 Bosley Ave. (04)
Room 223 Court House, Towson, Md. 21204 Sun Life Bldg. Ste. 508
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MAY 13 1985

IN THE MATTER OF THE APPLICATION OF PAUL GAMBRILL ET AL. FOR ZONING RECLASSIFICATION FROM DR 5.5 AND DR 3.5 TO DR 16 ON PROPERTY LOCATED ON THE NORTH SIDE OF SMITH AVENUE, 1250 FEET EAST FROM THE CENTER LINE OF EDENVILLE ROAD - 3RD DISTRICT ZONING FILE NO R-86-108

Phyllis Cole Friedman
Peter Max Zimmerman
Room 223, Court House (04)
494-2188

Jeffrey H. Scherr
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Kramon & Graham
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Charles Center (01) 752-6030
Arnold Fleischman
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28 Allegheny Ave. (04) 296-9220

BANCROFT HOMES, INC.
PAUL AND HENRIETTA GAMBRILL
JOSEPH GARY
BARBARA MUELLER
EDWARD WEITZEL
MARTIN AND MINNA SCHEFF
JOHN T. COADY
LINDA CUNNINGHAM
EDWARD A. FEUSTLE
MELVIN VERGER

Assignment - July - Motion
Marcy Fennell
Assignment - July - Motion
Irene Summers - 494-2661
Assignment - Non-Jury - Motion
Freddie Grove
Assistant Clerk Typist

County Board of Appeals of Baltimore County
401 Bosley Avenue
P.O. Box 6754
Towson, Maryland 21204-0754
August 5, 1986

Phyllis Cole Friedman, Esq. Jeffrey H. Scherr, Esq. Arnold Fleishman, Esq.
Peter Max Zimmerman, Esq. Philip M. Andrews, Esq. 408 Bosley Ave. (04)
Room 223 Court House, Towson, Md. 21204 Sun Life Bldg. Ste. 508
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COUNTY BOARD OF APPEALS
MAY 13 1985

IN THE MATTER OF THE APPLICATION OF PAUL GAMBRILL ET AL. FOR ZONING RECLASSIFICATION FROM DR 5.5 AND DR 3.5 TO DR 16 ON PROPERTY LOCATED ON THE NORTH SIDE OF SMITH AVENUE, 1250 FEET EAST FROM THE CENTER LINE OF EDENVILLE ROAD - 3RD DISTRICT ZONING FILE NO R-86-108

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BANCROFT HOMES, INC.
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County Board of Appeals of Baltimore County
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P.O. Box 6754
Towson, Maryland 21204-0754
August 5, 1986

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Peter Max Zimmerman, Esq. Philip M. Andrews, Esq. 408 Bosley Ave. (04)
Room 223 Court House, Towson, Md. 21204 Sun Life Bldg. Ste. 508
Charles Center (01) 28 Allegheny Ave. (04)

June Holmen Mail Stop 2205

In accordance with Maryland Rule of Procedure B12, you are notified that the record in the above entitled case was filed on July 2, 1986

Clerk

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COUNTY BOARD OF APPEALS
MAY 13 1985

IN THE MATTER OF THE APPLICATION OF PAUL GAMBRILL ET AL. FOR ZONING RECLASSIFICATION FROM DR 5.5 AND DR 3.5 TO DR 16 ON PROPERTY LOCATED ON THE NORTH SIDE OF SMITH AVENUE, 1250 FEET EAST FROM THE CENTER LINE OF EDENVILLE ROAD - 3RD DISTRICT ZONING FILE NO R-86-108

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BANCROFT HOMES, INC.
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EDWARD A. FEUSTLE
MELVIN VERGER



Baltimore County, Maryland

PEOPLE'S COUNSEL
RM. 223, COURT HOUSE
TOWSON, MARYLAND 21204
494-2183

PHYLLIS COLE FRIEDMAN
People's Counsel

PETER MAX ZIMMERMAN
Deputy People's Counsel

July 17, 1986

Ms. Irene Summers
Assignment Office
Circuit Court for Baltimore County
County Courts Building
401 Bosley Avenue, P. O. Box 6754
Towson, Maryland 21204-0754

RE: Paul Gambrill, et al. v.
Bancroft Homes, Inc., et al.,
Case No. 86CG2109

Dear Ms. Summers:

I am in receipt of your notice setting the above-referenced case in for hearing on Tuesday, October 7, 1986, at 9:30 a.m. I would appreciate it if you would reschedule this case as this office has a conflict with a previously-scheduled case for the same date.

Thank you in advance.

Sincerely yours,

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

PCF:sh

cc: Arnold Fleischmann, Esquire
Leslie M. Pittler, Esquire
Jeffrey H. Scherr, Esquire
Philip M. Andrews, Esquire
James Rubenstein, President
Bancroft Homes, Inc.
County Board of Appeals

RECEIVED
COUNTY BOARD OF APPEALS
JUL 16 P 2 25

IN THE MATTER OF THE APPLICATION OF PAUL GAMBRILL, ET AL. FOR ZONING RECLASSIFICATION FROM DR 5.5 AND DR 3.5 TO DR 16 ON PROPERTY LOCATED ON THE NORTH SIDE OF SMITH AVENUE, 1250 FEET EAST FROM THE CENTER LINE OF EDENVALE ROAD - 3rd DISTRICT

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW

PHYLLIS C. FRIEDMAN, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, PLAINTIFF

Misc. Doc. No. 27
Folio No. 249

ZONING FILE NO. R-86-108 File No. 86-CG-2109

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

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come William T. Hackett, William R. Evans and Patricia Phipps, constituting the County Board of Appeals of Baltimore County, and in answer to the Order for Appeal directed against them in this case, herewith return the record of proceedings had in the above entitled matter, consisting of the following certified copies or original papers on file in the office of the Zoning Department of Baltimore County:

ZONING ENTRIES FROM DOCKET OF ZONING COMMISSIONER OF BALTIMORE COUNTY

No. R-86-108

February 28, 1985 Petitions of Paul Gambrill, et al. for zoning reclassification from DR 5.5 and DR 3.5 to DR 16, on property located on the north side of Smith Avenue, 1250 ft. east from the center line of Edenvale Rd., in the 3rd District of Baltimore County.
Baltimore City Zoning Plans Advisory Committee - filed
Publication in newspaper - filed

April 12, 1985 Certificate of Posting of property - filed
August 22, 1985

August 23, 1985 At 10:00 A.M. hearing held on petitions by County Board of Appeals.

September 10, 1985 Continued hearing before the Board

October 16, 1985

Paul Gambrill, et al.
Case No. R-86-108

March 12, 1986

May 7, 1986

June 2, 1986

June 2, 1986

June 2, 1986

July 2, 1986

Continued hearing before the Board

Order of the County Board of Appeals ordering that the Petition for Reclassification from DR 5.5 and DR 3.5 to DR 16 be GRANTED.

Order for Appeal filed in the Circuit Ct. for Baltimore County by Phyllis C. Friedman, People's Counsel for Baltimore County.

Petition to accompany Order for Appeal filed in the Circuit Ct. for Baltimore County

Certificate of Notice sent to interested parties

Transcript of testimony filed

Petitioners' Exhibit No. 1 - Resume, Samuel Crozier

" " " 2A - 2B - Aerial photos of site

" " " 3 - Zoning Land Use Map (in Bd's closet)

" " " 4 - Color coded exhibit of Existing Site Conditions (in Bd's closet)

" " " 5 - Elevation Map color coded, (in Bd's closet)

" " " 6 - Slope Analysis Map color coded (in Bd's closet)

" " " 7 - Site Data Chart (in Bd's closet)

" " " 8 - Context Plan - Broadview, (in Bd's closet)

" " " 9 - Broadview sketch of road, (Roll in Bd's closet)

" " " 10 - 9/6/85, Probable Const. costs.

" " " 11 - Resume of Robt. Kleinpaste

" " " 12 - Synopsis of Personnel, Rep. projects, etc.

" " " 13 - Map of Regional Studies prepared by Kleinpaste

Paul Gambrill, et al.
Case No. R-86-108

Petitioners' Exhibit No. 14 - Chart, re change in Housing Units (in Bd's closet)

" " " 15 - Chart re Housing Growth Projection vs Actual (in Bd's closet)

" " " 16A - Age Distribution Chart, (in Bd's closet)

" " " 16B - Age Distribution Source Census 1980.

" " " 17 - Chart of Reg. Planning Districts

" " " 18 - Resume of George Gavrelis

Protestants' Exhibit No. 1 - Petition

People's Counsel's Exhibit No. 1 - Series of documents re issues 1984 zoning maps

" " " 2 - Site data overlay prepared by P.C. (on Pet. Exh. #7 in Board's closet)

" " " 3 - Smith Ave. relocation and widening costs

" " " 4 - 12/31/85 (2 pgs.) Est. of probable construction costs

" " " 5 - Cost of public improvements, DR 5.5 (Bd's closet)

" " " 6 - Gen'l Highway Map of Md. (3d's. closet)

" " " 7 - Gen'l Highway Map of Md. (reproduction in miniature)

" " " 8A, 8B, 8C - Brochures

" " " 9 - Qualification of appraiser, Frederick Klaus

" " " 10A-0 - Photos of subj. site

" " " 11 - Aerial photo of subj. site

" " " 12 - 1000 scale map (zoning)

Paul Gambrill, et al.
Case No. R-86-108

July 2, 1986

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 Zoning Department 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,

Jane Holmen
Jane Holmen
County Board of Appeals of Baltimore County

cc: Arnold Fleischman, Esq.
Leslie M. Pittler, Esq.
Phyllis C. Friedman



County Board of Appeals of Baltimore County

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

June 2, 1986

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

Dear Mrs. Friedman:

Re: Case No. R-86-108
Paul Gambrill, et al

In accordance with Rule 3-7 (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 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 3-7 (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 Holmen
Jane Holmen, Secretary

Encls.



County Board of Appeals of Baltimore County

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

June 2, 1986

Arnold Fleischman, Esq.
408 Bosley Avenue
Towson, Md. 21204

Dear Mr. Fleischman:

Re: Case No. R-86-108
Paul Gambrill, et al

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 Holmen
Jane Holmen, Secretary

Encl.
cc: Leslie M. Pittler, Esq.
Paul & Henrietta Gambrill
Joseph and Barbara Mueller
Edward Weitzel
Martin and Minna Scheff
John T. Coady
Linda Cunningham
Edward A. Reustle
James Rubenstein
Robert Goldman
Jeffrey Scherr
James E. Kraft

Arnold Jablon
Jean Jung
James Dyer
Norman Gerber
James Hoswell

IN THE MATTER OF THE APPLICATION OF PAUL GAMBRILL, ET AL. FOR ZONING RECLASSIFICATION FROM DR 5.5 AND DR 3.5 TO DR 16 ON PROPERTY LOCATED ON THE NORTH SIDE OF SMITH AVENUE, 1250 FEET EAST FROM THE CENTER LINE OF EDENVALE ROAD - 3rd District

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW

CG Docket No. _____
Folio No. _____
File No. _____

NOTICE OF APPEAL

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 May 7, 1986, in the above-captioned matter.

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
JUL 23 A 9 40 E
JUL 23

I HEREBY CERTIFY that on this 2nd day of June, 1986, a copy of the foregoing Notice of Appeal was delivered to the Administrative Secretary, County Board of Appeals, Rm. 200, Court House, Towson, MD 21204; and a copy mailed to Leslie M. Pittler, Esq., Suite 508, 28 Allegheny Ave., Towson, MD 21204; and Arnold Fleischman, Esq., 408 Bosley Ave., Towson, MD 21204.

Phyllis Cole Friedman
Phyllis Cole Friedman

IN THE MATTER OF THE :
APPLICATION OF PAUL GEMILL :
ET AL. FOR ZONING RECLASSIFICATION :
FROM DR 5.5 AND DR 3.5 TO DR 16 :
ON PROPERTY LOCATED ON THE NORTH :
SIDE OF SMITH AVENUE, 1250 FEET :
EAST FROM THE CENTER LINE OF :
EDENVALE ROAD - 3rd District :
ZONING FILE NO. R-86-108 :
IN THE CIRCUIT COURT :
FOR BALTIMORE COUNTY :
AT LAW :
CG Docket No. :
Folio No. :
File No. :

PETITION ON APPEAL

The People's Counsel for Baltimore County, Protestant below and Appellant herein, having heretofore filed a Notice of Appeal from the Opinion and Order of the County Board of Appeals, under date of May 7, 1986, granting the reclassification from DR 5.5 and DR 3.5 to DR 16 in the above-captioned matter, in compliance with Maryland Rule B-2(e), files this Petition on Appeal setting forth the grounds upon which this Appeal is taken, viz:

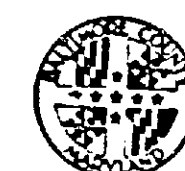
That the County Board of Appeals had no locally sufficient evidence upon which to base its conclusion that the present zoning on the parcel which is the subject of this appeal is an erroneous classification and therefore their Order passed herein is illegal, arbitrary, and capricious.

WHEREFORE, Appellant prays that the Opinion and Order of the Board of Appeals of Baltimore County under date of May 7, 1986 be reversed, and the action of the County Council of Baltimore County in zoning the subject property DR 5.5 and DR 3.5 be affirmed and reinstated.

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

I HEREBY CERTIFY that on this 24 day of June, 1986, a copy of the foregoing 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 Leslie M. Pittler, Esq., Suite 508, 28 Allegheny Ave., Towson, MD 21204; and Arnold Fleischmann, Esq., 408 Bosley Ave., Towson, MD 21204.

Phyllis Cole Friedman
Phyllis Cole Friedman



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

May 7, 1986

Arnold Fleischman, Esq.
408 Bosley Ave.
Towson, Md. 21204

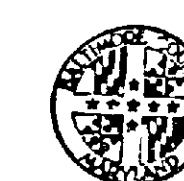
Dear Mr. Fleischman:

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

Very truly yours,

June Holmen
June Holmen, Secretary

Encl.
cc: Leslie M. Pittler, Esq.
Paul and Henrietta Gambrill
Joseph and Barbara Mueller
Edward Weitzel
Martin and Minna Scheff
John T. Coady
Linda Cunningham
Edward A. Feustle
James Rubenstein
Robert Goldman
James E. Kraft
Arnold Jablon
Jean Jung
James E. Dyer
Norman E. Gerber
James Hoswell
Phyllis C. Friedman
Jeffrey Scherr



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

PHYLIS COLE FRIEDMAN
People's Counsel

PETER MAX ZIMMERMAN
Deputy People's Counsel

April 8, 1986

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

RE: Paul Gambrill, et al., Petitioners
Zoning Case No. R-86-108

Dear Chairman Hackett:

It is not our intention to file a supplemental memorandum. However, some comment is necessary on the allegation that this office violated Rule 1092(c) in reference to the Court of Special Appeals decisions in *Gabill* and *Frey*.

These cases, which began in the Board of Appeals and proceeded through the courts, were referred to generally in opening statement. Of course, Rule 1092(c) does not apply to proceedings before the County Board of Appeals. See Rule 1-101. In any event, as prior cases involving decisions of this Board, they should be given such weight as is appropriate.

Although it would have been perfectly appropriate to produce and cite specifically portions of the unpublished Court of Special Appeals decisions in that context, they were not in fact produced until the Petitioners, through counsel, made a written request for them by letter dated February 20, 1986.

At that point, any of the parties were obviously free to cite these cases, and there certainly should not reasonably have been any objection. Strangely enough, the Petitioners chose to object without even reviewing our memorandum. As the Board will note, our memorandum makes reference only to several of the published decisions which are well known and, in the interest of simplicity, makes no further mention of the unpublished decisions.

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 reclassified, pursuant to the Zoning Law of Baltimore County, from an DR 5.5 and DR 3.5 zone to an DR 16 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 Error in the original zoning. The County Council committed

error in failing to rezone the subject property from DR 5.5

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

to DR 16 on the 1984 Baltimore County Zoning Map. The property is bounded by DR 16 zones. Topographically and economically the property can be utilized or developed as presently zoned.

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

I, or we, agree to pay expenses of above reclassification, 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: BANCROFT HOMES, INC. Legal Owner(s):

BY: *James Rubenstein* Martin P. Scheff
(Type or Print Name) President
Signature

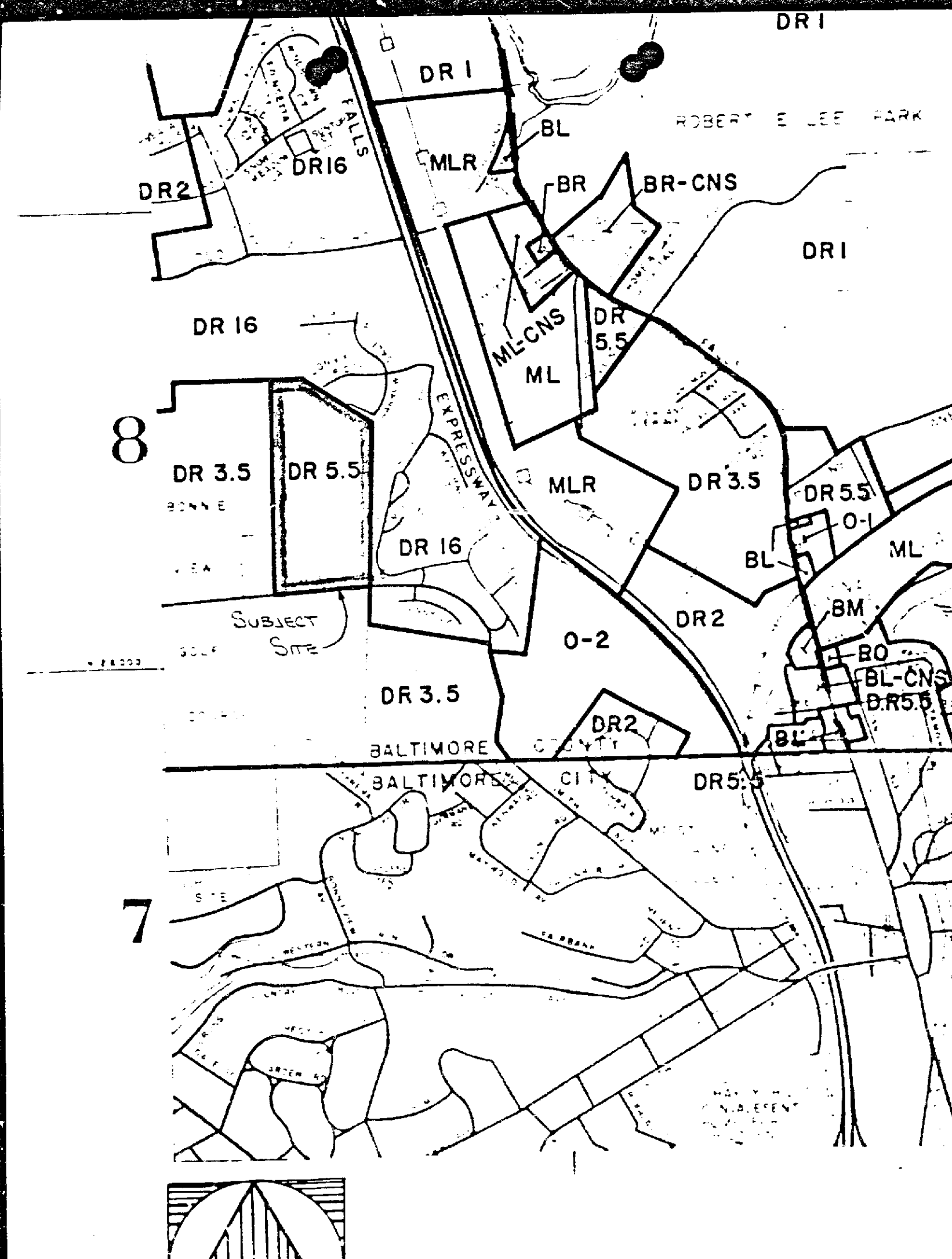
10404 Stevenson Road
Address
Stevenson, Maryland 21153
City and State

Attorneys for Petitioner:
Arnold Fleischmann 3840 Elmcroft Road 922-5589
(Type or Print Name) Address Phone No.
Arnold Fleischmann Randallstown, Maryland 21133
Signature City and State

408 Bosley Ave.
Address
Towson, Md. 21204
City and State

Attorney's Telephone No: 332-7400

Leslie M. Pittler
LESLIE M. PITTLER
Suite 508
28 Allegheny Avenue
Towson, Maryland 21204
296-9220



BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

April 12, 1985

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

cc: Nicholas B. Commodari
Chairman

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

Arnold Fleischmann, Esquire
408 Bosley Avenue
Towson, Maryland 21204

Leslie M. Pittler, Esquire
28 Allegheny Avenue - Suite 508
Towson, Maryland 21204

RE: Item No. 2 - Cycle No. 1
Petitioner - Paul Gambrill, et al
Reclassification Petition

Gentlemen:

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

If it has been suggested that the petition forms, description, briefs, and/or the site plans be amended so as to reflect better compliance with the zoning regulations and/or correcting agencies' standards and policies, you are requested to review these comments, make your own judgment as to their accuracy and submit the necessary amendments to this office before Tuesday, April 30, 1985. In the event that any requested amendments are not received prior to this date, the petition will be advertised as originally submitted.

In view of your clients' proposal to reclassify this property to a D.P. 16 zoning in its entirety, this hearing is required. The site plan and petition forms should indicate that the current zoning of this property is D.R. 5.5, 3.5 and 16. In addition and in order to make less paperwork, it would be better to have one set of petition forms with signatures of the remaining owners attached.

Item No. 2 - Cycle No. I
Petitioner - Paul Gambrell, et al
Reclassification Petition
April 12, 1985

In view of the fact that the submitted site plan does not indicate a proposed development, the enclosed comments from this Committee are general in nature. If the requested reclassification is granted, more detailed comments from County agencies and the Committee (if a hearing is required) will be written when a proposed development is indicated.

If you have any questions concerning the enclosed comments, please feel free to contact me at 494-3391. Notice of the specific hearing date which will be between September 1, and December 31, 1985, will be forwarded to you in the future.

Very truly yours,

Nicholas B. Comodari
NICHOLAS B. COMODARI
Chairman
Zoning Plans Advisory Committee

NEC:bac

Enclosures

cc: Bankroft Homes
10404 Stevenson Road
Stevenson, Maryland 21153



BALTIMORE COUNTY
DEPARTMENT OF PUBLIC WORKS
TOWSON, MARYLAND 21204

HARRY J. PISTEL, P.E.
DIRECTOR

March 15, 1985

Mr. Arnold Jablon
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Re: Item #2 - Cycle I - 1985
Property Owner: Paul Gambrell, et al
N/S Smith Avenue 1250' E. from centerline
Edenvale Road
Existing Zoning: D.R. 5.5 & D.R. 3.5
Proposed Zoning: D.R. 16
Acres: 34.3 District: 3rd

Dear Mr. Jablon:

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

General Comments:

Smith Avenue is an existing road, which shall ultimately be improved on a 60-foot right-of-way. Phasant Cross Road is proposed as a 70-foot right-of-way and will traverse this property.

Public water exists within Smith Avenue and sanitary sewer exists within the adjacent property to the north of the site.

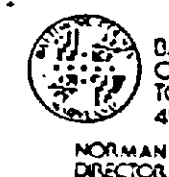
Development of this property will require a meeting with the County Review Group.

Very truly yours,

James A. Markle
JAMES A. MARKLE, P.E., Chief
Bureau of Public Works

JAM:EM:ROP:SS

cc: File



BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
TOWSON, MARYLAND 21204
494-3321
NORMAN E. GEDER
DIRECTOR

Mr. Arnold Jablon
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Dear Mr. Jablon:

The Division of Current Planning and Development has reviewed the subject petition and offers the following comments. The items checked below are applicable.

- 3/25/85
Re: Zoning Advisory Meeting of 3/6/85
Item #2
Property Owner: Paul Gambrell, et al.
Location: N/S Smith Ave.
E of Edenvale Rd.
- (X) There are no site planning factors requiring comment at this time.
 - () A County Review Group Meeting is required.
 - () A County Review Group meeting was held and the minutes will be forwarded by the Bureau of Public Services.
 - () This site is part of a larger tract; therefore it is defined as a subdivision. The plan must show the entire tract.
 - () A record plat will be required and must be recorded prior to issuance of a building permit.
 - () The access is not satisfactory.
 - () The circulation on this site is not satisfactory.
 - () The parking arrangement is not satisfactory.
 - (X) The parking calculations must be shown on the plan.
 - (X) This property contains soils which are defined as wetlands, and development on these soils is prohibited.
 - () Construction in or alteration of the floodplain is prohibited under the provisions of Section 22-98 of the Development Regulations.
 - () Development of this site may constitute a potential conflict with the Baltimore County Master Plan.
 - () The amended Development Plan was approved by the Planning Board on [blank].
 - () Landscaping: Must comply with Baltimore County Landscape Manual.
 - () The property is located in a deficient service area as defined by Bill 173-79. No building permit may be issued until a Reserve Capacity Use Certificate has been issued. The deficient service is [blank].
 - () The property is located in a traffic area controlled by a "D" level intersection as defined by Bill 178-79, and as conditions change are re-evaluated annually by the County Council.
 - (X) Additional comments:
Any future development on this site
for development of a building permit
will require a meeting with the County Review Group

cc: James Howell

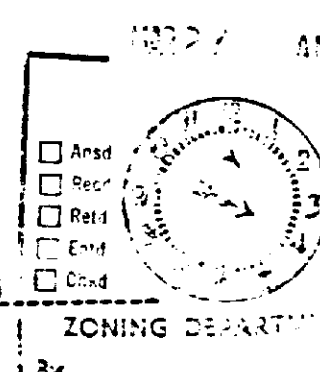
Eugene A. Rober
Chief, Current Planning and Development

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. William Hackett
Chairman, Board of Appeals
FROM: Ian J. Forrest
SUNJECT: Reclassification Petitions
CYCLE I - 1985
Meeting of March 6, 1985

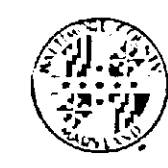
Date: March 20, 1985



The Baltimore County Department of Health has reviewed the following Reclassification Petitions and does not anticipate any health hazards at this time regarding these Petitions.

- Item #1 - Helen D. Gibbons
Item #2 - Paul Gambrell, et al
Item #3 - Nelson L. Bond, Jr., et al
Item #4 - Conservation Associates
Item #5 - Greater Baltimore Medical Center
Item #6 - Josef of Vienna, Inc.
Item #7 - John W. Ruppert, et al

Ian J. Forrest
Ian J. Forrest, Director
BUREAU OF ENVIRONMENTAL SERVICES



BALTIMORE COUNTY
FIRE DEPARTMENT
TOWSON, MARYLAND 21204-2586
494-4500

PAUL H. REINCKE
CHIEF
William Hackett
Chairman, Board of Appeals
Office of Planning and Zoning
Baltimore County Office Building
Towson, MD 21204

March 11, 1985

Attention: Nick Comodari, Chairman
Zoning Plans Advisory Committee

RE: Property Owner: Paul Gambrell, et al

Location: N/S Smith Avenue 1250' E. from c/l Edenvale Road

Item No.: 2 Zoning Agenda: 3/6/85 - Cycle 1

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" are applicable and required to be corrected or incorporated into the final plans for the property.

- (X) 1. Fire hydrants for the referenced property are required and shall be located at intervals or located at intervals or in accordance with Baltimore County Standards as published by the Department of Public Works.

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

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

- (X) 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation. Fire flow test shall be conducted on Smith Avenue.
(X) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1976 Edition prior to occupancy.

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

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

REVIEWED BY: *Paul H. Reincke* Approved: *Paul H. Reincke*
Planning Group Fire Prevention Bureau
Special Inspection Division

/nb

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Mr. William T. Hackett, Chairman, Appeals Board
TO: Mr. Nicholas Comodari, Zoning Department Date: March 12, 1985
FROM: Charles E. Burdick, Chief, Building Plans Review C.E.B.

SUBJECT: Cycle I - 1985 Meeting Scheduled 3/6/85
ITEM #2) Owner - Paul Gambrell, et al, N/S Smith Avenue 1250' E. from centerline of Edenvale Road

Conversion of property from one use to another use requires the structures involved to comply with the Building Code in force at the time a permit is applied for and before the structure can be used. Existing structures will require a Change of Use/Occupancy permit as well as alteration permits to upgrade the structure to meet the Code requirements for the new proposed use.

