

RECEIVED

File

COPY: J. Robert Haines SEP 30 1987

RECEIVED  
COUNTY BOARD OF APPEALS

ZONING OFFICE 1987 SEP 29 P 3:25

PEOPLE'S COUNSEL FOR  
BALTIMORE COUNTY

Appellant

v.

J. DARWIN ROSS, TRUSTEE,  
et al.

Appellees

(ZONING FILE NO. R-87-263-A) \*

\* IN THE  
\* CIRCUIT COURT  
\* FOR  
\* BALTIMORE COUNTY  
\* Case No.: 87-CG-2302  
\* Docket: 40  
\* Page: 372

\*\*\*\*\*

ORDER

Upon consideration of the Stipulation reached in open court by all parties to this case, it is this 22<sup>nd</sup> day of September, 1987, by the Circuit Court for Baltimore County hereby

ORDERED that the Order of the County Board of Appeals of Baltimore County (the "Board") in Zoning Case No. R-87-263-A granting the requested reclassification from M.L.-C.S.1 and M.L.-I.M. to B.R.-C.S.1. and B.R.-I.M., a copy of which is attached, is hereby affirmed.

AND IT IS FURTHER ORDERED that by further stipulation of all parties that one sentence marked at page 2 of the attached Opinion of the Board shall be stricken, in that it is not supported by evidence in the Record.

JUDGE JAMES S. SPEKAS

FILED SEP 22 1987

RECEIVED  
COUNTY BOARD OF APPEALS  
1987 SEP 29 P 3:25

PEOPLE'S COUNSEL FOR  
BALTIMORE COUNTY

Appellant

v.

J. DARWIN ROSS, TRUSTEE,  
et al.

Appellees

(ZONING FILE NO. R-87-263-A)

\* IN THE  
\* CIRCUIT COURT  
\* FOR  
\* BALTIMORE COUNTY  
\* Case No.: 87-CG-2302  
\* Docket: 40  
\* Page: 372

ORDER

Upon consideration of the Stipulation reached in open court by all parties to this case, it is this 22<sup>nd</sup> day of September, 1987, by the Circuit Court for Baltimore County hereby

ORDERED that the Order of the County Board of Appeals of Baltimore County (the "Board") in Zoning Case No. R-87-263-A granting the requested reclassification from M.L.-C.S.1 and M.L.-I.M. to B.R.-C.S.1 and B.R.-I.M., a copy of which is attached, is hereby affirmed.

AND IT IS FURTHER ORDERED that by further stipulation of all parties that one sentence marked at page 2 of the attached Opinion of the Board shall be stricken, in that it is not supported by evidence in the Record.

JUDGE JAMES S. HOFFMAN

FILED SEP 22 1987

IN RE: \* BEFORE THE  
\* COUNTY BOARD OF APPEALS  
\* OF BALTIMORE COUNTY  
\* Case No.: R-87-263-A

MEMORANDUM OF LAW

Circuit City Stores, Inc. ("Circuit City"),  
Petitioner, by John B. Howard, Robert A. Hoffman with  
Cook, Howard, Downes & Tracy, its attorneys, hereby files  
this Memorandum of Law and respectfully submits that  
reasonable alternative uses of the subject property in its  
present zoning classification does not prohibit this Board  
from granting the subject Petition.

The Maryland Court of Appeals in Rohde v. County Board of Appeals, 234 Md. 259 (1964) determined that where property can be used in its original zoning classification, such fact is not enough to bar reclassification where error can be shown. The Court stated at pp. 266 - 267 of its opinion the following:

They also lay stress on the fact, which is conceded, that the property can be used under its R-6 Classification. That alone is not, however, an absolute bar to reclassification. Zoning is not static. Missouri Realty, Inc. v. Ramer, supra, 216 Md. at 447. It is nevertheless necessary to show error in original zoning or in its

equivalent, comprehensive rezoning, or a subsequent change in conditions, although the change in classification be from one residential use to another. (Reese v. Mandal, 224 Md. 121, 167 A.2d 111; Levy v. Seven Slade, Inc., 234 Md. 145, 198 A.2d 267) . . . (Emphasis added).

As in the Rohde case, this Board should grant the subject reclassification if error is proven even though reasonable use could be made of the property under its existing zoning classification.

Respectfully submitted,

JOHN B. HOWARD

ROBERT A. HOFFMAN  
Cook, Howard, Downes & Tracy  
210 Allegheny Avenue  
P.O. Box 5517  
Towson, Maryland 21204  
301-823-4111  
Attorneys for the Petitioner

CERTIFICATION OF SERVICE

I HEREBY CERTIFY that on this 16<sup>th</sup> day of April, 1987, a copy of the foregoing Petition for Reclassification was delivered to Phyllis Cole Friedman, Esquire, Peoples Counsel, Second Floor, Old Courthouse, Towson, Maryland 21204.

ROBERT A. HOFFMAN

2

IN THE MATTER OF  
J. DARWIN ROSS, TRUSTEE, ET AL  
(Trust under will of C. Boyd Ross)  
CASE NO. R-87-263-A  
RE: REQUEST FOR AMENDED OPINION/ORDER

COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY

DISSENTING OPINION

I respectfully dissent from the decision of my colleagues wherein they refuse to revise the Opinion and Order of this Board dated May 12, 1987. I am in agreement with the majority that the zoning reclassification requested in this matter should be granted. However, a re-reading of the Board's Opinion and Order dated May 12, 1987 convinces me that the Board mistakenly identified the basis upon which such a reclassification should be granted.

It is clear from the testimony before this Board that the site was not considered for rezoning during the last comprehensive zoning process. Specifically, contained within the Report to this Board from the Baltimore County Planning Board dated January 29, 1987, it is noted that the property has had an M.L. classification since before 1984 and that "during the preparation and processing of the map, the zoning of the property was not identified as a specific issue before either the Planning Board or the County Council."

Testimony produced at a hearing before this Board discloses an increasing trend in the immediate area adjacent to and surrounding this site from industrial uses to commercial uses. This trend is of a long-standing nature. Additional testimony indicated that the site is losing its ability to support industrial uses due to the traffic patterns within the area, the land-locked limited access to the site, and the general physical layout of the site. These trends are of long-standing but of increasing intensification.

In my view, therefore, failure of the County Council to adopt a commercial classification for this property during the 1984 zoning map process constituted

J. Darwin Ross, Trustee, et al  
Case No. R-87-263-A

Dissenting Opinion  
2.

error in that the Council did not recognize the increasing changes both surrounding and on this site. These changes have continued steadily since the adoption of the 1984 Map and continue to form a basis to justify reclassifying the property as petitioned.

I would therefore grant the Petitioner's Motion for Revision and Reconsideration so as to grant the petition for the reasons set forth herein.

COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY

Lawrence E. Schmidt

Date: June 12, 1987

IN THE MATTER OF  
J. DARWIN ROSS, TRUSTEE, ET AL  
(Trust under will of C. Boyd Ross)  
CASE NO. R-87-263-A  
RE: REQUEST FOR AMENDED OPINION/ORDER

COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY

This matter comes before this Board on request for a revision of the Board's Opinion and Order dated May 12, 1987, from the Attorney for the Petitioner. The Board has reviewed the evidence in the case and its Opinion and Order. The Board will deny the request for an amended order.

Rule 10 of Appendix C of the Baltimore County Code entitled, "Rules of Practice and Procedure of County Board of Appeals," states:

"Within thirty (30) days after the entry of an order, the board shall have revisory power and control over the order in the event of fraud, mistake or irregularity."

The Board in its discretion can find no evidence of fraud, mistake or irregularity in the Opinion and Order as issued and will therefore deny the request.

It is therefore this 12th day of June, 1987, by the County Board of Appeals ORDERED that the request for a revision be DENIED.

Since the denial of this request in no way alters or changes the original Opinion and Order, the date from which an appeal may be taken will remain the date of the original Order and not the date of this denial.

COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY

William T. Hackett, Chairman

Leroy B. Spurr

LAW OFFICES  
COOK, HOWARD, DOWNES & TRACY  
210 ALLEGHENY AVENUE  
P.O. BOX 5517  
TOWSON, MARYLAND 21204

August 28, 1986

JAMES H. COOK  
JOHN B. HOWARD  
DANIEL G. TRACY, JR.  
JOHN R. ZIM, JR.  
JOSEPH E. WICK, JR.  
HERBERT S. O'CONNOR, III  
THOMAS E. HUDSON  
C. GAREY DELEY, JR.  
H. WIDE HILL, JR.

ROBERT A. HOFFMAN  
LAWRENCE E. SCHMIDT  
DEBORAH C. JOHNSON  
CHRISTOPHER R. JAMES  
ANTHONY R. BLOOMFIELD, COO.  
KEVIN H. SMITH  
A. THOMAS BRENNAN  
H. BARRY PETERSON, JR.

JAMES D. C. DOWNES  
(301-823-4111)  
TELEPHONE  
(301) 823-4111  
TELECOPIER  
(301) 823-0147

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

RE: Petition for Reclassification and Variances  
Property located 332 ft. north of the intersection of Pulaski Highway and Rossville Boulevard  
Existing Zoning: M.L.-C.S.-1, M.L.-I.M. and B.R.-C.S.-1  
Proposed Zoning: B.R.-C.S.-1 and B.R.  
Circuit City Stores, Inc., Petitioner

Dear Board Members:

This firm represents Circuit City Stores, Inc. (hereinafter "Circuit City") in its Petition for Reclassification and Variances on property located on Pulaski Highway (U.S. Route 40) 332 ft. from the intersection of Rossville Boulevard and Pulaski Highway.

A review of the 200 and 1000 scale zoning maps shows that this property is bounded on the south by property zoned B.R.-C.S.-1, on the southeast by the CSX Railroad right-of-way, on the east by Pulaski Highway and on the north by property zoned M.L.-C.S.-1. The subject property is also in immediate proximity to Golden Ring Mall and other commercially zoned property to the east on Pulaski Highway.

To leave the subject property in the ML zone serves no sound planning purpose and was an error on the 1984 Comprehensive Map.

Except for some small "pockets" of industrially zoned land, the south side of Pulaski Highway west of the subject property (toward the Beltway) has substantial commercial zoning with a depth that extends to the CSX Railroad right-of-way.

The County Board of Appeals  
of Baltimore County  
August 28, 1986  
Page 2

Also, on the opposite corner of Pulaski Highway is land zoned B.R.-C.S.-2 with adequate depth for commercial development. Logically, the B.R. zone should be extended east to encompass the subject site at the same depth as the commercial sites to the west.

With regard to the variances, should the Board of Appeals be favorably disposed to the Petition for Reclassification, the development of a commercial use on this property would require side and rear yard setbacks of 20 ft. in lieu of the required 30 ft.

In order to provide adequate retail space and because of the shape of the site and the need for adequate parking, any building must be placed closer to the side and rear property than would be permitted under the B.R. area regulations. Therefore, to meet the setbacks in the B.R. zone would cause an undue hardship and practical difficulty upon the Petitioner and the Variances should be granted.

For the foregoing reasons it is respectfully requested that the Petition for Reclassification and Variances be granted.

Yours truly,

John B. Howard

JBH/dmh

J. DARWIN ROSS, TRUSTEE, ET AL  
SE/s Pulaski Highway, 332' E of r/w  
filllet to the E/s Rossville Boulevard  
M.L.-C.S.-1 and M.L.-I.M. to  
B.R.-C.S.-1 and B.R.-I.M. and var from  
\$238.1 and \$238.2 to permit setbacks of  
20' in lieu of required 50' and 30'  
respectively. (not documented)

#3-87-263-A  
Item #16, Cycle IV, 1986-87  
15th Election District  
7.61 acres

September 2, 1986 Petition filed.  
April 16, 1987 Hearing held before CBA.  
May 12 Board GRANTED reclassification; DISMISSED variance.  
June 11 Order for Appeal filed in CCT, BCo by People's Counsel.  
June 11 Petition to accompany Order for Appeal filed.  
June 15 Certificate of Notice sent.  
June 22 Record of Proceedings filed in Circuit Court, BCo.  
June 22 Board DENIED Request for Amended Opinion/Order from  
John B. Howard, Esquire (Counsel for Petitioner (Hackett, Spurrier)  
Dissenting Opinion (Schmidt)  
Sept 14 Hearing had in Circuit Court before Judge Sfekas.  
Sept 22 Circuit Court AFFIRMED CB of A (Sfekas).

Baltimore County  
Zoning Commissioner  
Office of Planning & Zoning  
Towson, Maryland 21204  
494-3333  
Arnold Jablon  
Zoning Commissioner

May 11, 1987

John B. Howard, Esquire  
210 Allegheny Avenue  
Towson, Maryland 21204

RE: PETITION FOR ZONING RECLASSIFICATION  
SE/S Pulaski Highway, 332' E of R/W Fillet to the  
E/S Rossville Blvd.  
15th Election District - 6th Councilmanic District  
Trust Under Will of C. Boyd Ross - Petitioner  
Case No. R-87-263-A

Dear Mr. Howard:

A review of our records reveals that your client, Circuit City  
Stores, Inc., has not reimbursed the Zoning Office for advertising and  
posting costs which it has expended regarding this case. Please  
have your client issue a check in the amount of \$309.79, payable to  
"Baltimore County, Maryland", and remit same to the attention of Miss  
Margaret E. du Bois, Zoning Office, Room 113, County Office Building,  
111 West Chesapeake Avenue, Towson, Maryland 21204.

Failure on your part to comply with this request will result in  
my being forced to refer this matter to the Baltimore County Office of Law  
for collection.

Very truly yours,

Arnold Jablon  
ARNOLD JABLON  
Zoning Commissioner

AJ:med

c.c. Mr. Donald L. Chasen, Assistant  
Vice President  
Circuit City Stores, Inc.  
2040 Thalbro Street  
Richmond, Virginia 23230

bl. c.c. Mr. William T. Hackett, Chairman  
County Board of Appeals



Dennis F. Rasmussen  
County Executive



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

ARNOLD JABLON  
ZONING COMMISSIONER

JEAN M. H. JUNG  
DEPUTY ZONING COMMISSIONER

April 13, 1987

John B. Howard, Esquire  
210 Allegheny Avenue  
Towson, Maryland 21204

RE: PETITION FOR ZONING RECLASSIFICATION  
SE/S Pulaski Highway, 332' E of R/W Fillet to the  
E/S Rossville Blvd.  
15th Election District - 6th Councilmanic District  
Trust Under Will of C. Boyd Ross - Petitioner  
Case No. R-87-263-A

Dear Mr. Howard:

This is to advise you that \$309.79 is due for advertising  
and posting of the above property. This fee must be paid before an  
Order is issued.

THIS FEE MUST BE PAID AND THE RECLASSIFICATION SIGN AND POST  
RETURNED TO THE BALTIMORE COUNTY ZONING OFFICE ON THE DAY OF  
THE BOARD OF APPEALS' HEARING OR THE ORDER WILL NOT BE ISSUED.

Please make your check payable to "Baltimore County, Maryland"  
and remit it to Ms. Margaret E. du Bois, Zoning Office, Room 113,  
County Office Building, Towson, Maryland 21204, before the hearing.

