

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY, et al

Appellants

Vs.

307, INC., a Maryland
Corporation

Appellee

IN THE
CIRCUIT COURT
FOR BALTIMORE COUNTY

CASE NO. 88 CG 3000

ORDER

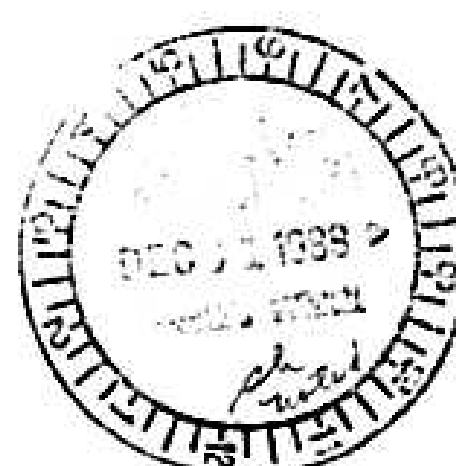
The Court having considered Appellee's Motion to Dismiss filed November 7, 1988, and Appellants' having no opposition to same, it is this 29th day of November, 1988,

ORDERED by the Circuit Court for Baltimore County that said Motion to Dismiss is hereby GRANTED and this Appeal dismissed as moot.

Leonard S. Jacobson
LEONARD S. JACOBSON, JUDGE

COPIES SENT TO:

Peter Max Zimmerman, Esquire
R. Douglas Jones, Esquire
John P. Geiss, Esquire



IN THE MATTER OF
THE APPLICATION OF
307, INC., A MARYLAND CORPORATION
FOR RECLASSIFICATION FROM D.R. 5.5
TO R.O. ON PROPERTY LOCATED ON THE
SOUTHEAST CORNER OF FREDERICK ROAD
AND HOLMEHURST AVENUE
1st ELECTION DISTRICT
1st COUNCILMANIC DISTRICT

ON REMAND FROM
THE CIRCUIT COURT
FOR BALTIMORE COUNTY
AT LAW
CASE NO. 87-CG-4432
ZONING CASE NO. R-87-451

SUPPLEMENTARY OPINION AND ORDER

By Order of the Honorable William M. Nickerson, Judge, dated February 23, 1988, Case No. R-87-451 is remanded from the Circuit Court to the Baltimore County Board of Appeals for further action as the Board feels necessary in light of the Court of Special Appeals decision in People's Counsel for Baltimore County v. Robert W. Mockard, No. 451, September Term (1987), concerning Section 2-58.1(j) of the Baltimore County Code.

In essence, this section of the Code mandates that, before any property may be reclassified, the Board must find that there has occurred substantial change in the character of the neighborhood or that the last classification of the property was established in error.

The Board has reviewed all the testimony and evidence received in the original hearing in this case. An evaluation of this testimony and evidence indicated that the Board's original conclusions were correct. The Board will not attempt in this Opinion to summarize all the testimony and evidence received but will let the record speak for itself. Basically, the testimony evidencing error in the afforded D.R. 5.5 zoning is as follows.

The subject property is orientated to Frederick Road and is located in the block between Wade Avenue and Holmehurst Avenue. In this particular block, four structures exist. At the corner of Wade Avenue and Frederick Road

Case No. 87-CG-4432
Zoning Case No. R-87-451
307, Inc., a Maryland Corporation

there exists a funeral home and a crematorium. To the west, the abutting property is strictly used as a residence. As will be seen by later testimony, the Board can only wonder how long this will continue. The next structure to the west is a residential building used as a doctor's office. In the Board's opinion, this removes this site from the strictly residential aspect of use. The subject site located on the corner of Frederick Road and Holmehurst Avenue is at present abandoned and fire-damaged. Continuing to the west along Frederick Road, the next two properties across Holmehurst Avenue are zoned R.O. and B.L. Continuing west on Frederick Road, there are almost uninterrupted strip shopping centers, uninterrupted commercial use and a large 0-1 office park. Across Frederick Road from the subject site, there is a mix of R.O. zoning and a small amount of D.R. zoning. These conditions as evidenced at this hearing, in the Board's opinion, render the D.R. 5.5 classification of this property impractical for strictly residential use, and the Board finds as a fact that the D.R. 5.5 classification is in error, and that the proposed zoning of R.O. is proper.