New structures shall be designed from the footings up to comply with the correct Use Group as provided for in Article 3 of the current 1981 Code.

Compliance with the State Handicapped Code is required for the buildings and the site.

Set backs from interior lot lines, other buildings on the same lot, and street lot lines for fire separations shall also comply to the Building Code in force at the time an application is made for the permit. This currently involves Table L01, Table 507 and Section 506, of the current 1981 B.O.C.A. Code known as the Baltimore County Building Code as adopted by Bill 1-82. The 1984 Edition of B.O.C.A. has been approved by the County Council and will become effective on permits filed 15 days after it's enactment.

No further comments at this time.

CMB/vw



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

STEPHEN E. COLLINS
DIRECTOR

March 7, 1985

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

Cycle I - March 6, 1985
Item No. - 2
Property Owner: Paul Gambrell, et al
Location: N/S Smith Avenue
Existing Zoning: D.R. 5.5 & D.R. 3.5
Proposed Zoning: D.R. 16

Acres: 34.3
District: 3rd

Dear Mr. Hackett:

We are unable to comment on this plan, due to the lack of information.

MSF/ccm

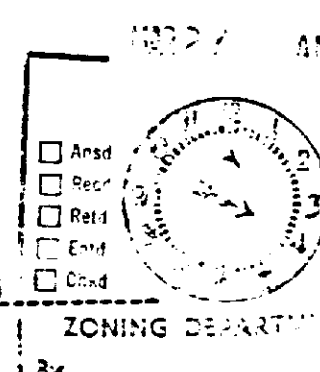
Michael S. Flanagan
Michael S. Flanagan
Traffic Engineering Assoc. II

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. William Hackett
Chairman, Board of Appeals
FROM: Ian J. Forrest
SUNJECT: Reclassification Petitions
CYCLE I - 1985
Meeting of March 6, 1985

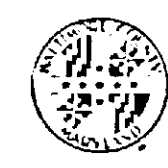
Date: March 20, 1985



The Baltimore County Department of Health has reviewed the following Reclassification Petitions and does not anticipate any health hazards at this time regarding these Petitions.

- Item #1 - Helen D. Gibbons
Item #2 - Paul Gambrell, et al
Item #3 - Nelson L. Bond, Jr., et al
Item #4 - Conservation Associates
Item #5 - Greater Baltimore Medical Center
Item #6 - Josef of Vienna, Inc.
Item #7 - John W. Ruppert, et al

Ian J. Forrest
Ian J. Forrest, Director
BUREAU OF ENVIRONMENTAL SERVICES



BALTIMORE COUNTY
FIRE DEPARTMENT
TOWSON, MARYLAND 21204-2586
494-4500

PAUL H. REINCKE
CHIEF
William Hackett
Chairman, Board of Appeals
Office of Planning and Zoning
Baltimore County Office Building
Towson, MD 21204

March 11, 1985

Attention: Nick Comodari, Chairman
Zoning Plans Advisory Committee

RE: Property Owner: Paul Gambrell, et al

Location: N/S Smith Avenue 1250' E. from c/l Edenvale Road

Item No.: 2 Zoning Agenda: 3/6/85 - Cycle 1

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" are applicable and required to be corrected or incorporated into the final plans for the property.

- (X) 1. Fire hydrants for the referenced property are required and shall be located at intervals or located at intervals or in accordance with Baltimore County Standards as published by the Department of Public Works.

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

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

- (X) 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation. Fire flow test shall be conducted on Smith Avenue.
(X) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1976 Edition prior to occupancy.

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

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

REVIEWED BY: *Paul H. Reincke* Approved: *Paul H. Reincke*
Planning Group Fire Prevention Bureau
Special Inspection Division

/nb

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Mr. William T. Hackett, Chairman, Appeals Board
TO: Mr. Nicholas Comodari, Zoning Department Date: March 12, 1985
FROM: Charles E. Burdick, Chief, Building Plans Review C.E.B.

SUBJECT: Cycle I - 1985 Meeting Scheduled 3/6/85
ITEM #2) Owner - Paul Gambrell, et al, N/S Smith Avenue 1250' E. from centerline of Edenvale Road

Conversion of property from one use to another use requires the structures involved to comply with the Building Code in force at the time a permit is applied for and before the structure can be used. Existing structures will require a Change of Use/Occupancy permit as well as alteration permits to upgrade the structure to meet the Code requirements for the new proposed use.

New structures shall be designed from the footings up to comply with the correct Use Group as provided for in Article 3 of the current 1981 Code.

Compliance with the State Handicapped Code is required for the buildings and the site.

Set backs from interior lot lines, other buildings on the same lot, and street lot lines for fire separations shall also comply to the Building Code in force at the time an application is made for the permit. This currently involves Table L01, Table 507 and Section 506, of the current 1981 B.O.C.A. Code known as the Baltimore County Building Code as adopted by Bill 1-82. The 1984 Edition of B.O.C.A. has been approved by the County Council and will become effective on permits filed 15 days after it's enactment.

No further comments at this time.

CMB/vw



BALTIMORE COUNTY PUBLIC SCHOOLS

Robert Y. Dubel, Superintendent

Towson, Maryland - 21204

Date: March 19, 1985

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

Zoning Cycle #1

RE: Item No: 2
Property Owner: Paul Gambrell, et al
Location: N/S Smith Avenue 1250' E. from c/l Edenvale Road
Present Zoning: D.R. 5.5
Proposed Zoning: D.R. 16

School Situation September 1984

School	Enrollment	Capacity	Over/Under
Wellwood Elementary	262	525	-263
Pikesville Middle	1006	1154	-148
Pikesville High	1125	1320	-195

Student Yield With:	Existing Zoning	And	Proposed Zoning
Elementary	33	From 4 to 80	
Middle	23	From 1 to 71	
High	39	From 2 to 60	

Very truly yours,
John Dameron
John Dameron, Field Representative
Department of Planning

JD/1h

IN THE MATTER OF :
THE APPLICATION OF :
PAUL GAMBRILL, ET AL :
FOR ZONING RECLASSIFICATION :
FROM DR 5.5 AND DR 3.5 TO DR 16 :
ON PROPERTY LOCATED ON THE NORTH :
SIDE OF SMITH AVENUE, 1250 FEET :
EAST FROM THE CENTER LINE OF :
EDENVALE ROAD - 3RD DISTRICT :
BALTIMORE COUNTY :
No. R-86-108

OPINION

The above captioned matter came before the County Board of Appeals to consider a Petition for Reclassification of property located on the north side of Smith Avenue at Broadview Road in the 3rd Election District of Baltimore County.

The matter is further identified as Item #2 in the 1st Reclassification Cycle.

This Board heard three full days of testimony, received into evidence numerous exhibits and, finally, legal memorandums from Petitioners and People's Counsel.

Petitioners produced as witnesses, James Rubenstein, President of Hancock Homes, Samuel Crozier, a Landscape Architect and Land Planner, David S. Thaler, an Engineer, Robert T. Kleinpaste, a Real Estate Developer and George L. Gavrellis, former Director of Planning for Baltimore County.

People's Counsel produced as witnesses, Robert Goldman, a property owner near the subject site, Lawrence Caplan, a property owner within one-half mile of the subject site, Steve Huster, a property owner residing across the street from the subject site, James G. Hoswell, a Planner for Baltimore County, James A. Markie, Chief, Bureau of Public Services for Baltimore County, Francis D. Alessi, a Private Investigator and Frederick Klaus, a Real Estate and Development expert.

Paul Gambrill, et al
Case No. R-86-108

Although this Board recognizes the genuine interests each of the witnesses expressed in this matter, we believe it unnecessary to address, at length, the testimony of each. We will, however, in this Opinion, attempt to address that which we feel are the salient issues.

Mr. Rubenstein testified that a reclassification of the subject property is necessary because development of same under the existing zoning is not economically feasible. The economic impact of a particular zoning classification, however, is not one of the matters this Board is mandated to consider pursuant to Section 2-58.1 of the County Code. Further, this Board believes economic impact, standing alone, is not sufficient to establish error in a zoning classification.

Mr. Crozier described the physical characteristics of the subject property, to wit, that Pheasant Cross Drive was a mandated road and would bisect the subject property, how such a bisection would impact the subject property and stated that he believed the County Council had committed error by not classifying the subject property DR 16 in its entirety. Mr. Crozier stated that, except for the Bonnie View Country Club Golf Course, all property contiguous to the subject site is zoned DR 16.

Mr. Thaler repeated Mr. Crozier's comments concerning Pheasant Cross Drive, discussed the possible relocation of Smith Avenue and discussed various construction costs. Again, this Board is compelled to comment that despite the obvious concern over construction costs, such is not a matter this Board considers pertinent to a question regarding error by the County Council. Indeed, when People's Counsel produced Mr. Markie to contradict the costs submitted into evidence by Mr. Thaler, this Board asked but one question, "Were these costs presented to or considered by the County Council during the Comprehensive Zoning Process?" The answer was no. Consequently, costs and/or the economic feasibility of development could not have been an issue upon which the County Council erred.

Paul Gambrill, et al
Case No. R-86-108

Mr. Thaler did state, however, on cross-examination, that he believed the County Council erred in not considering the fact that Pheasant Cross Drive shall be constructed across the subject property.

Indeed, this Board believes that, at present, the subject site is land locked, unless Pheasant Cross Drive is constructed as Mr. Thaler suggests.

Mr. Kleinpaste testified that he had reviewed the Planning Board and County Council activity including the log issues during the 1984 Map Process, but had reviewed no testimony concerning same. Mr. Kleinpaste indicated that his studies included demographics, demand for housing in the area, employment growth within the area and the transportation zones. The conclusions of Mr. Kleinpaste suggested error by the County Council by not recognizing the demand for housing, the need for housing for the elderly and the employment growth in the area.

The final witness for the Petitioners, Mr. Gavrellis, stated that there had been no real public input during the 1984 Zoning Map Process. According to the studies of Mr. Gavrellis, only one speaker appeared during the Planning Process and none at the Council hearings. The only opposition voiced at the Council hearings to the DR 16 zone concerned a possible increase in traffic.

Mr. Gavrellis noted that the Planning staff had recommended DR 16 zoning to the County Council and it was apparent to him that this particular issue had received very little scrutiny.

Mr. Gavrellis stated that Bonnie View Country Club to the south and west formed a natural boundary to the subject property, and the extension of Pheasant Cross Drive would link the subject site with the existing high density development areas. Furthermore, according to Mr. Gavrellis, since Baltimore County has mandated the extension of Pheasant Cross Drive, the subject site will, naturally, become an integral part of the DR 16 zoning to the north

Paul Gambrill, et al
Case No. R-86-108

and east of the subject site. Mr. Gavrellis expressed the opinion that the County Council had erred because the subject site, upon the extension of Pheasant Cross Drive, would be at the entrance of a major collector road servicing a high density zone.

In conclusion, Mr. Gavrellis expressed the opinion that the County Council had erred by failing to recognize the employment growth in the area, the extension of Pheasant Cross Drive and the compatibility of the subject site to the surrounding DR 16 zones.

People's Counsel produced Mr. Goldman, Mr. Huster and Mr. Caplan, all of whom complained of increased traffic and the fact that each felt DR 5.5 zoning for the subject property is adequate. Interestingly, however, none of these gentlemen testified during the Comprehensive Zoning Process.

James G. Hoswell, County Planner, stated that the present zoning of the subject property provided a reasonable use for same. Mr. Hoswell, however, in his characteristically candid manner, acknowledged that although DR 5.5 zoning is compatible with the neighborhood, DR 16 zoning is not inconsistent with the Master Plan and, further, that the preferred zoning, from a planning perspective, in 1984 was DR 16. Nevertheless, Mr. Hoswell said that he could not conclude that the County Council had erred.

On cross-examination, Mr. Hoswell stated that he was unable to state the factors considered by the County Council during the 1984 Zoning Map Process, however, as a Planner his recommendation for the subject site at present would be DR 16.

Mr. Alessi advised that he had investigated the area and for the most part his testimony merely confirmed that testimony and evidence previously received concerning the surrounding area. Upon cross-examination, Mr. Alessi demonstrated a lack of knowledge concerning the zoning of the subject site or the area surrounding it.

Paul Gambrill, et al
Case No. R-86-108

The last witness produced by People's Counsel, Frederick F. Klaus, described the physical characteristics of the site and stated that the present zoning of the property would afford a reasonable use for same. He further stated that in his opinion, the County Council had not committed error on the 1984 Zoning Maps.

When considering Petitions for Reclassification, this Board is statutorily governed by Section 2-58.1-j (1) & (2) of the County Code which states:

(j) Before any property is reclassified pursuant to this section, the Board of Appeals must find:

- (1) That there has occurred a substantial change in the character of the neighborhood in which the property is located since the property was last classified, or that the last classification of the property was established in error; and
- (2) That the prospective reclassification of the property is warranted by that change or error. Any finding of such a change or error and any finding that the prospective reclassification is warranted may be made only upon consideration of factors relating to the purposes of the zoning regulations and maps, including, but not limited to, all of the following: Population trends; availability and adequacy of present and proposed transportation facilities, water-supply facilities, sewerage, solid waste-disposal facilities, schools, recreational facilities, and other public facilities; compatibility of uses generally allowable under the prospective classification with the present and projected development or character of the surrounding area; any pertinent recommendation of the Planning Board or Office of Planning and Zoning; and consistency of the current and prospective classifications with the master plan, the county plan for sewerage and water-supply facilities, and the capital program.

Clearly, the Petitioners produced a number of excellent witnesses to demonstrate that the County Council erred in not granting DR 16 zoning to the subject site during the 1984 Comprehensive Zoning Process.

Paul Gambrill, et al
Case No. R-86-108

Conversely, People's Counsel, primarily through Mr. Hoswell and Mr. Klaus, attempted to demonstrate that the County Council was correct in zoning the subject site and in fact, the present zoning of same provides for a reasonable use.

It is, however, for this Board to determine whether the County Council committed error. Simply, we believe that the County Council did err by not zoning the subject site DR 16.

We do not believe that because an existing zoning classification provides for a reasonable use, that error may not have occurred. Certainly, in the case at bar the subject property can be reasonably developed within its existing zone, however, we do not believe it feasible to superimpose a lower density zoning upon a higher density zoning.

In this case, the subject property is at the entrance to a high density zone. Pheasant Cross Drive will become a collector road for the high density adjacent properties. We are persuaded that the County Council failed to consider the impact of the Pheasant Cross Drive extension on the subject property. We are also persuaded that the County Council failed to consider the employment growth in the area.

The testimony of Mr. Hoswell and Mr. Klaus, though credible, was nevertheless, we believe, weak. In particular, this Board was impressed by the honesty and integrity of both gentlemen. Each was an expert and testified as such, however, each refused to stray from the facts and, in this case, we believe, the facts clearly demonstrate the inappropriateness of low density zoning for the subject property.

Of course we are familiar with Boyce v. Samsby 25 Md. App. 43, 334 A 2d 137 (1975), Coppolino v. County Board of Appeals, 23 Md. App. 358, 329 A 2d 55 (1974) and Stratakis v. Beauchamp, 268 Md. 643, 304 A 2d 244 (1973).

Paul Gambrill, et al
Case No. R-86-108

We recognize the Petitioners' burden to demonstrate by strong evidence that the zoning was in error and/or that there has been a denial of all reasonable use of the property for any use permitted in the zoning classification. However, we are also persuaded by the language utilized in Missouri Realty v. Reamer, 216 Md. 442, (1958) wherein the Court of Appeals stated

"... this case involves an application for reclassification from one residential sub-category to another. In this respect, the situation is, to a certain degree, different from the application to reclassify property zoned as residential to commercial or industrial".

We believe, therefore, that the Court of Appeals intended to apply a more liberal standard when addressing Petitions for Reclassification from one use to a similar use.

Finally, this Board is persuaded that the extension of Pheasant Cross Drive is essential and that the failure to extend same "land locks" the subject property. Since Pheasant Cross Drive shall be extended this Board believes the County Council erred in super-imposing a low density zone at the mouth of a major collector road to a higher density zone.

This Board is also cognizant of the fact that during the Comprehensive Zoning Process the failure of the public to offer input may have led to the error in failing to zone this property DR 16. Obviously, when one studies the topography, the location of the site and its boundaries along a golf course, this Board can understand why, in the absence of public input, the Council may have imposed the existing zone. Simply, however, we believe the Council failed to consider the issues enumerated in this Opinion and did, therefore, err.

For the reasons indicated above, this Board shall grant the Petition for Reclassification.

Paul Gambrill, et al
Case No. R-86-108

ORDER

For the reasons set forth in the foregoing Opinion, it is this Ten day of May, 1986, by the County Board of Appeals, ORDERED that the Petition for Reclassification from DR 5.5 and DR 3.5 to DR 16 be and the same is hereby GRANTED.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett
William T. Hackett, Chairman

William R. Evans
William R. Evans

Patricia E. Frapp
Patricia E. Frapp

Item No. 2 - Cycle No. I
Petitioner - Paul Gambrell, et al
Reclassification Petition
April 12, 1985

In view of the fact that the submitted site plan does not indicate a proposed development, the enclosed comments from this Committee are general in nature. If the requested reclassification is granted, more detailed comments from County agencies and the Committee (if a hearing is required) will be written when a proposed development is indicated.

If you have any questions concerning the enclosed comments, please feel free to contact me at 494-3391. Notice of the specific hearing date which will be between September 1, and December 31, 1985, will be forwarded to you in the future.

Very truly yours,

Nicholas B. Comodari
NICHOLAS B. COMODARI
Chairman
Zoning Plans Advisory Committee

NEC:bsc

Enclosures

cc: Bankroft Homes
10404 Stevenson Road
Stevenson, Maryland 21153



BALTIMORE COUNTY
DEPARTMENT OF PUBLIC WORKS
TOWSON, MARYLAND 21204

HARRY J. PISTEL, P.E.
DIRECTOR

March 15, 1985

Mr. Arnold Jablon
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Re: Item #2 - Cycle I - 1985
Property Owner: Paul Gambrell, et al
N/S Smith Avenue 1250' E. from centerline
Edenvale Road
Existing Zoning: D.R. 5.5 & D.R. 3.5
Proposed Zoning: D.R. 16
Acres: 34.3 District: 3rd

Dear Mr. Jablon:

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

General Comments:

Smith Avenue is an existing road, which shall ultimately be improved on a 60-foot right-of-way. Phasant Cross Road is proposed as a 70-foot right-of-way and will traverse this property.

Public water exists within Smith Avenue and sanitary sewer exists within the adjacent property to the north of the site.

Development of this property will require a meeting with the County Review Group.

Very truly yours,

James A. Markle
JAMES A. MARKLE, P.E., Chief
Bureau of Public Works

JAM:EM:ROP:SS

cc: File



BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
TOWSON, MARYLAND 21204
494-3391
NORMAN E. GEDER
DIRECTOR

Mr. Arnold Jablon
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Dear Mr. Jablon:

The Division of Current Planning and Development has reviewed the subject petition and offers the following comments. The items checked below are applicable.

- 3/25/85
Re: Zoning Advisory Meeting of 3/6/85
Item #2
Property Owner: Paul Gambrell, et al.
Location: N/S Smith Ave.
E of Edenvale Rd.
- (X) There are no site planning factors requiring comment at this time.
 - () A County Review Group Meeting is required.
 - () A County Review Group meeting was held and the minutes will be forwarded by the Bureau of Public Services.
 - () This site is part of a larger tract; therefore it is defined as a subdivision. The plan must show the entire tract.
 - () A record plat will be required and must be recorded prior to issuance of a building permit.
 - () The access is not satisfactory.
 - () The circulation on this site is not satisfactory.
 - () The parking arrangement is not satisfactory.
 - (X) The parking calculations must be shown on the plan.
 - (X) This property contains soils which are defined as wetlands, and development on these soils is prohibited.
 - () Construction in or alteration of the floodplain is prohibited under the provisions of Section 22-98 of the Development Regulations.
 - () Development of this site may constitute a potential conflict with the Baltimore County Master Plan.
 - () The amended Development Plan was approved by the Planning Board on [blank].
 - () Landscaping: Must comply with Baltimore County Landscape Manual.
 - () The property is located in a deficient service area as defined by Bill 173-79. No building permit may be issued until a Reserve Capacity Use Certificate has been issued. The deficient service is [blank].
 - () The property is located in a traffic area controlled by a "D" level intersection as defined by Bill 178-79, and as conditions change are re-evaluated annually by the County Council.
 - (X) Additional comments:
Any future development on this site
for development of a building permit
will require a meeting with the County Review Group

cc: James Howell

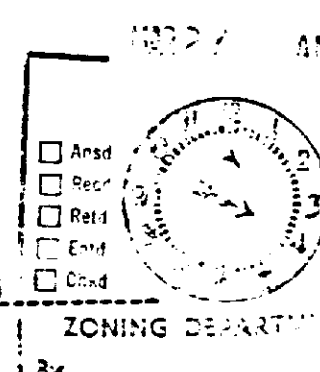
Eugene A. Rober
Chief, Current Planning and Development

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. William Hackett
Chairman, Board of Appeals
FROM: Ian J. Forrest
SUNJECT: Reclassification Petitions
CYCLE I - 1985
Meeting of March 6, 1985

Date: March 20, 1985



The Baltimore County Department of Health has reviewed the following Reclassification Petitions and does not anticipate any health hazards at this time regarding these Petitions.

- Item #1 - Helen D. Gibbons
- Item #2 - Paul Gambrell, et al
- Item #3 - Nelson L. Bond, Jr., et al
- Item #4 - Conservation Associates
- Item #5 - Greater Baltimore Medical Center
- Item #6 - Josef of Vienna, Inc.
- Item #7 - John W. Ruppert, et al

Ian J. Forrest
Ian J. Forrest, Director
BUREAU OF ENVIRONMENTAL SERVICES



BALTIMORE COUNTY
FIRE DEPARTMENT
TOWSON, MARYLAND 21204-2586
494-4500

PAUL H. REINCKE
CHIEF
William Hackett
Chairman, Board of Appeals
Office of Planning and Zoning
Baltimore County Office Building
Towson, MD 21204

March 11, 1985

Attention: Nick Comodari, Chairman
Zoning Plans Advisory Committee

RE: Property Owner: Paul Gambrell, et al

Location: N/S Smith Avenue 1250' E. from c/l Edenvale Road

Item No.: 2 Zoning Agenda: 3/6/85 - Cycle 1

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" are applicable and required to be corrected or incorporated into the final plans for the property.

- (X) 1. Fire hydrants for the referenced property are required and shall be located at intervals or located at intervals or in accordance with Baltimore County Standards as published by the Department of Public Works.

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

() 3. The vehicle dead end condition shown at [blank]

EXCEEDS the maximum allowed by the Fire Department.

- (X) 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation. Fire flow test shall be conducted on Smith Avenue.
- (X) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1976 Edition prior to occupancy.

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

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

REVIEWED: *Paul H. Reincke* Approved: *Ray W. Kemmer*
Planning Group Fire Prevention Bureau
Special Inspection Division

/nb

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Mr. William T. Hackett, Chairman, Appeals Board
TO: Mr. Nicholas Comodari, Zoning Department Date: March 12, 1985

FROM: Charles E. Burdick, Chief, Building Plans Review C.E.B.

SUBJECT: Cycle I - 1985 Meeting Scheduled 3/6/85
ITEM #2) Owner - Paul Gambrell, et al, N/S Smith Avenue 1250' E. from centerline of Edenvale Road

Conversion of property from one use to another use requires the structures involved to comply with the Building Code in force at the time a permit is applied for and before the structure can be used. Existing structures will require a Change of Use/Occupancy permit as well as alteration permits to upgrade the structure to meet the Code requirements for the new proposed use.

New structures shall be designed from the footings up to comply with the correct Use Group as provided for in Article 3 of the current 1981 Code.

Compliance with the State Handicapped Code is required for the buildings and the site.

Set backs from interior lot lines, other buildings on the same lot, and street lot lines for fire separations shall also comply to the Building Code in force at the time an application is made for the permit. This currently involves Table L01, Table 507 and Section 506, of the current 1981 B.O.C.A. Code known as the Baltimore County Building Code as adopted by Bill 1-82. The 1984 Edition of B.O.C.A. has been approved by the County Council and will become effective on permits filed 15 days after it's enactment.

No further comments at this time.

CES/vw



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

STEPHEN E. COLLINS
DIRECTOR

March 7, 1985

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

Cycle I - March 6, 1985
Item No. - 2
Property Owner: Paul Gambrell, et al
Location: N/S Smith Avenue
Existing Zoning: D.R. 5.5 & D.R. 3.5
Proposed Zoning: D.R. 16

Acres: 34.3
District: 3rd

Dear Mr. Hackett:

We are unable to comment on this plan, due to the lack of information.

MSF/ccm

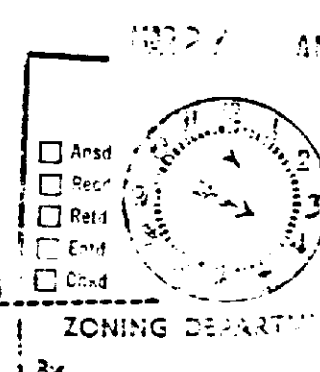
Michael S. Flanigan
Michael S. Flanigan
Traffic Engineering Assoc. II

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. William Hackett
Chairman, Board of Appeals
FROM: Ian J. Forrest
SUNJECT: Reclassification Petitions
CYCLE I - 1985
Meeting of March 6, 1985

Date: March 20, 1985



The Baltimore County Department of Health has reviewed the following Reclassification Petitions and does not anticipate any health hazards at this time regarding these Petitions.

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- Item #2 - Paul Gambrell, et al
- Item #3 - Nelson L. Bond, Jr., et al
- Item #4 - Conservation Associates
- Item #5 - Greater Baltimore Medical Center
- Item #6 - Josef of Vienna, Inc.
- Item #7 - John W. Ruppert, et al

Ian J. Forrest
Ian J. Forrest, Director
BUREAU OF ENVIRONMENTAL SERVICES



BALTIMORE COUNTY
FIRE DEPARTMENT
TOWSON, MARYLAND 21204-2586
494-4500

PAUL H. REINCKE
CHIEF
William Hackett
Chairman, Board of Appeals
Office of Planning and Zoning
Baltimore County Office Building
Towson, MD 21204

March 11, 1985

Attention: Nick Comodari, Chairman
Zoning Plans Advisory Committee

RE: Property Owner: Paul Gambrell, et al

Location: N/S Smith Avenue 1250' E. from c/l Edenvale Road

Item No.: 2 Zoning Agenda: 3/6/85 - Cycle 1

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" are applicable and required to be corrected or incorporated into the final plans for the property.

- (X) 1. Fire hydrants for the referenced property are required and shall be located at intervals or located at intervals or in accordance with Baltimore County Standards as published by the Department of Public Works.

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

() 3. The vehicle dead end condition shown at [blank]

EXCEEDS the maximum allowed by the Fire Department.

- (X) 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation. Fire flow test shall be conducted on Smith Avenue.
- (X) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1976 Edition prior to occupancy.

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

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

REVIEWED: *Paul H. Reincke* Approved: *Ray W. Kemmer*
Planning Group Fire Prevention Bureau
Special Inspection Division

/nb

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Mr. William T. Hackett, Chairman, Appeals Board
TO: Mr. Nicholas Comodari, Zoning Department Date: March 12, 1985

FROM: Charles E. Burdick, Chief, Building Plans Review C.E.B.

SUBJECT: Cycle I - 1985 Meeting Scheduled 3/6/85
ITEM #2) Owner - Paul Gambrell, et al, N/S Smith Avenue 1250' E. from centerline of Edenvale Road

Conversion of property from one use to another use requires the structures involved to comply with the Building Code in force at the time a permit is applied for and before the structure can be used. Existing structures will require a Change of Use/Occupancy permit as well as alteration permits to upgrade the structure to meet the Code requirements for the new proposed use.

New structures shall be designed from the footings up to comply with the correct Use Group as provided for in Article 3 of the current 1981 Code.

Compliance with the State Handicapped Code is required for the buildings and the site.