Sincerely,

Arnold Jablon  
ARNOLD JABLON  
Zoning Commissioner

AJ:med

cc: Mr. William T. Hackett  
Chairman  
Board of Appeals for Baltimore County

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

FEB 12 1987

TO: Pette du Bois - Zoning

Date: February 11, 1987

FROM: Kathi Weidenhammer  
Item #12, Cycle IV - R-87-263-A  
Jane I. Purinton  
SUBJECT:

As you requested, attached is a copy of the letter of withdrawal  
which we received yesterday from Rob Hoffman re the subject reclassification  
case. Please note that this case was set for hearing on Thursday, April 16  
at 10:00 a.m.

As a result of this withdrawal and at the request of Rob Hoffman,  
the following change has been made:

Item #16, IV FROM: TO:  
R-87-263-A J. Darwin Ross, Trustee et al Tues 5/19/87 Thurs 4/16/87

Any questions, please call me.

Attachment

PETITION FOR RECLASSIFICATION

Case No. R-87-263-A

LOCATION: Southeast Side of Pulaski Highway, 332 feet East of the Right-of-Way  
Fillet to the East Side of Rossville Boulevard

PUBLIC HEARING: Thursday, April 16, 1987, 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:

To reclassify the property from an M.L.-I.M. and M.L.-C.S. 1 Zone to a  
B.R.-C.S. 1 and B.R.-I.M. Zone

All that parcel of land in the 15th Election District of Baltimore County

Point of beginning being located on the south side of Pulaski Highway easterly  
332 feet ± from the intersection of the east side of Rossville Boulevard with the  
south side of Pulaski Highway thence in a clockwise direction:

1. R = 2,789.79 feet ±, L = 337.10 feet ± Chord = North 70° 00' East  
336.52 feet ±
2. South 61° 41' East 354.65 feet ±
3. South 59° 48' East 80.32 feet ±
4. South 55° 47' West 1,002 feet ±
5. North 41° 13' 24" West 36.82 feet ±
6. North 37° 21' 25" West 256 feet ±
7. North 52° 29' 49" East 110 feet ±
8. South 70° 48' East 54.13 feet ± and
9. North 20° 17' East 388.3 feet ± to the place of beginning.  
Containing 7.7 acres of land more or less.  
Saving and excepting that portion presently zoned BR-CS-1.

Being the property of Trust Under Will of C. Boyd Ross  
as shown on the plat plan filed with the Zoning Department.

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

LAW OFFICES

COOK, HOWARD, DOWNES & TRACY  
210 ALLEGHENY AVENUE  
P.O. BOX 5517  
TOWSON, MARYLAND 21204

August 28, 1986

JAMES H. COOK  
JOHN B. HOWARD  
DAVID D. DOWNES  
DANIEL G. TRACY, JR.  
JOSEPH E. WICK, JR.  
HENRY B. PECK, JR.  
THOMAS L. HUDSON  
C. CARLY GILLEY, JR.  
H. RAND HILL, JR.

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

RE: Petition for Reclassification and Variances  
Property located 332 ft. north of the intersec-  
tion of Pulaski Highway and Rossville Boulevard  
Existing Zoning: M.L.-C.S.-1, M.L.-I.M. and  
B.R.-C.S.-1  
Proposed Zoning: B.R.-C.S.-1 and B.R.  
Circuit City Stores, Inc., Petitioner

Dear Board Members:

This firm represents Circuit City Stores, Inc.  
(hereinafter "Circuit City") in its Petition for Reclassifica-  
tion and Variances on property located on Pulaski Highway (U.S.  
Route 40) 332 ft. from the intersection of Rossville Boulevard  
and Pulaski Highway.

A review of the 200 and 1000 scale zoning maps shows  
that this property is bounded on the south by property zoned  
B.R.-C.S.-1, on the southeast by the CSX Railroad right-of-way,  
on the east by Pulaski Highway and on the north by property  
zoned M.L.-C.S.-1. The subject property is also in immediate  
proximity to Golden Ring Mall and other commercially zoned  
property to the east on Pulaski Highway.

To leave the subject property in the ML zone serves no  
sound planning purpose and was an error on the 1984 Comprehen-  
sive Map.

Except for some small "pockets" of industrially zoned  
land, the south side of Pulaski Highway west of the subject  
property (toward the Beltway) has substantial commercial zoning  
with a depth that extends to the CSX Railroad right-of-way.

The County Board of Appeals  
of Baltimore County  
August 28, 1986  
Page 2

Also, on the opposite corner of Pulaski Highway is land zoned  
B.R.-C.S.-2 with adequate depth for commercial development.  
Logically, the B.R. zone should be extended east to encompass  
the subject site at the same depth as the commercial sites to  
the west.

With regard to the variances, should the Board of  
Appeals be favorably disposed to the Petition for Reclassifica-  
tion, the development of a commercial use on this property  
would require side and rear yard setbacks of 20 ft. in lieu of  
the required 30 ft.

In order to provide adequate retail space and because  
of the shape of the site and the need for adequate parking, any  
building must be placed closer to the side and rear property  
lines than would be permitted under the B.R. area regulations.  
Therefore, to meet the setbacks in the B.R. zone would cause an  
undue hardship and practical difficulty upon the petitioner and  
the Variances should be granted.

For the foregoing reasons it is respectfully requested  
that the Petition for Reclassification and Variances be  
granted.

Yours truly,

John B. Howard

JBH/dmh

LAW OFFICES  
COOK, HOWARD, DOWNES & TRACY  
210 ALLEGHENY AVENUE  
P.O. BOX 5517  
TOWSON, MARYLAND 21204

August 28, 1986

JAMES H. COOK  
JOHN B. HOWARD  
DAVID D. DOWNES  
DANIEL G. TRACY, JR.  
JOSEPH E. WICK, JR.  
HENRY B. PECK, JR.  
THOMAS L. HUDSON  
C. CARLY GILLEY, JR.  
H. RAND HILL, JR.

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

RE: Petition for Reclassification and Variances  
Property located 332 ft. north of the intersec-  
tion of Pulaski Highway and Rossville Boulevard  
Existing Zoning: M.L.-C.S.-1, M.L.-I.M. and  
B.R.-C.S.-1  
Proposed Zoning: B.R.-C.S.-1 and B.R.  
Circuit City Stores, Inc., Petitioner

Dear Board Members:

This firm represents Circuit City Stores, Inc.  
(hereinafter "Circuit City") in its Petition for Reclassifica-  
tion and Variances on property located on Pulaski Highway (U.S.  
Route 40) 332 ft. from the intersection of Rossville Boulevard  
and Pulaski Highway.

A review of the 200 and 1000 scale zoning maps shows  
that this property is bounded on the south by property zoned  
B.R.-C.S.-1, on the southeast by the CSX Railroad right-of-way,  
on the east by Pulaski Highway and on the north by property  
zoned M.L.-C.S.-1. The subject property is also in immediate  
proximity to Golden Ring Mall and other commercially zoned  
property to the east on Pulaski Highway.

To leave the subject property in the ML zone serves no  
sound planning purpose and was an error on the 1984 Comprehen-  
sive Map.

Except for some small "pockets" of industrially zoned  
land, the south side of Pulaski Highway west of the subject  
property (toward the Beltway) has substantial commercial zoning  
with a depth that extends to the CSX Railroad right-of-way.

ORIGINAL COPY

# 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 ML-IM and ML-CS-1 zone to an BR-CS-1 and BR-IM 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,

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: Section 238.1 to permit a 20-foot setback in lieu of the required 50 ft. and Section 238.2 to permit side and rear yard setbacks of 20 ft. in lieu of the required 50 ft.

MAP NE 44  
4B  
E.D. 154  
DATE 6-14-87  
200 BF  
1000 CF  
DP

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 Purchase: 1. Trust under will of C. Boyd Ross  
Legal Owner(s):

Circuit City Stores, Inc. 2. J. Darwin Ross, and as Trustee  
(Type or Print Name)

Signature By: Donald L. Chasen, Asst. V.P. Signature

2040 Thalbro Street V.P. Twila Louise Bilger and as Trustee  
Address

Richmond, Virginia 23230 Signature

City and State

Attorney for Petitioner: c/o Baker & Baker, P.A.  
John B. Howard, Esquire 10 Charles Plaza - Suite 200  
(Type or Print Name) Baltimore, Maryland 21201

Address: (301) 837-3737 Phone No.

210 Allegheny Avenue  
Address

Towson, MD 21204  
City and State

Attorney's Telephone No.: 823-4111 210 Allegheny Avenue, Towson, MD 21204  
Address Phone No.

Address

Address

Address

Address

Address

Address

Address

Address

Address

Address

Address

Address

Address

Address

Address

Address

Address

Address

Address

Address

Address

Address

Address

Address

Address

Address

Address

Address

Address

Address

Address

Address

Address

Address

Address

Address

Address

Address

Address

Address

Address

Address

Address

Address

Address

Address

Address

Address

Address

Address

Address

Address

FROM THE OFFICE OF  
GEORGE WILLIAM STEPHENS, JR. & ASSOCIATES, INC.  
ENGINEERS  
303 ALLEGHENY AVENUE, TOWSON, MARYLAND 21204

Description to Accompany A Petition  
For A Zoning Reclassification and Variances.

August 27, 1986

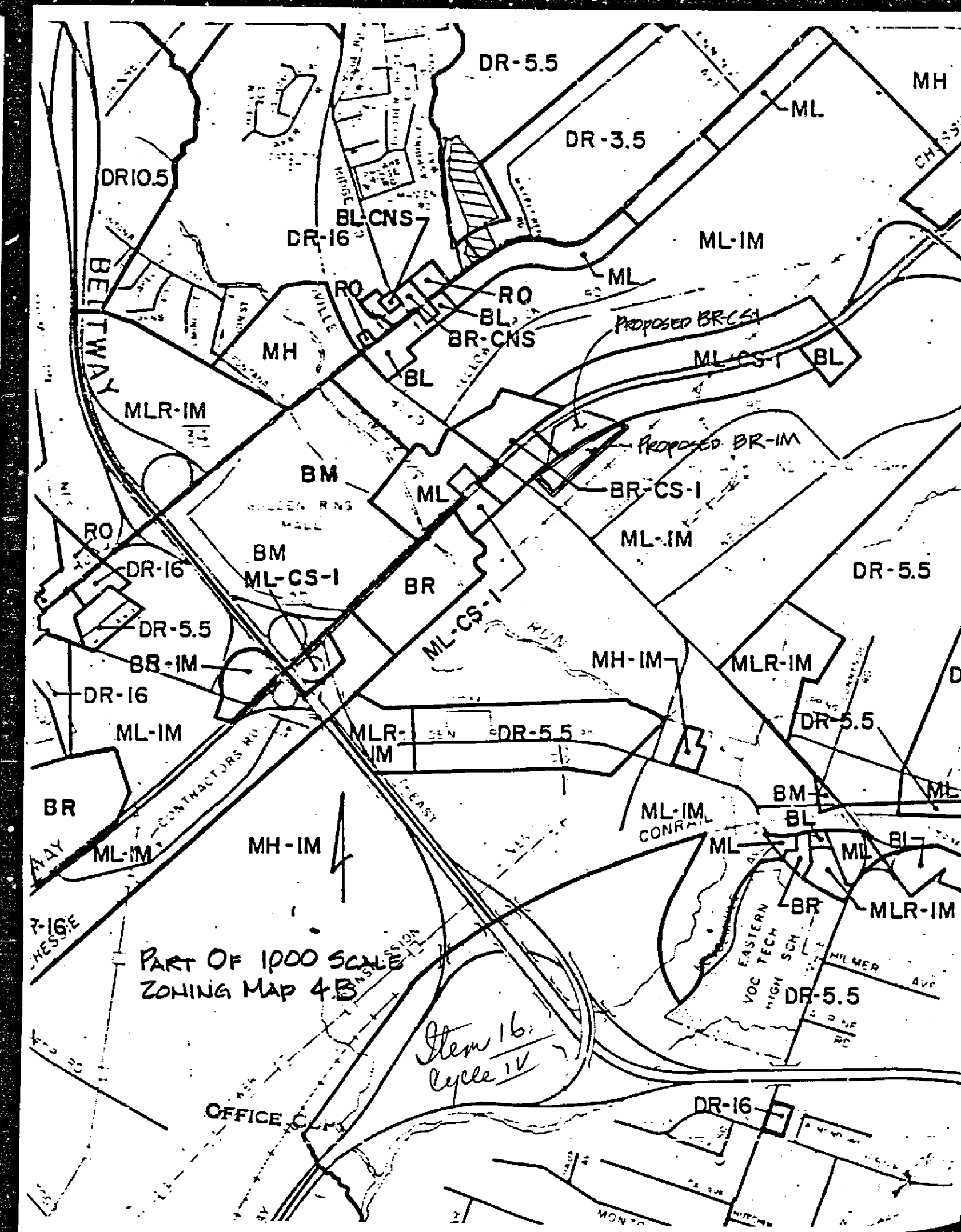
RE: Circuit City  
Rossville Boulevard

Point of beginning being located on the south side of Pulaski Highway easterly 332 feet ± from the intersection of the east side of Rossville Boulevard with the south side of Pulaski Highway thence in a clockwise direction:

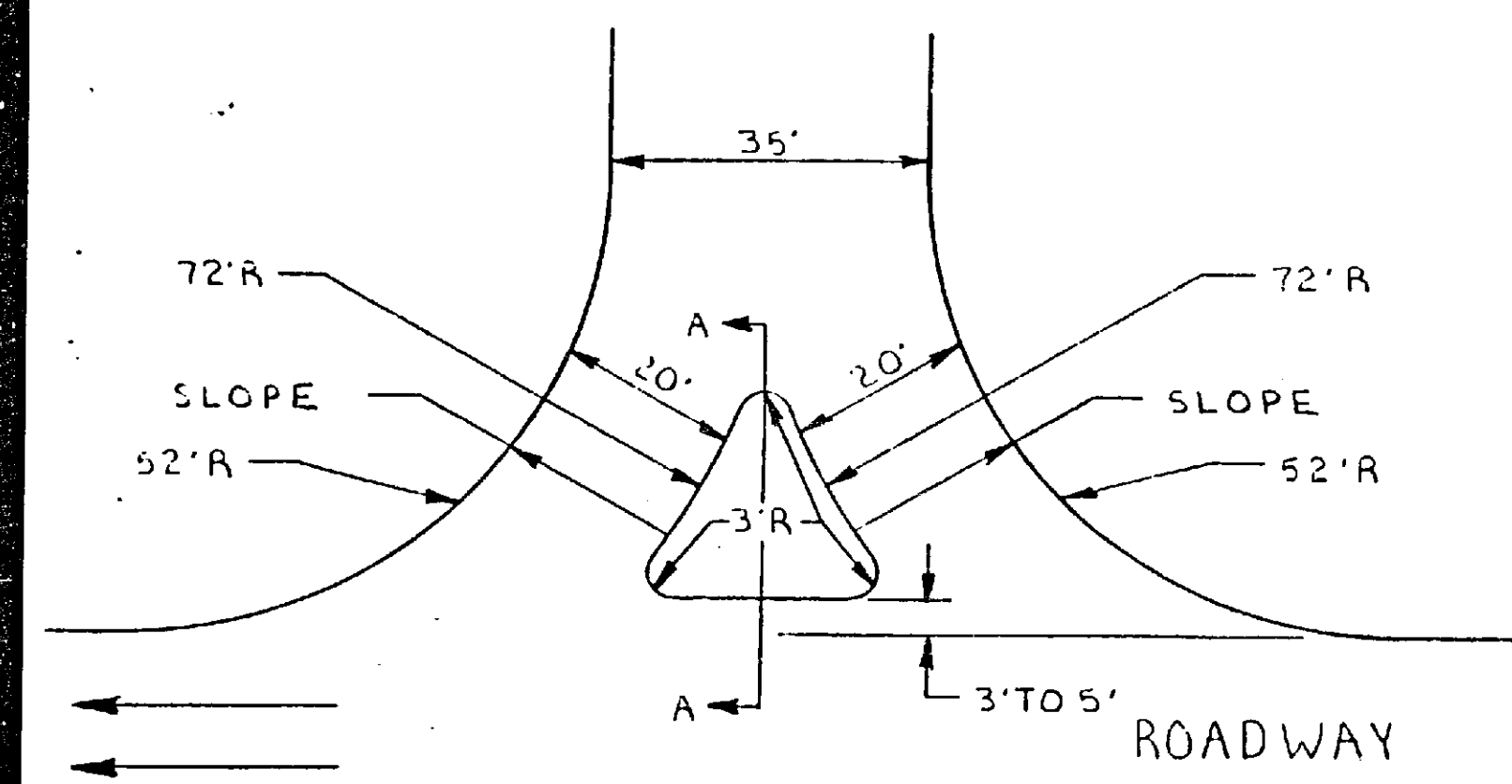
1. R = 2,789.79 feet ±, L = 337.10 feet ± Chord = North 70° 00' East 336.52 feet ±
2. South 61° 41' East 354.65 feet ±
3. South 59° 48' East 80.32 feet ±
4. South 55° 47' West 1,002 feet ±
5. North 41° 13' 24" West 36.82 feet ±
6. North 37° 21' 25" West 256 feet ±
7. North 52° 29' 49" East 110 feet ±
8. South 70° 48' East 54.13 feet ± and
9. North 20° 17' East 388.3 feet ± to the place of beginning.