To further compound the unreasonableness of the assigned D.R. 5.5 zoning is the testimony presented at the hearing that the traffic on Frederick Road between the years of 1983 and 1986 had increased some 31 percent and in 1986 exceeded 21,000 vehicle trips per day. The Board will note that this is 1988. This evidence of change in the residential aspect of this site further evidences the error of the D.R. 5.5 zoning. After consideration of all the testimony and evidence, the Board is of the opinion that the D.R. 5.5 zoning is in error and will find as a fact that it is in error and will so order.

CASE NO. 87-CG-4432
Zoning Case No. R-87-451
307, Inc., a Maryland Corporation

Section 2-58.1(j)(1) of the Baltimore County Code mandates that before any property is reclassified pursuant to this section, the Board of Appeals must find that "there has occurred a substantial change in the character of the neighborhood in which the property is located since the property was last classified, or that the last classification of the property was established in error...." Testimony and evidence in this case indicated that the last classification of the property as residential was in fact in error. In addition, a significant change in the character of the neighborhood is evidenced by the ever-increasing traffic flow on Frederick Road, which adversely affects a strictly residential use of this property.

Pursuant to Section 2-58.1(j)(2) of the Code as that section has been interpreted by the Court of Special Appeals in People's Counsel for Baltimore County v. Robert W. Mockard, No. 451, September Term, 1987, this Board has considered the testimony presented this day and has evaluated this testimony and evidence as it relates to the applicable factors enumerated therein. This section provides:

"...Any finding of such a change or error and any finding that the prospective reclassification is warranted may be made only upon consideration of factors relating to the purposes of the zoning regulations and maps, including, but not limited to, all of the following: Population trends; availability and adequacy of present and proposed transportation facilities; water-supply facilities, sewerage, solid-waste disposal facilities, schools, recreational facilities, and other public facilities; compatibility of uses generally allowable under the prospective classification with the present and projected development or character of the surrounding area; any pertinent recommendation of the planning board or office of planning and zoning; and consistency of the current and prospective classifications with the master plan, the county plan for sewerage and water-supply facilities, and the capital program."

Case No. 87-CG-4432
Zoning Case No. R-87-451
307, Inc., a Maryland Corporation

The Board will not repeat herein at length the lengthy testimony received; however, incorporates by reference the transcript of this case which addressed each applicable factor. The Board finds as a matter of fact and after due consideration of each of these applicable factors that the current zoning is in error for the reasons set forth therein and that the proposed zoning of R.O. is proper.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 15th day of June, 1988 by the County Board of Appeals of Baltimore County ORDERED that the Petition for Zoning Reclassification from D.R. 5.5 to R.O. on the subject site is and the same is GRANTED, with the following restrictions:

1. The only access to the subject site is to be provided from Holmehurst Avenue.
2. Sufficient parking shall be provided on site so that no parking will be needed on Holmehurst Avenue.
3. Said parking shall be screened from the adjacent neighbor on Holmehurst Avenue in accordance with the Baltimore County Zoning Regulations.

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

Arnold G. Foreman
Arnold G. Foreman

Case No. R-87-451
R-87-451

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY, et al

Appellants

V.

307, INC., A MARYLAND
CORPORATION

Appellee

COPY: *yn Clark*

IN THE

CIRCUIT COURT

FOR

BALTIMORE COUNTY

87 CG 4432

ORDER

Appellant's (People's Counsel for Baltimore County) Appeal is hereby granted, the case is remanded to the Baltimore County Board of Appeals for further action as the Board feels necessary in light of the Court of Special Appeals' decision in People's Counsel for Baltimore County v. Robert W. Mockard, No. 451, September Term (1987), concerning Section 2-58.1(j) of the Baltimore County Zoning Regulations.