Set backs from interior lot lines, other buildings on the same lot, and street lot lines for fire separations shall also comply to the Building Code in force at the time an application is made for the permit. This currently involves Table L01, Table 507 and Section 506, of the current 1981 B.O.C.A. Code known as the Baltimore County Building Code as adopted by Bill 1-82. The 1984 Edition of B.O.C.A. has been approved by the County Council and will become effective on permits filed 15 days after it's enactment.

No further comments at this time.

CES/vw



BALTIMORE COUNTY PUBLIC SCHOOLS

Robert Y. Dubel, Superintendent

Towson, Maryland - 21204

Date: March 19, 1985

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

Zoning Cycle #1

RE: Item No: 2
Property Owner: Paul Gambrell, et al
Location: N/S Smith Avenue 1250' E. from c/l Edenvale Road
Present Zoning: D.R. 5.5
Proposed Zoning: D.R. 16

School Situation September 1984

School	Enrollment	Capacity	Over/Under
Wellwood Elementary	262	525	-263
Pikesville Middle	1006	1154	-148
Pikesville High	1125	1320	-195

Student Yield With:	Existing Zoning	And	Proposed Zoning
Elementary	33	From 4 to 80	
Middle	23	From 1 to 71	
High	39	From 2 to 60	

Very truly yours,
John Dameron
John Dameron, Field Representative
Department of Planning

JD/1h



BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353

ARNOLD JADON
ZONING COMMISSIONER

September 5, 1985

JEAN M. H. JUNG
DEPUTY ZONING COMMISSIONER

Arnold Fleischmann, Esquire
408 Bosley Avenue
Towson, Maryland 21204

Leslie M. Pittler, Esquire
Suite 508, 28 Allegheny Avenue
Towson, Maryland 21204

Re: Petition for Re-Classification
N/S of Smith Avenue at
Broadview Road - 3rd Election District
Paul Gambrell, et ux - Petitioners
Case No. R-86-108 Cycle I - Item # 2

Dear Sirs:

This is to advise you that \$ 676.00 is due for advertising and posting of the above property. This fee must be paid before an Order is issued.

Please make the check payable to Baltimore County, Maryland, and remit to Mrs. Barbara Galliard, Zoning Office, Room 103, County Office Building, Towson, Maryland 21204, before the hearing.

Sincerely,

Arnold Jadon
ARNOLD JADON
Zoning Commissioner

AJ:bg

Arnold Fleischmann, Esquire
408 Bosley Avenue
Towson, Maryland 21204

August 6, 1985

Leslie M. Pittler, Esquire
Suite 508, 28 Allegheny Avenue
Towson, Maryland 21204

NOTICE OF HEARING

RE: Petition for Re-Classification
N/S of Smith Avenue at
Broadview Road - 3rd Election District
Paul Gambrell, et ux - Petitioners
Case No. R-86-108 Cycle I - Item #2

TIME: 10:00 a.m.

DATE: Tuesday, September 10, 1985

PLACE: Room 218, Courthouse, Towson, Maryland

cc: Bancroft Homes, Inc.
James Rubenstein, President
10404 Stevenson Road
Stevenson, Maryland 21153

Smith-Greenspring Association, Inc.
c/o Robert Goldman
6601 Pimlico Road
Baltimore, Maryland 21209

People's Counsel

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

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Mr. James E. Dyer
Office of Planning and Zoning
TO: Edith T. Eisenhart, Adm. Secretary
FROM: County Board of Appeals

Date: June 11, 1985

SUBJECT: Item #2, Cycle I - 1985, Paul Gambrell, et al

Please include the following name in the above entitled file for notification when the case is set for hearing:

Smith-Greenspring Association, Inc.
c/o Robert Goldman
6601 Pimlico Road
Baltimore, MD 21209
(486-5386)

Thank you.

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

PETITION FOR RECLASSIFICATION 3rd Election District

LOCATION: North side of Smith Avenue at Broadview Road
1250 feet East of the centerline of Edenvale

PUBLIC HEARING: Tuesday, September 10, 1985 at 10:00 a.m.

Present Zoning: D.R. 5.5 and D.R. 3.5
Proposed Zoning: D.R. 16

All that parcel of land in the 3rd District of Baltimore County

34.3 + ACRE PARCEL, NORTH SIDE SMITH AVENUE AT BROADVIEW ROAD,

3RD ELECTION DISTRICT, BALTIMORE COUNTY, MARYLAND.

BEGINNING FOR THE SAME at the intersection of the centerlines of Smith Avenue and Broadview Road, 1250 ± East of the centerline of Edenvale Road, running thence along the centerline of Broadview Road, two courses: (1) N 06° 45' E 265 feet, more or less, and (2) N 03° 30' E 1566 feet, more or less, thence leaving Broadview Road and running the following three courses: (3) S 85° 15' E 314 feet, more or less, (4) S 56° E 749 feet, more or less, (5) S 09° W 1420 feet, more or less, to the centerline of Smith Avenue, thence along the centerline of Smith Avenue (6) N 87° W 822 feet, more or less, to the place of beginning, saving and excepting that portion of the property now zoned "DR 16".

Being the property of Paul Gambrell, et ux
as shown on the plat plan filed with the Zoning Department.

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



DESCRIPTION

34.3 + ACRE PARCEL, NORTH SIDE SMITH AVENUE AT BROADVIEW ROAD,

3RD ELECTION DISTRICT, BALTIMORE COUNTY, MARYLAND.

This Description is for DR 16 Reclassification from DR 5.5 @ 3.5

BEGINNING FOR THE SAME at the intersection of the centerlines of Smith Avenue and Broadview Road, 1250 ± East of the centerline of Edenvale Road, running thence along the centerline of Broadview Road, two courses: (1) N 06° 45' E 265 feet, more or less, and (2) N 03° 30' E 1566 feet, more or less, thence leaving Broadview Road and running the following three courses: (3) S 85° 15' E 314 feet, more or less, (4) S 56° E 749 feet, more or less, (5) S 09° W 1420 feet, more or less, to the centerline of Smith Avenue, thence along the centerline of Smith Avenue (6) N 87° W 822 feet, more or less, to the place of beginning, saving and excepting that portion of the property now zoned "DR 16".

Containing 34.3 acres, more or less.

JJJ/kjr

Feb. 27, 1985

FILE COPY

10404 STEVENSON ROAD • STEVENSON, MARYLAND 21153 • (301) 653-0292

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Mr. James E. Dyer
Office of Planning and Zoning
TO: Edith T. Eisenhart, Adm. Secretary
FROM: County Board of Appeals

Date: June 11, 1985

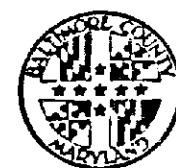
SUBJECT: Item #2, Cycle I - 1985, Paul Gambrell, et al

Please include the following name in the above entitled file for notification when the case is set for hearing:

Smith-Greenspring Association, Inc.
c/o Robert Goldman
6601 Pimlico Road
Baltimore, MD 21209
(486-5386)

Thank you.

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



County Board of Appeals of Baltimore County

Room 200 Court House
Towson, Maryland 21204
(301) 494-2180

July 21, 1987

Howard E. Friedman, Clerk
Court of Special Appeals
of Maryland
Annapolis, MD 21401-1698

RE: Case No. 86-CO-2109
(Paul Gambrell vs. Bancroft Homes, Inc. et al)

Dear Mr. Friedman:

We would appreciate your noting our request for a copy of the Opinion in the above-entitled case when it is filed by the Court of Special Appeals.

Thank you.

Sincerely,

Kathleen C. Weidenhammer
Kathleen C. Weidenhammer
Administrative Secretary

IN THE MATTER OF THE APPLICATION OF PAUL GAMBRELL, ET AL FOR ZONING RECLASSIFICATION FOR DR. 5.5. and DR. 3.5 to DR 16 on property located on the north side of Smith Ave. 1250 feet east from the Center line of Edenvale Road 3rd District Zoning file no R-86-108

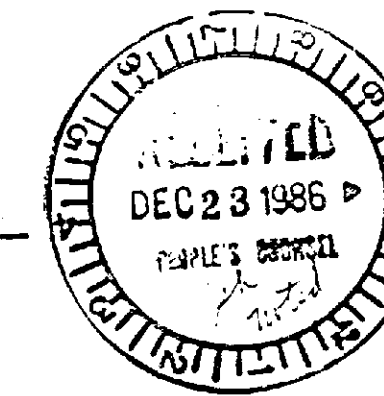
IN THE CIRCUIT COURT

FOR

BALTIMORE COUNTY

DOCKET # 27 FOLIO #

CASE 86CC2109



VS
BANCROFT HOMES, INC.
APUL AND HENRIETTA GAMBRELL
JOSEPH GARY
BARBARA MUELLER
EDWARD WEITZEL
MARTIN AND MINNA SCHEFF
JOHN T. COADY
LINDA CUNNINGHAM
EDWARD A. FEUSTLE
MELVIN VERGER

J. William Hinkel

ON A PLEADING IN THE ABOVE ENTITLED MATTER IS AS FOLLOWS:

Motion to alter or amend and revise judgment (paper #16), request for hearing DENIED.

Motion DENIED.

DATE December 18, 1986

SUZANNE MENSCH

Clerk, Circuit Court

for Baltimore County

cc:

PER Cottie Dovel
Deputy Clerk

Phyllis Cole Friedman Esq.
Peter Max Zimmerman Esq.

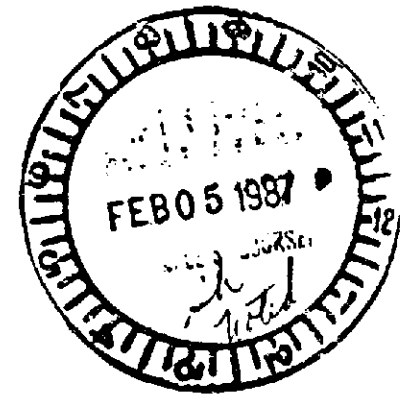
Jeffrey H Scherr Esq.
Philip M Andrews Esq.

Arnold Fleischman Esq.

Leslie M Pittler Esq.

JOHN J. BISHOP
JUDGE
401 BOSLEY AVENUE
TOWSON, MARYLAND 21204
484-2640

February 4, 1987



Nancy E. Paige, Esquire
Gordon, Feinblatt, Rothman,
Hoffberger & Hollander
Garrett Building
233 E. Redwood Street
Baltimore, MD 21202

Phyllis Cole Friedman, Esquire
Peter Max Zimmerman, Esquire
Room 223, Court House
Towson, MD 21204

Paul Gambrell, et al. v. People's
Council for Baltimore County
PHC No. 924, Sept. Term, 1986

Dear Counsel:

This is to confirm that the above captioned
matter has been rescheduled for a prehearing
conference on Monday, February 23, 1987, at 10:00 a.m.

Sincerely yours,

John J. Bishop

JJB:sh

cc: Mr. Howard E. Friedman, Clerk
Court of Special Appeals

To be filled in by Clerk,
Court of Special Appeals

COURT OF SPECIAL APPEALS

OF MARYLAND

CIVIL APPEAL PREHEARING INFORMATION REPORT

PHC NO. _____

NOTICE
Pursuant to Md. Rule
1023 this form must be
completed and sent to
Ct. of Special
Appeals, Court of Ap-
peals Bldg., Annapolis,
Md. 21401

1. Title of case: In The Matter Of The Application Of Paul Gambrell vs. Bancroft
Homes, Inc., et al.
Which party is Appellant in Court of Special Appeals: Bancroft Homes, Inc. Paul and
Henrietta Gambrell, Joseph and Barbara Mueller, Edward Weitzel, Martin and
Minna Scheff, John T. Coady, Linda and Kenneth Cunningham, Edward A.
Feustle and Melvin Verger

2. For Appellant: Jeffrey H. Scherr, Philip M. Andrews (See attachment)
Kramon & Graham, P.A.
Sun Life Bldg., Charles Center, Baltimore, MD 21202
(301) 752-6036

For Appellee: Phyllis C. Friedman and Peter Max Zimmerman
Office of People's Counsel
Suite 900, 409 Washington Avenue, Towson, Maryland 21204
(301) 494-0100

3. Trial court: (Circuit) Court for Baltimore County a. Docket No: 27; Folio: 249
Case No. 86CG2109

b. Non-jury (Appeal from Baltimore County
Zoning Board of Appeals)

4. Type of case (e.g., automobile negligence, breach of contract, domestic, product liability, property dispute, tax,
UDC, zoning, etc.) Zoning

5. Trial In the Circuit Court, the only proceeding was an oral argument, which
lasted approximately 1.5 hours. Presentation of the zoning case at the
a. Duration of trial: Board of Appeals level consumed three (3) days.

b. Number of exhibits in evidence:
At the Zoning Board level, Petitioners Paul Gambrell, et al. had 17
Exhibits. People's Counsel had 12 Exhibits.

6. Judgment

a. Date of judgment being appealed: (If date is other than that shown on docket, please explain.)
December 2, 1986

b. Describe judgment (Attach copy of any written opinion by the trial court.)
The Circuit Court reversed the Zoning Board's decision.

c. Did judgment finally dispose of all claims by and against all parties? If not, please explain why judgment
is appealable. (See Md. Rule 2-602; Courts art. §§12-301, 12-303)
Yes.

d. Was post-judgment motion under Md. Rule 2-533 or 2-534 filed? If so, date of disposition:
Yes; December 18, 1986

7. Date appeal noted:
December 29, 1986
ATTACH COPY OF NOTICE OF APPEAL TO THIS FORM.

BANCROFT HOMES, et al.,

Appellants

v.

PEOPLES COUNCIL OF BALTIMORE
COUNTY

Appellees

IN THE

COURT OF

SPECIAL APPEALS

OF MARYLAND

NO.



ORDER TO ENTER APPEARANCE

Mr. Clerk:

Please enter my appearance, and the appearance of

David H. Fishman, Gordon, Feinblatt, Rothman, Hoffberger &
Hollander, as attorneys for Bancroft Homes, Inc., Paul and
Henrietta Gambrell, Joseph and Barbara Mueller, Edward Weitzel,
Martin and Minna Scheff, John T. Coady, Linda and Kenneth
Cunningham, Edward A. Feustle and Melvin Verger, Appellants.

Nancy E. Paige

Gordon, Feinblatt, Rothman,
Hoffberger & Hollander
Garrett Building
233 E. Redwood Street
Baltimore, Maryland 21202
(301) 576-4234

Attorneys for Appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of February,
1987, a copy of the foregoing Order to Enter Appearance was
mailed first-class, postage prepaid to Phyllis Cole Friedman,
Esquire, Peter Max Zimmerman, Esquire, Room 223 - Court House,

Towson, Maryland 21204, Jeffrey H. Scherr, Esquire, Philip
M. Andrews, Kramon & Graham, P.A., Sun Life Building, Charles
Center, Baltimore, Maryland 21201, Arnold Fleischman, Esquire
408 Bosley Avenue, Towson, Maryland 21204, Leslie M. Pittler,
Esquire, Suite 508, 28 Allegheny Avenue, Towson, Maryland
21204.

Nancy E. Paige

County Board of Appeals of Baltimore County

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

May 7, 1986

Arnold Fleischman, Esq.
408 Bosley Ave.
Towson, Md. 21204

Re: Case No. R-55-108
Paul Gambrell, et al

Dear Mr. Fleischman:

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

Very truly yours,

June Holmen, Secretary

Encl.

cc: Leslie M. Pittler, Esq.
Paul and Henrietta Gambrell
Joseph and Barbara Mueller
Edward Weitzel
Martin and Minna Scheff
John T. Coady
Linda Cunningham
Edward A. Feustle
James Rubenstein
Robert Goldman
James E. Kraft
Arno'd Jablon
Jean Jung
James E. Dyer
Norman E. Gerber
James Howell
Phyllis C. Friedman
Jeffrey Scherr

IN THE MATTER OF THE
APPLICATION OF
PAUL GAMBRILL

Vs.

BANCROFT HOMES, INC.,
ET AL.

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY

Case No. 86-CG-2109

ORDER FOR APPEAL

Please enter an appeal in the above captioned action
to the Court of Special Appeals of Maryland on behalf of
appellees Bancroft Homes, Inc., Paul and Henrietta Gambrell,
Joseph and Barbara Mueller, Edward Weitzel, Martin and Minna
Scheff, John T. Coady, Linda and Kenneth Cunningham, Edward A.
Feustle and Melvin Verger from the judgment entered in this
action on December 2, 1986, this Court having denied appellees'
Motion to alter or amend and revise that judgment on December
18, 1986.

Jeffrey H. Scherr

Philip M. Andrews

Kramon & Graham, P.A.

Sun Life Building
Charles Center
Baltimore, Maryland 21201
PHONE: (301) 752-6036

LAW OFFICES
KRAMON & GRAHAM, P.A.
SUN LIFE BUILDING
CHARLES CENTER
BALTIMORE, MD. 21201
(301) 752-6036

IN THE MATTER OF
THE APPLICATION OF
PAUL GAMBRILL, ET AL.
FOR ZONING RECLASSIFICATION
FROM DR 5.5 AND DR 3.5 TO DR 16
ON PROPERTY LOCATED ON THE NORTH
SIDE OF SMITH AVENUE, 1250 FEET
EAST FROM THE CENTER LINE OF
BEECHVALE ROAD - 3rd DISTRICT

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. R-96-108

OPINION

The above captioned matter came before the County Board of
Appeals to consider a Petition for Reclassification of property located on the
north side of Smith Avenue at Broadview Road in the 3rd Election District of
Baltimore County.

The matter is further identified as Item #2 in the 1st
Reclassification Cycle.

This Board heard three full days of testimony, received into
evidence numerous exhibits and, finally, legal memorandums from Petitioners and
People's Counsel.

Petitioners produced as witnesses, James Rubenstein, President
of Bancroft Homes, Samuel Crozier, a Landscape Architect and Land Planner,
David S. Thaler, an Engineer, Robert T. Klempaste, a Real Estate Developer and
George E. Gavallias, former Director of Planning for Baltimore County.

People's Counsel produced as witnesses, Robert Goldman, a
property owner near the subject site, Lawrence Caplan, a property owner within
one-half mile of the subject site, Steve Huster, a property owner residing
across the street from the subject site, James G. Howell, a Planner for
Baltimore County, James A. Markle, Chief, Bureau of Public Services for Baltimore
County, Francis D. Alessi, a Private Investigator and Frederick Klaus, a Real
Estate and Development expert.

Paul Garbrill, et al
Case No. R-86-108

Although this Board recognizes the genuine interests each of the witnesses expressed in this matter, we believe it unnecessary to address, at length, the testimony of each. We will, however, in this Opinion, attempt to address that which we feel are the salient issues.

Mr. Rubenstein testified that a reclassification of the subject property is necessary because development of same under the existing zoning is not economically feasible. The economic impact of a particular zoning classification, however, is not one of the matters this Board is mandated to consider pursuant to Section 2-58.1 of the County Code. Further, this Board believes economic impact, standing alone, is not sufficient to establish error in a zoning classification.

Mr. Crozier described the physical characteristics of the subject property, the fact that Pheasant Cross Drive was a mandated road and would bisect the subject property, how such a bisection would impact the subject property and stated that he believed the County Council had committed error by not classifying the subject property DR 16 in its entirety. Mr. Crozier stated that, except for the Bonnie View Country Club Golf Course, all property contiguous to the subject site is zoned DR 16.

Mr. Thaler repeated Mr. Crozier's comments concerning Pheasant Cross Drive, discussed the possible relocation of Smith Avenue and discussed various construction costs. Again, this Board is compelled to comment that despite the obvious concern over construction costs, such is not a matter this Board considers pertinent to a question regarding error by the County Council. Indeed, when People's Counsel produced Mr. Markle to contradict the costs submitted into evidence by Mr. Thaler, this Board asked but one question, "Were these costs presented to or considered by the County Council during the Comprehensive Zoning Process?" The answer was no. Consequently, costs and/or the economic feasibility of development could not have been an issue upon which the County Council erred.

Paul Garbrill, et al
Case No. R-86-108

Mr. Thaler did state, however, on cross-examination, that he believed the County Council erred in not considering the fact that Pheasant Cross Drive shall be constructed across the subject property.

Indeed, this Board believes that, at present, the subject site is land locked, unless Pheasant Cross Drive is constructed as Mr. Thaler suggests.

Mr. Kleinpaste testified that he had reviewed the Planning Board and County Council activity including the log issues during the 1984 Map Process, but had reviewed no testimony concerning same. Mr. Kleinpaste indicated that his studies included demographics, demand for housing in the area, employment growth within the area and the transportation zones. The conclusions of Mr. Kleinpaste suggested error by the County Council by not recognizing the demand for housing, the need for housing for the elderly and the employment growth in the area.

The final witness for the Petitioners, Mr. Gavrelis, stated that there had been no real public input during the 1984 Zoning Map Process. According to the studies of Mr. Gavrelis, only one speaker appeared during the Planning Process and none at the Council hearings. The only opposition voiced at the Council hearings to the DR 16 zone concerned a possible increase in traffic.

Mr. Gavrelis noted that the Planning staff had recommended DR 16 zoning to the County Council and it was apparent to him that this particular issue had received very little scrutiny.

Mr. Gavrelis stated that Bonnie View Country Club to the south and west formed a natural boundary to the subject property, and the extension of Pheasant Cross Drive would link the subject site with the existing high density development areas. Furthermore, according to Mr. Gavrelis, since Baltimore County has mandated the extension of Pheasant Cross Drive, the subject site will, naturally, become an integral part of the DR 16 zoning to the north

Paul Garbrill, et al
Case No. R-86-108

and east of the subject site. Mr. Gavrelis expressed the opinion that the County Council had erred because the subject site, upon the extension of Pheasant Cross Drive, would be at the entrance of a major collector road servicing a high density zone.

In conclusion, Mr. Gavrelis expressed the opinion that the County Council had erred by failing to recognize the employment growth in the area, the extension of Pheasant Cross Drive and the compatibility of the subject site to the surrounding DR 16 zones.

People's Counsel produced Mr. Goldman, Mr. Huster and Mr. Caplan, all of whom complained of increased traffic and the fact that each felt DR 5.5 zoning for the subject property is adequate. Interestingly, however, none of these gentlemen testified during the Comprehensive Zoning Process.

James G. Hoswell, County Planner, stated that the present zoning of the subject property provided a reasonable use for same. Mr. Hoswell, however, in his characteristically candid manner, acknowledged that although DR 5.5 zoning is compatible with the neighborhood, DR 16 zoning is not inconsistent with the Master Plan and, further, that the preferred zoning, from a planning perspective, in 1984 was DR 16. Nevertheless, Mr. Hoswell said that he could not conclude that the County Council had erred.

On cross-examination, Mr. Hoswell stated that he was unable to state the factors considered by the County Council during the 1984 Zoning Map Process, however, as a Planner his recommendation for the subject site at present would be DR 16.

Mr. Alessi advised that he had investigated the area and for the most part his testimony merely confirmed that testimony and evidence previously received concerning the surrounding area. Upon cross-examination, Mr. Alessi demonstrated a lack of knowledge concerning the zoning of the subject site or the area surrounding it.

Paul Garbrill, et al
Case No. R-86-108

The last witness produced by People's Counsel, Frederick P. Klaus, described the physical characteristics of the site and stated that the present zoning of the property would afford a reasonable use for same. He further stated that in his opinion, the County Council had not committed error on the 1984 Zoning Maps.

When considering Petitions for Reclassification, this Board is statutorily governed by Section 2-58.1.1 (1) & (2) of the County Code which states:

(3) Before any property is reclassified pursuant to this section, the Board of Appeals must find:

- (1) That there has occurred a substantial change in the character of the neighborhood in which the property is located since the property was last classified; or that the last classification of the property was established in error; and
- (2) That the prospective reclassification of the property is warranted by that change or error. Any finding of such a change or error and any finding that the prospective reclassification is warranted may be made only upon consideration of factors relating to the purposes of the zoning regulations and maps, including, but not limited to, all of the following: Population trends; availability and adequacy of present and proposed transportation facilities, water-supply facilities, sewerage, solid waste-disposal facilities, schools, recreational facilities, and other public facilities; compatibility of uses generally allowable under the prospective classification with the present and projected development or character of the surrounding area; any pertinent recommendation of the Planning Board or Office of Planning and Zoning; and consistency of the current and prospective classifications with the master plan, the county plan for sewerage and water-supply facilities, and the capital program.

Clearly, the Petitioners produced a number of excellent witnesses to demonstrate that the County Council erred in not granting DR 16 zoning to the subject site during the 1984 Comprehensive Zoning Process.

Paul Garbrill, et al
Case No. R-86-108

Conversely, People's Counsel, primarily through Mr. Hoswell and Mr. Klaus, attempted to demonstrate that the County Council was correct in zoning the subject site and in fact, the present zoning of same provides for a reasonable use.

It is, however, for this Board to determine whether the County Council committed error. Simply, we believe that the County Council did err by not zoning the subject site DR 16.

We do not believe that because an existing zoning classification provides for a reasonable use, that error may not have occurred. Certainly, in the case at bar the subject property can be reasonably developed within its existing zone, however, we do not believe it feasible to superimpose a lower density zoning upon a higher density zoning.

In this case, the subject property is at the entrance to a high density zone. Pheasant Cross Drive will become a collector road for the high density adjacent properties. We are persuaded that the County Council failed to consider the impact of the Pheasant Cross Drive extension on the subject property. We are also persuaded that the County Council failed to consider the employment growth in the area.

The testimony of Mr. Hoswell and Mr. Klaus, though credible, was nevertheless, we believe, weak. In particular, this Board was impressed by the honesty and integrity of both gentlemen. Each was an expert and testified as such, however, each refused to stray from the facts and, in this case, we believe, the facts clearly demonstrate the inappropriateness of low density zoning for the subject property.

Of course we are familiar with *Boyce v. Sembly*, 25 Md. App. 43, 334 A 2d 137 (1975), *Coppolino v. County Board of Appeals*, 23 Md. App. 358, 326 A 2d 55 (1974) and *Stratakis v. Beauchamp*, 26P Md. 643, 304 A 2d 244 (1973).

Paul Garbrill, et al
Case No. R-86-108

We recognize the Petitioners' burden to demonstrate by strong evidence that the zoning was in error and/or that there has been a denial of all reasonable use of the property for any use permitted in the zoning classification. However, we are also persuaded by the language utilized in *Missouri Realty v. Fearer*, 216 Md. 442, (1958) wherein the Court of Appeals stated

"... this case involves an application for reclassification from one residential sub-category to another. In this respect, the situation is, to a certain degree, different from the application to reclassify property zoned as residential to commercial or industrial."

We believe, therefore, that the Court of Appeals intended to apply a more liberal standard when addressing Petitions for Reclassification from one use to a similar use.

Finally, this Board is persuaded that the extension of Pheasant Cross Drive is essential and that the failure to extend same "land locks" the subject property. Since Pheasant Cross Drive shall be extended this Board believes the County Council erred in super-imposing a low density zone at the mouth of a major collector road to a higher density zone.

This Board is also cognizant of the fact that during the Comprehensive Zoning Process the failure of the public to offer input may have led to the error in failing to zone this property DR 16. Obviously, when one studies the topography, the location of the site and its boundaries along a golf course, this Board can understand why, in the absence of public input, the Council may have imposed the existing zone. Simply, however, we believe the Council failed to consider the issues enumerated in this Opinion and did, therefore, err.

For the reasons indicated above, this Board shall grant the Petition for Reclassification.

Paul Garbrill, et al
Case No. R-86-108

ORDER

For the reasons set forth in the foregoing Opinion, it is this 7th day of May, 1986, by the County Board of Appeals, ORDERED that the Petition for Reclassification from DR 5.5 and DR 3.5 to DR 16 be and the same is hereby GRANTED.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett
William T. Hackett, Chairman

William H. Evans
William H. Evans

Patricia Phipps
Patricia Phipps

UNREPORTED IN THE COURT OF SPECIAL APPEALS OF MARYLAND

No. 221,

September Term, 1987

BANCROFT HOMES, INC.,
et al.

-v-

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY

Weant,
Garity,
Bloom,
JJ.