Containing 7.7 acres of land more or less.  
Saving and excepting that portion presently zoned BR-CS-1.

(THIS DESCRIPTION IS FOR ZONING PURPOSES ONLY)



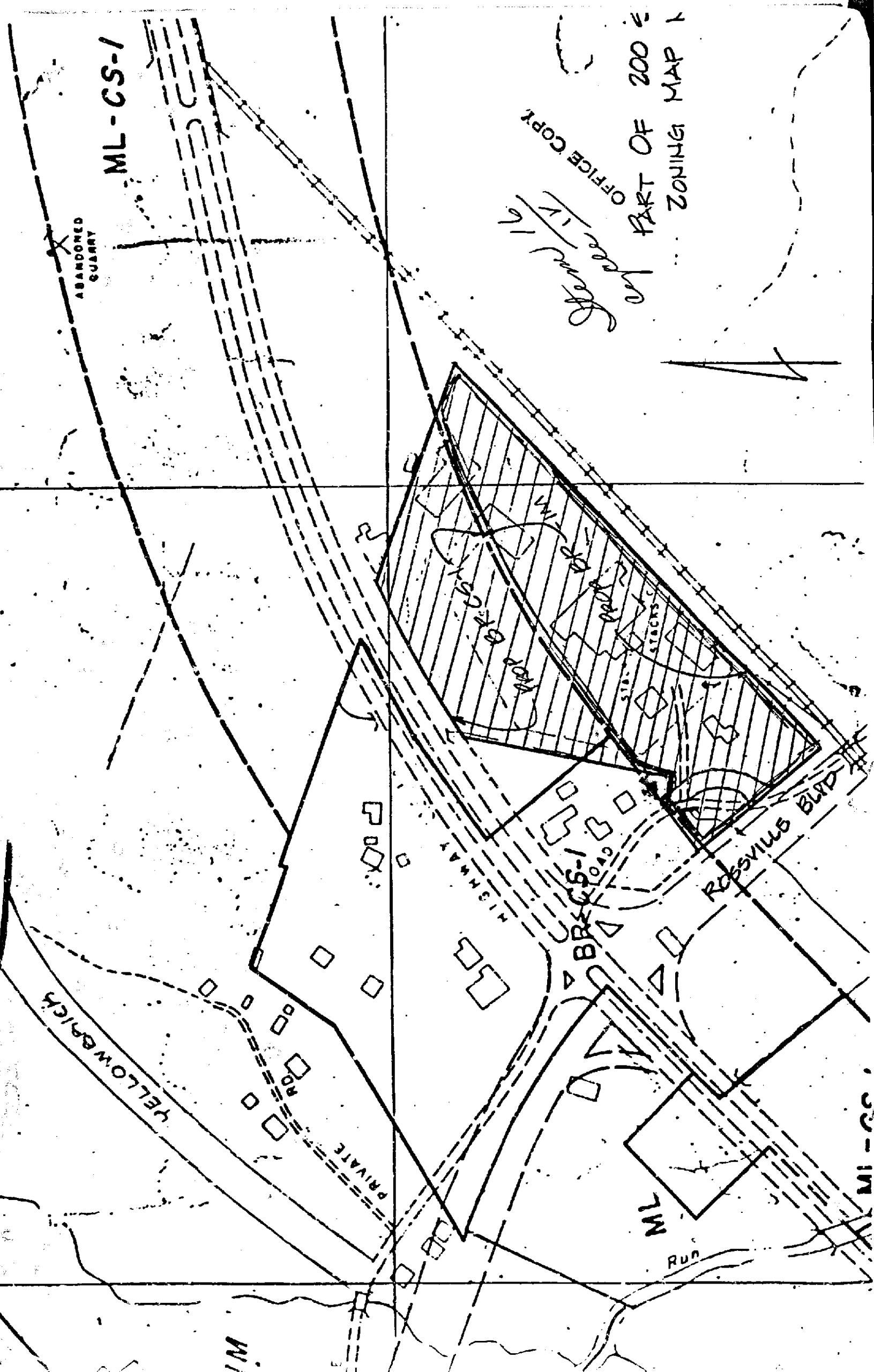
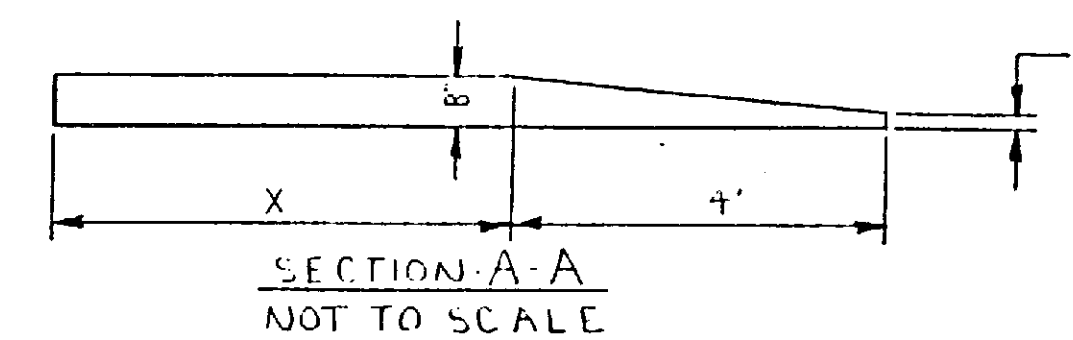
## CHANNELIZATION OF COMMERCIAL ENTRANCES A TYPICAL DIRECTIONAL ENTRANCE DUAL HWY.



MEDIAN RAISED OR FLUSH

ROADWAY

SCALE: 1" = 20'



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

ARNOLD JABLON  
ZONING COMMISSIONER

JEAN M. H. JUNG  
DEPUTY ZONING COMMISSIONER

April 13, 1987

John B. Howard, Esquire  
210 Allegheny Avenue  
Towson, Maryland 21204

RE: PETITION FOR ZONING RECLASSIFICATION  
SE/S Pulaski Highway, 332' E of R/W Fillet to the  
E/S Rossville Blvd.  
15th Election District - 6th Councilmanic District  
Trust Under Will of C. Boyd Ross - Petitioner  
Case No. R-87-263-A

Dear Mr. Howard:

This is to advise you that \$309.79 is due for advertising and posting of the above property. This fee must be paid before an Order is issued.

THIS FEE MUST BE PAID AND THE RECLASSIFICATION SIGN AND POST RETURNED TO THE BALTIMORE COUNTY ZONING OFFICE ON THE DAY OF THE BOARD OF APPEALS' HEARING OR THE ORDER WILL NOT BE ISSUED.

Please make your check payable to "Baltimore County, Maryland" and remit it to Ms. Margaret E. du Bois, Zoning Office, Room 113, County Office Building, Towson, Maryland 21204, before the hearing.

Sincerely,

Arnold Jablon  
Zoning Commissioner

AJ:med

cc: Mr. William T. Hackett  
Chairman  
Board of Appeals for Baltimore County

County Board of Appeals of Baltimore County  
Room 200 Court House  
Towson, Maryland 21204  
(301) 494-3180  
May 12, 1987

John B. Howard, Esquire  
COOK, HOWARD, DOWNES & TRACY  
210 Allegheny Avenue  
Towson, MD 21204

RE: Case No. R-87-263-A  
J. Darwin Ross, Trustee, et al

Dear Mr. Howard:

Enclosed is a copy of the Opinion and Order passed today by the County Board of Appeals in the subject matter.

Sincerely,

Kathleen C. Weidenhammer  
Administrative Secretary

Encl.

cc: Robert A. Hoffman, Esquire  
J. Darwin Ross  
c/o Baker & Baker, P.A.  
Mr. Donald L. Chasen, Vice Pres.  
Circuit City Stores, Inc.  
Twila Louise Bilger  
c/o Baker & Baker, P.A.  
James Earl Kraft  
Phyllis Cole Friedman, Esquire  
Norman E. Gerber  
James G. Hoswell  
Arnold Jablon  
Jean M. H. Jung  
James E. Dyer  
Margaret E. du Bois

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

April 13, 1987

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

Chairman

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

John B. Howard, Esquire  
210 Allegheny Avenue  
Towson, Maryland 21204

RE: Item No. 16 - Cycle No. IV  
Case No. R-87-263  
Petitioner: J. Darwin Ross,  
Trustee, et al  
Reclassification Petition

Dear Mr. Howard:

This reclassification petition has been timely filed with the Board of Appeals for a public hearing within the October-April reclassification cycle (Cycle IV). 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 request. They are not intended to indicate the appropriateness of the zoning action requested.

If it has been suggested that the petition forms, descriptions, briefs, and/or the site plans be amended so as to reflect better compliance with the zoning regulations and/or commenting agencies' standards and policies, you are requested to review these comments, make your own judgment as to their accuracy and submit the necessary amendments to this office on or before April 15, 1987. 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 the fact that the submitted site plan does not indicate a proposed use at this time, the comments from this Committee are general in nature. If the request is granted and an additional hearing is required at a later date, more detailed comments will be submitted at that time.

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

Appellant

v.

J. DARWIN ROSS, TRUSTEE, et al.

Appellees

(ZONING FILE NO. R-87-263-A)

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW

Case No.: 87-CG-2302  
Docket: 40  
Page: 372

#### MEMORANDUM OF APPELLEES

J. Darwin Ross, Twila Louese Bilger, individually and as Trustees of a trust under the Will of C. Boyd Ross, legal owners, and Circuit City Stores, Inc., contract purchasers, Petitioners below and Appellees herein ("Appellees"), by John B. Howard and Robert A. Hoffman with Cook, Howard, Downes & Tracy, in answer to People's Counsel's Memorandum filed on July 10, 1987 state the following:

#### STATEMENT OF THE CASE

This case is an appeal by the People's Counsel from an Opinion and Order of the County Board of Appeals of Baltimore County (the "Board"), dated May 12, 1987

RECEIVED  
COUNTY BOARD OF APPEALS  
JUL 15 1987

granting Appellees' Petition for Reclassification from M.L.-C.S.-1 and M.L.-I.M. to B.R.-C.S.-1 and B.R.-I.M.

On July 11, 1987, People's Counsel filed an Order for Appeal and Petition in the Circuit Court for Baltimore County.

#### QUESTION PRESENTED

The issue before the Court is whether the decision of the Board of Appeals to grant the rezoning of the subject property was arbitrary and discriminatory, or supported by the evidence in the record and therefore fairly debatable.

#### ARGUMENT

The scope of review by the Circuit Court of a Board's decision in a case alleging error in 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. Sembly*, 25 Md. App. 43 (1975), citing *Stratakis v. Beauchamp*, 268 Md. 643, pp. 652-653 (1973).

To determine whether the decision of the Board to grant the rezoning is fairly debatable, it is necessary to examine the standard of review that the Board is required to apply to make its decision. After acknowledging the

presumption of correctness of original zoning and of comprehensive rezoning, the *Boyce* Court went on to state the following standard for establishing error:

A perusal of cases, particularly those in which a finding of error was upheld indicates that the presumption of validity accorded to a comprehensive zoning is overcome and error or mistake is established when there is probative evidence to show that the assumptions or premises relied upon by the Council at the time of the comprehensive rezoning were invalid. Error can be established by showing that at the time of the comprehensive zoning the Council failed to take into account then existing facts, or projects or trends which were reasonably foreseeable of fruition in the future, so that the Council's action was premised initially on a misapprehension . . . . Error or mistake may also be established by showing that events occurring subsequent to the comprehensive zoning have proven the Council's initial premises were incorrect." (Emphasis added).

*Boyce v. Sembly*, 25 Md. App. at pp. 50-51.

Upon application of the standards described above to the facts and testimony presented in the transcript of the proceedings before the Board of Appeals in the present case, it is immediately apparent that there is substantial evidence of error and that not only is the Board's finding of error fairly debatable, but it also is correct.

First, it was established that both the Director of Planning and the Planning Board recommended that the property be rezoned from industrial use to commercial use. (Tr. p. 2, 25-28). The members of the Planning

Board are not attorneys and therefore do not make a decision concerning what zoning classifications constitute an "error". Nevertheless, the Appellant's witness, James Hoswell, stated that although the Planning Staff's primary review is in terms of planning, they also "concern [them]selves with a layman's view of mistake change . . . . We have, for the past ten years, paid particular--or paid quite a bit of heed to mistake change for the simple reason when I first began to testify here, I wound up in terrible trouble . . . because we were totally ignoring it as if it didn't exist . . . ." (Tr. p. 33). It appears from this statement that the Planning Staff did take into consideration the "mistake" aspect of the requested zoning reclassification when it supported the change. Mr. Hoswell did qualify his statement, however, by adding that the Planning Staff did not come to a final conclusion, as laymen, that the original zoning constituted an error. (Tr. p. 34). (But see *Montgomery Co. v. Shiental*, 249 Md. 194 (1967), where the Court of Appeals found that a denial of rezoning based on Technical Staff's well reasoned report was sufficient to make the decision "fairly debatable.")

Second, Appellees' witness, William F. Kirwin, testified repeatedly that the area in which the subject property is located has evolved into a primarily

commercial area and that for traffic and planning reasons, the existing industrial use is no longer appropriate.