JUDGE

COPIES SENT:

Peter Max Zimmerman, Esquire
R. Douglas Jones, Esquire
John P. Geiss, Esquire
Administrative Secretary, County Board of Appeals

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

TO THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition (1) that the zoning status of the herein described property be re-classified, pursuant to the Zoning Law of Baltimore County, from an DR5.5 zone to an RO zone, for the reasons given in the attached statement; and (2) for a Special Exception, under the said Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property, for

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

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

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

Contract Purchaser:	Legal Owner(s):
(Type or Print Name)	307, Inc., a Maryland Corporation
Signature	Signature
Address	John P. Geiss, President
City and State	(Type or Print Name)
Signature	Signature
Address	Address
City and State	City and State
Name, address and phone number of legal owner, contract purchaser or representative to be contacted	
John P. Geiss	
2403 Harborwood Road, Catonsville, MD 21228	
Phone No.	Phone No.
301-788-9422	301-788-9422

307, INC., A MARYLAND CORPORATION

#R-87-451

SE/corner Frederick Rd. and Holmehurst Ave.

Item #1, Cycle V, 1987

D.R. 5.5 to R.O.
(Open Plan)

1st Election District
1st Councilmanic Dist.
.275 acre (approx.)

March 2, 1987 Petition Filed

John P. Geiss, Esquire
2403 Harborwood Road
Catonsville, MD 21228
788-9422

John P. Geiss, President
307, Inc., a Maryland Corp.
2403 Harborwood Road
Catonsville, MD 21228

James Earl Kraft
Baltimore County Board of Education
940 York Road 21204

Phyllis Cole Frieum, Esquire
Norman E. Gerber
James G. Howell
Arnold Jablon
Jean M. H. Jung
James E. Dyer
Margaret E. du Bois

R. Douglas Jones
Pete

esg - Pmt
P.C.

PHONE (301) 788-9422

John P. Geiss
ATTORNEY & COUNSELOR AT LAW

623 EDMONDSON AVENUE
CATONSVILLE, MARYLAND 21228

Case No. R-87-451

Copy: J. Robert Haines

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY, et al

Appellants

V.

307 INC., A MARYLAND
CORPORATION

Appellee

: IN THE
:
: CIRCUIT COURT
:
: FOR
:
: BALTIMORE COUNTY
:
: 87 CG 4432

.....

ORDER

Appellant's (People's Counsel for Baltimore County) Appeal is hereby
reversed and
granted, the case is/remanded to the Baltimore County Board of Appeals
for further action as the Board feels necessary in light of the Court of
Special Appeals' decision in People's Counsel for Baltimore County v. Robert
W. Mockard, Mp/ 451, September Term (1987), concerning Section 2-58.1(j) of
the Baltimore County Zoning Regulations.

2/23/88 William M. Nickerson
JUDGE

COPIES SENT:

Peter Max Zimmerman, Esquire
R. Douglas Jones, Esquire
John P. Geiss, Esquire
Administrative Secretary, County Board of Appeals

RECEIVED
COUNTY BOARD OF APPEALS

1988 FEB 23 A 10 09

True Copy Test
SUZANNE NENCH, Clerk
Per S. Sanders
Deputy Clerk

File
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FEB 25 1988
ZONING OFFICE

307, INC., A MARYLAND CORPORATION
3E/corner Frederick Rd. and Holmehurst Ave.
D.R. 5.5 to R.O.
(Open plan)

#E-87-451
Item #1, Cycle V, 1987
1st Election Dist.
1st Councilmanic Dist.
.275 acre (approx.)

March 2, 1987 Petition of 307, Inc., a Md. Corp., for reclassification from D.R. 5.5 to R.O. on property located on the SE/cor Frederick Road and Holmehurst Ave.

September 1 Hearing held on petition by County Board of Appeals.

September 22 Order of C.B. of A. that the Petition for Zoning Recl. from D.R. 5.5 to R.O. be GRANTED w/restrictions.

October 16 Order for Appeal filed in Circuit Ct for Balto. Co. by People's Counsel for Balto. Co., and R. Douglas Jones, Esq., Counsel for Protestants.