PER CURIAM

SS: [Signature]
Clerk of the Court of Special Appeals

Filed: November 10, 1987

ZONING FILE NO. R-86-108
(Paul Garbrill, et al)



MEMORANDUM TO ACCOMPANY PETITION
FOR RECLASSIFICATION OF
PROPERTY AT SMITH AVENUE & BROADVIEW ROAD

The subject tract comprises several parcels of land under separate ownership, located on the north side of Smith Avenue and the east side of Broadview Road in the Second Councilmanic District of Baltimore County.

DR 3.5 a
The subject property is currently zoned DR 3.5 with DR 16 zoning along the east property line which is the existing Bonnie Ridge Apartments; DR 16 along the north property line which is now being developed in townhouses and along the west property line DR 3.5 which is the Bonnie Ridge Golf Course.

This property is now an island or pocket of low density land surrounded essentially by high density zoned land except for the Bonnie Ridge Golf Course which acts as a natural buffer between the subject parcel and the developed low density land located at Old Pimlico Road and Smith Avenue.

The subject property has public utilities either existing in the public streets or abutting the north and east property lines.

The subject property also enjoys frontage on Smith Avenue, a major thoroughfare running generally east and west from Mt. Washington in Baltimore City to Park Heights Avenue east of Pikesville.

From the north, Pheasant Cross Drive abuts the property from Old Pimlico Road. The granting of this reclassification to DR 16 will encourage development to its highest and best use thus making Pheasant Cross Drive a north-south artery linking Smith Avenue to Old Pimlico Road, thereby providing easier, more efficient traffic access for the residents of this area to the Jones Falls Expressway and the Baltimore Beltway.

As a matter of fact, during its last review the Planning Board and the Planning Staff recommended a change to higher density for these parcels of land, recommending DR 16 zoning under Items 2-6, 2-7, 2-14, 2-15, 2-16 and Item 2-59 during the 1984 Comprehensive Zoning Map Review.

In conclusion, the aforesaid facts clearly demonstrate that error was committed during the Comprehensive Zoning Map Process by denying a change of zoning from DR 3.5 to DR 16.

10404 STEVENSON ROAD • STEVENSON, MARYLAND 21153 • (301) 653-0292



DESCRIPTION

34.3 ± ACRE PARCEL, NORTH SIDE SMITH AVENUE AT BROADVIEW ROAD,

3RD ELECTION DISTRICT, BALTIMORE COUNTY, MARYLAND.

This Description is for DR 16 Reclassification from DR 3.5 & 3.5

BEGINNING FOR THE SAME at the intersection of the centerlines of Smith Avenue and Broadview Road, 1250 ± East of the centerline of Edenvale Road, running then along the centerline of Broadview Road, two courses: (1) N 06° 45' E 265 feet, more or less, and (2) N 03° 30' E 1566 feet, more or less, thence leaving Broadview Road and running the following three courses: (3) S 85° 15' E 314 feet, more or less, (4) S 56° E 749 feet, more or less, (5) S 09° W 1420 feet, more or less, to the centerline of Smith Avenue, thence along the centerline of Smith Avenue (6) N 87° W 822 feet, more or less, to the place of beginning, saving and excepting that portion of the property now zoned "DR 16".

Containing 34.3 acres, more or less.

JJJ/Kjr

Feb. 27, 1985

10404 STEVENSON ROAD • STEVENSON, MARYLAND 21153 • (301) 653-0292

494-3180

County Board of Appeals

Room 219 Court House

TOWSON, MARYLAND 21204

January 3, 1985

NOTICE OF POSTPONEMENT and REASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH 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-86-108

PAUL GAMBRILL, ET AL

N/S Smith Ave., 1250' E from c/l of Edenvale Rd.

3rd District

DR 3.5 & DR 3.5 to DR 16

The above case, scheduled for hearing on WEDNESDAY, JANUARY 8, 1985, at 10 a.m., has been POSTPONED by the Board, and

REASSIGNED FOR: WEDNESDAY, MARCH 12, 1985, at 10 a.m.

cc: Arnold Fleischman, Esq.

Counsel for Petitioner

Leslie M. Pittler, Esq.

" " "

Paul & Henrietta Gambrill

Petitioners

Joseph Gary & Barbara Mueller

"

Edward Weitzel

"

Martin and Minna Scheff

"

John Coady

"

Linda Cunningham

"

Edward A. Feustel

"

James Rubenstein, Bancroft Homes

Contract Purchaser

Melvin Veiger

"

Robert Goldman

"

Jeffrey Scherr

Bancroft Homes

James E. Kraft

"

Arnold Jablon

"

Jean Jung

"

James Dyer

"

Norman Gerber

"

James Hoswell

"

Phyllis C. Friedman

People's Counsel

June Holmen, Secretary

LAW OFFICE
Leslie M. Pittler
SUITE 501
28 ALLEGHENY AVENUE
TOWSON, MARYLAND 21204
(301) 796-0200

November 7, 1985

William T. Hackett, Chairman
Baltimore County Board of Appeals
Room 200 Old Courthouse
Towson, Maryland 21204

Hand-delivered

Re: Broadview Reclassification Hearing
scheduled for November 19, 1985 at
10:00 a.m. (Case No. R-86-108)

Dear Mr. Hackett:

As I had indicated on October 16, 1985, when the above-captioned hearing was continued to November 19, 1985, that I may have a scheduling conflict with the November 19th date, please be advised that I will not be available on November 19, due to the fact that I am scheduled to appear in the Circuit Court for Baltimore County in Case Number 83-L-1483/149281, Smith vs. Greenwalt, et al., on November 18, 19, and 20, 1985. I represent the Plaintiffs in this case, in which a Settlement Conference was held on November 4, 1985; the case was not settled, and I have every indication that the trial will be held on November 18, 19, and 20.

Therefore, I respectfully request a postponement of the above-captioned hearing date of November 19, 1985.

Very truly yours,

Leslie M. Pittler
Leslie M. Pittler

LMP/cas

cc: Arnold Fleischman, Esquire

Phyllis Cole Friedman, Esquire
People's Counsel

James Rubenstein, President
Bancroft Homes, Inc.

Rest 1/8/86
10 am

RECEIVED
COUNTY BOARD OF APPEALS
NOV 17 1985

BALTIMORE COUNTY PUBLIC SCHOOLS

Robert Y. Dubel, Superintendent

Towson, Maryland - 21204

October 24, 1985

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

Dear Mr. Hackett:

Enclosed are updated comments on Case Number R-86-108, Paul Gambrill property.

Since the original comments sent to you in March of 1985, the Board of Education has closed Campfield Elementary School and sent a portion of those students to Wellwood Elementary School. The new comments reflect this increase in Wellwood's enrollment, as well as the most recent enrollment data at Pikesville Middle and High Schools.

Student yields have also been adjusted to reflect more current information. Under proposed zoning, a range for student yields is given. The lower number assumes all units built will be one bedroom apartments; the higher number assumes all apartment units will be three bedroom.

I hope this information will be useful for your hearing.

Sincerely,

John P. Damron
John Damron, Field Representative
Department of Planning

JD/lh

Enclosure

RECEIVED
COUNTY BOARD OF APPEALS
NOV 28 1985

BALTIMORE COUNTY PUBLIC SCHOOLS

Robert Y. Dubel, Superintendent

Towson, Maryland - 21204

Date: March 19, 1985

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

Zoning Cycle #1

RE: Item No: 2
Property Owner: Paul Gambrill, et al.
Location: N/S Smith Avenue 1250' E. from c/l Edenvale Road
Present Zoning: D.R. 3.5
Proposed Zoning: D.R. 16

School Situation	September 1984			
School	Enrollment	Capacity	Over/Under	
Wellwood Elementary	262	525	-263	
Pikesville Middle	1006	1154	-148	
Pikesville High	1125	1320	-195	

Student Yield With:	Existing Zoning	And	Proposed Zoning
Elementary	33	From 4 to 80	
Middle	23	From 1 to 71	
High	39	From 2 to 60	

Very truly yours,
John Damron
John Damron, Field Representative
Department of Planning

JD/lh

Arnold Fleischman, Esquire
408 Bosley Avenue
Towson, Maryland 21204
Leslie M. Pittler, Esquire
Suite 508, 28 Allegheny Avenue
Towson, Maryland 21204

August 6, 1985

NOTICE OF HEARING

RE: Petition for Re-Classification
N/S of Smith Avenue at
Broadview Road - 3rd Election District
Paul Gambrill, et al - Petitioners
Case No. R-86-108 Cycle I - Item #2

TIME: 10:00 a.m.

DATE: Tuesday, September 10, 1985

PLACE: Room 218, Courthouse, Towson, Maryland

CAVIER - 9/11/85 - All notified of CONTINUED HEARING set for WEDNESDAY, OCTOBER 16, 1985 at 10 a.m.

10/17/85 - All notified of CONTINUED HEARING set for TUESDAY, NOV. 19, 1985 at 10 a.m.

11/2/85 - All notified of CONTINUED HEARING set for Wednesday, March 12, 1986 at 10 a.m.

11/1/85 - All notified of CONTINUED HEARING set for Wednesday, March 12, 1986 at 10 a.m.
William T. Hackett, Chairman
County Board of Appeals

cc: Bancroft Homes, Inc.
James Rubenstein, President
10404 Stevenson Road
Stevenson, Maryland 21153

Smith-Greenspring Association, Inc.
c/o Robert Goldman
6601 Pimlico Road
Baltimore, Maryland 21209

People's Counsel

BALTIMORE COUNTY PUBLIC SCHOOLS

Robert Y. Dubel, Superintendent

Towson, Maryland - 21204

Date:

October 24, 1985

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

Zoning Cycle #1

RE: Item No: 2
Property Owner: Paul Gambrill
Location: N/S Smith Avenue 1250' E. from c/l Edenvale Road
Present Zoning: D.R. 3.5
Proposed Zoning: D.R. 16

School Situation	September, 1985			
School	Enrollment	Capacity	Over/Under	
Wellwood Elementary	370	504	-134	
Pikesville Middle	914	1154	-240	
Pikesville High	1090	1320	-230	

Student Yield With:	Existing Zoning	And	Proposed Zoning
Elementary	28	From 4 to 74	
Middle	22	From 1 to 40	
High	39	From 1 to 94	

Very truly yours,
John Damron
John Damron, Field Representative
Department of Planning

JD/lh



County Board of Appeals of Baltimore County

Room 200 Court House (Hearing Room #218)
Towson, Maryland 21204
(301) 494-3180

September 11, 1985

NOTICE OF ASSIGNMENT

CONTINUED HEARING

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 #59-79

CASE NO. R-86-108

PAUL GAMBRILL, ET AL
(Bancroft Homes, C.P. & Melvin Verger, C.P.)

FOR RECLASSIFICATION FROM DR 5.5 & DR 3.5 to DR 16

N/S SMITH AVENUE 1250' E. FROM C/L EDENVALE ROAD

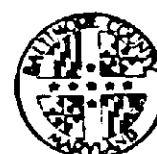
3rd DISTRICT

ASSIGNED FOR:

WEDNESDAY, OCTOBER 16, '85 at 10 a.m.

cc: Arnold Fleischman, Esquire	Counsel for Petitioner
Leslie M. Pittler, Esquire	" " "
Paul and Henrietta Gambrill	Petitioner
Joseph Gary & Barbara L. Mueller	"
Edward Weitzel	"
Martin P. & Minna F. Scheff	"
John T. Coady, Guardian of	"
Estate of Joseph Lochte	"
Linda Cunningham	"
Edward A. Feustle	"
James Rubenstein, President	Contract Purchaser
Bancroft Homes, Inc.	" "
Melvin Verger	
Robert Goldman	Requested Notification
Phyllis Cole Friedman	People's Counsel
Arnold Jablon	
Jean M. H. Jung	
James E. Dyer	
Norman E. Gerber	
James G. Hoswell	

Edith T. Eisenhart, Adm. Secretary



BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353

ARNOLD JABLON
ZONING COMMISSIONER

September 5, 1985

JEAN M. H. JUNG
DEPUTY ZONING COMMISSIONER

Arnold Fleischmann, Esquire
408 Bosley Avenue
Towson, Maryland 21204

Leslie M. Pittler, Esquire
Suite 508, 28 Allegheny Avenue
Towson, Maryland 21204

RE: Petition for RE-Classification
N/S of Smith Avenue at
Broadview Road - 3rd Election District
Paul Gambrill, et ux - Petitioners
Case No. 86-108 Cycle I - Item # 2

Dear Sirs:

This is to advise you that \$ 676.00 is due for advertising and posting of the above property. This fee must be paid before an Order is issued.

Please make the check payable to Baltimore County, Maryland, and remit to Mrs. Barbara Galliard, Zoning Office, Room 109, County Office Building, Towson, Maryland 21204, before the hearing.

Sincerely,

Arnold Jablon
ARNOLD JABLON
Zoning Commissioner

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

No. 012541

DATE	ACCOUNT
AMOUNT	\$ 676.00
RECEIVED FROM:	Bancroft Homes, Inc.
FOR:	Advertising and Posting R-86-108 Item 2
VALIDATION OR SIGNATURE OF CASHIER	

IN THE MATTER OF THE APPLICATION OF PAUL GAMBRILL, ET AL FOR ZONING RECLASSIFICATION TO D.R. 16 ON PROPERTY LOCATED ON THE NORTH SIDE OF SMITH AVENUE, 1255 FEET EAST FROM THE CENTER LINE OF EDENVALE ROAD 3RD ELECTION DISTRICT (BANCROFT HOMES, INC.)

ON REMAND FROM THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW

CASE NO. 86-CG-2109 (ZONING FILE NO. R-86-108)

ORDER

WHEREAS, this matter came before the Board as a Petition to reclassify the above-captioned property from its then present zoning classification of D.R. 5.5, and

WHEREAS, the Board granted the Petition for Zoning Reclassification; however, said Opinion and Order was appealed to the Circuit Court, and

WHEREAS, the Circuit Court for Baltimore County (J. William Hinkel, Judge) concluded that the Board's decision to grant the reclassification petition was in error and ordered that the matter be remanded to the Board "for reinstatement of the Council's original zoning of the subject property as D.R. 5.5," and

WHEREAS, the decision of the Circuit Court was appealed to the Court of Special Appeals of Maryland and said decision was affirmed, and

WHEREAS, the Court of Appeals of Maryland has denied a Writ of Certiorari, and

WHEREAS, the matter has therefore reached its final conclusion, now therefore

IT IS ORDERED this 4th day of May, 1988 by the County Board of Appeals of Baltimore County that the above-captioned property

Case No. 86-CG-2109 (Zoning File No. R-86-108) Paul Gambrill, et al

is zoned D.R. 5.5 pursuant to the Order of the Circuit Court for Baltimore County, J. William Hinkel, Judge.

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

William T. Hackett
WILLIAM T. HACKETT, CHAIRMAN



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

May 4, 1988

Arnold Fleischman, Esquire
408 Bosley Avenue
Towson, MD 21204

RE: Case No. R-86-108
Paul Gambrill, et al (Bancroft Homes)

Dear Mr. Fleischman:

Enclosed is a copy of the Order which was issued this date by the County Board of Appeals pursuant to the Order of the Circuit Court for Baltimore County regarding the subject case.

Sincerely,

Kathleen C. Weidenhammer
Kathleen C. Weidenhammer
Administrative Secretary

Encl.

cc: Leslie M. Pittler, Esquire
Mr. & Mrs. Paul Gambrill
Mr. & Mrs. Joseph G. Mueller
Mr. Edward Weitzel
Mr. & Mrs. Martin P. Scheff
Mr. John T. Coady
Ms. Linda Cunningham
Mr. Edward A. Feustle
Mr. James Rubenstein
(Bancroft Homes, Inc.)
Mr. Robert Goldman
Jeffrey Scherr, Esquire
James Earl Kraft
Phyllis Cole Friedman, Esquire

P. David Fields
James G. Howell
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
Docket Clerk
Arnold Jablon, County Attorney

R-86-108

BANCROFT HOMES, INC.

In the
Court of Appeals
of Maryland

Petition Docket No. 551
September Term, 1987
(No. 221, September Term, 1987
Court of Special Appeals)

PEOPLE'S COUNSEL OF BALTIMORE COUNTY

ORDER

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

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

it is hereby, denied as there has been no showing that review by certiorari is desirable

and in the public interest.

/s/ Robert C. Murphy
Chief Judge

Date: February 24, 1988

PAUL GAMBRILL ET AL R-86-108
(Bancroft Homes, C.P. and Melvin Verger, C.P.)
N/s Smith Ave. 1250' E. from c/l Edenvale Rd.
3rd District

DR 5.5 and DR 3.5 to DR 16

Feb. 28, 1985 Petitions filed
Sept. 10 Hearing before the Board
Oct. 16 Continued hearing before the Board
March 12, 1986 Continued hearing before the Board
May 7 Order of the Board GRANTING the reclassification
June 2 Order for Appeal filed in the Cir. Ct. for Balto. Cty. by Phyllis Friedman, People's Counsel
June 2 Certificate of Notice sent to interested parties
July 2, 1986 Record of proceedings filed in the Cir. Ct. for Balto. County
Dec. 1 REMANDED to the Board for reinstatement of Council's original zoning of subject property as D.R. 5.5.
Dec. 29 Order for Appeal to Court of Special Appeals of Md. filed by Counsel for Petitioners.
Febr. 23, 1987 Prehearing conference scheduled per Judge J. J. Bishop.
Nov. 10, 1987 Circuit Court AFFIRMED by CSA. (Weant, Garrity, Bloom JJ)
December 28 Writ of Certiorari filed by Fishman/Paige, Esq.
February 24, 1988 Writ DENIED in Court of Appeals (Robt C. Murphy, J)

IN THE MATTER OF THE APPLICATION OF PAUL GAMBRILL VS. BANCROFT HOMES, INC., ET AL.

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

CASE NO. 86-CG-2109

MEMORANDUM OPINION AND ORDER

On October 20, 1986, this Court heard oral argument on this Appeal from the County Board of Appeals. The County Council by legislation, at the conclusion of the 1984 Comprehensive Zoning Process, designated the 34.3 acres of subject property, located to the north side of Smith Avenue, as D.R. 5.5. The Board of Appeals, after a hearing, concluded that the Council had erred and rezoned the property as DR.16.

Appellant, People's Counsel for Baltimore County, argues that the Legislative zoning was reasonable and fairly debatable and thus the County Board's finding of error involved reasoning which was legally insufficient and defective. Specifically Appellant asserts:

1) Although the Board found that "... the subject property can be reasonably developed within its existing zone. ..." it failed to consider this in its findings.

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2) Although the Board found that the existing zoning is in character with the neighborhood, the Board failed to consider this in its findings.

3) There was never any finding that the existing zoning is inconsistent with the Master Plan.

- 4) The Board never made any specific findings (i.e. as to population, water supply, etc.) in accordance with the County Code Section 2-58.1 (j).
- 5) The Board never found that the County Council was unaware of Pheasant Cross Drive or the U.S.F. & G. office zoning.
- 6) The County Board of Appeals made up its mind as to the zoning classification preferred from a planning point of view, and based its conclusion of the Council's error on this premise.

Appellees, Paul Gambrill, et al. contend that the Board's decision in finding that the Council erred is fairly debatable and thus should be affirmed by this Court. Appellees' set forth specific factors which demonstrate the Council's error. They are as follows:

- 1) The Council failed to take into account the extension of Pheasant Cross Drive through the subject tract.
- 2) The Council failed to consider the impact of the U.S.F. & G. rezoning.
- 3) The Council failed to consider that the subject property is an in-fill parcel, and that the policy of the Office of Planning and Zoning is to channel development into such areas.
- 4) The Council failed to consider the demand for housing and particularly rental housing, as well as the age of the market population.

Standard of Review

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

"... Where a legislative body, or a board of county officials pursuant to authority

conferred upon it, has granted a rezoning of property, the question on judicial review is whether or not such action is arbitrary and discriminatory or fairly debatable." *Boyce v. Sembley*, 25 Md. App. 43 (1975) citing *Strataxis v. Beauchamp*, 268 Md. 643, 652-53 (1973).

In order to adequately review the Board's rulings it is imperative to consider the standards the Board uses to review the County Council's zoning decisions. In considering these standards it is first important to note that there is a "strong presumption of the correctness of original zoning and of comprehensive rezoning. *Boyce*, 25 Md. App. at 49. (Emphasis supplied).

The Board of Appeals review consists of a two part analysis. In order to grant a reclassification the Board must first find strong and substantial probative evidence that there was "mistake" or "error" in the Comprehensive Zoning. *Boyce* 43 Md. App. at 50. The presumption of validity accorded to a comprehensive zoning is overcome by error or mistake if it can be established that "premises relied upon by the Council at the time of the comprehensive rezoning were invalid." Error can be demonstrated 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*, 25 Md. App. at 51, citing *Bonnie View Club v. Glass*, 242 Md. 46, 52-53 (1966)

In reviewing the Council's decision for error and in making determination that reclassification is appropriate, the

Board of Appeals is also guided by Section 2-58.1(j), (1) & (2) of the County Code. The Code provides:

(j) Before any property is reclassified pursuant to this section, the Board of Appeals must find:

- (1) That there has occurred a substantial change in the character of the neighborhood in which the property is located since the property was last classified, or that the last classification of the property was established in error; and
- (2) That the prospective reclassification of the property is warranted by that change or error. Any finding of such a change or error and any finding that the prospective reclassification is warranted may be made only upon consideration of factors relating to the purposes of the zoning regulations and maps, including, but not limited to, all of the following: Population trends, availability and adequacy of present and proposed transportation facilities, water supply facilities, sewerage, solid waste disposal facilities, schools, recreational facilities, and other public facilities, compatibility of uses generally allowable under the prospective classification with the present and projected development or character of the surrounding area; any pertinent recommendation of the Planning Board of Office of Planning and Zoning; and consistency of the current and prospective classifications with the master plan, the county plan for sewerage and water supply facilities, and the capital program.

Review of the Board's Decision

The Board set forth several factors to support its finding of error.

This Court believes that the Board has properly found that economic impact of a particular zoning classification is

-4-

not appropriate for consideration by the Board pursuant to Section 2-58.1, and that economic feasibility is not an issue of error in this case.

Although Mr. James Markle, Chief, Bureau of Public Services for Baltimore County, and Mr. David Thaler, an Engineer, both testified during the Board's hearing as to various construction costs, these costs were not presented to the County Council. Consequently, as stated by the Board, error by the Council could not be based on the issue of cost.

A large portion of the Board's finding of error is based on the Board's contention that the Council failed to consider the impact of the extension of Pheasant Cross Drive to the subject property. Based on the testimony of Mr. David Thaler (Tr.A p.118) and others, there is a current need to extend Pheasant Cross Drive. However, the question for the Board on review is not whether there currently exists a need for the extension of Pheasant Cross Drive, but whether the Council had this information at the time of its review and failed to consider such information.

Mr. Gavrelis, former Director of Planning for Baltimore County, claimed that the Council erred on the issue of Pheasant Cross Drive, and in support stated the following:

"I reached a personal opinion that the 1984 comprehensive zoning maps were in error because it failed to take into account the consequences of the County mandated extension to Pheasant Cross Drive through these properties and what it meant in terms of how land use should be organized, and it failed to recognize, again, that these properties are a component part, an integral part of the existing high density D.R.16 development and zoning. (Tr.B, pp. 80-81).

-5-

Mr. Gavrelis' testimony only states that the Council did not account for current consequences of the mandated extension of Pheasant Cross Drive, but this does not demonstrate that the Council failed to consider then existing facts regarding Pheasant Cross Drive. It is important to note that the issue before this Court is not whether substantial change in the character of the neighborhood occurred, but the issue before this Court is whether the Council erred by not considering proper factors at the time of its decision.

The Board furthered its opinion that the Council committed error in regard to the impact of Pheasant Cross Drive, by noting that Mr. James Hoswell, a Planner for Baltimore County, if asked today, would recommend that the site in question be zoned D.R.16. This Court believes that this is not sufficiently strong evidence to show that the Council erred. The issue in this case is not what is appropriate zoning currently, but whether the Council made an appropriate decision based on evidence before the Council.

The Board also based its finding of error on the contention that "it is not feasible to superimpose a lower density zoning upon a higher density zoning". (County Board of Appeals Opinion, p.6). A review of the transcripts reveal that there were contrasting opinions regarding the mixture of high and low density areas. Mr. Gavrelis stated:

"You do not provide a lower density residential zone at the entry along a major collector street that serves essentially high density residential development. (Tr.B, pp. 81).

-6-

Planner Hoswell stated:

"It is not contrary to sound planning principles to have a number of types of densities and types of zones, not just residential along collectors. (Tr.C, pp.43).

Based on the Board's finding it appears that the Board was persuaded by Mr. Gavrelis' testimony. This Court duly notes Mr. Gavrelis' testimony, but also takes note that Mr. Hoswell's testimony supports the Council's conclusion. In accordance, this Court believes that there did not exist the strong evidence of mistake needed for the Board to find error and overcome the presumption of correctness in the Council's decision.

The Board also attributes Council's error to the fact that the Council failed to consider employment growth in the area. Both Mr. Kleinpaste, a Real Estate Developer, and Mr. Gavrelis testified regarding this matter. Mr. Kleinpaste's testimony is as follows:

"The round two forecasts which were available to the County Council at the time of the comprehensive rezoning, forecast in this market area over the period from 1985, there would be an increase in employment of 700 jobs. On this site there would be an increase of 3,000 jobs. So, in our opinion an error would have to have been committed." (Tr.B, p.26).

Other testimony by Mr. Kleinpaste confirmed that only Round II figures were available to the Council. His testimony is as follows:

Q. Which figures were available during the year 1984?

A. During the year?

-7-

Q. Yes.

A. During the year, round two was available. The round three figures weren't published until the end of the year. (Tr.B, p.16).

It is clear from the evidence that the Council based its finding on the then existing facts of an increase of 700 jobs, and did not have available to it the figure of 3,000 jobs. This Court finds that the Council did not commit error when it considered the impact of the job increase at the U.S.F. & G. site.

Argument was also raised regarding the Council's error in not considering the shortage of rental property and a need for housing for the elderly in the subject area. Mr. Gavrelis expressed that the Council erred in failing to consider these consequences of the U.S.F. & G. employment growth, as they were reasonably foreseeable (Tr.B, p.88). The test is not simply whether consequences were foreseeable, but rather whether then existing facts were reasonably foreseeable of fruition in the future, making the Council's actions premised initially on a misapprehension. Boyce, 25 Md. App. at 51, citing Bonnie View Club v. Glass, 24q Md. 46, 52-53 (1966). This Court finds no evidence that the Council erred based on the demographic information that was before the Council.

The Board pointed out that Council's error may also have been the result of lack of input from the public. Although only one person, Mr. Plot (attending on behalf of Green Gate Community Association), came to offer his opinion at the public

-8-

hearing. This Court does not believe that this is evidence of the Council's error. In fact, Mr. Plot opposed D.R.16 zoning and recommended D.R.5.5 zoning.

In the final analysis, this Court notes that the Board did not make any specific finding that D.R.5.5 zoning of the subject property is inconsistent with the Master Plan, and that the Board did infer that D.R.5.5 zoning provides for a reasonable use (County Board of Appeals Opinion p.6). The Board effectively considered appropriate factors for reclassification as set forth in Section 258.1 j (1) and (2) of the County Code. However, this Court believes that the evidence before the Board was not the sufficiently strong evidence needed to override the Council's presumption of correctness. Therefore, the Board committed error in reclassifying the subject property.

Based on the above reasoning in this Opinion, it is further the conclusion of this Court that the Board's findings were not fairly debatable and thus should not be upheld.

It is this 1 day of December, 1986, by the Circuit Court for Baltimore County, ORDERED that this case be remanded to the County Board of Appeals for reinstatement of the Council's original zoning of the subject property as D.R. 5.5.