(Tr. pp. 15-20). Mr. Kirwin testified as follows:

It is my belief that there's error here. It is my belief that, as a professional, . . . its the type of a site that if it was brought up to staff, as staff has stated in the recommendations as well as the Planning Board, that the County Council may have taken a good look at that and may have changed the zoning from industrial use to commercial use . . . . I think the County Council, in looking at the context of Golden Ring Mall and what has happened in that area and what has happened commercially would have realized that the remaining area is more suited to a commercial zone than it is manufacturing." (Tr. pp. 19-20).

Mr. Kirwin's opinion that the existing zoning was erroneous is supported by the decision of the Maryland Court of Special Appeals in *People's Counsel v. Williams*, 45 Md. App. 617 (1980). In *Williams*, the Court upheld the decision of the Circuit Court for Baltimore County and the Baltimore County Board of Appeals to rezone approximately 13 acres from a "Manufacturer Light-Industrial Major" classification to a "Business Major" classification. The *Williams* court found that in preparing the comprehensive zoning, the County Council had relied upon assumptions or premises that were invalid, including the assumption that the property was better suited for industrial use than for business purposes. *Id.* at 625-26.

In the present case, it does not appear that the County Council specifically reviewed this property or determined that it was best suited for industrial use. (Tr. p. 27). It is clear, however, from the testimony in the transcript before the Board of Appeals that if the County Council had been presented with the information presented to the Board of Appeals regarding the traffic, economic and land use trends developing in the area, in all likelihood, the County Council most certainly would have zoned the property for commercial use, as was recommended by the Planning Staff and Planning Board. (Tr. pp. 25-27).

As the *Boyce* court stated, error can be established by showing that at the time of the comprehensive zoning, the Council failed to take into account then-existing facts or projects or trends which were reasonably foreseeable. *Boyce v. Sembly*, 25 Md. at 50. In that regard, Mr. Kirwin also testified:

[T]he Council did not have the opportunity to take a look at this. Its very, very obvious that this total area is and has been over the past number of years going very strongly commercial, particularly with the inception of Golden Ring Mall and A.V. Williams Properties having gone into development within the last five years or so . . . . Had the Council really taken a look at this site, and looked at the physical characteristics and looked at the growth patterns . . . they would reason immediately that this should have been a commercial site." (Tr. pp. 22-23).

In the People's Counsel's Memorandum ("P.C. Memorandum"), it is argued that (i) the Board found there had not been an error by the County Council in the zoning of the instant property at the time of the 1984 map, and (ii) this conclusion by the Board was well supported by the evidence that showed there was an existing permitted use of the site to manufacture concrete products. (P.C. Memorandum p. 1-2). But as the Court stated in *Rohde v. County Board of Appeals*, 234 Md. 259 (1964), simply because property can be used in its original zoning classification does not mean that such use is enough to bar reclassification where error can be shown. The *Rohde* Court said the following:

They also lay stress on the fact, which is conceded, that the property can be used under its R-6 classification. That alone is not, however, an absolute bar of reclassification. Zoning is not static. *Missouri Realty, Inc. v. Ramer*, supra, 216 Md. at 447. It is, nevertheless, necessary to show error in original zoning or in its equivalent, comprehensive rezoning, or subsequent change in conditions . . . (*Reese v. Mandel*, 224 Md. 121, 167 A.2d 111; *Levy v. Savin Slade, Inc.*, 234 Md. 145, 198 A.2d 267). (Emphasis added).

*Id.* at 266-267. Contrary to the contention of the People's Counsel that strong evidence of mistake was not presented before the Board of Appeals, the testimony of Mr. Kirwin cited above and the recommendations of the Planning Staff and Planning Board provide overwhelming

evidence that the property was erroneously zoned for industrial use rather than commercial use.

The final argument presented by People's Counsel is that "the Board's decision is based solely on a belief that Petitioners have somehow outgrown the site." The People's Counsel then maintains that the position of the Board can be reduced to a simple theory, that "if a business is successful, it gets a reclassification." (P.C. Memorandum p. 3). The People's Counsel concludes that "this theory is so fanciful as to leave no room to doubt the inappropriateness of the reclassification." (P.C. Memorandum p. 3).

Appellees' submit that the rationale of the Board is not as simplistic as claimed by People's Counsel, nor is the Board as misguided or "fanciful" in its reasoning as portrayed by People's Counsel. As noted above, the transcript contains considerable expert testimony stating that not only had the present use outgrown the site, but that the trend in the area was overwhelmingly to commercial use, not industrial use; that traffic problems were exacerbated by the need to use tractor trailers to haul the heavy concrete products from the site; and that both the Planning Staff and Planning Board felt that commercial zoning was the appropriate type of zoning for the property. The sum of these factors convincingly

support the finding of the Board that the prior zoning was in error.

In addition to the existence of a "mistake" in the present case, the Board's decision to approve rezoning of the property is supported by evidence in the record of change in the neighborhood. In Montgomery v. Board of County Commissioners, 263 Md. 1, 4 (1971), the Court stated that the primary issue to be decided in a case challenging rezoning is "whether or not there are sufficient facts in the record to render the conclusion that there has been either a mistake in the original zoning of the subject property or a substantial change in the character of the neighborhood . . . ." (i.e., since the property was last classified. See Section 2-58.1(j)(1) Baltimore County Code). (Emphasis added).

In Mr. Kirwin's testimony, he identified an area of commercialization (marked Petitioner's Exhibit No. 4) which boundaries are the same on the 1984 200 Scale Zoning Map No. N.E., 4G (Tr. p. 11). This area, which includes the subject property, constitutes the neighborhood that, as more specifically stated below, has substantially changed in character from industrial to commercial.

In the present case there is ample expert testimony in the record demonstrating that there has been a substantial change in the above stated area in which the

9

subject property is located since the adoption of the 1984 Comprehensive Map. Most notably, Mr. Kirwin testified that "it's very, very obvious that this total area is and has been over the past number of years going fairly, strongly commercial, particularly with the inception of Golden Ring Mall and A. V. Williams Properties having gone into development within the last five years or so." (Emphasis added). (Tr. p. 22). Also, Mr. Kirwin summed up the effect of recent changes in the neighborhood by stating that the site is in an area of expanding commercial use and should be rezoned commercial because of the number of commercial users that exit to the south and west of the site. (Tr. p. 24). Implicit in these statements is that there has been an evolution of change in the neighborhood from industrial to commercial since the adoption of the 1984 Comprehensive Map. The change has been so substantial since 1984, that the subject property's industrial zoning classification is inconsistent with what now is clearly a commercial neighborhood.

In sum, there is substantial evidence in the record to support the Board's Opinion based upon a finding of either "mistake" or "change in the neighborhood".

Although the Board's Opinion may not clearly articulate the legal premises for its decision, the

10

determination is fully substantiated by the record and reaches the correct result. As the Court stated in Ginn v. Farley, 43 Md. App. 229, 235-236 (1979):

All that is required by courts in reviewing a Board's determination is that the Board's decision be based on fairly debatable evidence. Gowl v. Atlantic Richfield Co., 27 Md. App. 410 (1975). . . . It is not the function of the courts to retry or second guess the Board. When there is fairly debatable evidence, the courts must refrain from substituting their judgment for that of the Board (emphasis added). (Citations omitted).

In describing the "fairly debatable" rule and the deference that should be paid to a decision by the Board, the Court went even further in Eger v. Stone, 253 Md. 533, 542 (1969), when it stated that "this rule will be adhered to even if we were of the opinion that the administrative body came to a conclusion we probably would not have reached on the evidence." The Eger Court added that the conclusion of the administrative body will be considered 'fairly debatable' if the determination involved testimony from which a reasonable man could come to different conclusions. Id. at 542.

And most persuasive in the instant case is the Court of Appeals decision in Bigenho v. Montgomery Co., 248 Md. 386 (1967), (a "floating zone" case). In that case, the County Council of Montgomery County was required to find that the requested zoning was compatible with the

11

surrounding area. In its opinion, however, the Council made no such finding. Notwithstanding the oversight, the Court found that the "required finding" could be inferred from other statements in the Council's opinion and stated the following:

It clearly can be inferred that in making these statements the Council considered the facts and made findings thereon although its opinion does not so state specifically. Id. at 396.

Consistent with Bigenho, is the clearly established principle in Maryland law that a lower court need not correctly articulate its reasons to be affirmed by the reviewing court. In Andrews v. Andrews, 242 Md. 143, 153 (1966), the Court of Appeals stated the following:

That the trial judge rested his ruling on other ground, is immaterial. A ruling may be right for the wrong reason; if the ruling is right, it will be sustained, even if the reasons assigned were erroneous. (Citations omitted). (Emphasis added). See also, Loyola Federal Savings and Loan Assn. v. Galanes, 38 Md. App. 559 (1976).

Because the record is replete with evidence of error and substantial change in the neighborhood, the Board reached the correct ruling in reclassifying the subject property to B.R. - C.S.1. and B.R. - I.M. Any deficiencies in its Opinion are immaterial under the Maryland authority cited above and, therefore, the decision it is respectfully submitted, must be affirmed.

12

John B. Howard R.H.  
JOHN B. HOWARD  
Robert A. Hoffman  
ROBERT A. HOFFMAN  
Cook, Howard, Downes & Tracy  
210 Allegheny Avenue  
P.O. Box 5517  
Towson, Maryland 21204  
301-823-4111  
Attorneys for Appellees

#### CERTIFICATION OF SERVICE

I HEREBY CERTIFY that on this 10<sup>th</sup> day of August, 1987, a copy of the foregoing Memorandum of Appellees was delivered to Phyllis Cole Freidman and Peter Max Zimmerman, People's Counsel for Baltimore County, Room 223, Courthouse, Towson, Maryland 21204; and to the County Board of Appeals of Baltimore County, Room 200, Courthouse, Towson, Maryland 21204.

Robert A. Hoffman  
ROBERT A. HOFFMAN

13

IN THE MATTER OF  
THE APPLICATION OF  
J. DARWIN ROSS, TRUSTEE, ET AL.  
FOR ZONING RECLASSIFICATION  
FOR PROPERTY LOCATED ON THE  
SE/4 PULASKI HIGHWAY, 332' OF  
OF r/w FILLET TO THE E/S  
ROSSVILLE BOULEVARD  
FROM M.L.-C.S.1 and M.L.-I.M.  
TO B.R.-C.S.1 and B.R.-I.M.  
AND SETBACK VARIANCES  
15th ELECTION DISTRICT

#### OPINION

This case comes before this Board on petition to reclassify a parcel of some 7.6 acres in the 15th Election District of Baltimore County from M.L.-C.S.1 and M.L.-I.M. to B.R.-C.S.1 and B.R.-I.M. In addition, several variances were requested on the original Petition but the request for variances was withdrawn prior to the taking of any testimony. The case was heard this day in its entirety.

Petitioners presented William Kirwin, Registered Land Planner, as their first and only witness. Mr. Kirwin reviewed the existing zoning and all the nearby uses and nearby zoning. He described in detail these surrounding uses, and entered exhibits documenting same. He testified that the present use being known as Balcon Products were the manufacturers of heavy concrete prestress slabs and pavings and that this use generates almost exclusively heavy truck traffic. It was his testimony that the commercial use requested would alleviate this heavy truck traffic and would generate almost exclusively automobile traffic. He noted in his testimony that the property is bordered on one side in its entirety by an M.L. classification now developed as an industrial park. He also noted that this property line is bounded by an elevated railroad line which effectively separates this parcel from the industrial park and there is no access to the industrial park from this site. He also noted that the Director of

RECEIVED  
COUNTY BOARD OF APPEALS  
1987 SEP 29 P 3 25

Case No. R-87-263-A  
J. Darwin Ross, Trustee, et al

Planning & Zoning and the Planning Board both recommended the commercial zoning for this site. It is apparent from the testimony and evidence received this day that the present use has outgrown this site and the property owner is in full support of the downgrading of his property from M.L. to B.R. This basically concluded Petitioners' testimony.

Mr. James Hoswell, Planner for Baltimore County, testified for People's Counsel. He testified that he has reviewed this Petition and prepared all the reports and while the Planning staff and the Planning Board both recommend the granting of the Petition, it was his testimony that the present zoning is not in error and does provide a legitimate M.L. use for this site. It was his opinion that any reclassification would be better accomplished comprehensively than through the petition process. This concluded testimony in this case.

The Board is of the opinion that when the 1984 maps were drawn the M.L. classification as was then in use was a proper zoning classification. It is apparent that the present use has outgrown the site and the existence of the railroad precludes any further expansion in that direction. It is also apparent from the testimony and evidence received and the exhibits that the ingress and egress point to the site is somewhat detrimental and is intensified by the principal use of the heavy concrete products to be transported on tractor/trailers. It is the opinion of this Board that this change in the intensification of the use, the intensification of the ingress and egress, and the existence of the railroad all constitute legitimate reasons to justify its reclassification. In reviewing all the nearby and abutting commercial uses and the situation as has been described, it is the opinion of this Board that the reclassification should be granted and the Board will so order.

RECEIVED  
COUNTY BOARD OF APPEALS  
1987 SEP 29 P 3 25

Don Coffey  
JSS  
COUNTY BOARD OF APPEALS  
1987 SEP 29 P 3 25

Case No. R-87-263-A  
J. Darwin Ross, Trustee, et al

#### ORDER

It is therefore this 12th day of May, 1987, by the County Board of Appeals ORDERED that the reclassification from M.L.-C.S.1 and M.L.-I.M. to B.R.-C.S.1 and B.R.-I.M. be and the same is GRANTED.

IT IS FURTHER ORDERED that the request for variances included in the original Petition be and the same is DISMISSED.

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

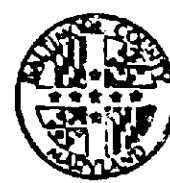
COUNTY BOARD OF APPEALS OF  
BALTIMORE COUNTY

William T. Hackett  
William T. Hackett, Chairman

Lawrence E. Schmidt  
Lawrence E. Schmidt

LeRoy B. Spurrer  
LeRoy B. Spurrer

RECEIVED  
COUNTY BOARD OF APPEALS  
1987 SEP 29 P 3 25



County Board of Appeals of Baltimore County

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

June 15, 1987

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

Re: Case No. R-87-263-A  
J. Darwin Ross, Trustee, et al

Dear Mrs. Friedman:

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

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

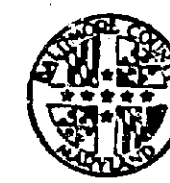
The cost of the transcript, plus any other documents, must be paid in time to transmit the same to the Circuit Court not later than thirty days from the date of any petition you file in court, in accordance with Rule B-7 (a).

Enclosed is a copy of the Certificate of Notice which has been filed in the Circuit Court.

Very truly yours,

*June Holmen*  
June Holmen, Secretary

Enclosures



County Board of Appeals of Baltimore County

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

June 15, 1987

John B. Howard, Esq.  
Robert A. Hoffman, Esq.  
210 Allegheny Ave.  
Towson, Md. 21204

Re: Case No. R-87-263-A  
J. Darwin Ross, Trustee, et al

Gentlemen:

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

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

*June Holmen*  
June Holmen, Secretary

Encl.

cc: J. Darwin Ross  
Twila L. Bilger  
James E. Kraft  
Circuit City Stores, Inc.  
Norman E. Gerber  
James Hoswell  
Arnold Jablon  
Jean M. H. Jung  
James E. Dyer  
Margaret duBois

PEOPLE'S COUNSEL FOR  
BALTIMORE COUNTY,

Appellant

v.