October 16 Petition to accompany Order for Appeal filed in CCT.

November 16 Record of proceedings filed in CCT for BCo.

February 23, 1988 Order of Circuit Court - case is reversed and remanded to C.B. of A. for "further action as the Board feels necessary." (Nickerson, J)

June 15 Supplementary Opinion and Order of the C.B. of A.: that the Petition for Zoning Reclassification from D.R. 5.5 to R.O. on the subject site is GRANTED, with restrictions.

July 12 Order for Appeal to CCT, BCo from R. Douglas Jones, Esq. on behalf of Protestants/Plaintiffs, and Phyllis C. Friedman, People's Counsel; Petition to accompany appeal filed in CCT/BCo.

July 15 Certificate of Notice sent to interested parties.

August 3 Record of proceedings filed in CCT, BCo.

November 7 Motion to Dismiss filed in CCT, BCo by John R. Geiss, Esq. Counsel for Appellee. (Council Bill No. 144-88-- Comprehensive Map Process --re-zoned property D.R. 5.5 effective January 1, 1989; appeal is therefore moot.)

November 29 Order of the Circuit Court that the Motion to Dismiss filed November 7, 1988 by Appellee, and having no opposition by Appellants, is hereby GRANTED and Appeal dismissed as MOOT. (J. Jacobson)

IN THE MATTER OF
THE APPLICATION OF
307, INC., A MARYLAND CORPORATION
FOR RECLASSIFICATION FROM D.R. 5.5
TO R.O. ON PROPERTY LOCATED ON THE
SOUTHEAST CORNER FREDERICK RD. AND
HOLMEHURST AVENUE
1st ELECTION DISTRICT
1st COUNCILMANIC DISTRICT

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW

PEOPLE'S COUNSEL FOR BALTIMORE
COUNTY, ET AL. PLAINTIFFS

CG Doc. No. 47
Folio No. 302
File No. 87-CG-4432

ZONING FILE NO. R-87-451

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 and Arnold G. Foreman, 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

March 2, 1987 Petition of 307, Inc., a Maryland Corporation, for a reclassification from DR 5.5 to R.O. on property located on the southeast corner Frederick Rd. and Holmehurst Ave. in the 1st Election and 1st Councilmanic Districts of Baltimore County.

August 10 Certificate of Posting of Property - filed

August 13 Publication in newspaper - filed

August 25 Comments of Baltimore County Zoning Plans Advisory Committee - filed

September 1 At 10 a.m. hearing held on petition by County Board of Appeals

September 22 Order of the Board of Appeals ordering that the Petition for Zoning Reclassification from DR 5.5 to R.O. on the subject site be GRANTED with restrictions.

307, Inc., A Maryland Corporation
Case No. R-87-451

October 16, 1987 Order for Appeal filed in the Circuit Court for Baltimore County by Phyllis C. Friedman, People's Counsel for Baltimore County, and R. Douglas Jones, Esq., Counsel for Plaintiffs Richard Decker, William Hawkins, and Holmehurst Community Association.

October 16 Petition to accompany Order for Appeal filed in the Circuit Court for Baltimore County.

October 16 Certificate of Notice sent to all interested parties

November 16 Transcript of testimony filed

Petitioner's Exhibit No. 1 - Complete file

" " " 2A,B,C,D - Traffic Map Studies

" " " 3 - Location Survey

" " " 4 - Subdivision Plat

" " " 5A-J - Photos

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

" " " 2 - Report from Director of Planning

" " " 3 - Report from Planning Board

Protestants' Exhibit No. 1 & 1A - Minutes and Resolution

" " " 2 - Petition

" " " 3 - Series of Photos (in Board of Appeals closet)

" " " 4 - Series of Photos (in Board of Appeals closet)

November 16, 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 whomsoever institutes the request.