J. WILLIAM HINKEL
JUDGE

-9-

Re: In the Matter of the Application of Paul Gambrell vs. Bancroft Homes, Inc., et al.
Case No. 86-CG-2109

A copy of the foregoing Memorandum Opinion and Order has been mailed to each of the following:

Phyllis Cole Friedman, Esq.
Peter Max Zimmerman, Esq.
Room 223 - Court House
Towson, Maryland 21204

Jeffrey H. Scherr, Esq.
Philip M. Andrews
Kramon & Graham, P.A.
Sun Life Building
Charles Center
Baltimore, Maryland 21201

Arnold Fleischman, Esq.
408 Bosley Avenue
Towson, Maryland 21204

Leslie M. Pittler, Esq.
Suite 508
23 Allegheny Avenue
Towson, Maryland 21204

-10-

PETITION OF
PAUL GAMBRILL, ET AL
FOR RECLASSIFICATION
OF PROPERTY
* * * * *
* * * * *

BEFORE THE
COUNTY BOARD OF APPEALS
FOR
BALTIMORE COUNTY
Case No. R86-108

PETITIONER'S MEMORANDUM

INTRODUCTORY STATEMENT

This case is a petition for the reclassification of several parcels of land zoned D.R. 5.5 to D.R. 16 as the requested zoning. The contract purchaser of the site, Bancroft Homes, has signed all of the petitions along with the various property owners. The site consists of about 34.5 acres located on the north side of Smith Avenue, 1250' east of Edenvale Road. It adjoins the Bonnie View Country Club on the south; Wise Avenue and Broadview Road on the west; Falls II and III (zoned D.R. 16) on the north; and the Bonnie Ridge Apartments (zoned D.R. 16) on the east. The property for all practical purposes is zoned D.R. 5.5.

The site was represented as individual parcels of the various owners on the 1984 Comprehensive Zoning Map before the Baltimore County Planning Board and the Baltimore County Council as Issues #2-6, 2-7, 2-14, 2-15, 2-16, 2-28 and 2-59 which were the assembled parcels.

1

During the deliberations leading to the final adoption by the Baltimore County Council of the Comprehensive Zoning Map of 1984, the Office of Planning for Baltimore County recommended to the Planning Board that the parcels, both individually and collectively, be rezoned to D.R. 16. Without sequestering these issues, the Planning Board voted to recommend to the Council that these issues be granted a rezoning to D.R. 16. Although there was no contrary evidence and despite the recommendations of the Planning Staff and the Planning Board, the Baltimore County Council, voted to retain the D.R. 5.5 zoning. Subsequently, the property owners agreed to sell to a single contract purchaser. When Bancroft Homes became the contract purchaser of all of the assembled parcels, the reclassification petition based upon error/or mistake was filed.

The fundamental rule of law, applicable to a case of this nature were clearly set forth in Boyce v. Sembly (1975) 25 Md App 43, p. 137. However, it must be kept in mind that the rules set forth in Boyce have to be applied on a case by case basis, dependent on the particular facts before the Board of Appeals.

The People's Counsel (PC) appears to take the position that it is literally impossible for the Board to grant a reclassification based on mistake/error. She argues that as long as the

zoning designation of the property in question is not confiscatory, there is no error in the original zoning process. However, this is not the position of the Special Court of Appeals of Maryland.

As the Court said in the Boyce case, it is "...necessary to understand the inherent nature of the term 'mistake' or 'error' as they are used in zoning law."

The Petitioners in this case have no problem stating the general rule at the outset, because the Petitioners have clearly met their burden of proof and have provided the required probative evidence to entitle them to the reclassification they seek. Petitioners have shown by probative evidence that the assumptions or premises upon which the Baltimore County Council relied, at the time of the comprehensive rezoning, were in correct, incomplete, and invalid.

Petitioners' probative evidence established error as defined by the rules set forth in Boyce as follows:

"At the time of the comprehensive rezoning, 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."

The Petitioners' testimony, particularly as summed up by George Gavrelis, showed that the County Council was unaware of then existing facts, or projects or trends which were reasonably foreseeable of fruition in the future in this case.

However, even PC witnesses Hoswell and Klaus admitted that D.R. 16 is the most appropriate zoning classification for subject property. Their only argument appears to be that D.R.5.5 constitutes a "reasonable use" classification for the property. This is the thrust of PC's case. However, this argument misses the issue before this Board altogether, because it is based on erroneous premises.

For example, the table of "Comparable Public Works Costs" introduced through PC's witness Markle, was intended to show that projected public works costs for subject property were similar to and not substantially in excess of public works costs for similar D.R.5.5 developments in the area.

However, the projected public works costs prepared jointly by PC's witness Markle and Pet's witness Thaler pertained only to the public works costs resulting from the proposed construction of Pheasant Cross Drive and did not include the usual public works costs of all the other developments listed on PC's Exhibit No. 5 introduced through Markle. Although Exhibit No. 5 stated merely what was the SURCHARGE arising out of the projected public

works costs of Pheasant Cross Drive, this surcharge alone was equal to the total per unit public works costs of the "comparable" developments shown on PC's Exhibit No. 5.

PC's Exhibit No. 5, thus not only emphasized the logical defect in PC's argument, but it also demonstrated the opposite of what PC attempted to prove; namely, that Bancroft would face excessive, indeed confiscatory public works and land development costs, in addition to the "road surcharge". If Bancroft were to consider the development of the entire parcel as presently zoned.

The evidence is clear from Mr. Markle's response to Board-member Evans' question that the Baltimore County Council had no information from the Department of Public Works about the costs of constructing Pheasant Cross Drive, a although it was mandated as a major collector road through subject parcel at the time the Council made its determination to retain the subject parcel D.R. 5.5. Thus, the County Council could not have given any consideration to the "surcharge" of the public works costs projected to arise out of construction Pheasant Cross Drive through the subject site in his response to Mr. Evans' question. Since County Council had no information at the time of its consideration and adoption of the 1984 Comprehensive Map, it committed error.

PETITIONERS' WITNESSES

Petitioners would like to note the qualifications of each of Petitioners' witnesses and their direct familiarity with subject site and the surrounding area, giving them particularly high qualifications to support their evidentiary conclusions that the County Council erred with regard to subject property in the adoption of the 1984 Zoning Map. The witnesses were:

- (1) James Rubenstein, the President of Bancroft Homes is actively developing Jones Valley, a D.R. 16 development, which is adjacent to this site.
- (2) Samuel Crozier, the Petitioners' land and site planner, has been involved in the planning of most of the properties near the subject parcel and other substantial development in this general area of Baltimore County.

- (3) David Thaler, a civil engineer, whose family was one of the initial developers of housing in this area of Baltimore County and who has done much of the engineering work for developers in the area surrounding the subject property.

- (4) Robert Kleinpaste, a marketing expert whose company has done extensive population and marketing studies in the area surrounding the subject property.

- (5) George Gavrelis, a noted planner, was the planning director for Baltimore County when the first comprehensive zoning maps were adopted by the Baltimore County Council. He is the one of the most distinguished and experienced planning and zoning experts in Baltimore County.

All of the experts came to the same conclusion that the Baltimore County Council, under the legal definition of mistake/error, did err in failing to increase the density zoning for the site to D.R. 16.

SUMMARY OF TESTIMONY JAMES RUBENSTEIN

James Rubenstein testified about his extensive experience in residential development. Mr. Rubenstein has been developing the "Jones Valley" at Old Pimlico Road and Pheasant Cross Drive which adjoins the subject property at its northern property line. As a result, he has become familiar with this neighborhood and its development potential. He testified that because of the complexities with the development of this particular property, it can be developed only as a unified 34.5 acre development.

Mr. Rubenstein stated that in his opinion, based on his own extensive development work in this area of Baltimore County, that action of the County Council was in error because of the requirement by Baltimore County to build Pheasant Cross Drive, a major thoroughfare through the site, which in turn requires a major economic commitment, which could not be met under the D.R. 5.5 zoning.

He also stated that in his opinion, the Council failed to consider that when it granted substantial new zoning for the office and commercial use near the site, that the need for high density residential uses would be increased, so that the County Council's failure to increase the residential density of subject site was clearly erroneous.

Mr. Rubenstein categorically stated that he would not and is not interested in purchasing subject property as it is presently zoned.

SAMUEL CROZIER

Samuel Crozier, an expert land planner, familiar with the area, stated that he had made a detailed study and a site analysis of subject property and the surrounding area.

Crozier then described the aerial photographs showing proximity of the Jones Falls Expressway (I-83), to the subject site, to Old Pimlico Road, the Jones Valley and Falls Developments, where Old Pimlico meets Pheasant Cross, Twin Ridge and Bonnie Ridge Apartments and Bonnie View Country Club's golf course; and surrounding development of garden apartments.

Presently Pheasant Cross Drive stops at the Jones Valley project. Because the high density (D.R. 16) residential developments surrounding subject property have required of roads, and many parking areas, subject site is like an island in a sea of D.R. 16.

Mr. Crozier has studied how this site fits into the remainder of this community.

Mr. Crozier had prepared a zoning map illustrating the zoning and land use patterns throughout this area in the form of a context and land use map to demonstrate that the predominant zoning in the area is D.R. 16 zoning.

Mr. Crozier described the location of the proposed interchanges. The context map clearly shows that subject property zoned D.R. 5.5 is the only substantial underdeveloped area which has not been designated for higher density use. Crozier then described the impact of Pheasant Cross Drive by introducing an exhibit setting forth the road network. The exhibit indicates a web-like road network of minor collector roads feeding into Old Pimlico Road, the circuitous way to get to I-83, and the proposed county plan to continue Pheasant Cross Drive to Smith Avenue that bisect the subject parcel. There are no roads to

carry this traffic. Pheasant Cross Drive is needed as a major collector road to serve the D.R. 16 developments which are completed and those D.R. 16 developments that are still under construction.

Mr. Crozier described the character of the site and the surrounding uses. Using Petitioner's Exhibit No. 7, he showed that the unassembled parcels could not be developed economically separately zoned D.R. 5.5 because of the existing physical conditions and restrictions of the site. He pointed out the 25% steep slopes as areas of non-development, the hydric soil areas that cannot be built on or developed and then pointed out the 300' set back requirement from existing houses (transition zones).

Crozier described the shape of the land, the rough topography, the two ridge lines and the deep valleys and the impact of the severe grade changes.

Mr. Crozier's slope analysis map shows the severity in the rise and fall of the land, the 25% slopes and how they adversely affect the development of the rear half of the site, the parking, the placement of roads and driveways, and the compliance with county standard road grades of in-project roadways.

Crozier then described Exhibit No. 7, existing lots as they are held by the individual property owners. This exhibit considers sight distance requirements on Smith Avenue, the effect of Pheasant Cross Drive, slope requirement, hydric soils, setbacks and impact of the adjacent DR 16 zoning. He came to the conclusion that individual parcels separately in a D.R. 5.5 zone would result in only between 108 and 125 units being developed. Although, if assembled in a single development, at least 188 units would be permitted on a parcel of 34.5 acres in a 5.5 zone.

Parcel A - No development Because of the proposed alignment of Pheasant Cross Drive, property is taken by road expansion and the impact of the set back requirements.

Parcel B - No development considering set backs and width of the site, site becomes too narrow to develop.

Parcel C - No development same as B, too narrow to develop.

Parcel D - No development Development is adversely affected by set backs from the existing house, the only access road is Smith Avenue and the sight distances prevent ingress and egress.

Parcel E - Layout indicates that this 2.5 acre lot can possibly be developed for 13 units.

Parcel F - No development The lot is totally landlocked, has no access and therefore, has no development potential.

Parcel G - The development of this lot is affected by a 300' setback, impact of Pheasant Cross Drive and hydric soils therefore, development potential is reduced but possibly 21 units can be constructed.

Parcel H - Development of this lot is affected by Pheasant Cross Drive and soil conditions, but possibly 21 units can be built.

Parcel I - Development prospects are fairly good and a possible 18 units could be constructed.

Parcel J - Development prospects are fairly good and a possible 25 units could be constructed.

Parcel K - Development of this lot is affected by its wedge shape, by 25% slopes, and by the construction of Pheasant Cross Drive but possibly 27 units could be built.

In Crozier's opinion, instead of 188 units permitted on a site of 34.5 acres developed as one parcel, only 125 units could be developed by the individual property owners. Mr. Crozier then concluded that there was error in the County Council's decision to retain the subject parcel D.R. 5.5. because the council failed to consider the topological problems of the property which made it unsuitable to low density development.

DAVID THALER

David Thaler P.E., Petitioner's expert on engineering matters, stated that he had examined the neighborhood regarding the site, analyzed site's development potential, analyzed the development costs and prepared some exhibits to demonstrate his findings.

Thaler described the Context Plan (Exhibit No. 8) which highlights the road network in vicinity of subject site. He showed the Board the developments along Smith Avenue beginning with the USF&G site (rezoned to U2 on the 1984 zoning map) which is projected to become the largest employment center in the area

and then the D.R. 16 zoned Copperridge Townhouses along Smith Avenue which face the Bonnie Ridge Apartments (Tr 115 et seq). He noted the location of the D.R. 16 areas of Jones Valley and of Falls I, II and Falls III located at Old Pimlico Road, at Rockland Hills Drive, and at Pheasant Cross Drive. He then pointed out the D.R. 16 areas of Twin Ridge Apartments and Rockland Run Apartments. The roads to the Greengate Condominiums and the Greengate development were also shown. The property to the northwest, called Falls II, is under development. Falls I and Falls III are substantially completed. Parking lots currently funnel to Old Pimlico Road and to Smith Avenue. The last remaining link to the road network is Pheasant Cross Drive. Regardless of zoning, Pheasant Cross Drive is a mandated major collector road which must be constructed as part of the development of the land owned by the various individual owners.

Thaler said that Pheasant Cross Drive will be necessary to move current heavy traffic south to Smith Avenue and the traffic to the intensive office park development of USF&G. Pheasant Cross Drive will also be necessary to move traffic north to Old Pimlico Road and he further indicated that one of two proposed interchanges, when built, will be in close proximity to subject site.

Thaler further testified that Pheasant Cross Drive is required to have a 70' right of way for four moving lanes.

Thaler reviewed the sight distances required on Smith Avenue at the intersection with Pheasant Cross Drive. Major improvements will be required to Smith Avenue. A relocation of Smith Avenue will result in further loss of developable land. The northern location of Pheasant Cross Drive has been fixed and it cannot be moved. Because of the sight distance requirements at Smith and the fixed location of Pheasant Cross Drive where it begins at northern end of subject property, the location of Pheasant Cross Drive through subject property is almost fixed by topography to the location shown on Petitioner's plat.

Thaler's development cost estimates (Exhibit 10) include paving, curb, gutter, street lights, sidewalks, water lines, on site sanitary sewer lines and off site storm drains, excavation, storm water management and erosion control for Pheasant Cross Drive only. Markle and Thaler have agreed that an estimated \$870,000 will be the surcharge for the construction of Pheasant Cross Drive. Thaler's estimate of the surcharge for 188 units zoned D.R. 5.5 is \$4,636.00 per unit and 548 units zoned D.R. 16 is \$1,589.00.

Thaler testified that in addition to the cost of the construction of Pheasant Cross Drive shown in Exhibit 10, the developer will incur the costs of paving, water lines, sewer lines, storm drains, sediment control and storm water

management. All of these costs have to be borne by the developer because Pheasant Cross Drive is a major collector road. No direct access is allowed from single family homes because driveways cannot be constructed to collector roads.

Thaler said that most of the individual parcel owners could not develop at all because individual parcels cannot get access to Smith Avenue, the storm water management is too expensive, and the sediment control is too expensive.

Thaler concluded that the County Council in adopting the 1984 Zoning Map was in error because the Council failed to consider the extraordinarily high cost of Pheasant Cross Drive, and that could not be developed and road could not be constructed if the zoning of the property remained at D.R. 5.5.

Since the County Council had no knowledge of the costs of Pheasant Cross Drive and knew nothing about a relocation of Smith Avenue at the time of the adoption of the 1984 Zoning Map, the County Council erred further by failing to recognize that Pheasant Cross Drive must be built; that it is too expensive to construct, and that these factors make development even of the assembled parcels uneconomical if zoning remained D.R. 5.5.

ROBERT KLEINPASTE

Robert Kleinpaste examined in detail the population and household trends, extent and nature of market demand and the consistency of the present zoning, D.R. 5.5, with those trends.

Mr. Kleinpaste considered the site, examined the site's basic characteristics, traffic, availability of support services, residential support services and facilities, demographic characteristics, population, population growth, household growth, housing units growth, historic and projected, age characteristics of market area, housing unit characteristics, and other demographics.

After consideration of the aforesaid factors, Mr. Kleinpaste examined the competitive market area for the markets for rental housing, the market for condominium and residential sales and sales of housing in newly constructed developments.

Mr. Kleinpaste, after studying this area extensively, knows of no market study for this area of Baltimore County performed by or for Baltimore County and that available population studies and market trends available at the time of the adoption of the 1984 Zoning Map were out of date of altogether erroneous.

Kleinpaste then, determined that the Baltimore County Council erred in retaining D.R. 5.5 zoning for subject site because the Council had no knowledge of the great demand for housing in the area, and had ignored the tremendous growth in employment opportunities created by the rezoning of the USF&G complex. He also noted that subject site is an in-fill parcel, in which all utilities and infrastructure are present.

Further, the condo market has captured an ever increasing share of the rental housing stock. The rental housing stock lost to condominium conversions has not been replaced. There is a serious shortage of rental housing. In evaluating housing forecasts for this area used by Baltimore County, it is clear that these forecasts seriously underestimated the strength of the housing market and that the forecasts upon which the County relied were in error.

Mr. Kleinpaste observed that three of the most successful projects in Baltimore region are in this market and are very close to subject property. He further noted that the conversion of apartments to condominiums has resulted the removal of large numbers of rental units from the rental stock in this market area so significantly that almost all Class A rental units have been removed from the rental market in the area.

He also explained that he had examined the elderly housing market for the area. Statistics show that this market area has the greatest percentage of persons aged 55 or older in the entire region. It was error on the part of the Baltimore County Council not to provide opportunities for housing to satisfy this need. Only D.R. 16 zoning will provide the high level service housing that the existing elderly population in this market needs. The fact the demand for such housing is significant is evident from the success of current construction and the extremely low vacancy rate in the area.

Kleinpaste noted that there was significant growth in employment opportunities as the result of the creation of the 0-2 rezoning at USF&G site on the 1984 Zoning Map. He estimated that USF&G, site which consists of 41.76 acres, will result in approximately 3,000 new jobs. It is his opinion that the County Council could not have considered this impact and kept D.R. 5.5 zoning of subject site. The Council may have been misled because Round II population figures which were available to the Council showed only a possible increase of 700 jobs, thus clearly an error.

GEORGE GAVRELIS

The Petitioner closed its direct case with the testimony of George Gavrelis as a planner and zoning expert. Mr. Gavrelis was the director of the Office of Planning and Zoning when the current cycle zoning system was devised. In addition, he was director when the current density residential (D.R.) zoning was developed.

Mr. Gavrelis heard all the prior testimony in the case before testifying. He had met with Baltimore County Department of Traffic Engineering to review traffic implications and the need for Pleasant Cross Drive and whether its construction would solve traffic problems or cause traffic problems in this area. He had reviewed the 1979 county-wide Master Plan to determine its bearing on this case. He had discussed needs and the economics of Pleasant Cross Drive with Department of Public Works. Mr. Gavrelis had series of meetings with planning staff members who played a role in the preparations of maps as related to this site and he had reviewed all available files and issue logs bearing on this case.

Mr. Gavrelis testified that as a result of all of this preliminary work, he came to the conclusion that there was very little information in the files; that the issues did not create any serious interest; that there had been no great public input

on the issues; only one speaker had provided input on all issues at the Planning Board's Public Hearing and no one had provided any comments at the County Council's Public Hearings. Further, no prepared detailed statements had been provided by anyone as why or why not that D.R. 16 should be placed on these properties. In reviewing the issues, he noted that the Planning Staff had recommended D.R. 16 for the individual parcels; had added one parcel and then provided a combined issue for all parcels assembled. He observed further, that the Planning Board had accepted the Planning Staff's recommendation of D.R. 16 zoning, without the sequestration of any of the issues pertaining to subject site so that the issues before the County Council were uncontradicted recommendations to rezone the subject property to D.R. 16. There were questions about whether an overall plan had been submitted and that only the Planning Staff had appeared to recommend a unified approach to zone the lots as if they had been assembled into a single parcel.

Mr. Gavrelis noted that error was more likely when there was no extensive discussion and debate about all facets and ramifications of the zoning issues as there had been in the Greenspring Quarry case. The Council appeared to have no knowledge of the consequences of the requirement to construct Pleasant Cross

Drive; that Pleasant Cross Drive is to be the mandated extension of a 70' right of way through subject properties by the Department of Public Works and that it is absolutely needed as a major collector road linking the high density D.R. 16 area to the north of subject property with Smith Avenue. The Council was unaware of economic costs and conditions of the extension, that it was developer implemented, and the costs would be exceedingly high. All existing streets within nearby D.R. 16 areas are interconnected parking lots with speed bumps which provide no connection between Smith Avenue and Old Pimlico Road. The various D.R. 16 developments have no road connections. There is an absolute need for a coherent and rational pattern of circulation in this high density area which require Pleasant Cross Drive as a major collector street.

GEORGE GAVRELIS' SUMMARY OF FACTS PERTAINING TO ERROR

Petitioner's witnesses had earlier testified that subject site had many topological conditions which would require very costly solutions. Because of these conditions, a large part and much of the land of the thirty-four point five (34.5) acre site cannot be utilized as building sites. The required setbacks from Pleasant Cross Road and other setbacks as well the hydric soils eliminate further acreage.

Gavrelis noted that Mr. Thaler had testified that the total land costs for the site are extraordinarily high and that the grading costs are above average because of the rough contours of the land. The rough topography and rock problems of the subject site are similar to the adjoining property, which has been developed as "Bonnie Ridge Apartments".

Gavrelis concluded that there was error on the part of the County Council with respect to this parcel in the adoption of the 1984 Zoning Map because:

1. Pheasant Cross Drive, a mandated major collector road.

The Council was unaware of or ignored the mandated extension and construction of Pleasant Cross Drive through subject property, as the missing link to connect all the D.R. 16 developments. This road makes the subject site a part and component of the current D.R. 16 zoning area which now exists immediately to the east and to the north, so that current 5.5 zoning is an incorrect residential zone. It is erroneous to place a lower density residential category at the entrance along a major collector road that serves essentially high density residential development. The 1984 Zoning Map failed to take these consequences into consideration. (Tr 81)

2. Economic Aspects of Pleasant Cross Drive Construction.

The Council was unaware of or ignored the fact that the construction of Pleasant Cross Drive places a surcharge on development costs, which must be borne by the developer of the parcel. The road has been part of the planned County road network for years, the need for Pleasant Cross Drive and the impact should have been foreseen by the County Council. (Tr 82)

3. The Employment Center at USF&G.

The Council was unaware of the consequences of zoning changes in the area and their effect on existing and future employment opportunities. The property is near two major centers: the established industrial corridor between I-83 and Falls Road and the newly developed and rezoned (0-2) USF&G Complex. The Planning staff had made an estimate of potential buildings, square footages and arrived at a maximum of between 800,000 to one million square feet of office use for USF&G. Until the 1984 Zoning Map changes, USF&G was D.R. 2 on the map. Forty-six (46) acres of D.R. 2 were removed and rezoned 0-2. Three thousand (3,000) new jobs will be created. This will result in a demand for housing which should be met in close proximity to the site. There is already a scarcity of rental housing in the area and almost no vacancy rate in the area.

4. In-fill requirements and energy conservation.

The Council was unaware or ignored its own policy. The purposes as they are set forth in the Zoning Regulations for O-2 zoning and the Development Regulations under 22-104 state that land in an O-2 zone will be used with careful regard as to energy conservation and energy efficiency. This means that there should be a reasonable relationship between employment activities within the O-2 zone and with housing opportunities nearby to minimize the home-distance relationships. The 1984 map failed to recognize the logic and inevitable consequence of creating a very significant employment center without evaluating the consequential demand for housing. The Council failed to recognize that growth in employment would create housing demand in the area where the prospective employees could live at convenient distances to the site.

It was error on the part of the County Council not to create the D.R. 16 on subject site because these underdeveloped parcels are the only properties near USP&G.

5. Planning errors due to irrational zone boundaries.

The 1984 Zoning Map was in error because it did not provide a rational boundary that should have extended high density zoning westerly from its current boundary at Bonnie Ridge Apartments over to the boundary afforded by Broadview Road and Bonnie View Country Club.

6. Master Plan - in-fill and existing infrastructure.

The master plan provides that maximum use is to be made of in-fill parcels. D.R. 16 should provide consistency with the county wide master plan. The Broadview tract (subject property) is situated in an area of existing communities. Residential development is to be encouraged where appropriate to preserve and strengthen the character and identity of existing communities. New development should be compatible with the present character of these communities and county services, facilities. Infrastructures are adequate to accommodate the growth resulting from D.R. 16 zoning of subject property.

7. Availability of Public Services.

The Board of Education states that there is foreseeable capacity surplus for all schools in the area. The Department of Public Works has stated that water and sewer are available to serve this site. There are no deficiencies on any basic services maps affecting this site and extension of Pheasant Cross Drive will be accomplished if the site is zoned D.R. 16. D.R. 16 is not out of context with character and identity of the existing community and in fact affirms that character as established. The master plan, in fact, defines this area as the

Rockland-Mt. Washington community and has projected for this defined area a 123% increase in dwelling units which adds more than 3,000 units through 1995, thus projecting extensive growth for this community.

There is therefore no inconsistency between the Baltimore County Master Plan and the petition to rezone subject property. Infrastructure requisite to support the anticipated growth exists. The area is projected for growth. D.R. 16 is consistent with the master plan and is an ideal in-fill site and D.R. 16 satisfies a master plan objective of preventing leapfrogging of development throughout the County. Adequate water, sewer & solid waste disposal facilities exist. The school recreational facilities for the area already exist. As the result of D.R. 16 rezoning of this site, an additional eight acres or 24% of the site would be set aside for recreational or open space activities, either passive or active.

It was Mr. Gavrelis's opinion that the D.R. 5.5 zoning for subject property is unreasonable, inappropriate and in error.

CONCLUSION

It is Petitioner's contention that he has made a clear case of error in the adoption of the 1984 Zoning Map by the Baltimore County Council, in that the subject parcel was retained

at D.R. 5.5 zoning despite contrary recommendation of the Planning Staff and the Baltimore County Planning Board to rezone the parcel to D.R. 16. Petitioner contends that the Baltimore County Council failed to take into account then existing facts, projects or trends which were reasonable of fruition so that the Council's action was premised initially on a misapprehension. Not only was the testimony of Petitioner's witnesses unambiguous in showing the Council's lack of knowledge of "existing facts and trends", but even the testimony of People's Counsel's witnesses do not contradict any part of the Petitioner's case. Mr. Hoswell, who has been the People's Counsel's key witness, conceded that he had written the Planning Board recommendations of D.R. 16 zoning for the subject site, and the Planning Board recommendation to the County Board of Appeals recommending D.R. 16 zoning. Hoswell stated that in his judgement, D.R. 16 was the preferred zoning for subject property. His only reservation was that he also considered D.R. 5.5 a "reasonable" use of the property. This reservation was seriously undermined by the testimony of Mr. Markle, who conceded, with the aid of the testimony of Mr. Thaler, that the County Council had no knowledge of the construction costs of Pheasant Cross Drive and that Pheasant Cross Drive unit "surcharges", due to the construction of the road, were estimated to equal or exceed total public works unit costs for many similar projects.

Mr. Klaus' testimony also supported the testimony of Petitioner's witnesses that D.R. 16 is the preferred and best use of subject property. After stating on direct examination, D.R. 5.5 was reasonable, he had great difficulty in responding to People's Counsel's questions on whether he considered D.R. 5.5 error, until he finally responded that he did not consider the Council's actions erroneous. However, none of the People's Counsel's witnesses dispute that the preferred and most appropriate use for the parcel is D.R. 16.

There is no need for citation of a great deal of law because the law of this case is not really in dispute. In a letter dated March 4, 1986, Deputy People's Counsel has furnished Petitioners with copies of certain unpublished Court of Special Appeals decisions which had been cited in the course of oral argument before the Board. The copies were sent to the Chairman of the Baltimore County Board of Appeals.

I am certain that the Board, as well as People's Counsel, are aware of Rule 1092-c of the Maryland Rules of Procedure which specifically provides that "an unreported opinion of this Court is not a precedent within the Rule of stare decisis, and shall not be cited by a Court or a party for any purpose, in any

unrelated action or proceeding". Its use is limited to proceedings dealing with the same defendant or the same respondent. For these reasons, we will not discuss these cases which are very different on the facts and presume that People's Counsel will not do so either.