J. DARWIN ROSS, TRUSTEE,  
et al.,

Appellees

(Zoning File No. R-87-263-A)

IN THE CIRCUIT COURT  
FOR BALTIMORE COUNTY

AT LAW

CG Docket No. 40

Folio No. 372

File No. 87-06-2302

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 under date of May 12, 1987, in the above-captioned matter.

RECEIVED  
COUNTY BOARD OF APPEALS  
1987 JUN 11 A 9 31

*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

I HEREBY CERTIFY that on this 11th day of June, 1987, a copy of the foregoing Notice of Appeal was served on the Administrative Secretary, County Board of Appeals, Room 200, Court House, Towson, MD 21204; and a copy mailed to John B. Howard, Esquire, and Robert A. Hoffman, Esquire, Cook, Howard, Downes & Tracy, 210 Allegheny Ave., P. O. Box 5517, Towson, MD 21204.

*Phyllis Cole Friedman*  
Phyllis Cole Friedman

PEOPLE'S COUNSEL FOR  
BALTIMORE COUNTY,

Appellant

v.

J. DARWIN ROSS, TRUSTEE,  
et al.,

Appellees

(Zoning File No. R-87-263-A)

IN THE CIRCUIT COURT  
FOR BALTIMORE COUNTY

AT LAW

CG Docket No. 40

Folio No. 372

File No. 87-06-2302

PETITION ON APPEAL

People's Counsel for Baltimore County, Protestants below and Appellants herein, having heretofore filed a Notice of Appeal from the Opinion and Order of the County Board of Appeals under date of May 12, 1987, 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 legally sufficient evidence upon which to base its conclusion that the present zoning on the parcel which is the subject of this appeal is an erroneous classification and therefore their Order passed herein is illegal, arbitrary, and capricious.

WHEREFORE, Appellant prays that the Opinion and Order of the Board of Appeals of Baltimore County under date of May 12, 1987 be reversed, and the action of the County Council of Baltimore County in zoning the subject property M.L.-C.S.1 and M.L.-I.M. be affirmed and reinstated.

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

RECEIVED  
COUNTY BOARD OF APPEALS  
1987 JUN 11 A 9 31

- 2 -

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

I HEREBY CERTIFY that on this 11th day of June, 1987, a copy of the foregoing Petition on Appeal was served on the Administrative Secretary, County Board of Appeals, Room 200, Court House, Towson, MD 21204; and a copy mailed to John B. Howard, Esquire, and Robert A. Hoffman, Esquire, Cook, Howard, Downes & Tracy, 210 Allegheny Ave., P. O. Box 5517, 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

June 12, 1987

John B. Howard, Esquire  
210 Allegheny Avenue  
Towson, MD 21204

RE: J. Darwin Ross, Trustee, et al  
Case No. R-87-263-A

Dear Mr. Howard:

Enclosed is a copy of the Board's decision regarding your Motion for Revision and Reconsideration in the subject matter. Also enclosed is a copy of Mr. Schmidt's Dissenting Opinion.

Sincerely,

*Kathleen C. Weidenhammer*  
Kathleen C. Weidenhammer  
Administrative Secretary

Encl.

cc: J. Darwin Ross  
c/o Baker & Baker, P.A.  
Twila Louise Bilger  
c/o Baker & Baker, P.A.  
James Earl Kraft  
Phyllis Cole Friedman, Esquire  
Robert A. Hoffman, Esquire  
Donald L. Chasen, Circuit City Stores, Inc.  
Norman E. Gerber  
James G. Hoswell  
Arnold Jablon  
Jean M. H. Jung  
James E. Dyer  
Margaret E. du Bois

Baltimore County  
Zoning Commissioner  
Office of Planning & Zoning  
Towson, Maryland 21204  
494-8353

Arnold Jablon  
Zoning Commissioner

May 20, 1987

Mr. Donald L. Chasen  
Circuit City Stores, Inc.  
2040 Thalbro Street  
Richmond, Virginia 23230

RE: PETITION FOR ZONING RECLASSIFICATION  
SE/S Pulaski Highway, 332' E of R/W Fillet to the  
E/S Rossville Blvd.  
15th Election District - 6th Councilmanic District  
Trust Under Will of C. Boyd Ross - Petitioner  
Case No. R-87-263-A

Dear Mr. Chasen:

We acknowledge receipt of your Check No. 28658, in the amount of \$309.79, for payment of advertising and posting costs in connection with the above-entitled reclassification case. We are hereby returning your check to you as we received payment of same on May 12, 1987, from your attorneys, Cook, Howard, Downes & Tracy.

Very truly yours,

*Margaret E. du Bois*  
Margaret E. du Bois  
Zoning Office

Enclosure

c.c. John B. Howard, Esquire

Circuit City Stores, Inc.



2040 Thalbro Street  
Richmond, VA 23230  
804-231-1414

Donald L. Chasen  
Director of Real Estate

RECEIVED  
MAY 20 1987

ZONING OFFICE

May 15, 1987

Miss Margaret E. du Bois  
Zoning Office, Room 113  
County Office Building  
111 West Chesapeake Avenue  
Towson, Maryland 21204

Re: Petition for Zoning Reclassification  
Pulaski Highway & Rossville Blvd.  
Your Case # R-87-263-A

Dear Ms. du Bois:

Enclosed please find our check # 28658 in the amount of \$309.79 as full payment for advertising and posting costs regarding the referenced case.

Very truly yours,

*Donald L. Chasen*  
Donald L. Chasen

DLC/ser  
Enclosures

cc: Arnold Jablon, Zoning Commissioner



CIRCUIT CITY STORES, INC.  
2040 THALBRO ST.  
RICHMOND, VIRGINIA 23230



ML 28658

VOID AFTER 90 DAYS

PAY  
TO THE  
ORDER  
OF

TEN \$309.79

DATE  
May 15, 1987  
AMOUNT  
\$309.79  
CIRCUIT CITY STORES, INC.  
AUTHORIZED SIGNATURE

\*00028658\* \*1051407128\*

The County Board of Appeals  
of Baltimore County  
August 28, 1986  
Page 2

Also, on the opposite corner of Pulaski Highway is land zoned B.R.-C.S.-2 with adequate depth for commercial development. Logically, the B.R. zone should be extended east to encompass the subject site at the same depth as the commercial sites to the west.

With regard to the variances, should the Board of Appeals be favorably disposed to the Petition for Reclassification, the development of a commercial use on this property would require side and rear yard setbacks of 20 ft. in lieu of the required 30 ft.

In order to provide adequate retail space and because of the shape of the site and the need for adequate parking, any building must be placed closer to the side and rear property lines than would be permitted under the B.R. area regulations. Therefore, to meet the setbacks in the B.R. zone would cause an undue hardship and practical difficulty upon the Petitioner and the Variances should be granted.

For the foregoing reasons it is respectfully requested that the Petition for Reclassification and Variances be granted.

Yours truly,

*John B. Howard*  
John B. Howard

JBH/dmh

*John B. Howard*  
John B. Howard  
Robert A. Hoffman  
Cook, Howard, Downes & Tracy  
210 Allegheny Avenue  
Towson, Maryland 21204  
(301) 823-4111  
Attorneys for Appellees

#### CERTIFICATION OF SERVICE

I HEREBY CERTIFY that on this 28<sup>th</sup> day of July, 1987 a copy of the foregoing Answer to Petition on Appeal was delivered to Phyllis Cole Friedman, People's Counsel and Peter Max Zimmerman, Deputy People's Counsel, 2nd Floor, Old Court House, Towson, Maryland 21204; and to the County Board of Appeals of Baltimore County, 2nd Floor, Old Court House, Towson, Maryland 21204.

*Robert A. Hoffman*  
Robert A. Hoffman

RECEIVED  
COUNTY BOARD OF APPEALS  
1987 AUG 21 A 11:42

HEARING DATE: **Monday, September 14, 1987, @ 9:30 a.m., corrected notice of an agreed date.**  
ON THE FOLLOWING: **Appeals 1 to 15 hours**

Please see the below notations.

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

IF the above Hearing Date is not agreeable to any counsel, a request for a postponement MUST BE MADE IN WRITING TO the Assignment Office AS SOON AS POSSIBLE, with a copy to all counsel involved. POSTPONEMENTS PRIOR TO 15 DAYS OF TRIAL should be directed to the attention of John Adams, POSTPONEMENTS WITHIN 15 DAYS OF TRIAL must be made to the attention of the Director of Central Assignments - Joyce Ganna - 494-3497.

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

From CMA  
John Adams - 494-2660  
Civil Assignment Commissioner  
Settlement Court  
Maria Ecolino - 494-2662  
Hearing Assignment Clerk  
Medical Records

TO: **Phyllis Cole Friedman, Esq.,  
Peter Max Zimmerman, Esq.,  
June Holman, Esq.,  
C. Gary Dealey, Jr., Esq.**

Towson, Maryland, 21285-6764  
August 20, 1987.

ASSIGNMENT OFFICE  
COUNTY COURTS BUILDING  
401 Bailey Avenue  
P.O. Box 6754  
Towson, Maryland, 21285-6764

ASSIGNMENT OFFICE  
COUNTY COURTS BUILDING  
401 Bailey Avenue  
P.O. Box 6754  
Towson, Maryland, 21285-6764

ASSIGNMENT OFFICE  
COUNTY COURTS BUILDING  
401 Bailey Avenue  
P.O. Box 6754  
Towson, Maryland, 21285-6764

ASSIGNMENT OFFICE  
COUNTY COURTS BUILDING  
401 Bailey Avenue  
P.O. Box 6754  
Towson, Maryland, 21285-6764

IN THE MATTER OF THE APPLICATION OF J. DARWIN ROSS, TRUSTEE, ET AL FOR ZONING RECLASSIFICATION ON PROPERTY LOCATED ON THE SE/S PULASKI HIGHWAY, 332' E OF P/W FILLET TO THE E/S ROSSVILLE BOULEVARD FROM M.L.-C.S.1 AND M.L.-I.M. TO B.R.-C.S.1 AND B.R.-I.M. AND SETBACK VARIANCES 15th ELECTION DISTRICT

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

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW

CG Doc. No. 40

Folio No. 372

File No. 87-CG-2302

ZONING FILE NO. R-87-263-A

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

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come William T. Hackett, Lawrence E. Schmidt and LeRoy B. Spurrier, constituting the County Board of Appeals of Baltimore County, and in answer to the Order for Appeal directed against them in this case, herewith return the record of proceedings had in the above entitled matter, consisting of the following certified copies or original papers on file in the office of the Board of Appeals of Baltimore County:

ENTRIES FROM DOCKET OF BOARD OF APPEALS OF BALTIMORE COUNTY

No. R-87-263-A

September 2, 1986 Petition of J. Darwin Ross, Trustee, and Twila Bilger, Trustee, for reclassification and variance from ML-IM and ML-CS1 to BR-CS1 and BR-IM on property located on the southeast side Pulaski Highway, 332' east of the right-of-way fillet to the east side of Rossville Blvd. in the 15th Election District of Baltimore County.

March 27, 1987 Certificate of Posting of Property filed

April 2 Publication in newspaper filed

April 13 Comments of Baltimore County Zoning Plans Advisory Committee filed

April 16 Hearing held on petition by County Board of Appeals

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Appellant

v. J. DARWIN ROSS, TRUSTEE, et al.

Appellees

(Zoning File No.: R-87-263-A)

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW

Case No. 87-CG-2302

Docket 40

Page 372

#### ANSWER TO PETITION ON APPEAL

J. Darwin Ross, Twila Louese Bilger, individually and as Trustees of a Trust under the Will of C. Boyd Ross, legal owners, and Circuit City Stores, Inc., Contract Purchasers, Petitioners below and Appellees herein, by John B. Howard and Robert A. Hoffman with Cook, Howard, Downes & Tracy answers the Petition on Appeal filed by People's Counsel for Baltimore County as follows:

1. The Appellees deny the allegations made and contained in the Petition,
2. Further answering the Petition Appellees state that the decision of the County Board of Appeals of Baltimore County (the "Board") was proper and justified by legally sufficient and substantial evidence before it.

WHEREFORE Appellees respectfully request that:

- (a) The Appeal be dismissed; or
- (b) The Order of the Board be affirmed; and
- (c) That the Appellees be granted such other and further relief as the nature of this case may require.

RECEIVED  
COUNTY BOARD OF APPEALS  
1987 JUL -8 -8 A 9 29

RECEIVED  
CIRCUIT COURT BALTIMORE COUNTY  
1987 JUL -7 PM 3:50

J. Darwin Ross, et al  
Case No. R-87-263-A

May 12, 1987 Order of the County Board of Appeals ordering that the reclassification from M.L.-C.S.1 and M.L.-I.M. to B.R.-C.S.1 and B.R.-I.M. be GRANTED; FURTHER ORDERED that the request for variances included in the original petition be DISMISSED.

June 12 Re: Request for Amended Opinion/Order; ordered that the request for a revision be DENIED; Dissenting Opinion stating he (the Board member) would grant the Petitioner's Motion for Revision and Reconsideration.

June 11 Order for Appeal filed in the Circuit Ct. for Baltimore County by Phyllis C. Friedman, People's Counsel for Baltimore County.

June 11 Petition to accompany Order for Appeal filed in the Circuit Ct. for Baltimore County.

June 15 Certificate of Notice sent to all interested parties

June 22 Transcript of testimony filed

Petitioners' Exhibit No. 1 - Qualifications of William F. Kirwin

" " 2 - Plat of proposed petition, Aug. 28, 1986. (In Board's cupboard)

" " 3 - Copy of Balto. Co. Zoning Map 1984. (In Board's cupboard)

" " 4 - Copy of Balto. Co. office of Planning & Zoning 46 with 2 overlays. 1/86 (In Board's cupboard)

" " 5 - Photographic map showing different occupants of the property on map.

" " 6 - Map showing present uses on subject site.

" " 7 - Report by Director of Planning & Zoning to Balto. Co. Planning Bd., 11/86

" " 8 - Report to Board of Appeals by Balto. Co. Plan. Bd., 1/29/87.

People's Counsel's Exhibit No. 1A-1K - Group of photos showing subject property and surrounding area.

J. Darwin Ross, et al  
Case No. R-87-263-A

June 22, 1987 Record of proceedings filed in the Circuit Court for Baltimore County

Record of proceedings pursuant to which said Order was entered and upon which said Board acted are hereby forwarded to the Court, together with exhibits entered into evidence before the Board. However, all tangible material or evidence of an unwieldy or bulky nature will be retained in the Board of Appeals' office, and upon request of the parties or the Court will be transmitted to the Court by whomever institutes the request.