June Holmen, County Board of Appeals

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY, et al.,
Appellants
v.
307, INC., A MARYLAND
CORPORATION,
Appellee

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
AT LAW
Case No. _____
(Zoning Case No. R-87-451)

PETITION ON APPEAL

People's Counsel for Baltimore County, and R. Douglas Jones, Esquire, on behalf of Protestants/Appellants Richard Decker, William Hawkins, and Holmehurst Community Association, having heretofore filed a Notice of Appeal from the decision of the County Board of Appeals under date of September 22, 1987, in compliance with Maryland Rule B-2(e), file 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, Appellants pray that the Opinion and Order of the Board of Appeals of Baltimore County under date of September 22, 1987 be reversed, and the action of the County Council of Baltimore County in zoning the subject property D.R. 5.5 be affirmed and reinstated.

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

- 2 -

R. Douglas Jones
R. Douglas Jones
Lerch and Huesman
Suite 504, 16 S. Calvert Street
Baltimore, Maryland 21202
539-0155

Attorney for Protestants:
Richard Decker, William Hawkins,
and Holmehurst Community Assn.

I HEREBY CERTIFY that on this 16th day of October, 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 was mailed to John P. Geiss, Esquire, 310 Frederick Rd., Catonsville, MD 21228, Attorney for Petitioner.

Peter Max Zimmerman
Peter Max Zimmerman

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY, et al.
APPELLANTS
VS.
307, INC., A MARYLAND
CORPORATION
APPELLEE
(Zoning Case No. R-87-451)

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
AT LAW
CASE NO. _____
(PREVIOUS APPELLATE
CASE NO. 87-CG-4432)

PETITION ON APPEAL

People's Counsel for Baltimore County, and R. Douglas Jones, Esquire, on behalf of Protestants/Appellants Richard Decker, Williams Hawkins, and Holmehurst Community Association, having heretofore filed a Notice of Appeal from the supplementary decision of the County Board of Appeals under date of June 15, 1988, in compliance with Maryland Rule B-2(e), file 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 to this appeal is an erroneous classification and therefore their Order passed herein is illegal, arbitrary, and capricious.

WHEREFORE, Appellants pray that the Supplementary Opinion and Order of the Board of Appeals of Baltimore

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County under date of June 15, 1988, be reversed, and the action of the County Council of Baltimore County in zoning the subject property D.R. 5.5 be affirmed and reinstated.

Phyllis Cole Friedman
PHYLLIS COLE FRIEDMAN
People's Counsel for
Baltimore County

R. Douglas Jones, Attorney at Law
Lerch and Huesman
Suite 201, Alex Brown Building
102 W. Pennsylvania Avenue
Towson, Maryland 21204
(301)296-1184

PETER MAX ZIMMERMAN
Deputy People's Counsel
Room 223, Court House
Towson, Maryland 21204
494-2188

Attorney for Protestants
Richard Decker, William Hawkins,
and Holmehurst Community Assn.

I HEREBY CERTIFY that on this 12th day of July, 1988, a copy of the foregoing Notice of Appeal was served on the Administrative Secretary, County Board of Appeals, Room 200, Court House, Towson, Maryland 21204; and a copy was mailed to John P. Geiss, Esquire, 310 Frederick Road, Catonsville, Maryland 21228, Attorney for Petitioner.

R. DOUGLAS JONES

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY, et al.,
Appellants
v.
307, INC., A MARYLAND
CORPORATION,
Appellee
(Zoning Case No. R-87-451)

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
AT LAW
CG Docket No. 47
Folio No. 302
File No. 87-CG-4432

NOTICE OF APPEAL

Please note an appeal to the Circuit Court for Baltimore County from the Opinion and Order of the County Board of Appeals of Baltimore County, under date of September 22, 1987, in the above-captioned matter.

R. Douglas Jones
R. Douglas Jones, Attorney at Law
Lerch and Huesman
Suite 504, 16 S. Calvert Street
Baltimore, Maryland 21202
539-0155

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

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

I HEREBY CERTIFY that on this 16th day of October, 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 was mailed to John P. Geiss, Esquire, 310 Frederick Rd., Catonsville, MD 21228, Attorney for Petitioner.