Petitioner relies on the case of Boyce v. Sembly, which has been previously cited, and the rules stated therein. Petitioner also relies on the case of Bonnie View Country Club v. Glass (1965) 242 Md 46 which is particularly appropriate because it pertains to the Bonnie Ridge Apartments, which adjoin subject property on the east, and the reclassification based on error in the original zoning. There is an obvious similarity in the facts, particularly as noted in 242 Md p. 50, because "the topography makes the development for R. 10 and R. 20 impractical; the rock and previous mining operation make it undesirable for housing;...."

In Missouri Realty v. Raner (1958) 216 Md 442, the Court of Appeals said: "It should be noted that this case involves an application for reclassification from one residential subcategory to another; not the removal of the land from the use category in which it was placed when originally zoned, as was the situation in many of the cases presented to this Court. In this respect, the situation is, to a certain degree, different from the application to reclassify property zoned as residential to

commercial or industrial." In reviewing this case, the Maryland Law Review (1966) 23 MLR 48, the commentator concluded, "Thus, the court seems to adopt a more liberal attitude when reviewing amendments from one use to a similar use." Id. at 51

The Board of Appeals in this case has had before it the classic case of zoning error as defined by the Court of Appeals and the Court of Special Appeals. The evidence provided Petitioner's expert witnesses and the supporting documentation clearly indicates that the County Council acted by inadvertence or ignorance.

Although, People's Counsel argued that D.R. 5.5 offers a reasonable opportunity of development to the individual property owners or to the developer of the assembled property, the evidence of Petitioner's expert witnesses clearly shows that this is not the case and that economic and topographical factors absolutely negate a basis for development of the property in its present zoning classification.

In view of the recommendations of the Planning Staff, and the Planning Board during the map process and its recommendations to the Board of Appeals in this case, and the testimony of even People's Counsel's witnesses that the zoning of the property to D.R. 16 is appropriate and the highest and best use, there is substantial and uncontradicted evidence entitling Petitioner to

an increase in the density for subject property, supporting a finding that the Petitioner's burden of proof has been met. Petitioner has provided substantial, clear and uncontradicted probative evidence to support each and every one of its allegations of error and mistake on the part of the Baltimore County Council in the adoption of the 1984 Zoning Map. Supporting facts cited by Petitioner's expert witnesses were sound and substantial and prove that the County Council's zoning decision were made without "taking into account then existing facts, or projects, or trends which were reasonable foreseeable of fruition in the future, to that the Council's action was premised initially on a misapprehension" as stated in Bonnie View Country Club v. Glass, 242 Md 46, 52-53 and in Boyce v. Sembly, 25 Md App 43.

The Petitioner has met its burden of proof. People's Counsel has been unable to contradict by any probative evidence, any of Petitioner's conclusion that error occurred by failure on the part of the Baltimore County Council to take into account the following items:

1. Economic problems arising out of the surcharge and the construction of Pheasant Cross Road.
2. The rezoning of USP&G to O-2, creating a employment opportunity for 3,000 people without providing farther residential uses on subject property; the topographical problems

IN THE MATTER OF
THE APPLICATION OF
PAUL GAMBRILL, ET AL
FOR ZONING RECLASSIFICATION
FROM DR 5.5 AND DR 3.5 TO DR 16
ON PROPERTY LOCATED ON THE NORTH
SIDE OF SMITH AVENUE, 1250 FEET
EAST FROM THE CENTER LINE OF
EDENVALE ROAD - 3RD DISTRICT

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. R-86-108

OPINION

The above captioned matter came before the County Board of Appeals to consider a Petition for Reclassification of property located on the north side of Smith Avenue at Broadview Road in the 3rd Election District of Baltimore County.

The matter is further identified as Item #2 in the 1st Reclassification Cycle.

This Board heard three full days of testimony, received into evidence numerous exhibits and, finally, legal memorandums from Petitioners and People's Counsel.

Petitioners produced as witnesses, James Rubenstein, President of Hancock Homes, Samuel Crozier, a Landscape Architect and Land Planner, David S. Thaler, an Engineer, Robert T. Kleinpaste, a Real Estate Developer and George L. Gavrellis, former Director of Planning for Baltimore County.

People's Counsel produced as witnesses, Robert Goldman, a property owner near the subject site, Lawrence Caplan, a property owner within one-half mile of the subject site, Steve Huster, a property owner residing across the street from the subject site, James G. Hoswell, a Planner for Baltimore County, James A. Markie, Chief, Bureau of Public Services for Baltimore County, Francis D. Alessi, a Private Investigator and Frederick Klaus, a Real Estate and Development expert.

Paul Gambrill, et al
Case No. R-86-108

Although this Board recognizes the genuine interests each of the witnesses expressed in this matter, we believe it unnecessary to address, at length, the testimony of each. We will, however, in this Opinion, attempt to address that which we feel are the salient issues.

Mr. Rubenstein testified that a reclassification of the subject property is necessary because development of same under the existing zoning is not economically feasible. The economic impact of a particular zoning classification, however, is not one of the matters this Board is mandated to consider pursuant to Section 2-58.1 of the County Code. Further, this Board believes economic impact, standing alone, is not sufficient to establish error in a zoning classification.

Mr. Crozier described the physical characteristics of the subject property, to wit, that Pheasant Cross Drive was a mandated road and would bisect the subject property, how such a bisection would impact the subject property and stated that he believed the County Council had committed error by not classifying the subject property DR 16 in its entirety. Mr. Crozier stated that, except for the Bonnie View Country Club Golf Course, all property contiguous to the subject site is zoned DR 16.

Mr. Thaler repeated Mr. Crozier's comments concerning Pheasant Cross Drive, discussed the possible relocation of Smith Avenue and discussed various construction costs. Again, this Board is compelled to comment that despite the obvious concern over construction costs, such is not a matter this Board considers pertinent to a question regarding error by the County Council. Indeed, when People's Counsel produced Mr. Markie to contradict the costs submitted into evidence by Mr. Thaler, this Board asked but one question, "Were these costs presented to or considered by the County Council during the Comprehensive Zoning Process?" The answer was no. Consequently, costs and/or the economic feasibility of development could not have been an issue upon which the County Council erred.

Paul Gambrill, et al
Case No. R-86-108

Mr. Thaler did state, however, on cross-examination, that he believed the County Council erred in not considering the fact that Pheasant Cross Drive shall be constructed across the subject property.

Indeed, this Board believes that, at present, the subject site is land locked, unless Pheasant Cross Drive is constructed as Mr. Thaler suggests.

Mr. Kleinpaste testified that he had reviewed the Planning Board and County Council activity including the log issues during the 1984 Map Process, but had reviewed no testimony concerning same. Mr. Kleinpaste indicated that his studies included demographics, demand for housing in the area, employment growth within the area and the transportation zones. The conclusions of Mr. Kleinpaste suggested error by the County Council by not recognizing the demand for housing, the need for housing for the elderly and the employment growth in the area.

The final witness for the Petitioners, Mr. Gavrellis, stated that there had been no real public input during the 1984 Zoning Map Process. According to the studies of Mr. Gavrellis, only one speaker appeared during the Planning Process and none at the Council hearings. The only opposition voiced at the Council hearings to the DR 16 zone concerned a possible increase in traffic.

Mr. Gavrellis noted that the Planning staff had recommended DR 16 zoning to the County Council and it was apparent to him that this particular issue had received very little scrutiny.

Mr. Gavrellis stated that Bonnie View Country Club to the south and west formed a natural boundary to the subject property, and the extension of Pheasant Cross Drive would link the subject site with the existing high density development areas. Furthermore, according to Mr. Gavrellis, since Baltimore County has mandated the extension of Pheasant Cross Drive, the subject site will, naturally, become an integral part of the DR 16 zoning to the north

Paul Gambrill, et al
Case No. R-86-108

and east of the subject site. Mr. Gavrellis expressed the opinion that the County Council had erred because the subject site, upon the extension of Pheasant Cross Drive, would be at the entrance of a major collector road servicing a high density zone.

In conclusion, Mr. Gavrellis expressed the opinion that the County Council had erred by failing to recognize the employment growth in the area, the extension of Pheasant Cross Drive and the compatibility of the subject site to the surrounding DR 16 zones.

People's Counsel produced Mr. Goldman, Mr. Huster and Mr. Caplan, all of whom complained of increased traffic and the fact that each felt DR 5.5 zoning for the subject property is adequate. Interestingly, however, none of these gentlemen testified during the Comprehensive Zoning Process.

James G. Hoswell, County Planner, stated that the present zoning of the subject property provided a reasonable use for same. Mr. Hoswell, however, in his characteristically candid manner, acknowledged that although DR 5.5 zoning is compatible with the neighborhood, DR 16 zoning is not inconsistent with the Master Plan and, further, that the preferred zoning, from a planning perspective, in 1984 was DR 16. Nevertheless, Mr. Hoswell said that he could not conclude that the County Council had erred.

On cross-examination, Mr. Hoswell stated that he was unable to state the factors considered by the County Council during the 1984 Zoning Map Process, however, as a Planner his recommendation for the subject site at present would be DR 16.

Mr. Alessi advised that he had investigated the area and for the most part his testimony merely confirmed that testimony and evidence previously received concerning the surrounding area. Upon cross-examination, Mr. Alessi demonstrated a lack of knowledge concerning the zoning of the subject site or the area surrounding it.

Paul Gambrill, et al
Case No. R-86-108

The last witness produced by People's Counsel, Frederick F. Klaus, described the physical characteristics of the site and stated that the present zoning of the property would afford a reasonable use for same. He further stated that in his opinion, the County Council had not committed error on the 1984 Zoning Map.

When considering Petitions for Reclassification, this Board is statutorily governed by Section 2-58.1-j (1) & (2) of the County Code which states:

(j) Before any property is reclassified pursuant to this section, the Board of Appeals must find:

- (1) That there has occurred a substantial change in the character of the neighborhood in which the property is located since the property was last classified, or that the last classification of the property was established in error; and
- (2) That the prospective reclassification of the property is warranted by that change or error. Any finding of such a change or error and any finding that the prospective reclassification is warranted may be made only upon consideration of factors relating to the purposes of the zoning regulations and maps, including, but not limited to, all of the following: Population trends; availability and adequacy of present and proposed transportation facilities, water-supply facilities, sewerage, solid waste-disposal facilities, schools, recreational facilities, and other public facilities; compatibility of uses generally allowable under the prospective classification with the present and projected development or character of the surrounding area; any pertinent recommendation of the Planning Board or Office of Planning and Zoning; and consistency of the current and prospective classifications with the master plan, the county plan for sewerage and water-supply facilities, and the capital program.

Clearly, the Petitioners produced a number of excellent witnesses to demonstrate that the County Council erred in not granting DR 16 zoning to the subject site during the 1984 Comprehensive Zoning Process.

Paul Gambrill, et al
Case No. R-86-108

Conversely, People's Counsel, primarily through Mr. Hoswell and Mr. Klaus, attempted to demonstrate that the County Council was correct in zoning the subject site and in fact, the present zoning of same provides for a reasonable use.

It is, however, for this Board to determine whether the County Council committed error. Simply, we believe that the County Council did err by not zoning the subject site DR 16.

We do not believe that because an existing zoning classification provides for a reasonable use, that error may not have occurred. Certainly, in the case at bar the subject property can be reasonably developed within its existing zone, however, we do not believe it feasible to superimpose a lower density zoning upon a higher density zoning.

In this case, the subject property is at the entrance to a high density zone. Pheasant Cross Drive will become a collector road for the high density adjacent properties. We are persuaded that the County Council failed to consider the impact of the Pheasant Cross Drive extension on the subject property. We are also persuaded that the County Council failed to consider the employment growth in the area.

The testimony of Mr. Hoswell and Mr. Klaus, though credible, was nevertheless, we believe, weak. In particular, this Board was impressed by the honesty and integrity of both gentlemen. Each was an expert and testified as such, however, each refused to stray from the facts and, in this case, we believe, the facts clearly demonstrate the inappropriateness of low density zoning for the subject property.

Of course we are familiar with Boyce v Samsby 25 Md. App. 43, 334 A 2d 137 (1975), Coppolino v County Board of Appeals, 23 Md. App. 358, 329 A 2d 55 (1974) and Stratakis v Beauchamp, 268 Md. 643, 304 A 2d 244 (1973).

Paul Gambrill, et al
Case No. R-86-108

We recognize the Petitioners' burden to demonstrate by strong evidence that the zoning was in error and/or that there has been a denial of all reasonable use of the property for any use permitted in the zoning classification. However, we are also persuaded by the language utilized in Missouri Realty v Reamer, 216 Md. 442, (1958) wherein the Court of Appeals stated

"... this case involves an application for reclassification from one residential sub-category to another. In this respect, the situation is, to a certain degree, different from the application to reclassify property zoned as residential to commercial or industrial".

We believe, therefore, that the Court of Appeals intended to apply a more liberal standard when addressing Petitions for Reclassification from one use to a similar use.

Finally, this Board is persuaded that the extension of Pheasant Cross Drive is essential and that the failure to extend same "land locks" the subject property. Since Pheasant Cross Drive shall be extended this Board believes the County Council erred in super-imposing a low density zone at the mouth of a major collector road to a higher density zone.

This Board is also cognizant of the fact that during the Comprehensive Zoning Process the failure of the public to offer input may have led to the error in failing to zone this property DR 16. Obviously, when one studies the topography, the location of the site and its boundaries along a golf course, this Board can understand why, in the absence of public input, the Council may have imposed the existing zone. Simply, however, we believe the Council failed to consider the issues enumerated in this Opinion and did, therefore, err.

For the reasons indicated above, this Board shall grant the Petition for Reclassification.

Paul Gambrill, et al
Case No. R-86-108

ORDER

For the reasons set forth in the foregoing Opinion, it is this 17th day of May, 1986, by the County Board of Appeals, ORDERED that the Petition for Reclassification from DR 5.5 and DR 3.5 to DR 16 be and the same is hereby GRANTED.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett
William T. Hackett, Chairman

William R. Evans
William R. Evans

Patricia E. Frapp
Patricia E. Frapp

inherent in the site; the relocation of Smith Avenue and the recognition that this was an in-fill parcel which had all the necessary infrastructure and school support system as to entitle it to preferred development status.

- The recommendations of rezoning by the Planning Staff and the Planning Board were ignored.
- The argument by People's Counsel that the use of D.R. 5.5 was a reasonable use was unsupported by any probative evidence and therefore there is no basis for People's Counsel's opposition to the reclassification to D.R. 16.

For all the foregoing reasons, Petitioners respectfully request the Board to reclassify the subject property to D.R. 16 zoning.

Respectfully submitted,

Arnold Fleischmann
Arnold Fleischmann

Leslie M. Pittler

34

CERTIFICATE OF SERVICE

This is to certify that on this 26th day of March, 1985, a copy of Petitioners' Memorandum was provided by hand delivery to the Office of People's Counsel for Baltimore County, Towson, Maryland 21204.

Arnold Fleischmann
Arnold Fleischmann

"DUPLICATE" CERTIFICATE OF PUBLICATION

TOWSON, MD., August 22, 1985
THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., appearing on August 22, 1985.

THE JEFFERSONIAN,

18 Kentel
Publisher

Cost of Advertising
33.00

PETITION FOR RECLASSIFICATION 3rd Election District

LOCATION: North side of Smith Avenue at Broadview Road
1250 feet East of the centerline of Edenvale Road

PUBLIC HEARING: Tuesday, September 10, 1985 at 10:00 a.m.

The County Board of Appeals for Baltimore County, by authority of the Baltimore County Charter, will hold a public hearing:
Present Zoning: D.R. 5.5 and D.R. 3.5
Proposed Zoning: D.R. 16

All that parcel of land in the 3rd District of Baltimore County

34.3 ± ACRE PARCEL, NORTH SIDE SMITH AVENUE AT BROADVIEW ROAD,

3RD ELECTION DISTRICT, BALTIMORE COUNTY, MARYLAND.

BEGINNING FOR THE SAME at the intersection of the centerlines of Smith Avenue and Broadview Road, 1250 ± East of the centerline of Edenvale Road, running thence along the centerline of Broadview Road, two courses: (1) N 06° 45' E 265 feet, more or less, and (2) N 03° 30' E 1566 feet, more or less, thence leaving Broadview Road and running the following three courses: (3) S 85° 15' E 314 feet, more or less, (4) S 56° E 749 feet, more or less, (5) S 09° W 1420 feet, more or less, to the centerline of Smith Avenue, thence along the centerline of Smith Avenue (6) N 87° W 822 feet, more or less, to the place of beginning, saving and excepting that portion of the property now zoned "DR 16".

Being the property of Paul Gambrill, et ux
as shown on the plat plan filed with the Zoning Department.

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



MEMORANDUM TO ACCOMPANY PETITION FOR RECLASSIFICATION OF PROPERTY AT SMITH AVENUE & BROADVIEW ROAD

The subject tract comprises several parcels of land under separate ownerships located on the north side of Smith Avenue and the east side of Broadview Road in the Second Councilmanic District of Baltimore County.

DR 3.5 & 3
The subject property is currently zoned DR 5.5 with DR 16 zoning along the east property line which is the existing Bonnie Ridge Apartments; DR 16 along the north property line which is now being developed in townhouses and along the west property line DR 3.5 which is the Bonnie Ridge Golf Course.

This property is now an island or pocket of low density land surrounded essentially by high density zoned land except for the Bonnie Ridge Golf Course which acts as a natural buffer between the subject parcel and the developed low density land located at Old Pimlico Road and Smith Avenue.

The subject property has public utilities either existing in the public streets or abutting the north and east property lines.

The subject property also enjoys frontage on Smith Avenue, a major thoroughfare running generally east and west from Mt. Washington in Baltimore City to Park Heights Avenue east of Pikesville.

From the north, Pheasant Cross Drive abuts the property from Old Pimlico Road. The granting of this reclassification to DR 16 will encourage development to its highest and best use thus making Pheasant Cross Drive a north-south artery linking Smith Avenue to Old Pimlico Road, thereby providing easier, more efficient traffic access for the residents of this area to the Jones Falls Expressway and the Baltimore Beltway.

As a matter of fact, during its last review the Planning Board and the Planning Staff recommended a change to higher density for these parcels of land, recommending DR 16 zoning under Items 2-6, 2-7, 2-14, 2-15, 2-16 and Item 2-59 during the 1984 Comprehensive Zoning Map Review.

In conclusion, the aforesaid facts clearly demonstrate that error was committed during the Comprehensive Zoning Map Process, denying a change of zoning from DR 5.5 to DR 16.

10404 STEVENSON ROAD • STEVENSON, MARYLAND 21153 • (301) 653-0292



DESCRIPTION

34.3 ± ACRE PARCEL, NORTH SIDE SMITH AVENUE AT BROADVIEW ROAD,
3RD ELECTION DISTRICT, BALTIMORE COUNTY, MARYLAND.

This Description is for DR 16 Reclassification from DR 5.5 & 3.5

BEGINNING FOR THE SAME at the intersection of the centerlines of Smith Avenue and Broadview Road, 1250 ± East of the centerline of Edenvale Road, running thence along the centerline of Broadview Road, two courses: (1) N 06° 45' E 265 feet, more or less, and (2) N 03° 30' E 1566 feet, more or less, thence leaving Broadview Road and running the following three courses: (3) S 85° 15' E 314 feet, more or less, (4) S 56° E 749 feet, more or less, (5) S 09° W 1420 feet, more or less, to the centerline of Smith Avenue, thence along the centerline of Smith Avenue (6) N 87° W 822 feet, more or less, to the place of beginning, saving and excepting that portion of the property now zoned "DR 16".

Containing 34.3 acres, more or less.

JJJ/kjr

Feb. 27 1985

10404 STEVENSON ROAD • STEVENSON, MARYLAND 21153 • (301) 653-0292

LEGAL NOTICE

PETITION FOR RECLASSIFICATION 3rd Election District

LOCATION: North side of Smith Avenue at Broadview Road, 1250 feet East of the centerline of Edenvale Road

PUBLIC HEARING: Tuesday, September 10, 1985 at 10:00 a.m.

The County Board of Appeals for Baltimore County, by authority of the Baltimore County Charter, will hold a public hearing:
Present Zoning: D.R. 5.5 and D.R. 3.5
Proposed Zoning: D.R. 16

All that parcel of land in the 3rd District of Baltimore County

34.3 ± ACRE PARCEL, NORTH SIDE SMITH AVENUE AT BROADVIEW ROAD,
3RD ELECTION DISTRICT, BALTIMORE COUNTY, MARYLAND.

BEGINNING FOR THE SAME at the intersection of the centerlines of Smith Avenue and Broadview Road, 1250 ± East of the centerline of Edenvale Road, running thence along the centerline of Broadview Road, two courses: (1) N 06° 45' E 265 feet, more or less, and (2) N 03° 30' E 1566 feet, more or less, thence leaving Broadview Road and running the following three courses: (3) S 85° 15' E 314 feet, more or less, (4) S 56° E 749 feet, more or less, (5) S 09° W 1420 feet, more or less, to the centerline of Smith Avenue, thence along the centerline of Smith Avenue (6) N 87° W 822 feet, more or less, to the place of beginning, saving and excepting that portion of the property now zoned "DR 16".

Being the property of Paul Gambrill, et ux
as shown on the plat plan filed with the Zoning Department.

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

CERTIFICATE OF PUBLICATION

Pikesville, Md., Aug. 21, 1985

TO CERTIFY, that the annexed advertisement was published in the NORTHWEST STAR, a weekly newspaper published in Pikesville, Baltimore

Maryland before the 10th day of

1985

publication appearing on the

day of Aug., 1985

publication appearing on the

day of Aug., 1985

publication appearing on the

day of Aug., 1985

THE NORTHWEST STAR

John Hall
Manager

Cost of Advertisement \$26.00

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. James E. Dyer
Office of Planning and Zoning
Edith T. Eisemann, Adm. Secretary
County Board of Appeals

FROM: _____

SUBJECT: Item #2, Cycle I - 1985; Paul Gambrill, et al

Please include the following name in the above entitled file for notification when the case is set for hearing:

Smith-Greenspring Association, Inc.
c/o Robert Coldman
6601 Pimlico Road
Baltimore, MD 21209
(486-5396)

Thank you.

Edith T. Eisemann
Edith T. Eisemann, Adm. Secretary

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. William Hackett
CHAIRMAN, BOARD OF APPEALS

DATE: March 20, 1985

FROM: Ian J. Forrest

SUBJECT: Reclassification Petitions
CYCLE I - 1985
Meeting of March 6, 1985

The Baltimore County Department of Health has reviewed the following Reclassification Petitions and does not anticipate any health hazards at this time regarding these Petitions.

- Item #1 - Helena D. Gibbons
- Item #2 - Paul Gambrill, et al
- Item #3 - Nelson L. Bond, Jr., et al
- Item #4 - Conservation Associates
- Item #5 - Greater Baltimore Medical Center
- Item #6 - Josef of Vienna, Inc.
- Item #7 - John W. Ruppert, et al

Ian J. Forrest
Ian J. Forrest, Director
BUREAU OF ENVIRONMENTAL SERVICES

RECEIVED
COUNTY BOARD OF APPEALS
MAY 25 P 1:00 E

PAUL GAMBRILL, ET AL.
(Bancroft Homes, C.P. & Melvin Verger, C.P.)
N/S Smith Avenue 1250'
E. from C/ Edenville Road
3rd District
DR 5.5 & DR 3.5 to DR 16
34.3 Acres

Feb. 28, 1985 Petition Filed

Arnold Fleiselman, Esq.
408 Bosley Avenue (21204)
" " "
Leslie M. Pittler, Esq.
Suite 508
28 Allegheny Ave. (21204)

Paul & Henrietta Gambrill
6719 Broadview Rd. (21209)
" " "
Joseph Cary & Barbara L. Mueller
2020 Smith Ave. (21209)

Edward Weitzel
4008 Biddison Lane, Apt. E
Baltimore, MD 21206

Martin P. & Minna F. Scheff
3840 Elmcraft Road
Randallstown, MD 21133

John T. Coady
Guardian of the Estate of
Joseph Lochte
400 Allegheny Avenue (21204)

Linda Cunningham
Route 1, Box 65
Graysonville, MD 21638

Edward A. Feustle
502 Walker Ave. (21212)

James Rubenstein, President
Bancroft Homes, Inc.
10404 Stevenson Road
Stevenson, MD 21153

Melvin Verger
16 Bosley Road
Randallstown, MD 21133

Robert Goldman
Smith-Greenspring Assn., Inc.
6601 Pimlico Road (21209)

Arnold Jablon
Jen M. H. Jung
James E. Dyer
Norman E. Gertner
James G. Hoswell

Phyllis Cole Friedman
People's Counsel

Arthur Chelack
James Earl Kraft
D.C. Board of Education

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 reclassified, pursuant to the Zoning Law of Baltimore County, from an DR5.5 + 0.814 zone to an DR16 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 Error in the original zoning. The County Council committed error in failing to rezone the subject property from DR5.5

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: DR16 on the 1984 Baltimore County Zoning Map. The property is bounded by DR16 zones. Topographically and economically the property cannot be utilized or developed as presently zoned.

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COUNTY BOARD OF APPEALS
MAY 28 1985

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: BANCROFT HOMES, INC. Legal Owner(s):

By: James Rubenstein (Type or Print Name) James Rubenstein (Type or Print Name) President

10404 Stevenson Road (Type or Print Name) Stevenson, Maryland 21153 (Type or Print Name) City and State

Attorneys for Petitioner: Arnold Fleiselman (Type or Print Name) 408 Bosley Ave. (Type or Print Name) City and State

Arnold Fleiselman (Type or Print Name) Baltimore, Maryland 21204 (Type or Print Name) City and State

408 Bosley Ave. (Type or Print Name) City and State

Attorney's Telephone No. 337-7600 Address Phone No.

LESLIE M. PITTIER (Type or Print Name) Suite 508 (Type or Print Name) City and State

28 Allegheny Avenue (Type or Print Name) City and State

296-9220 (Type or Print Name) City and State

296-9220 (Type or Print Name) City and State

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CIRCUIT COURT FOR BALTIMORE COUNTY CIVIL GENERAL

DOCKET 27 PAGE 249 CASE NO. 86CG2109 CATEGORY APPEAL

ATTORNEYS

IN THE MATTER OF THE APPLICATION OF PAUL GAMBRILL, ET AL. FOR ZONING RECLASSIFICATION FROM DR 5.5 and DR 3.5 to DR 16 ON PROPERTY LOCATED ON THE NORTH SIDE OF SMITH AVENUE, 1250 FEET EAST FROM THE CENTER LINE OF EDENVILLE ROAD - 3rd District ZONING FILE NO R-86-108

Phyllis Cole Friedman
Peter Max Zimmerman
Room 223, Court House (04)
494-2188

Jeffrey H. Scherr
Philip M. Andrews
Kramon & Graham
Sun Life Bldg.
Charles Center (01) 752-6030

Arnold Fleiselman
408 Bosley Ave. (04) 337-7600

Leslie M. Pittler
Ste 508
28 Allegheny Ave. (04) 296-9220

BANCROFT HOMES, INC.
PAUL AND HENRIETTA GAMBRILL
JOSEPH GARY
BARBARA MUELLER
EDWARD WEITZEL
MARTIN AND MINNA SCHEFF
JOHN T. COADY
LINDA CUNNINGHAM
EDWARD A. FEUSTLE
MELVIN VERGER

Jeffrey H. Scherr
Philip M. Andrews
Kramon & Graham
Sun Life Bldg.
Charles Center (01) 752-6030

Arnold Fleiselman
408 Bosley Ave. (04) 337-7600

Leslie M. Pittler
Ste 508
28 Allegheny Ave. (04) 296-9220

(1) June 2, 1986 - People's Counsel for Balto. Co.'s Order for Appeal from the Order of the County Board of Appeals of Balto. Co. and Petition for Appeal fd.

(2) June 2, 1986 - Certificate of Notice fd.

(3) July 1, 1986 - App. of Jeffrey H. Scherr, Philip M. Andrews for Appellees and Same Day Answer fd. (and app. of Arnold Fleiselman and Leslie Pittler)

(4) July 1, 1986 - Certificate of Service fd.

(5) July 2, 1986 - Transcript of Record fd.

(6) July 2, 1986 - Notice of Filing of Record fd.