Respectfully submitted,

*June Holman*  
June Holman  
County Board of Appeals of Baltimore County

RECEIVED  
COUNTY BOARD OF APPEALS  
1987 JUL -6 -6 A 10 40

Form CMA  
Job Adams - 494-2660  
Civil Assignment Commissioner  
Settlement Court  
Maria Ecolino - 494-2662  
Hearing Assignment Clerk  
Medical Records

TO: **Phyllis C. Friedman, Esq.,  
Peter M. Zimmerman, Esq.,  
June Holman, Esq.**

Towson, Maryland, 21285-6764  
July 2, 1987

ASSIGNMENT OFFICE  
COUNTY COURTS BUILDING  
401 Bailey Avenue  
P.O. Box 6754  
Towson, Maryland, 21285-6764

ASSIGNMENT OFFICE  
COUNTY COURTS BUILDING  
401 Bailey Avenue  
P.O. Box 6754  
Towson, Maryland, 21285-6764

ASSIGNMENT OFFICE  
COUNTY COURTS BUILDING  
401 Bailey Avenue  
P.O. Box 6754  
Towson, Maryland, 21285-6764

ASSIGNMENT OFFICE  
COUNTY COURTS BUILDING  
401 Bailey Avenue  
P.O. Box 6754  
Towson, Maryland, 21285-6764



County Board of Appeals of Baltimore County  
Room 200 Court House  
Towson, Maryland 21204  
(301) 494-3180  
June 15, 1987

RECEIVED  
JUN 16 1987

ZONING OFFICE

John B. Howard, Esq.  
Robert A. Hoffman, Esq.  
210 Allegheny Ave.  
Towson, Md. 21204

Gentlemen: Re: Case No. R-87-263-A  
J. Darwin Ross, Trustee, 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,

*June Holmen*  
June Holmen, Secretary

Encl.  
cc: J. Darwin Ross  
Twila L. Bilger  
James E. Kraft  
Circuit City Stores, Inc.  
Norman E. Gerber  
James Hoswell  
Arnold Jablon  
Jean M. H. Jung  
James E. Dyer  
Margaret duBois

IN THE MATTER OF THE APPLICATION OF J. DARWIN ROSS, TRUSTEE, ET AL FOR ZONING RECLASSIFICATION ON PROPERTY LOCATED ON THE SE/4 PULASKI HIGHWAY, 332' E OF R/W FILLET TO THE E/S ROSSVILLE BOULEVARD FROM M.L.-C.S.1 AND M.L.-I.M. TO B.R.-C.S.1 AND B.R.-I.M. AND SETBACK VARIANCES 15th ELECTION DISTRICT

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW

CG Doc. No. 40  
Folio No. 372  
File No. 87-CG-2302

CERTIFICATE OF NOTICE

Mr. Clerk:  
Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, William T. Hackett, Lawrence E. Schmidt and Leroy B. Spurrier, 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, John B. Howard, Esq. and Robert A. Hoffman, Esq., 210 Allegheny Ave., Towson, Md. 21204, Counsel for Petitioner; J. Darwin Ross, c/o Baker & Baker, P.A., 10 Charles Plaza, Suite 200, Baltimore, Md. 21201, Petitioner; Twila Louise Bilger, c/o Baker & Baker, P.A., 10 Charles Plaza, Suite 200, Baltimore, Md. 21201, Petitioner; James Earl Kraft, Baltimore County Board of Education, 940 York Rd., Towson, Md. 21204; Circuit City Stores, Inc., Donald L. Chasen, Asst. Vice President, 2040 Thalbro St., Richmond, Va. 23230, Contract Purchaser; and Phyllis C. Friedman, Court House, Towson, Md. 21204, People's Counsel for Baltimore County, a copy of which Notice is attached hereto and prayed that it may be made a part thereof.

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

J. Darwin Ross, Trustee, et al  
Case No. R-87-263-A

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to John B. Howard, Esq. and Robert A. Hoffman, Esq., 210 Allegheny Ave., Towson, Md. 21204, Counsel for Petitioner; J. Darwin Ross, c/o Baker & Baker, P.A., 10 Charles Plaza, Suite 200, Baltimore, Md. 21201, Petitioner; Twila Louise Bilger, c/o Baker & Baker, P.A., 10 Charles Plaza, Suite 200, Baltimore, Md. 21201, Petitioner; James Earl Kraft, Baltimore County Board of Education, 940 York Rd., Towson, Md. 21204; Circuit City Stores, Inc., Donald L. Chasen, Asst. Vice President, 2040 Thalbro St., Richmond, Va. 23230, Contract Purchaser; and Phyllis C. Friedman, Court House, Towson, Md. 21204, People's Counsel for Baltimore County, on this 15th day of June, 1987.

*June Holmen*  
June Holmen  
County Board of Appeals of Baltimore County



County Board of Appeals of Baltimore County  
Room 200 Court House  
Towson, Maryland 21204  
(301) 494-3180  
June 12, 1987

RECEIVED  
JUN 16 1987

ZONING OFFICE

John B. Howard, Esquire  
210 Allegheny Avenue  
Towson, MD 21204

RE: J. Darwin Ross, Trustee, et al  
Case No. R-87-263-A

Dear Mr. Howard:

Enclosed is a copy of the Board's decision regarding your Motion for Revision and Reconsideration in the subject matter. Also enclosed is a copy of Mr. Schmidt's Dissenting Opinion.

Sincerely,

*Kathleen C. Weidenhammer*  
Kathleen C. Weidenhammer  
Administrative Secretary

Encl.

cc: J. Darwin Ross  
c/o Baker & Baker, P.A.  
Twila Louise Bilger  
c/o Baker & Baker, P.A.  
James Earl Kraft  
Phyllis Cole Friedman, Esquire  
Robert A. Hoffman, Esquire  
Donald L. Chasen, Circuit City Stores, Inc.  
Norman E. Gerber  
James G. Hoswell  
Arnold Jablon  
Jean M. H. Jung  
James E. Dyer  
Margaret E. du Bois

"DUPLICATE"  
CERTIFICATE OF PUBLICATION

TOWSON, MD., April 2, 1987

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 April 2, 1987, r11 2.

THE JEFFERSONIAN,

*Susan Shudis O'Connell*  
Publisher

38.61

IN THE MATTER OF J. DARWIN ROSS, TRUSTEE, ET AL (Trust under will of C. Boyd Ross) CASE NO. R-87-263-A RE: REQUEST FOR AMENDED OPINION/ORDER

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

This matter comes before this Board on request for a revision of the Board's Opinion and Order dated May 12, 1987, from the Attorney for the Petitioner. The Board has reviewed the evidence in the case and its Opinion and Order. The Board will deny the request for an amended order.

Rule 10 of Appendix C of the Baltimore County Code entitled, "Rules of Practice and Procedure of County Board of Appeals," states:

"Within thirty (30) days after the entry of an order, the board shall have revisory power and control over the order in the event of fraud, mistake or irregularity."

The Board in its discretion can find no evidence of fraud, mistake or irregularity in the Opinion and Order as issued and will therefore deny the request.

It is therefore this 12th day of June, 1987, by the County Board of Appeals ORDERED that the request for a revision be DENIED.

Since the denial of this request in no way alters or changes the original Opinion and Order, the date from which an appeal may be taken will remain the date of the original Order and not the date of this denial.

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

*William T. Hackett*  
William T. Hackett, Chairman

*Leroy B. Spurrier*  
Leroy B. Spurrier

IN THE MATTER OF J. DARWIN ROSS, TRUSTEE, ET AL (Trust under will of C. Boyd Ross) CASE NO. R-87-263-A RE: REQUEST FOR AMENDED OPINION/ORDER

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

DISSENTING OPINION

I respectfully dissent from the decision of my colleagues wherein they refuse to revise the Opinion and Order of this Board dated May 12, 1987. I am in agreement with the majority that the zoning reclassification requested in this matter should be granted. However, a re-reading of the Board's Opinion and Order dated May 12, 1987 convinces me that the Board mistakenly identified the basis upon which such a reclassification should be granted.

It is clear from the testimony before this Board that the site was not considered for rezoning during the last comprehensive zoning process. Specifically, contained within the Report to this Board from the Baltimore County Planning Board dated January 29, 1987, it is noted that the property has had an M.L. classification since before 1984 and that "during the preparation and processing of the map, the zoning of the property was not identified as a specific issue before either the Planning Board or the County Council."

Testimony produced at a hearing before this Board discloses an increasing trend in the immediate area adjacent to and surrounding this site from industrial uses to commercial uses. This trend is of a long-standing nature. Additional testimony indicated that the site is losing its ability to support industrial uses due to the traffic patterns within the area, the land-locked limited access to the site, and the general physical layout of the site. These trends are of long-standing but of increasing intensification.

In my view, therefore, failure of the County Council to adopt a commercial classification for this property during the 1984 zoning map process constituted

J. Darwin Ross, Trustee, et al  
Case No. R-87-263-A

Dissenting Opinion

error in that the Council did not recognize the increasing changes both surrounding and on this site. These changes have continued steadily since the adoption of the 1984 Map and continue to form a basis to justify reclassifying the property as petitioned.

I would therefore grant the Petitioner's Motion for Revision and Reconsideration so as to grant the petition for the reasons set forth herein.

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

*Lawrence E. Schmidt*  
Lawrence E. Schmidt

Date: June 12, 1987

BALTIMORE COUNTY, MARYLAND  
OFFICE OF REVENUE DIVISION  
MISCELLANEOUS CASH RECEIPT

DATE 6/12/87 ACCOUNT 01-113

AMOUNT \$ 200.00

RECEIVED FROM: *June Darwin Ross, Trustee*

FOR: *Fee For Reclassification Variance*

B 8115\*\*\*\*\*3093912 80348

CIRCUIT CITY STORES, INC. - C/P

VALIDATION OR SIGNATURE OF CARRIER

BALTIMORE COUNTY, MARYLAND  
OFFICE OF REVENUE DIVISION  
MISCELLANEOUS CASH RECEIPT

DATE 6/12/87 ACCOUNT 2-01-615-10

AMOUNT \$ 300.00

RECEIVED FROM: *Cook, Howard, Dwyer & Tracy, 210 Allegheny Ave., P.O. Box 5517, Towson, Md. 21204*

FOR: *Advertising & Posting Costs Re Case R-87-263-A*

B 8160\*\*\*\*\*3093912 81287

VALIDATION OR SIGNATURE OF CARRIER

PETITION FOR RECLASSIFICATION

Case No. R-87-263-A  
LOCATION: Southeast Side of Pulaski Highway, 332 feet East of the Right-of-Way Fillet to the East Side of Rossville Boulevard.  
PUBLIC HEARING: Thursday, April 16, 1987, 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.  
To reclassify the property from an M.L.-I.M. and M.L.-C.S. 1 Zone to a B.R.-C.S. 1 and B.R.-I.M. Zone.  
All that parcel of land in the 15th Election District of Baltimore County, Point of beginning being located on the south side of Pulaski Highway easterly 332 feet +/- from the intersection of the east side of Rossville Boulevard with the south side of Pulaski Highway thence in a clockwise direction:  
1. B equals 2,789.79 feet +/-, L equals 337.10 feet +/-, Chord equals North 70° 40' East 54.13 feet +/-,  
2. South 61° 41' East 36.61 feet +/-,  
3. South 69° 48' East 80.32 feet +/-,  
4. South 59° 47' West 130.02 feet +/-,  
5. North 41° 13' 24" West 36.82 feet +/-,  
6. North 37° 21' 25" West 256 feet +/-,  
7. North 62° 29' 49" East 110 feet +/-,  
8. South 70° 40' East 54.13 feet +/-,  
9. North 30° 17' East 358.3 feet +/- to the place of beginning.  
Containing 7.7 acres of land more or less.  
Selling and excepting that portion presently owned B.R.-C.S. 1.  
Being the property of Trust Under Will of C. Boyd Ross, as shown on the plan filed with the Zoning Department.

By Order Of:  
William T. Hackett, Chairman  
County Board of Appeals  
Baltimore County  
3418 Apr. 2

The Times

Middle River, Md., April 19 1987

This is to Certify, That the annexed (Petition - Case R-87-263-A) (Ross) Reg L 985-24 was inserted in The Times, a newspaper printed and published in Baltimore County, once in each of one successive weeks before the 1st day of April, 1987.  
*James E. Dyer* Publisher.

JAMES H. COLE  
JOHN B. HOBARD  
DAVID D. BOWNE  
DANIEL O. C. TRACY, JR.  
JOHN H. ZEUS, III  
JOSEPH C. WICH, JR.  
HENRY C. PICK, JR.  
HERBERT R. O'CONNOR, III  
THOMAS L. HUDSON  
C. CAREY DEELEY, JR.  
R. RYAN HILL, III

GEORGE R. BETHOLDS, III  
ROBERT E. HOOPER, JR.  
LAWRENCE A. HOFFMAN  
DEBORAH C. DOPPIN  
CYNTHIA B. HAHN  
KATHLEEN GALLAGHER COE  
KEVIN H. SMITH  
J. MICHAEL BRENNAN  
M. BARNETT PETERSON, JR.

**HAND-DELIVERED**

Re: Case R-87-263-A  
J. Darwin Ross, Trustee et al

In line with our discussion I am enclosing a suggested revised page 2 for the May 12, 1987 Opinion in the above matter. One copy has highlighted the proposed new language with two additional unmarked copies.

I am forwarding a copy of this letter, without attachments, to Ms. Friedman. I had discussed with her my thought as to clarification of the language. She expressed no objection to our proceeding in this manner but felt it inappropriate to join in any request for clarification.

We certainly do not want to appear presumptuous in this request but sincerely believe that it is in the interest of the Board and all parties that if the enclosed accurately reflects the Board's thinking then it might be incorporated in the opinion during the revisory period.

Sincerely,

John B. Howard

JBH/jhr  
Enclosure  
cc: Phyllis Cole Friedman  
George W. Baker, Jr.