Peter Max Zimmerman
Peter Max Zimmerman

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY, et al.
APPELLANTS
VS.
307, INC., A MARYLAND
CORPORATION
APPELLEE
(Zoning Case No. R-87-451)

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
AT LAW
CASE NO.
(PREVIOUS APPELLATE
CASE NO. 87-CG-4432)

NOTICE OF APPEAL

Please note an appeal to the Circuit Court for
Baltimore County from the Supplemental Opinion and Order of
the County Board of Appeals of Baltimore County, under date
of June 15, 1988, in the above captioned matter.

R. DOUGLAS JONES, Attorney at Law
Lerch and Huesman
Suite 201, Alex Brown Building
102 W. Pennsylvania Avenue
Towson, Maryland 21204
(301)296-1184

PHYLLIS COLE FRIEDMAN
People's Counsel for
Baltimore County

Attorney for Protestants/Appellants
Richard Decker, William Hawkins,
and Holmehurst Community Assn.

PETER MAX ZIMMERMAN
Deputy People's Counsel
Room 223, Court House
Towson, Maryland 21204
494-2188

I HEREBY CERTIFY that on this 12th day of July,
1988, a copy of the foregoing Notice of Appeal was served on
the Administrative Secretary, County Board of Appeals, Room



200, Court House, Towson, Maryland 21204; and a copy was
mailed to John P. Geiss, Esquire, 310 Frederick Road,
Catonsville, Maryland 21228, Attorney for Petitioner.

R. DOUGLAS JONES

IN THE MATTER OF
THE APPLICATION OF
307, INC., A MARYLAND CORPORATION
FOR RECLASSIFICATION FROM D.R. 5.5
TO R.O. ON PROPERTY LOCATED ON THE
SOUTHEAST CORNER FREDERICK RD. AND
HOLMEHURST AVENUE
1st ELECTION DISTRICT
1st COUNCILMANIC DISTRICT
PEOPLE'S COUNSEL FOR BALTIMORE
COUNTY, PLAINTIFFS, ET AL
ZONING FILE NO. R-87-451

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW
CG Doc. No. 47
Folio No. 302
File No. 87-CG-4432

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland
Rules of Procedure, William T. Hackett and Arnold G. Foreman, 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 P. Geiss, Esq., 623 Edmondson Ave., Catonsville, Md.
21228, Petitioner and Counsel; R. Douglas Jones, Esq., Suite 504, 16 S.
Calvert St., Baltimore, Md. 21202, Counsel for Plaintiffs Richard Decker,
William Hawkins, and Holmehurst Community Assoc.; and Phyllis C. Friedman and
Peter Max Zimmerman, 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
County Board of Appeals of Baltimore County
Rm. 200, Court House, Towson, Md. 21204
494-3180

307, Inc., A Md. Corp.
Case No. R-87-451

I HEREBY CERTIFY that a copy of the foregoing Certificate of
Notice has been mailed to John P. Geiss, Esq., 623 Edmondson Ave., Catonsville,
Md. 21228, Petitioner and Counsel; R. Douglas Jones, Esq., Suite 504, 16 S.
Calvert St., Baltimore, Md. 21202, Counsel for Plaintiffs Richard Decker,
William Hawkins, and Holmehurst Community Assoc.; and Phyllis C. Friedman and
Peter Max Zimmerman, Court House, Towson, Md. 21204, People's Counsel for
Baltimore County, on this 16th day of October, 1987.

June Holmen
County Board of Appeals of Baltimore County

IN THE MATTER OF
THE APPLICATION OF
307, INC., A MARYLAND CORPORATION
FOR RECLASSIFICATION FROM D.R. 5.5
TO R.O. ON PROPERTY LOCATED ON THE
SOUTHEAST CORNER FREDERICK RD.
AND HOLMEHURST AVE.
1st ELECTION DISTRICT
1st COUNCILMANIC DISTRICT
PEOPLE'S COUNSEL FOR BALTIMORE
COUNTY, ET AL, PLAINTIFFS
ZONING CASE NO. R-87-451