(7) July 2, 1986 App. of Jeffrey M. Scherr and Phillip M. Andrews and Arnold Fleiselman and Leslie M. Pittler as attorneys for the appellee Melvin Verger same day answer fd.

(8) July 2, 1986 Certificate of service fd.

(9) July 1, 1986 Plaintiff's memorandum fd.

(10) Sept. 5, 1986 - Stipulation fd.

(11) Sept 18, 1986 - Stipulation fd.

(12) Sept. 30, 1986 = Appellees Response to People's Counsel's Memorandum fd.

October 20, 1986 Hon. J. William Hinkel. Hearing had. Case held Sub Curia Opinion to be filed.

(13) Dec. 2, 1986 = Memorandum Opinion and Order that case be remanded to the County Board of Appeals fd. (JWH)

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MAY 28 1985

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MAY 28 1985

IN THE MATTER OF THE APPLICATION OF PAUL GAMBRILL, ET AL. FOR ZONING RECLASSIFICATION FROM DR 5.5 and DR 3.5 to DR 16 ON PROPERTY LOCATED ON THE NORTH SIDE OF SMITH AVENUE, 1250 FEET EAST FROM THE CENTER LINE OF EDENVILLE ROAD - 3rd District

PHYLIS C. FRIEDMAN, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, PLAINTIFF

ZONING FILE NO. R-86-108

CG Doc. No. 27
Folio No. 249
File No. 86-CG-2109

CERTIFICATE OF NOTICE

Mr. Clerk: Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, William T. Hackett, William R. Evans and Patricia Phipps, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the appeal to the representative of every party to the proceeding before it; namely, Arnold Fleiselman, Esq., 408 Bosley Ave., Towson, Md. 21204, Counsel for Petitioner; Leslie M. Pittler, Esq., Suite 508, 28 Allegheny Ave., Towson, Md. 21204, Counsel for Petitioner; Paul & Henrietta Gambrill, 6719 Broadview Rd., Baltimore, Md. 21209, Petitioners; Joseph and Barbara Mueller, 2020 Smith Ave., Baltimore, Md. 21209, Petitioners; Edward Weitzel, 4008 Biddison Lane, Apt. E, Baltimore, Md. 21206, Petitioner; Martin and Minna Scheff, 3840 Elmcraft Rd., Randallstown, Md. 21133, Petitioners; John T. Coady, Guardian of the Estate of Joseph Lochte, 400 Allegheny Ave., Towson, Md. 21204, Petitioner; Linda Cunningham, Route 1, Box 65, Graysonville, Md. 21638, Petitioner; Edward A. Feustle, 802 Walker Ave., Baltimore, Md. 21212, Md. 21638, Petitioner; James Rubenstein, President, Bancroft Homes, Inc., 10404 Stevenson Rd., Stevenson, Md. 21153, Contract Purchaser; Robert Goldman, Smith-Greenspring Assn., Inc., 6601 Pimlico Rd., Baltimore, Md. 21209; Jeffrey Scherr, Bancroft Homes, Inc., 10404 Stevenson Rd., Stevenson, Md. 21153; James Earl Kraft, Board of Education, 212 Alghurth Rd., Towson, Md. 21204; and Phyllis Cole

Phyllis Cole Friedman
Peter Max Zimmerman
Room 223, Court House (04)
494-2188

Jeffrey H. Scherr
Philip M. Andrews
Kramon & Graham
Sun Life Bldg.
Charles Center (01) 752-6030

Arnold Fleiselman
408 Bosley Ave. (04) 337-7600

Leslie M. Pittler
Ste 508
28 Allegheny Ave. (04) 296-9220

BANCROFT HOMES, INC.
PAUL AND HENRIETTA GAMBRILL
JOSEPH GARY
BARBARA MUELLER
EDWARD WEITZEL
MARTIN AND MINNA SCHEFF
JOHN T. COADY
LINDA CUNNINGHAM
EDWARD A. FEUSTLE
MELVIN VERGER

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Charles Center (01) 752-6030

Arnold Fleiselman
408 Bosley Ave. (04) 337-7600

Leslie M. Pittler
Ste 508
28 Allegheny Ave. (04) 296-9220

(1) June 2, 1986 - People's Counsel for Balto. Co.'s Order for Appeal from the Order of the County Board of Appeals of Balto. Co. and Petition for Appeal fd.

(2) June 2, 1986 - Certificate of Notice fd.

(3) July 1, 1986 - App. of Jeffrey H. Scherr, Philip M. Andrews for Appellees and Same Day Answer fd. (and app. of Arnold Fleiselman and Leslie Pittler)

(4) July 1, 1986 - Certificate of Service fd.

(5) July 2, 1986 - Transcript of Record fd.

(6) July 2, 1986 - Notice of Filing of Record fd.

(7) July 2, 1986 App. of Jeffrey M. Scherr and Phillip M. Andrews and Arnold Fleiselman and Leslie M. Pittler as attorneys for the appellee Melvin Verger same day answer fd.

(8) July 2, 1986 Certificate of service fd.

(9) July 1, 1986 Plaintiff's memorandum fd.

(10) Sept. 5, 1986 - Stipulation fd.

(11) Sept 18, 1986 - Stipulation fd.

(12) Sept. 30, 1986 = Appellees Response to People's Counsel's Memorandum fd.

October 20, 1986 Hon. J. William Hinkel. Hearing had. Case held Sub Curia Opinion to be filed.

(13) Dec. 2, 1986 = Memorandum Opinion and Order that case be remanded to the County Board of Appeals fd. (JWH)

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MAY 28 1985



Baltimore County, Maryland

PEOPLE'S COUNSEL
RM. 223, COURT HOUSE
TOWSON, MARYLAND 21204
494-2183

PHYLLIS COLE FRIEDMAN
People's Counsel

PETER MAX ZIMMERMAN
Deputy People's Counsel

July 17, 1986

Ms. Irene Summers
Assignment Office
Circuit Court for Baltimore County
County Courts Building
401 Bosley Avenue, P. O. Box 6754
Towson, Maryland 21204-0754

RE: Paul Gambrill, et al. v.
Bancroft Homes, Inc., et al.,
Case No. 86CG2109

Dear Ms. Summers:

I am in receipt of your notice setting the above-referenced case in for hearing on Tuesday, October 7, 1986, at 9:30 a.m. I would appreciate it if you would reschedule this case as this office has a conflict with a previously-scheduled case for the same date.

Thank you in advance.

Sincerely yours,

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

PCF:sh

cc: Arnold Fleischmann, Esquire
Leslie M. Pittler, Esquire
Jeffrey H. Scherr, Esquire
Philip M. Andrews, Esquire
James Rubenstein, President
Bancroft Homes, Inc.
County Board of Appeals

RECEIVED
COUNTY BOARD OF APPEALS
JUL 16 P 2 25

IN THE MATTER OF THE APPLICATION OF PAUL GAMBRILL, ET AL. FOR ZONING RECLASSIFICATION FROM DR 5.5 AND DR 3.5 TO DR 16 ON PROPERTY LOCATED ON THE NORTH SIDE OF SMITH AVENUE, 1250 FEET EAST FROM THE CENTER LINE OF EDENVALE ROAD - 3rd DISTRICT

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW

PHYLLIS C. FRIEDMAN, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, PLAINTIFF

Misc. Doc. No. 27
Folio No. 249

ZONING FILE NO. R-86-108 File No. 86-CG-2109

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

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come William T. Hackett, William R. Evans and Patricia Phipps, constituting the County Board of Appeals of Baltimore County, and in answer to the Order for Appeal directed against them in this case, herewith return the record of proceedings had in the above entitled matter, consisting of the following certified copies or original papers on file in the office of the Zoning Department of Baltimore County:

ZONING ENTRIES FROM DOCKET OF ZONING COMMISSIONER OF BALTIMORE COUNTY

No. R-86-108

February 28, 1985 Petitions of Paul Gambrill, et al. for zoning reclassification from DR 5.5 and DR 3.5 to DR 16, on property located on the north side of Smith Avenue, 1250 ft. east from the center line of Edenvale Rd., in the 3rd District of Baltimore County.
Baltimore City Zoning Plans Advisory Committee - filed
Publication in newspaper - filed

April 12, 1985 Certificate of Posting of property - filed
August 22, 1985

August 23, 1985 At 10:00 A.M. hearing held on petitions by County Board of Appeals.

September 10, 1985 Continued hearing before the Board

October 16, 1985

Paul Gambrill, et al.
Case No. R-86-108

March 12, 1986

May 7, 1986

June 2, 1986

June 2, 1986

June 2, 1986

July 2, 1986

Continued hearing before the Board

Order of the County Board of Appeals ordering that the Petition for Reclassification from DR 5.5 and DR 3.5 to DR 16 be GRANTED.

Order for Appeal filed in the Circuit Ct. for Baltimore County by Phyllis C. Friedman, People's Counsel for Baltimore County.

Petition to accompany Order for Appeal filed in the Circuit Ct. for Baltimore County

Certificate of Notice sent to interested parties

Transcript of testimony filed

Petitioners' Exhibit No. 1 - Resume, Samuel Crozier

" " " 2A - 2B - Aerial photos of site

" " " 3 - Zoning Land Use Map (in Bd's closet)

" " " 4 - Color coded exhibit of Existing Site Conditions (in Bd's closet)

" " " 5 - Elevation Map color coded, (in Bd's closet)

" " " 6 - Slope Analysis Map color coded (in Bd's closet)

" " " 7 - Site Data Chart (in Bd's closet)

" " " 8 - Context Plan - Broadview, (in Bd's closet)

" " " 9 - Broadview sketch of road, (Roll in Bd's closet)

" " " 10 - 9/6/85, Probable Const. costs.

" " " 11 - Resume of Robt. Kleinpaste

" " " 12 - Synopsis of Personnel, Rep. projects, etc.

" " " 13 - Map of Regional Studies prepared by Kleinpaste

Paul Gambrill, et al.
Case No. R-86-108

Petitioners' Exhibit No. 14 - Chart, re change in Housing Units (in Bd's closet)

" " " 15 - Chart re Housing Growth Projection vs Actual (in Bd's closet)

" " " 16A - Age Distribution Chart, (in Bd's closet)

" " " 16B - Age Distribution Source Census 1980.

" " " 17 - Chart of Reg. Planning Districts

" " " 18 - Resume of George Gavrelis

Protestants' Exhibit No. 1 - Petition

People's Counsel's Exhibit No. 1 - Series of documents re issues 1984 zoning maps

" " " 2 - Site data overlay prepared by P.C. (on Pet. Exh. #7 in Board's closet)

" " " 3 - Smith Ave. relocation and widening costs

" " " 4 - 12/31/85 (2 pgs.) Est. of probable construction costs

" " " 5 - Cost of public improvements, DR 5.5 (Bd's closet)

" " " 6 - Gen'l Highway Map of Md. (3d's. closet)

" " " 7 - Gen'l Highway Map of Md. (reproduction in miniature)

" " " 8A, 8B, 8C - Brochures

" " " 9 - Qualification of appraiser, Frederick Klaus

" " " 10A-0 - Photos of subj. site

" " " 11 - Aerial photo of subj. site

" " " 12 - 1000 scale map (zoning)

Paul Gambrill, et al.
Case No. R-86-108

July 2, 1986

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 Zoning Department 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,

Jane Holmen
Jane Holmen
County Board of Appeals of Baltimore County

cc: Arnold Fleischmann, Esq.
Leslie M. Pittler, Esq.
Phyllis C. Friedman



County Board of Appeals of Baltimore County

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

June 2, 1986

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

Dear Mrs. Friedman:

Re: Case No. R-86-108
Paul Gambrill, et al

In accordance with Rule 3-7 (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 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 3-7 (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 Holmen
Jane Holmen, Secretary

Encls.



County Board of Appeals of Baltimore County

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

June 2, 1986

Arnold Fleischmann, Esq.
408 Bosley Avenue
Towson, Md. 21204

Dear Mr. Fleischmann:

Re: Case No. R-86-108
Paul Gambrill, et al

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 Holmen
Jane Holmen, Secretary

Encl.
cc: Leslie M. Pittler, Esq.
Paul & Henrietta Gambrill
Joseph and Barbara Mueller
Edward Weitzel
Martin and Minna Scherr
John T. Coady
Linda Cunningham
Edward A. Reustle
James Rubenstein
Robert Goldman
Jeffrey Scherr
James E. Kraft

Arnold Jablon
Jean Jung
James Dyer
Norman Gerber
James Hoswell

IN THE MATTER OF THE APPLICATION OF PAUL GAMBRILL, ET AL. FOR ZONING RECLASSIFICATION FROM DR 5.5 AND DR 3.5 TO DR 16 ON PROPERTY LOCATED ON THE NORTH SIDE OF SMITH AVENUE, 1250 FEET EAST FROM THE CENTER LINE OF EDENVALE ROAD - 3rd District

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW

CG Docket No. _____
Folio No. _____
File No. _____

NOTICE OF APPEAL

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 May 7, 1986, in the above-captioned matter.

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
JUL 23 A 9 40 E
JUL 23

I HEREBY CERTIFY that on this 2nd day of June, 1986, a copy of the foregoing Notice of Appeal was delivered to the Administrative Secretary, County Board of Appeals, Rm. 200, Court House, Towson, MD 21204; and a copy mailed to Leslie M. Pittler, Esq., Suite 508, 28 Allegheny Ave., Towson, MD 21204; and Arnold Fleischmann, Esq., 408 Bosley Ave., Towson, MD 21204.

Phyllis Cole Friedman
Phyllis Cole Friedman



BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353

ARNOLD JADON
ZONING COMMISSIONER

September 5, 1985

JEAN M. H. JUNG
DEPUTY ZONING COMMISSIONER

Arnold Fleischmann, Esquire
408 Bosley Avenue
Towson, Maryland 21204

Leslie M. Pittler, Esquire
Suite 508, 28 Allegheny Avenue
Towson, Maryland 21204

Re: Petition for Re-Classification
N/S of Smith Avenue at
Broadview Road - 3rd Election District
Paul Gambrell, et ux - Petitioners
Case No. R-86-108 Cycle I - Item # 2

Dear Sirs:

This is to advise you that \$ 676.00 is due for advertising and posting of the above property. This fee must be paid before an Order is issued.

Please make the check payable to Baltimore County, Maryland, and remit to Mrs. Barbara Galliard, Zoning Office, Room 103, County Office Building, Towson, Maryland 21204, before the hearing.

Sincerely,

Arnold Jadon
ARNOLD JADON
Zoning Commissioner

AJ:bg

Arnold Fleischmann, Esquire
408 Bosley Avenue
Towson, Maryland 21204

August 6, 1985

Leslie M. Pittler, Esquire
Suite 508, 28 Allegheny Avenue
Towson, Maryland 21204

NOTICE OF HEARING

RE: Petition for Re-Classification
N/S of Smith Avenue at
Broadview Road - 3rd Election District
Paul Gambrell, et ux - Petitioners
Case No. R-86-108 Cycle I - Item #2

TIME: 10:00 a.m.

DATE: Tuesday, September 10, 1985

PLACE: Room 218, Courthouse, Towson, Maryland

cc: Bancroft Homes, Inc.
James Rubenstein, President
10404 Stevenson Road
Stevenson, Maryland 21153

Smith-Greenspring Association, Inc.
c/o Robert Goldman
6601 Pimlico Road
Baltimore, Maryland 21209

People's Counsel

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

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. James E. Dyer
Office of Planning and Zoning
Edith T. Eisenhart, Adm. Secretary
FROM: County Board of Appeals

Date: June 11, 1985

SUBJECT: Item #2, Cycle I - 1985, Paul Gambrell, et al

Please include the following name in the above entitled file for notification when the case is set for hearing:

Smith-Greenspring Association, Inc.
c/o Robert Goldman
6601 Pimlico Road
Baltimore, MD 21209
(486-5386)

Thank you.

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

PETITION FOR RECLASSIFICATION 3rd Election District

LOCATION: North side of Smith Avenue at Broadview Road
1250 feet East of the centerline of Edenvale

PUBLIC HEARING: Tuesday, September 10, 1985 at 10:00 a.m.

Present Zoning: D.R. 5.5 and D.R. 3.5
Proposed Zoning: D.R. 16

All that parcel of land in the 3rd District of Baltimore County

34.3 + ACRE PARCEL, NORTH SIDE SMITH AVENUE AT BROADVIEW ROAD,

3RD ELECTION DISTRICT, BALTIMORE COUNTY, MARYLAND.

BEGINNING FOR THE SAME at the intersection of the centerlines of Smith Avenue and Broadview Road, 1250 ± East of the centerline of Edenvale Road, running thence along the centerline of Broadview Road, two courses: (1) N 06° 45' E 265 feet, more or less, and (2) N 03° 30' E 1566 feet, more or less, thence leaving Broadview Road and running the following three courses: (3) S 85° 15' E 314 feet, more or less, (4) S 56° E 749 feet, more or less, (5) S 09° W 1420 feet, more or less, to the centerline of Smith Avenue, thence along the centerline of Smith Avenue (6) N 87° W 822 feet, more or less, to the place of beginning, saving and excepting that portion of the property now zoned "DR 16".

Being the property of Paul Gambrell, et ux
as shown on the plat plan filed with the Zoning Department.

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



DESCRIPTION

34.3 + ACRE PARCEL, NORTH SIDE SMITH AVENUE AT BROADVIEW ROAD,

3RD ELECTION DISTRICT, BALTIMORE COUNTY, MARYLAND.

This Description is for DR 16 Reclassification from DR 5.5 @ 3.5

BEGINNING FOR THE SAME at the intersection of the centerlines of Smith Avenue and Broadview Road, 1250 ± East of the centerline of Edenvale Road, running thence along the centerline of Broadview Road, two courses: (1) N 06° 45' E 265 feet, more or less, and (2) N 03° 30' E 1566 feet, more or less, thence leaving Broadview Road and running the following three courses: (3) S 85° 15' E 314 feet, more or less, (4) S 56° E 749 feet, more or less, (5) S 09° W 1420 feet, more or less, to the centerline of Smith Avenue, thence along the centerline of Smith Avenue (6) N 87° W 822 feet, more or less, to the place of beginning, saving and excepting that portion of the property now zoned "DR 16".

Containing 34.3 acres, more or less.

JJJ/kjr

Feb. 27, 1985

FILE COPY

10404 STEVENSON ROAD • STEVENSON, MARYLAND 21153 • (301) 653-0292

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. James E. Dyer
Office of Planning and Zoning
Edith T. Eisenhart, Adm. Secretary
FROM: County Board of Appeals

Date: June 11, 1985

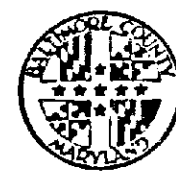
SUBJECT: Item #2, Cycle I - 1985, Paul Gambrell, et al

Please include the following name in the above entitled file for notification when the case is set for hearing:

Smith-Greenspring Association, Inc.
c/o Robert Goldman
6601 Pimlico Road
Baltimore, MD 21209
(486-5386)

Thank you.

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



County Board of Appeals of Baltimore County

Room 200 Court House
Towson, Maryland 21204
(301) 494-2180

July 21, 1987

Howard E. Friedman, Clerk
Court of Special Appeals
of Maryland
Annapolis, MD 21401-1698

RE: Case No. 86-CQ-2109
(Paul Gambrell vs. Bancroft Homes, Inc. et al)

Dear Mr. Friedman:

We would appreciate your noting our request for a copy of the Opinion in the above-entitled case when it is filed by the Court of Special Appeals.

Thank you.

Sincerely,

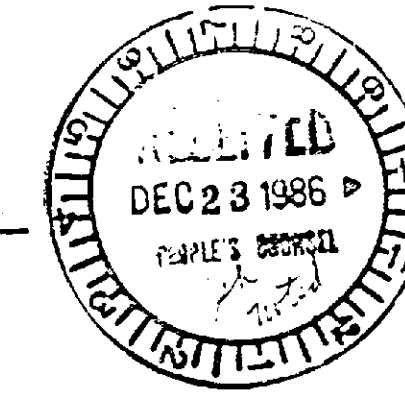
Kathleen C. Weidenhammer
Kathleen C. Weidenhammer
Administrative Secretary

IN THE MATTER OF THE APPLICATION OF PAUL GAMBRELL, ET AL FOR ZONING RECLASSIFICATION FOR DR. 5.5. and DR. 3.5 to DR 16 on property located on the north side of Smith Ave. 1250 feet east from the Center line of Edenvale Road 3rd District Zoning file no R-86-108

IN THE CIRCUIT COURT

FOR

VS.
BANCROFT HOMES, INC.
APUL AND HENRIETTA GAMBRELL
JOSEPH GARY
BARBARA MUELLER
EDWARD WEITZEL
MARTIN AND MINNA SCHEFF
JOHN T. COADY
LINDA CUNNINGHAM
EDWARD A. FEUSTLE
MELVIN VERGER



BALTIMORE COUNTY

DOCKET 27 FOLIO 9

CASE 86CC2109

J. William Hinkel

ON A PLEADING IN THE ABOVE ENTITLED MATTER IS AS FOLLOWS:

Motion to alter or amend and revise judgment (paper #16), request for hearing DENIED.

Motion DENIED.

DATE December 18, 1986

SUZANNE MENSCH
Clerk, Circuit Court
for Baltimore County

cc:

PER Cottie Dovel
Deputy Clerk

Phyllis Cole Friedman Esq.
Peter Max Zimmerman Esq.

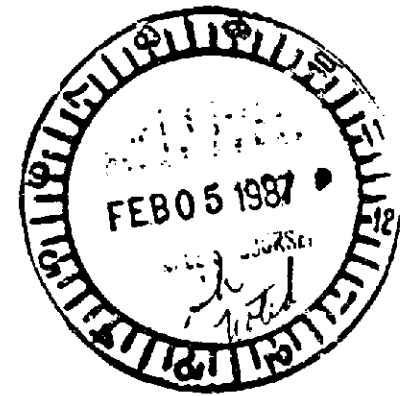
Jeffrey H Scherr Esq.
Philip M Andrews Esq.

Arnold Fleischman Esq.

Leslie M Pittler Esq.

JOHN J. BISHOP
JUDGE
401 BOSLEY AVENUE
TOWSON, MARYLAND 21204
484-2640

February 4, 1987



Nancy E. Paige, Esquire
Gordon, Feinblatt, Rothman,
Hoffberger & Hollander
Garrett Building
233 E. Redwood Street
Baltimore, MD 21202

Phyllis Cole Friedman, Esquire
Peter Max Zimmerman, Esquire
Room 223, Court House
Towson, MD 21204

Paul Gambrell, et al. v. People's
Council for Baltimore County
PHC No. 924, Sept. Term, 1986

Dear Counsel:

This is to confirm that the above captioned
matter has been rescheduled for a prehearing
conference on Monday, February 23, 1987, at 10:00 a.m.

Sincerely yours,

John J. Bishop

JJB:sh

cc: Mr. Howard E. Friedman, Clerk
Court of Special Appeals

To be filled in by Clerk,
Court of Special Appeals

COURT OF SPECIAL APPEALS

OF MARYLAND

CIVIL APPEAL PREHEARING INFORMATION REPORT

PHC NO. _____

NOTICE
Pursuant to Md. Rule
1023 this form must be
completed and sent to
Ct. of Special
Appeals, Court of Ap-
peals Bldg., Annapolis,
Md. 21401

1. Title of case: In The Matter Of The Application Of Paul Gambrell vs. Bancroft
Homes, Inc., et al.
Which party is Appellant in Court of Special Appeals: Bancroft Homes, Inc. Paul and
Henrietta Gambrell, Joseph and Barbara Mueller, Edward Weitzel, Martin and
Minna Scheff, John T. Coady, Linda and Kenneth Cunningham, Edward A.
Feustle and Melvin Verger

2. For Appellant: Jeffrey H. Scherr, Philip M. Andrews (See attachment)
Kramon & Graham, P.A.
Sun Life Bldg., Charles Center, Baltimore, MD 21202
(301) 752-6036

For Appellee: Phyllis C. Friedman and Peter Max Zimmerman
Office of People's Counsel
Suite 900, 409 Washington Avenue, Towson, Maryland 21204
(301) 494-0100

3. Trial court: (Circuit) Court for Baltimore County a. Docket No: 27; Folio: 249
Case No. 86CG2109

b. Non-jury (Appeal from Baltimore County
Zoning Board of Appeals)

4. Type of case (e.g. automobile negligence, breach of contract, domestic, product liability, property dispute, tax,
UDC, zoning, etc.) Zoning

5. Trial In The Circuit Court, the only proceeding was an oral argument, which
lasted approximately 1.5 hours. Presentation of the zoning case at the
a. Duration of trial: Board of Appeals level consumed three (3) days.

b. Number of exhibits in evidence:
At the Zoning Board level, Petitioners Paul Gambrell, et al. had 17
Exhibits. People's Counsel had 12 Exhibits.

6. Judgment
a. Date of judgment being appealed: (If date is other than that shown on docket, please explain.)
December 2, 1986
b. Describe judgment (Attach copy of any written opinion by the trial court.)
The Circuit Court reversed the Zoning Board's decision.
c. Did judgment finally dispose of all claims by and against all parties? If not, please explain why judgment
is appealable. (See Md. Rule 2-602; Courts art. §§12-301, 12-303)
Yes.

d. Was post-judgment motion under Md. Rule 2-533 or 2-534 filed? If so, date of disposition:
Yes; December 18, 1986

7. Date appeal noted:
December 29, 1986
ATTACH COPY OF NOTICE OF APPEAL TO THIS FORM.

BANCROFT HOMES, et al.,
Appellants
v.
PEOPLES COUNCIL OF BALTIMORE
COUNTY
Appellees

IN THE
COURT OF
SPECIAL APPEALS
OF MARYLAND
NO.



ORDER TO ENTER APPEARANCE

Mr. Clerk:

Please enter my appearance, and the appearance of
David H. Fishman, Gordon, Feinblatt, Rothman, Hoffberger &
Hollander, as attorneys for Bancroft Homes, Inc., Paul and
Henrietta Gambrell, Joseph and Barbara Mueller, Edward Weitzel,
Martin and Minna Scheff, John T. Coady, Linda and Kenneth
Cunningham, Edward A. Feustle and Melvin Verger, Appellants.

Nancy E. Paige
Gordon, Feinblatt, Rothman,
Hoffberger & Hollander
Garrett Building
233 E. Redwood Street
Baltimore, Maryland 21202
(301) 576-4234
Attorneys for Appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of February,
1987, a copy of the foregoing Order to Enter Appearance was
mailed first-class, postage prepaid to Phyllis Cole Friedman,
Esquire, Peter Max Zimmerman, Esquire, Room 223 - Court House,

Towson, Maryland 21204, Jeffrey H. Scherr, Esquire, Philip
M. Andrews, Kramon & Graham, P.A., Sun Life Building, Charles
Center, Baltimore, Maryland 21201, Arnold Fleischman, Esquire
408 Bosley Avenue, Towson, Maryland 21204, Leslie M. Pittler,
Esquire, Suite 508, 28 Allegheny Avenue, Towson, Maryland
21204.

Nancy E. Paige



County Board of Appeals of Baltimore County

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

May 7, 1986

Arnold Fleischman, Esq.
408 Bosley Ave.
Towson, Md. 21204

Re: Case No. R-55-108
Paul Gambrell, et al

Dear Mr. Fleischman:

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

Very truly yours,

June Holmen, Secretary

Encl.
cc: Leslie M. Pittler, Esq.
Paul and Henrietta Gambrell
Joseph and Barbara Mueller
Edward Weitzel
Martin and Minna Scheff
John T. Coady
Linda Cunningham
Edward A. Feustle
James Rubenstein
Robert Goldman
James E. Kraft
Arno'd Jablon
Jean Jung
James E. Dyer
Norman E. Gerber
James Howell
Phyllis C. Friedman
Jeffrey Scherr

IN THE MATTER OF THE
APPLICATION OF
PAUL GAMBRILL
Vs.
BANCROFT HOMES, INC.,
ET AL.

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
Case No. 86-CG-2109

ORDER FOR APPEAL

Please enter an appeal in the above captioned action
to the Court of Special Appeals of Maryland on behalf of
appellees Bancroft Homes, Inc., Paul and Henrietta Gambrell,
Joseph and Barbara Mueller, Edward Weitzel, Martin and Minna
Scheff, John T. Coady, Linda and Kenneth Cunningham, Edward A.
Feustle and Melvin Verger from the judgment entered in this
action on December 2, 1986, this Court having denied appellees'
Motion to alter or amend and revise that judgment on December
18, 1986.