2

Mr. James Hoswell, Planner for Baltimore County, testified for People's Counsel. He testified that he has reviewed this Petition and prepared all the reports and while the Planning staff and the Planning Board both recommend the granting of the Petition, it was his testimony that the present zoning is not in error and does provide a legitimate M.U. use for this site. It was his opinion that any reclassification would be better accomplished comprehensively than through the petition process. This concluded testimony in this case.

|                                           |   |             |            |
|-------------------------------------------|---|-------------|------------|
| IN THE MATTER OF                          | : | IN          | THE        |
| THE APPLICATION OF                        | : |             |            |
| J. DARWIN ROSS, TRUSTEE, ET AL            | : | CIRCUIT     | COURT      |
| FOR ZONING RECLASSIFICATION               | : |             |            |
| ON PROPERTY LOCATED ON                    | : | FOR         |            |
| SE/S/ PULASKI HIGHWAY, 332 <sup>E</sup> E | : |             |            |
| OF W/4 FILLER TO THE E/S                  | : | BALTIMORE   | COUNTY     |
| ROSSVILLE BOULEVARD                       | : |             |            |
| FROM M.L.-C.S.1 AND M.L.-I.M.             | : | AT          | LAW        |
| TO B.R.-C.S.1 AND B.R.-I.M.               | : |             |            |
| AND SETBACK VARIANCES                     | : | CG Doc. No. | 40         |
| 15th ELECTION DISTRICT                    | : |             |            |
|                                           | : | Folio No.   | 372        |
| PHYLLIS C. FRIEDMAN, PEOPLE'S             | : |             |            |
| COUNSEL FOR BALTIMORE COUNTY,             | : | File No.    | 87-CG-2302 |
| PLAINTIFF                                 | : |             |            |

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

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

No. R-87-263-A

|                   |                                                                                                                                                                                                                                                                                                                                                                |
|-------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| September 2, 1986 | Petition of J. Darwin Ross, Trustee, and Twila Bilger, Trustee, for reclassification and variance from ML-1M and ML-CS1 to RR-CS-1 and BR-1M on property located on the southeast side Pulaski Highway, 332 <sup>1</sup> / <sub>2</sub> east of the right-of-way fillet to the east side of Rossville Blvd. in the 15th Election District of Baltimore County. |
| March 27, 1987    | Certificate of Posting of Property filed                                                                                                                                                                                                                                                                                                                       |
| April 2           | Publication in newspaper filed                                                                                                                                                                                                                                                                                                                                 |
| April 13          | Comments of Baltimore County Zoning Plans Advisory Committee filed                                                                                                                                                                                                                                                                                             |
| April 16          | Hearing held on petition by County Board of Appeals                                                                                                                                                                                                                                                                                                            |

2

|              |                                                                                                                                                                                                                                              |
|--------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| May 12, 1987 | Order of the County Board of Appeals ordering that the reclassification from M.L.-C.S.1 and M.L.-I.M. to B.R.-C.S.1 and B.R.-I.M. be GRANTED; FURTHER ORDERED that the request for variances included in the original petition be DISMISSED. |
| June 12      | Re: Request for Amended Opinion/Order; ordered that the request for a revision be DENIED; Dissenting Opinion stating he (the Board member) would grant the Petitioner's Motion for Revision and Reconsideration.                             |
| June 11      | Order for Appeal filed in the Circuit Ct. for Baltimore County by Phyllis C. Friedman, People's Counsel for Baltimore County.                                                                                                                |
| June 11      | Petition to accompany Order for Appeal filed in the Circuit Ct. for Baltimore County.                                                                                                                                                        |
| June 15      | Certificate of Notice sent to all interested parties                                                                                                                                                                                         |
| June 22      | Transcript of testimony filed                                                                                                                                                                                                                |
|              | Petitioners' Exhibit No. 1 - Qualifications of William F. Kirwin                                                                                                                                                                             |
|              | " " " 2 - Plat of proposed petition, Aug. 28, 1986. (In Board's cupboard)                                                                                                                                                                    |
|              | " " " 3 - Copy of Balto. Co. Zoning Map 1984. (In Board's cupboard)                                                                                                                                                                          |
|              | " " " 4 - Copy of Balto. Co. office of Planning & Zoning 46 with 2 overlays. 1/86 (In Board's cupboard)                                                                                                                                      |
|              | " " " 5 - Photographic map showing different occupants of the property on map.                                                                                                                                                               |
|              | " " " 6 - Map showing present uses on subject site.                                                                                                                                                                                          |
|              | " " " 7 - Report by Director of Planning & Zoning to Balto. Co. Planning Bd., 11/86                                                                                                                                                          |
|              | " " " 8 - Report to Board of Appeals by Balto. Co. Plan. Bd., 1/29/87.                                                                                                                                                                       |
|              | People's Counsel's Exhibit No. 1A-1K - Group of photos showing subject property and surrounding area.                                                                                                                                        |

People's Counsel's Exhibit No. 1A-1K - Group of photos showing subject property and surrounding area.

3

Respectfully submitted,

June Holmen  
June Holmen  
County Board of Appeals of Baltimore  
County

IN THE MATTER OF : IN THE  
THE APPLICATION OF :  
J. DARWIN ROSS, TRUSTEE, ET AL : CIRCUIT COURT  
FOR ZONING RECLASSIFICATION :  
ON PROPERTY LOCATED ON : FOR  
SE/S PULASKI HIGHWAY, 332' E : BALTIMORE COUNTY  
OF r/w FILLER TO THE E/S  
ROSSVILLE BOULEVARD :  
FROM M.L.-C-S-1 AND M.L.-I-M. : AT LAW  
TO B.R.-C-S-1 AND B.R.-I-M. :  
AND SETBACK VARIANCES : CG Doc. No. 40  
15th ELECTION DISTRICT :  
:  
:  
PHYLLIS C. FRIEDMAN, PEOPLE'S : Folio No. 372  
COUNSEL FOR -BALTIMORE COUNTY, :  
PLAINTIFF - File #B-87-263-A : File No. 87-CG-2302

CERTIFICATE OF NOTICE

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, William T. Hackett, Lawrence E. Schmidt and LeRoy B. Spurrier, 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, John B. Howard, Esq. and Robert A. Hoffman, Esq., 210 Allegheny Ave., Towson, Md. 21204, Counsel for Petitioner; J. Darwin Ross, c/o Baker & Baker, P.A., 10 Charles Plaza, Suite 200, Baltimore, Md. 21201, Petitioner; Twila Louese Bilger, c/o Baker & Baker, P.A. 10 Charles Plaza, Suite 200, Baltimore, Md. 21201, Petitioner; James Earl Kraft, Baltimore County Board of Education, 940 York Rd., Towson, Md. 21204; Circuit City Stores, Inc., Donald L. Chasen, Asst. Vice President, 2040 Thalbro St., Richmond, Va. 23230, Contract Purchaser; and Phyllis C. Friedman, Court House, Towson, Md. 21204, People's Counsel for Baltimore County, a copy of which notice is attached hereto and prayed that it may be made a part thereof.

*Jane Holmen*  
Jane Holmen  
County Board of Appeals of Baltimore  
County, Rm. 200, Court House, Towson, Md.  
494-3180

9.

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to John B. Howard, Esq. and Robert A. Hoffman, Esq., 210 Allegheny Ave., Towson, Md. 21204, Counsel for Petitioner; J. Darwin Ross, c/o Baker & Baker, P.A., 10 Charles Plaza, Suite 200, Baltimore, Md. 21201, Petitioner; Twila Louise Bilger, c/o Baker & Baker, P.A., 10 Charles Plaza, Suite 200, Baltimore, Md. 21201, Petitioner; James Earl Kraft, Baltimore County Board of Education, 940 York Rd., Towson, Md. 21204; Circuit City Stores, Inc., Donald L. Chasen, Asst. Vice President, 2040 Thalhro St., Richmond, Va. 23230, Contract Purchaser; and Phyllis C. Friedman, Court House, Towson, Md. 21204, People's Counsel for Baltimore County, on this 15th day of June, 1987.

*Jane Holmen*  
\_\_\_\_\_  
Jane Holmen  
County Board of Appeals of Baltimore  
County

A circular stamp with a clock-like border. The date "SEP 22 1987" is printed in the center. Below the date, the word "UNSEL" is visible. The stamp is partially obscured by other markings on the page.

.....

RECEIVED  
COUNTY BOARD OF APPEALS

1987 SEP 29 P 3:25

Petitioners presented William Kirwin, Registered Land Planner, as their first and only witness. Mr. Kirwin reviewed the existing zoning and all the nearby uses and nearby zoning. He described in detail these surrounding uses, and entered exhibits documenting same. He testified that the present use being known as Balcon Products were the manufacturers of heavy concrete prestress slabs and pavings and that this use generates almost exclusively heavy truck traffic. It was his testimony that the commercial use requested would alleviate this heavy truck traffic and would generate almost exclusively automobile traffic. He noted in his testimony that the property is bordered on one side in its entirety by an M.L. classification now developed as an industrial park. He also noted that this property line is bounded by an elevated railroad line which effectively separates this parcel from the industrial park and there is no access to the industrial park from this site. He also noted that the Director of

RECEIVED  
COUNTY BOARD OF APPEALS

1987 SEP 29 P 3:25

JSS  
 JSS  
 100 COPY 100  
 SUPPLEMENTARY  
 P. 55 Send no  
 100 COPY

Case No. R-87-263-A  
J. Darwin Ross, Trustee, et al

3.

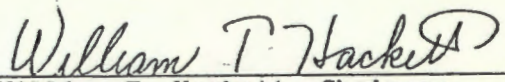
O R D E R

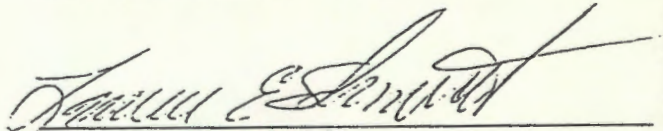
It is therefore this 12th day of May, 1987, by the County Board of Appeals ORDERED that the reclassification from M.L.-C.S.1 and M.L.-I.M. to B.R.-C.S.1 and B.R.-I.M. be and the same is GRANTED.

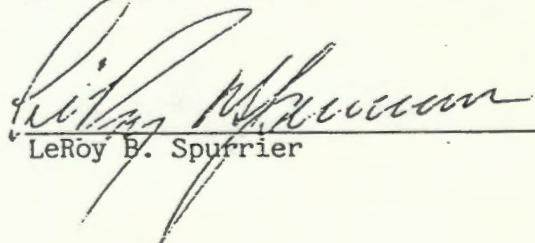
IT IS FURTHER ORDERED that the request for variances included in the original Petition be and the same is DISMISSED.

Any appeal from this decision must be made 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, Chairman

  
Lawrence E. Schmidt

  
LeRoy B. Spurrer

RECEIVED  
COUNTY BOARD OF APPEALS

1987 SEP 29 P 3 25

Baltimore County  
Zoning Commissioner  
Office of Planning & Zoning  
Towson, Maryland 21204  
494-3353

Arnold Jablon  
Zoning Commissioner

May 11, 1987



Dennis F. Rasmussen  
County Executive

John B. Howard, Esquire  
210 Allegheny Avenue  
Towson, Maryland 21204

RE: PETITION FOR ZONING RECLASSIFICATION  
SE/S Pulaski Highway, 332' E of R/W Fillet to the  
E/S Rossville Blvd.  
15th Election District - 6th Councilmanic District  
Trust Under Will of C. Boyd Ross - Petitioner  
Case No. R-87-263-A

Dear Mr. Howard:

A review of our records reveals that your client, Circuit City Stores, Inc., has not reimbursed the Zoning Office for advertising and posting costs which it has expended regarding this case. Please have your client issue a check in the amount of \$309.79, payable to "Baltimore County, Maryland", and remit same to the attention of Miss Margaret E. du Bois, Zoning Office, Room 113, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland 21204.

Failure on your part to comply with this request will result in my being forced to refer this matter to the Baltimore County Office of Law for collection.

Very truly yours,

*Arnold Jablon*  
ARNOLD JABLON  
Zoning Commissioner

AJ:med

c.c. Mr. Donald L. Chasen, Assistant  
Vice President  
Circuit City Stores, Inc.  
2040 Thalbro Street  
Richmond, Virginia 23230

bl. c.c. Mr. William T. Hackett, Chairman  
County Board of Appeals

COUNTY BOARD OF APPEALS  
1987 MAY 11 P 12:55

John B. Howard, Esquire  
210 Allegheny Avenue  
Towson, Maryland 21204

March 16, 1987

NOTICE OF HEARING

RE: PETITION FOR RECLASSIFICATION  
SE/S Pulaski Highway, 332' E of r/w fillet  
to the E/S Rossville Blvd.  
15th Election District - 6th Councilmanic District  
Trust Under Will of C. Boyd Ross - Petitioner  
Case No. R-87-263-A

TIME: 10:00 a.m.

DATE: Thursday, April 16, 1987

PLACE: Room 218, Courthouse, Towson, Maryland

4/16/87 - Awaiting memo from Pete Zimmermann; then will do Order.(WTH)

1987 APR 10 PM 4:07  
WTH:m

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

THIS IS TO ADVISE YOU THAT YOU WILL BE BILLED BY THE ZONING OFFICE FOR ADVERTISING AND POSTING COSTS WITH RESPECT TO THIS CASE APPROXIMATELY A WEEK BEFORE THE HEARING. THIS FEE MUST BE PAID AND THE SIGN AND POST RETURNED TO THE ZONING OFFICE ON THE DAY OF THE HEARING OR THE ORDER WILL NOT BE ISSUED.

W.T.H.

ccs: Mr. Donald L. Chasen, Assistant Vice President  
Circuit City Stores, Inc.  
2040 Thalbro Street  
Richmond, Virginia 23230

Trust Under Will of C. Boyd Ross  
J. Darwin Ross, et al.  
c/o Baker & Baker, P.A.  
10 Charles Plaza - Suite 200  
Baltimore, Maryland 21201

People's Counsel for Baltimore County

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Bettye du Bois - Zoning Date: February 11, 1987  
FROM: Kathi Weidenhammer  
Item #12, Cycle IV -#R-87-263-A  
SUBJECT: Jane I. Purinton

As you requested, attached is a copy of the letter of withdrawal which we received yesterday from Rob Hoffman re the subject reclassification case. Please note that this case was set for hearing on Thursday, April 16 at 10:00 a.m.

As a result of this withdrawal and at the request of Rob Hoffman, the following change has been made:

Item #16, IV FROM: TO:  
R-87-263-A J. Darwin Ross, Trustee et al. Tues 5/19/87 Thurs 4/16/87

Any questions, please call me.

Attachment

If you have any questions concerning the enclosed comments, please feel free to contact the Zoning Office at 494-3391 or the commenting agency.

Very truly yours,

*James E. Dyer*  
JAMES E. DYER  
Chairman  
Zoning Plans Advisory Committee

JED:kbb (MS018)

Enclosures

cc: G.W. Stephens, Jr. & Associates, Inc.  
303 Allegheny Avenue  
Towson, Maryland 21204



Maryland Department of Transportation  
State Highway Administration

RECEIVED  
NOV 12 1986  
ZONING OFFICE

William K. Hellmann  
Secretary  
Kai Kassoff  
Administrator

November 5, 1986

RE: Baltimore County  
Item #16  
Property Owner: J. Darwin  
Ross, Trustee, et al  
Contract Purchaser:  
Circuit City Stores Inc.  
SE/S Pulaski Hwy, (Rte  
40-E) 332' E. of R/W  
fillet to the E/S  
Rossville Blvd.  
Existing Zoning: M.L.  
C.S.1 and M.L. - I.M.  
Election District 15th  
Acres: 7.61  
Proposed Zoning: B.R.  
C.S.1 and B.R. L.M.  
& variance from Sections  
238.1 and 238.2 to permit  
setbacks of 20' in lieu  
of the required 50'  
and 30' respectively.  
(Not documented).

Att: James Dyer

October, 1986, - April, 1987  
Zoning Reclassification Cycle IV

RECEIVED  
COUNTY BOARD OF APPEALS  
FEB 10 1987

Dear Mr. Hackett:

On review of the submittal of August 28, 1986 and review of our files, the State Highway Administration-Bureau of Engineering Access Permits will require the following improvements on the S/S of Pulaski Highway-Route 40-E.