Jeffrey H. Scherr
Philip M. Andrews

Kramon & Graham, P.A.
Sun Life Building
Charles Center
Baltimore, Maryland 21201
PHONE: (301) 752-6036

LAW OFFICES
KRAMON & GRAHAM, P.A.
SUN LIFE BUILDING
CHARLES CENTER
BALTIMORE, MD. 21201
(301) 752-6036

IN THE MATTER OF
THE APPLICATION OF
PAUL GAMBRILL, ET AL.
FOR ZONING RECLASSIFICATION
FROM DR 5.5 AND DR 3.5 TO DR 16
ON PROPERTY LOCATED ON THE NORTH
SIDE OF SMITH AVENUE, 1250 FEET
EAST FROM THE CENTER LINE OF
BEECHVALE ROAD - 3rd DISTRICT

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. R-96-108

OPINION

The above captioned matter came before the County Board of
Appeals to consider a Petition for Reclassification of property located on the
north side of Smith Avenue at Broadview Road in the 3rd Election District of
Baltimore County.

The matter is further identified as Item #2 in the 1st
Reclassification Cycle.

This Board heard three full days of testimony, received into
evidence numerous exhibits and, finally, legal memorandums from Petitioners and
People's Counsel.

Petitioners produced as witnesses, James Rubenstein, President
of Bancroft Homes, Samuel Crozier, a Landscape Architect and Land Planner,
David S. Thaler, an Engineer, Robert T. Klempaste, a Real Estate Developer and
George E. Gavallias, former Director of Planning for Baltimore County.

People's Counsel produced as witnesses, Robert Goldman, a
property owner near the subject site, Lawrence Caplan, a property owner within
one-half mile of the subject site, Steve Huster, a property owner residing
across the street from the subject site, James G. Howell, a Planner for
Baltimore County, James A. Markle, Chief, Bureau of Public Services for Baltimore
County, Francis D. Alessi, a Private Investigator and Frederick Klaus, a Real
Estate and Development expert.

Although this Board recognizes the genuine interests each of the witnesses expressed in this matter, we believe it unnecessary to address, at length, the testimony of each. We will, however, in this Opinion, attempt to address that which we feel are the salient issues.

Mr. Rubenstein testified that a reclassification of the subject property is necessary because development of same under the existing zoning is not economically feasible. The economic impact of a particular zoning classification, however, is not one of the matters this Board is mandated to consider pursuant to Section 2-58.1 of the County Code. Further, this Board believes economic impact, standing alone, is not sufficient to establish error in a zoning classification.

Mr. Crozier described the physical characteristics of the subject property, the fact that Pheasant Cross Drive was a mandated road and would bisect the subject property, how such a bisection would impact the subject property and stated that he believed the County Council had committed error by not classifying the subject property DR 16 in its entirety. Mr. Crozier stated that, except for the Bonnie View Country Club Golf Course, all property contiguous to the subject site is zoned DR 16.

Mr. Thaler repeated Mr. Crozier's comments concerning Pheasant Cross Drive, discussed the possible relocation of Smith Avenue and discussed various construction costs. Again, this Board is compelled to comment that despite the obvious concern over construction costs, such is not a matter this Board considers pertinent to a question regarding error by the County Council. Indeed, when People's Counsel produced Mr. Markle to contradict the costs submitted into evidence by Mr. Thaler, this Board asked but one question, "Were these costs presented to or considered by the County Council during the Comprehensive Zoning Process?" The answer was no. Consequently, costs and/or the economic feasibility of development could not have been an issue upon which the County Council erred.

Mr. Thaler did state, however, on cross-examination, that he believed the County Council erred in not considering the fact that Pheasant Cross Drive shall be constructed across the subject property.

Indeed, this Board believes that, at present, the subject site is land locked, unless Pheasant Cross Drive is constructed as Mr. Thaler suggests.

Mr. Kleinpaste testified that he had reviewed the Planning Board and County Council activity including the log issues during the 1984 Map Process, but had reviewed no testimony concerning same. Mr. Kleinpaste indicated that his studies included demographics, demand for housing in the area, employment growth within the area and the transportation zones. The conclusions of Mr. Kleinpaste suggested error by the County Council by not recognizing the demand for housing, the need for housing for the elderly and the employment growth in the area.

The final witness for the Petitioners, Mr. Gavrelis, stated that there had been no real public input during the 1984 Zoning Map Process. According to the studies of Mr. Gavrelis, only one speaker appeared during the Planning Process and none at the Council hearings. The only opposition voiced at the Council hearings to the DR 16 zone concerned a possible increase in traffic.

Mr. Gavrelis noted that the Planning staff had recommended DR 16 zoning to the County Council and it was apparent to him that this particular issue had received very little scrutiny.

Mr. Gavrelis stated that Bonnie View Country Club to the south and west formed a natural boundary to the subject property, and the extension of Pheasant Cross Drive would link the subject site with the existing high density development areas. Furthermore, according to Mr. Gavrelis, since Baltimore County has mandated the extension of Pheasant Cross Drive, the subject site will, naturally, become an integral part of the DR 16 zoning to the north

and east of the subject site. Mr. Gavrelis expressed the opinion that the County Council had erred because the subject site, upon the extension of Pheasant Cross Drive, would be at the entrance of a major collector road servicing a high density zone.

In conclusion, Mr. Gavrelis expressed the opinion that the County Council had erred by failing to recognize the employment growth in the area, the extension of Pheasant Cross Drive and the compatibility of the subject site to the surrounding DR 16 zones.

People's Counsel produced Mr. Goldman, Mr. Huster and Mr. Caplan, all of whom complained of increased traffic and the fact that each felt DR 5.5 zoning for the subject property is adequate. Interestingly, however, none of these gentlemen testified during the Comprehensive Zoning Process.

James G. Hoswell, County Planner, stated that the present zoning of the subject property provided a reasonable use for same. Mr. Hoswell, however, in his characteristically candid manner, acknowledged that although DR 5.5 zoning is compatible with the neighborhood, DR 16 zoning is not inconsistent with the Master Plan and, further, that the preferred zoning, from a planning perspective, in 1984 was DR 16. Nevertheless, Mr. Hoswell said that he could not conclude that the County Council had erred.

On cross-examination, Mr. Hoswell stated that he was unable to state the factors considered by the County Council during the 1984 Zoning Map Process, however, as a Planner his recommendation for the subject site at present would be DR 16.

Mr. Alessi advised that he had investigated the area and for the most part his testimony merely confirmed that testimony and evidence previously received concerning the surrounding area. Upon cross-examination, Mr. Alessi demonstrated a lack of knowledge concerning the zoning of the subject site or the area surrounding it.

The last witness produced by People's Counsel, Frederick P. Klaus, described the physical characteristics of the site and stated that the present zoning of the property would afford a reasonable use for same. He further stated that in his opinion, the County Council had not committed error on the 1984 Zoning Maps.

When considering Petitions for Reclassification, this Board is statutorily governed by Section 2-58.1.1 (1) & (2) of the County Code which states:

(3) Before any property is reclassified pursuant to this section, the Board of Appeals must find:

- (1) That there has occurred a substantial change in the character of the neighborhood in which the property is located since the property was last classified; or that the last classification of the property was established in error; and
- (2) That the prospective reclassification of the property is warranted by that change or error. Any finding of such a change or error and any finding that the prospective reclassification is warranted may be made only upon consideration of factors relating to the purposes of the zoning regulations and maps, including, but not limited to, all of the following: Population trends; availability and adequacy of present and proposed transportation facilities, water-supply facilities, sewerage, solid waste-disposal facilities, schools, recreational facilities, and other public facilities; compatibility of uses generally allowable under the prospective classification with the present and projected development or character of the surrounding area; any pertinent recommendation of the Planning Board or Office of Planning and Zoning; and consistency of the current and prospective classifications with the master plan, the county plan for sewerage and water-supply facilities, and the capital program.

Clearly, the Petitioners produced a number of excellent witnesses to demonstrate that the County Council erred in not granting DR 16 zoning to the subject site during the 1984 Comprehensive Zoning Process.

Conversely, People's Counsel, primarily through Mr. Hoswell and Mr. Klaus, attempted to demonstrate that the County Council was correct in zoning the subject site and in fact, the present zoning of same provides for a reasonable use.

It is, however, for this Board to determine whether the County Council committed error. Simply, we believe that the County Council did err by not zoning the subject site DR 16.

We do not believe that because an existing zoning classification provides for a reasonable use, that error may not have occurred. Certainly, in the case at bar the subject property can be reasonably developed within its existing zone, however, we do not believe it feasible to superimpose a lower density zoning upon a higher density zoning.

In this case, the subject property is at the entrance to a high density zone. Pheasant Cross Drive will become a collector road for the high density adjacent properties. We are persuaded that the County Council failed to consider the impact of the Pheasant Cross Drive extension on the subject property. We are also persuaded that the County Council failed to consider the employment growth in the area.

The testimony of Mr. Hoswell and Mr. Klaus, though credible, was nevertheless, we believe, weak. In particular, this Board was impressed by the honesty and integrity of both gentlemen. Each was an expert and testified as such, however, each refused to stray from the facts and, in this case, we believe, the facts clearly demonstrate the inappropriateness of low density zoning for the subject property.

Of course we are familiar with *Boyce v. Sembly*, 25 Md. App. 43, 334 A 2d 137 (1975), *Coppolino v. County Board of Appeals*, 23 Md. App. 358, 326 A 2d 55 (1974) and *Stratakis v. Beauchamp*, 26P Md. 643, 304 A 2d 244 (1973).

We recognize the Petitioners' burden to demonstrate by strong evidence that the zoning was in error and/or that there has been a denial of all reasonable use of the property for any use permitted in the zoning classification. However, we are also persuaded by the language utilized in *Missouri Realty v. Fearer*, 216 Md. 442, (1958) wherein the Court of Appeals stated

"... this case involves an application for reclassification from one residential sub-category to another. In this respect, the situation is, to a certain degree, different from the application to reclassify property zoned as residential to commercial or industrial."

We believe, therefore, that the Court of Appeals intended to apply a more liberal standard when addressing Petitions for Reclassification from one use to a similar use.

Finally, this Board is persuaded that the extension of Pheasant Cross Drive is essential and that the failure to extend same "land locks" the subject property. Since Pheasant Cross Drive shall be extended this Board believes the County Council erred in super-imposing a low density zone at the mouth of a major collector road to a higher density zone.

This Board is also cognizant of the fact that during the Comprehensive Zoning Process the failure of the public to offer input may have led to the error in failing to zone this property DR 16. Obviously, when one studies the topography, the location of the site and its boundaries along a golf course, this Board can understand why, in the absence of public input, the Council may have imposed the existing zone. Simply, however, we believe the Council failed to consider the issues enumerated in this Opinion and did, therefore, err.

For the reasons indicated above, this Board shall grant the Petition for Reclassification.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 7th day of May, 1986, by the County Board of Appeals, ORDERED that the Petition for Reclassification from DR 5.5 and DR 3.5 to DR 16 be and the same is hereby GRANTED.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett
William T. Hackett, Chairman

William H. Evans
William H. Evans

Patricia Phipps
Patricia Phipps

UNREPORTED IN THE COURT OF SPECIAL APPEALS OF MARYLAND

No. 221,

September Term, 1987

BANCROFT HOMES, INC.,
et al.

-v-

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY

Weant,
Garity,
Bloom,
JJ.

PER CURIAM

SS: [Signature]
Clerk of the Court of Special Appeals

Filed: November 10, 1987

ZONING FILE NO. R-86-108
(Paul Garbrill, et al)



MEMORANDUM TO ACCOMPANY PETITION
FOR RECLASSIFICATION OF
PROPERTY AT SMITH AVENUE & BROADVIEW ROAD

The subject tract comprises several parcels of land under separate ownership, located on the north side of Smith Avenue and the east side of Broadview Road in the Second Councilmanic District of Baltimore County.

DR 3.5 a
The subject property is currently zoned DR 3.5 with DR 16 zoning along the east property line which is the existing Bonnie Ridge Apartments; DR 16 along the north property line which is now being developed in townhouses and along the west property line DR 3.5 which is the Bonnie Ridge Golf Course.

This property is now an island or pocket of low density land surrounded essentially by high density zoned land except for the Bonnie Ridge Golf Course which acts as a natural buffer between the subject parcel and the developed low density land located at Old Pimlico Road and Smith Avenue.

The subject property has public utilities either existing in the public streets or abutting the north and east property lines.

The subject property also enjoys frontage on Smith Avenue, a major thoroughfare running generally east and west from Mt. Washington in Baltimore City to Park Heights Avenue east of Pikesville.

From the north, Pheasant Cross Drive abuts the property from Old Pimlico Road. The granting of this reclassification to DR 16 will encourage development to its highest and best use thus making Pheasant Cross Drive a north-south artery linking Smith Avenue to Old Pimlico Road, thereby providing easier, more efficient traffic access for the residents of this area to the Jones Falls Expressway and the Baltimore Beltway.

As a matter of fact, during its last review the Planning Board and the Planning Staff recommended a change to higher density for these parcels of land, recommending DR 16 zoning under Items 2-6, 2-7, 2-14, 2-15, 2-16 and Item 2-59 during the 1984 Comprehensive Zoning Map Review.

In conclusion, the aforesaid facts clearly demonstrate that error was committed during the Comprehensive Zoning Map Process by denying a change of zoning from DR 3.5 to DR 16.

10404 STEVENSON ROAD • STEVENSON, MARYLAND 21153 • (301) 653-0292



DESCRIPTION

34.3 ± ACRE PARCEL, NORTH SIDE SMITH AVENUE AT BROADVIEW ROAD,

3RD ELECTION DISTRICT, BALTIMORE COUNTY, MARYLAND.

This Description is for DR 16 Reclassification from DR 3.5 & 3.5

BEGINNING FOR THE SAME at the intersection of the centerlines of Smith Avenue and Broadview Road, 1250 ± East of the centerline of Edenvale Road, running thence along the centerline of Broadview Road, two courses: (1) N 06° 45' E 265 feet, more or less, and (2) N 03° 30' E 1566 feet, more or less, thence leaving Broadview Road and running the following three courses: (3) S 85° 15' E 314 feet, more or less, (4) S 56° E 749 feet, more or less, (5) S 09° W 1420 feet, more or less, to the centerline of Smith Avenue, thence along the centerline of Smith Avenue (6) N 87° W 822 feet, more or less, to the place of beginning, saving and excepting that portion of the property now zoned "DR 16".

Containing 34.3 acres, more or less.

JJJ/Kjr

Feb. 27, 1985

10404 STEVENSON ROAD • STEVENSON, MARYLAND 21153 • (301) 653-0292

494-3180

County Board of Appeals

Room 219 Court House

TOWSON, MARYLAND 21204

January 3, 1985

NOTICE OF POSTPONEMENT and REASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH 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-86-108

PAUL GAMBRILL, ET AL

N/S Smith Ave., 1250' E from c/l of Edenvale Rd.

3rd District

DR 3.5 & DR 3.5 to DR 16

The above case, scheduled for hearing on WEDNESDAY, JANUARY 8, 1985, at 10 a.m., has been POSTPONED by the Board, and

REASSIGNED FOR: WEDNESDAY, MARCH 12, 1985, at 10 a.m.

cc: Arnold Fleischman, Esq. Counsel for Petitioner

Leslie M. Pittler, Esq. " " "

Paul & Henrietta Gambrill Petitioners

Joseph Gary & Barbara Mueller " "

Edward Weitzel " "

Martin and Minna Scheff " "

John Coady " "

Linda Cunningham " "

Edward A. Feustel " "

James Rubenstein, Bancroft Homes Contract Purchaser

Melvin Veiger " "

Robert Goldman " "

Jeffrey Scherr Bancroft Homes

James E. Kraft " "

Arnold Jablon " "

Jean Jung " "

James Dyer " "

Norman Gerber " "

James Hoswell " "

Phyllis C. Friedman People's Counsel

June Holmen, Secretary

Arnold Fleischman, Esquire
408 Bosley Avenue
Towson, Maryland 21204

August 6, 1985

Leslie M. Pittler, Esquire
Suite 508, 28 Allegheny Avenue
Towson, Maryland 21204

NOTICE OF HEARING

RE: Petition for Re-Classification
N/S of Smith Avenue at
Broadview Road - 3rd Election District
Paul Gambrill, et al - Petitioners
Case No. R-86-108 Cycle I - Item #2

TIME: 10:00 a.m.

DATE: Tuesday, September 10, 1985

PLACE: Room 218, Courthouse, Towson, Maryland

CAVIER - 9/11/85 - All notified of CONTINUED HEARING set for WEDNESDAY, OCTOBER 16, 1985 at 10 a.m.

10/17/85 - All notified of CONTINUED HEARING set for TUESDAY, NOV. 19, 1985 at 10 a.m.

11/13/85 - All notified of CONTINUED HEARING set for Wednesday, March 12, 1986 at 10 a.m.

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County Board of Appeals of Baltimore County

Room 200 Court House (Hearing Room #218)
Towson, Maryland 21204
(301) 494-3180

September 11, 1985

NOTICE OF ASSIGNMENT

CONTINUED HEARING

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 #59-79

CASE NO. R-86-108

PAUL GAMBRILL, ET AL
(Bancroft Homes, C.P. & Melvin Verger, C.P.)

FOR RECLASSIFICATION FROM DR 5.5 & DR 3.5 to DR 16

N/S SMITH AVENUE 1250' E. FROM C/L EDENVALE ROAD

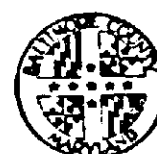
3rd DISTRICT

ASSIGNED FOR:

WEDNESDAY, OCTOBER 16, '85 at 10 a.m.

cc: Arnold Fleischman, Esquire	Counsel for Petitioner
Leslie M. Pittler, Esquire	" " "
Paul and Henrietta Gambrill	Petitioner
Joseph Gary & Barbara L. Mueller	"
Edward Weitzel	"
Martin P. & Minna F. Scheff	"
John T. Coady, Guardian of	"
Estate of Joseph Lochte	"
Linda Cunningham	"
Edward A. Feustle	"
James Rubenstein, President	Contract Purchaser
Bancroft Homes, Inc.	" "
Melvin Verger	
Robert Goldman	Requested Notification
Phyllis Cole Friedman	People's Counsel
Arnold Jablon	
Jean M. H. Jung	
James E. Dyer	
Norman E. Gerber	
James G. Hoswell	

Edith T. Eisenhart, Adm. Secretary



BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353

ARNOLD JABLON
ZONING COMMISSIONER

September 5, 1985

JEAN M. H. JUNG
DEPUTY ZONING COMMISSIONER

Arnold Fleischmann, Esquire
408 Bosley Avenue
Towson, Maryland 21204

Leslie M. Pittler, Esquire
Suite 508, 28 Allegheny Avenue
Towson, Maryland 21204

RE: Petition for RE-Classification
N/S of Smith Avenue at
Broadview Road - 3rd Election District
Paul Gambrill, et ux - Petitioners
Case No. 86-108 Cycle I - Item # 2

Dear Sirs:

This is to advise you that \$ 676.00 is due for advertising and posting of the above property. This fee must be paid before an Order is issued.

Please make the check payable to Baltimore County, Maryland, and remit to Mrs. Barbara Galliard, Zoning Office, Room 109, County Office Building, Towson, Maryland 21204, before the hearing.

Sincerely,

Arnold Jablon
ARNOLD JABLON
Zoning Commissioner

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

No. 012541

DATE	ACCOUNT
AMOUNT	\$ 676.00
RECEIVED FROM:	Bancroft Homes, Inc.
FOR:	Advertising and Posting R-86-108 Item 2
VALIDATION OR SIGNATURE OF CASHIER	

Board of Appeals is also guided by Section 2-58.1(j), (1) & (2) of the County Code. The Code provides:

(j) Before any property is reclassified pursuant to this section, the Board of Appeals must find:

- (1) That there has occurred a substantial change in the character of the neighborhood in which the property is located since the property was last classified, or that the last classification of the property was established in error; and
- (2) That the prospective reclassification of the property is warranted by that change or error. Any finding of such a change or error and any finding that the prospective reclassification is warranted may be made only upon consideration of factors relating to the purposes of the zoning regulations and maps, including, but not limited to, all of the following: Population trends, availability and adequacy of present and proposed transportation facilities, water supply facilities, sewerage, solid waste disposal facilities, schools, recreational facilities, and other public facilities, compatibility of uses generally allowable under the prospective classification with the present and projected development or character of the surrounding area; any pertinent recommendation of the Planning Board of Office of Planning and Zoning; and consistency of the current and prospective classifications with the master plan, the county plan for sewerage and water supply facilities, and the capital program.

Review of the Board's Decision

The Board set forth several factors to support its finding of error.

This Court believes that the Board has properly found that economic impact of a particular zoning classification is

-4-

not appropriate for consideration by the Board pursuant to Section 2-58.1, and that economic feasibility is not an issue of error in this case.

Although Mr. James Markle, Chief, Bureau of Public Services for Baltimore County, and Mr. David Thaler, an Engineer, both testified during the Board's hearing as to various construction costs, these costs were not presented to the County Council. Consequently, as stated by the Board, error by the Council could not be based on the issue of cost.

A large portion of the Board's finding of error is based on the Board's contention that the Council failed to consider the impact of the extension of Pheasant Cross Drive to the subject property. Based on the testimony of Mr. David Thaler (Tr.A p.118) and others, there is a current need to extend Pheasant Cross Drive. However, the question for the Board on review is not whether there currently exists a need for the extension of Pheasant Cross Drive, but whether the Council had this information at the time of its review and failed to consider such information.

Mr. Gavrelis, former Director of Planning for Baltimore County, claimed that the Council erred on the issue of Pheasant Cross Drive, and in support stated the following:

"I reached a personal opinion that the 1984 comprehensive zoning maps were in error because it failed to take into account the consequences of the County mandated extension to Pheasant Cross Drive through these properties and what it meant in terms of how land use should be organized, and it failed to recognize, again, that these properties are a component part, an integral part of the existing high density D.R.16 development and zoning. (Tr.B, pp. 80-81)."

-5-

Mr. Gavrelis' testimony only states that the Council did not account for current consequences of the mandated extension of Pheasant Cross Drive, but this does not demonstrate that the Council failed to consider then existing facts regarding Pheasant Cross Drive. It is important to note that the issue before this Court is not whether substantial change in the character of the neighborhood occurred, but the issue before this Court is whether the Council erred by not considering proper factors at the time of its decision.

The Board furthered its opinion that the Council committed error in regard to the impact of Pheasant Cross Drive, by noting that Mr. James Hoswell, a Planner for Baltimore County, if asked today, would recommend that the site in question be zoned D.R.16. This Court believes that this is not sufficiently strong evidence to show that the Council erred. The issue in this case is not what is appropriate zoning currently, but whether the Council made an appropriate decision based on evidence before the Council.

The Board also based its finding of error on the contention that "it is not feasible to superimpose a lower density zoning upon a higher density zoning". (County Board of Appeals Opinion, p.6). A review of the transcripts reveal that there were contrasting opinions regarding the mixture of high and low density areas. Mr. Gavrelis stated:

"You do not provide a lower density residential zone at the entry along a major collector street that serves essentially high density residential development. (Tr.B, pp. 81)."

-6-

Planner Hoswell stated:

"It is not contrary to sound planning principles to have a number of types of densities and types of zones, not just residential along collectors. (Tr.C, pp.43)."

Based on the Board's finding it appears that the Board was persuaded by Mr. Gavrelis' testimony. This Court duly notes Mr. Gavrelis' testimony, but also takes note that Mr. Hoswell's testimony supports the Council's conclusion. In accordance, this Court believes that there did not exist the strong evidence of mistake needed for the Board to find error and overcome the presumption of correctness in the Council's decision.

The Board also attributes Council's error to the fact that the Council failed to consider employment growth in the area. Both Mr. Kleinpaste, a Real Estate Developer, and Mr. Gavrelis testified regarding this matter. Mr. Kleinpaste's testimony is as follows:

"The round two forecasts which were available to the County Council at the time of the comprehensive rezoning, forecast in this market area over the period from 1985, there would be an increase in employment of 700 jobs. On this site there would be an increase of 3,000 jobs. So, in our opinion an error would have to have been committed." (Tr.B, p.26).

Other testimony by Mr. Kleinpaste confirmed that only Round II figures were available to the Council. His testimony is as follows:

Q. Which figures were available during the year 1984?

A. During the year?

-7-

Q. Yes.

A. During the year, round two was available. The round three figures weren't published until the end of the year. (Tr.B, p.16).

It is clear from the evidence that the Council based its finding on the then existing facts of an increase of 700 jobs, and did not have available to it the figure of 3,000 jobs. This Court finds that the Council did not commit error when it considered the impact of the job increase at the U.S.F. & G. site.

Argument was also raised regarding the Council's error in not considering the shortage of rental property and a need for housing for the elderly in the subject area. Mr. Gavrelis expressed that the Council erred in failing to consider these consequences of the U.S.F. & G. employment growth, as they were reasonably foreseeable (Tr.B, p.88). The test is not simply whether consequences were foreseeable, but rather whether then existing facts were reasonably foreseeable of fruition in the future, making the Council's actions premised initially on a misapprehension. Boyce, 25 Md. App. at 51, citing Bonnie View Club v. Glass, 24q Md. 46, 52-53 (1966). This Court finds no evidence that the Council erred based on the demographic information that was before the Council.

The Board pointed out that Council's error may also have been the result of lack of input from the public. Although only one person, Mr. Plot (attending on behalf of Green Gate Community Association), came to offer his opinion at the public

-8-

hearing. This Court does not believe that this is evidence of the Council's error. In fact, Mr. Plot opposed D.R.16 zoning and recommended D.R.5.5 zoning.

In the final analysis, this Court notes that the Board did not make any specific finding that D.R.5.5 zoning of the subject property is inconsistent with the Master Plan, and that the Board did infer that D.R.5.5 zoning provides for a reasonable use (County Board of Appeals Opinion p.6). The Board effectively considered appropriate factors for reclassification as set forth in Section 258.1 j (1) and (2) of the County Code. However, this Court believes that the evidence before the Board was not the sufficiently strong evidence needed to override the Council's presumption of correctness. Therefore, the Board committed error in reclassifying the subject property.

Based on the above reasoning in this Opinion, it is further the conclusion of this Court that the Board's findings were not fairly debatable and thus should not be upheld.

It is this 1 day of December, 1986, by the Circuit Court for Baltimore County, ORDERED that this case be remanded to the County Board of Appeals for reinstatement of the Council's original zoning of the subject property as D.R. 5.5.

J. WILLIAM HINKEL
JUDGE

-9-

Re: In the Matter of the Application of Paul Gambrell vs. Bancroft Homes, Inc., et al.
Case No. 86-CG-2109

A copy of the foregoing Memorandum Opinion and Order has been mailed to each of the following:

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-10-

PETITION OF
PAUL GAMBRILL, ET AL
FOR RECLASSIFICATION
OF PROPERTY
* * * * *
* * * * *

BEFORE THE
COUNTY BOARD OF APPEALS
FOR
BALTIMORE COUNTY
Case No. R86-108

PETITIONER'S MEMORANDUM

INTRODUCTORY STATEMENT

This case is a petition for the reclassification of several parcels of land zoned D.R. 5.5 to D.R. 16 as the requested zoning. The contract purchaser of the site, Bancroft Homes, has signed all of the petitions along with the various property owners. The site consists of about 34.5 acres located on the north side of Smith Avenue, 1250' east of Edenvale Road. It adjoins the Bonnie View Country Club on the south; Wise Avenue and Broadview Road on the west; Falls II and III (zoned D.R. 16) on the north; and the Bonnie Ridge Apartments (zoned D.R. 16) on the east. The property for all practical purposes is zoned D.R. 5.5.

The site was represented as individual parcels of the various owners on the 1984 Comprehensive Zoning Map before the Baltimore County Planning Board and the Baltimore County Council as Issues #2-6, 2-7, 2-14, 2-15, 2-16, 2-28 and 2-59 which were the assembled parcels.

1