1. Show all access to the site by way of a Standard Directional Entrance - 20' Ingress and 20' Egress (see attachment)
2. Show State Highway Administration Type "A" concrete curb and gutter along the entire frontage of the site, offset 15' from the edge of the travelled way of Route 40-E.
3. State Highway Administration Type "A" concrete curb and gutter along or in back of the State Highway Administration right-of-way line.
4. Construct bituminous paving to meet the State Highway Administration directional entrance and pave or overlay the shoulder area and taper at the direction of the S.H.A. Inspector.

continue

My telephone number is 301-333-1350

Typewriter for Impaired Hearing or Speech  
303-7555 Baltimore Metro - 855-0451 D.C. Metro - 1-800-32-5082 Statewide Toll Free  
P.O. Box 717 / 707 North Calvert St., Baltimore, Maryland 21203 - 0717

Mr. William Hackett  
Att: James Dyer  
Page 2  
November 5, 1986

5. Show a 5' tangent between the property line at the existing commercial strip stores and the directional entrance.
6. Establish a "WR" inlet and grate at the existing 30" outfall pipe on the S/S of Pulaski Highway-Route 40-E or modify the existing condition as a State Highway Administration standard curb opening with rip-rap to pick up all additional storm water run-off along the improved frontage of the site.

All work within the State Highway Administration right-of-way must be through S.H.A. Permit with the posting of a bond or Letter of Credit to guarantee construction.

Very truly yours,

*Charles Lee*  
Charles Lee, Chief  
Bureau of Engr. Access Permits

by: George Wittman

CL-GW:es

cc: J. Ogle

attachment

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Mr. Walter Hackett, Chairman  
TO: Board of Appeals  
Office of Planning and Zoning  
FROM: Jan J. Forrest  
SUBJECT: Reclassification Petitions - Cycle IV

Date: December 9, 1986

This office is unable at this time to make comments regarding the seventeen properties listed for zoning reclassification without more detailed information on the attached plats.

If you have any questions concerning this matter, you may contact Mr. Gerard A. Zitnik at 494-2762.

*Jan J. Forrest*  
Jan J. Forrest, Director  
BUREAU OF ENVIRONMENTAL SERVICES

IJF:pb



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

PAUL H. REINCKE  
CHIEF

October 22, 1986

Mr. Arnold Jablon  
Zoning Commissioner  
Office of Planning and Zoning  
Baltimore County Office Building  
Towson, Maryland 21204

Attention: William Hackett  
Chairman, County Board of Appeals

RE: Property Owner: J. Darwin Ross, Trustee, et al

Location: Circuit City Stores, Inc. SE/S Pulaski Hwy. 332' E. of r/w fillet to the E/S Rossville Blvd.

Item No.: 16

Zoning Agenda: Cycle IV

Gentlemen:

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

- (X) 1. Fire hydrants for the referenced property are required and shall be located at intervals or 300 feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.

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

- ( ) 3. The vehicle dead end condition shown at \_\_\_\_\_

EXCEEDS the maximum allowed by the Fire Department.

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

- (X) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1976 edition prior to occupancy.

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

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

REVIEWER: *John F. O'Neill*  
Planning Group  
Special Inspection Division

Noted and Approved:  
Fire Prevention Bureau

/mb

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Chairman,  
TO: William F. Hackett - Appeals Board  
FROM: Charles E. Burroughs - Planning Review Chief, Department of Permits & Licenses  
SUBJECT: October, 1986 - April, 1987 Zoning Reclassification - Cycle IV

Date: December 1, 1986

Item #16  
Property Owner: J. Darwin Ross, Trustee et al  
Contract Purchaser: Circuit City Stores, Inc.  
Location: SE/S Pulaski Highway, 332' E of R/W fillet to the E/S Rossville Blvd.  
Existing Zoning: M.L. - C.S. 1 and M.L. - I.M.  
Proposed Zoning: B.R. - C.S. 1 and B.R. - I.M., etc.  
Acres: 7.61  
District: 15th.

Building Code setbacks for fire separation of exterior walls varies from zero feet (0') for a Type 1A construction to as much as 50'-0" for an unlimited Type 2C building. It would appear the following Sections of Code would be applicable to this proposal.

Section 101.5  
Article 4 and Table 101  
Article 5, specifically Sections 500.1, Table 501, Section 502.0 and Table 504.2.

As there are no proposed buildings shown it is not possible to advise the applicant further. However, the applicant should be made aware of the possible ramifications of building closer than 30'-0" to an interior lot line with certain types and sizes of buildings.

CEB/vw



BALTIMORE COUNTY  
OFFICE OF PLANNING AND ZONING  
TOWSON, MARYLAND 21204  
494-3211

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

CYCLE IV, OCT. TO APR. 1986-87  
OCTOBER 15, 1986

Re: Zoning Advisory Meeting of OCTOBER 14, 1986  
Item #CYCLE IV - #16  
Property Owner: J. DARWIN ROSS, TRUSTEE  
Location: SE/S PULASKI HWY, 332' E. OF R/W  
FILLET TO THE E/S ROSSVILLE BLVD.

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.

- (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.
- ( ) Parking calculations must be shown on the plan.
- ( ) 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
- ( ) Landscaping: Must comply with Baltimore County Landscape Manual.
- ( ) The property is located in a deficient service area as defined by Bill 178-79. No building permit may be issued until a Reserve Capacity Use Certificate has been issued. The deficient service is
- (X) The property is located in a traffic area controlled by a "D" level intersection as defined by Bill 178-79, and as conditions change traffic capacity may become more limited. The Basic Services Areas are re-evaluated annually by the County Council.
- (X) Additional comments:  
IF SUBJECT PROPERTY IS REZONED ANY FUTURE DEVELOPMENT OF THE SITE MUST MEET THE REQUIREMENTS OF BILL 178-79 "THE DEVELOPMENT REGULATIONS"

cc: James Hoswell

David Fields, Acting Chief  
Current Planning and Development



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

STEPHEN E. COLLINS  
DIRECTOR

December 11, 1986

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

Cycle IV

Item No. 16

Property Owner: J.D. Ross, Trustee, et. al.  
Location: Pulaski Highway

Dear Mr. Hackett:

This department recommends against the rezoning of this property because of the limited sight distance at the existing access to Rossville Blvd. The limited sight distance is caused by the retaining wall for the existing railroad overpass. The projected increase in traffic for this existing access on Rossville Blvd. would be approximately 1700 trips/day.

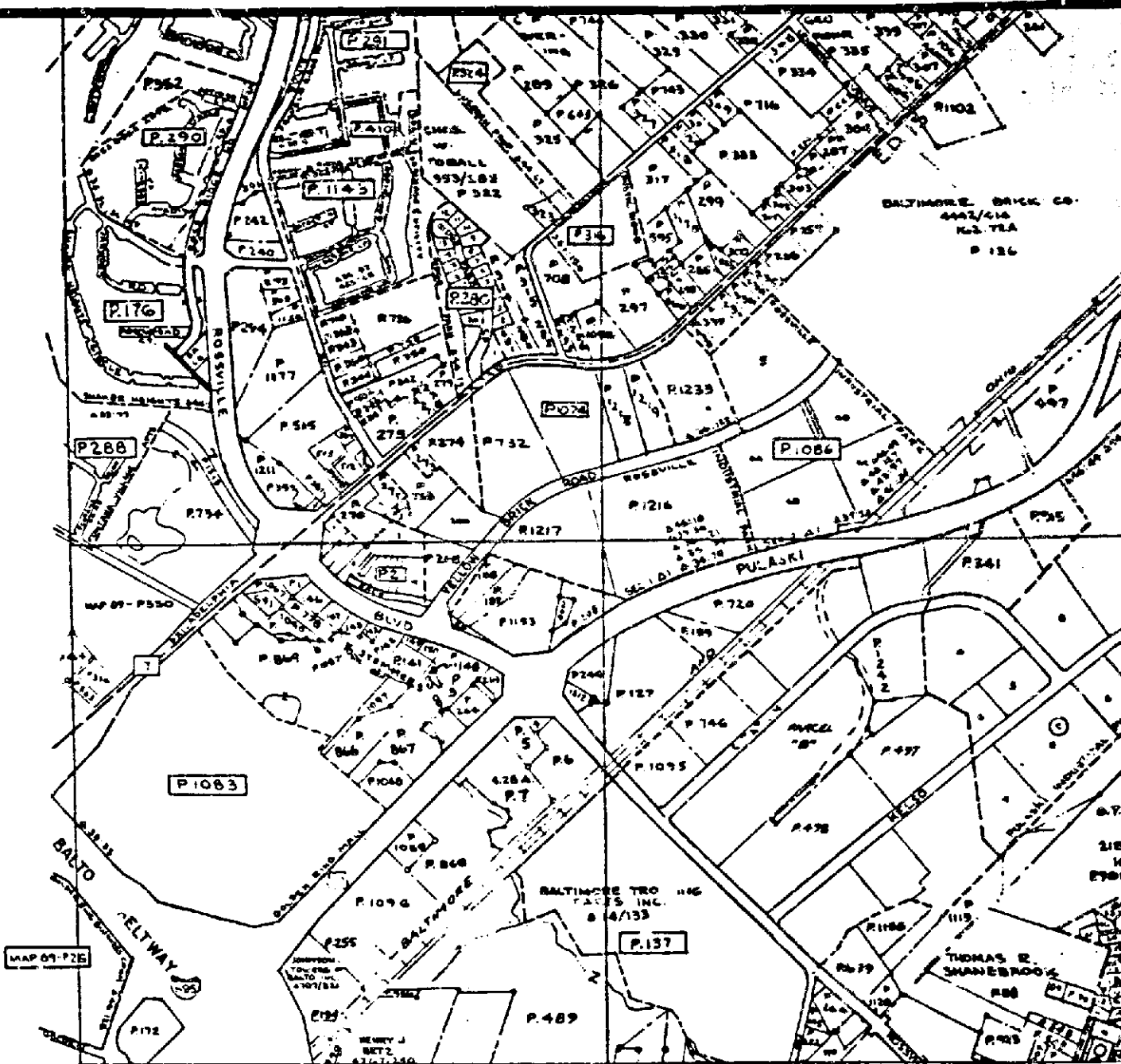
The projected trip generation for the existing zoning is 380 trips/day, and the projected trip generation for the proposed zoning is 3805 trips/day.

Very truly yours,

*K.C. Richard Moore*  
K.C. Richard Moore  
Deputy Director

CRM:GMJ:lt

DEC 16 1986



VICINITY MAP  
SCALE: 1"=900'

AREA OF TRACT ----- 7.7 AC.  
ZONING CHANGE PROPOSED  
1. EX. ML-CS-1 TO BR-CS-1 ----- 2.95 AC.  
2. EX. ML-1M TO BR-1M ----- 4.70 AC.  
3. EX. BR-CS-1 TO REMAIN ----- 0.05 AC.

THIS PLAT WAS COMPILED FROM DEEDS AND OTHER  
COUNTY RECORDS AND DOES NOT REPRESENT A FIELD  
SURVEY OR TITLE SURETY.

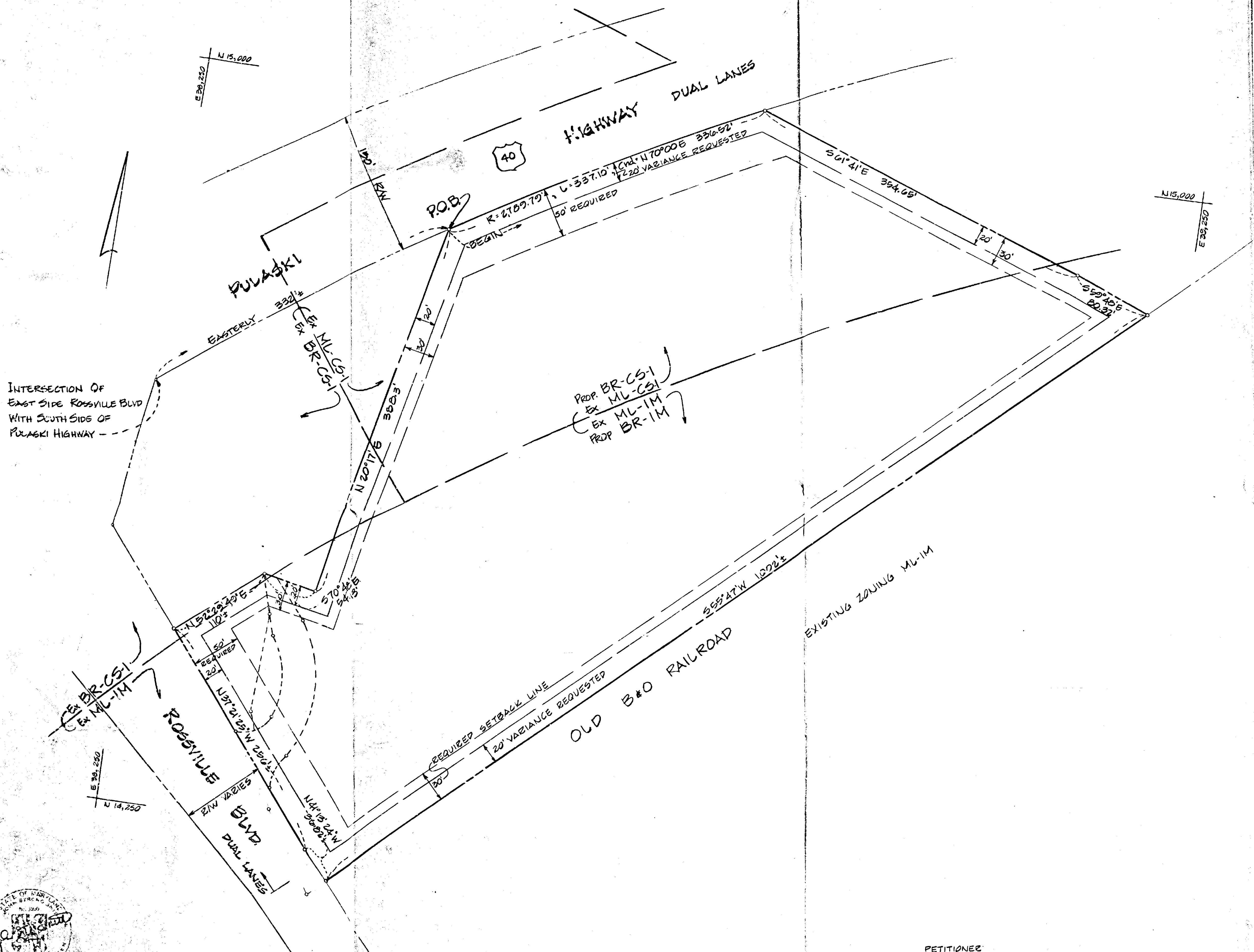
VARIANCE REQUESTED: SIDE AND REAR YARD VARIANCES  
OF 20' IN LIEU OF THE REQUIRED 30' IN A BR ZONE  
PER SECTION 230.2 AND A FRONT YARD VARIANCE OF 20'  
IN LIEU OF THE REQUIRED 50' PER SECT 230.1

R-57-2637  
Item 16  
Cycle IV

PLAT TO ACCOMPANY A PETITION FOR A  
ZONING RECLASSIFICATION AND VARIANCES

CIRCUIT CITY  
ROSSVILLE BOULEVARD

BALTIMORE COUNTY, MD ELECTION DISTRICT #15  
SCALE: 1"=50' AUGUST 28, 1986



PETITIONER  
CIRCUIT CITY STORES INCORPORATED  
2040 THALBRO STREET  
RICHMOND, VIRGINIA 23230



GEORGE WILLIAM STEPHENS, JR.  
AND ASSOCIATES, INC.



CIVIL ENGINEERS & LAND SURVEYORS

303 ALLEGHENY AVENUE  
TOWSON, MARYLAND 21204  
(301) 825-8120