ON REMAND FROM
THE CIRCUIT COURT
FOR BALTIMORE COUNTY
AT LAW
CG Doc. No. 58
Folio No. 300
File No. 88-CG-3000

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules
of Procedure, William T. Hackett and Arnold G. Foreman, 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 P. Geiss, Esq., 623 Edmondson Ave., Catonsville, MD. 21228,
Counsel for Petitioner; John P. Geiss, Pres., 307, Inc., a Maryland Corp.,
2403 Harborwood Rd., Catonsville, MD. 21228, Petitioner; R. Douglas Jones, Esq.,
Suite 504, 16 S. Calvert St., Balto., MD. 21202, Counsel for Protestants, Richard
Decker, Williams Hawkins, and Holmehurst Community Assn.; and Phyllis C.
Friedman, Esq., Rm. 304, County Office Bldg., 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
County Board of Appeals of Baltimore County
Rm. 315, County Office Bldg.
111 W. Chesapeake Avenue (21204)
494-3180

307, Inc., A Maryland Corporation
Case No. R-87-451

I HEREBY CERTIFY that a copy of the foregoing Certificate of
Notice has been mailed to John P. Geiss, Esq., 623 Edmondson Ave., Catonsville,
Md. 21228, Counsel for Petitioner; John P. Geiss, Pres., 307, Inc., A Maryland
Corporation, 2403 Harborwood Rd., Catonsville, MD. 21228, Petitioner; R. Douglas
Jones, Esq., Suite 504, 16 S. Calvert St., Balto., MD. 21202, Counsel for
Protestants, Richard Decker, Williams Hawkins, and Holmehurst Community Assn.;
and Phyllis C. Friedman, Esq., Rm. 304, County Office Bldg., Towson, Md. 21204,
People's Counsel for Baltimore County, on this 15th day of July, 1988.

June Holmen
County Board of Appeals of Baltimore
County

IN THE MATTER OF
THE APPLICATION OF
307, INC., A MARYLAND CORPORATION
FOR RECLASSIFICATION FROM D.R. 5.5
TO R.O. ON PROPERTY LOCATED ON THE
SOUTHEAST CORNER FREDERICK RD.
AND HOLMEHURST AVE.
1st ELECTION DISTRICT
1st COUNCILMANIC DISTRICT
PEOPLE'S COUNSEL FOR BALTIMORE
COUNTY, ET AL, PLAINTIFFS
ZONING CASE NO. R-87-451

ON REMAND FROM
THE CIRCUIT COURT
FOR BALTIMORE COUNTY
AT LAW
CG Doc. No. 58
Folio No. 300
File No. 88-CG-3000
Previous Case No. 87-CG-4432

**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 and Arnold G. Foreman, con-
stituting 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:

ENTRY FROM DOCKET OF BOARD OF APPEALS OF BALTIMORE COUNTY

February 23, 1988 Order of Circuit Court for Baltimore County - "Case is
reversed and remanded to the Baltimore County Board of
Appeals for further action as the Board feels necessary
in light of the Court of Special Appeals' decision in
People's Counsel for Baltimore County v. Robert W.
Mockart, Mp/ 451, September Term (1987), concerning
Section 2-58.1(j) of the Baltimore County Zoning
Regulations." (Judge William M. Nickerson)

June 15, Supplementary Opinion and Order of the Board of Appeals
ordering that the Petition for Zoning Reclassification
from D.R. 5.5 to R.O. on the subject site be and the
same is GRANTED, with restrictions.

July 12 Order for Appeal to the Circuit Ct. for Baltimore County
from R. Douglas Jones, Esq., on behalf of Protestants/
Plaintiffs, and Phyllis C. Friedman, Esq., People's Counsel
for Baltimore County.

July 12 Petition to accompany Order for Appeal filed in the Circuit
Court for Baltimore County.

307, Inc., A Maryland Corporation
Case No. R-87-451

July 15, 1988 Certificate of Notice sent to all interested parties.
August 3, 1988 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 whomsoever institutes the request.

Respectfully submitted,

June Holmen
County Board of Appeals of Baltimore
County

cc: John P. Geiss, Esq.
Phyllis Friedman
R. Douglas Jones, Esq.

PEOPLE'S COUNSEL FOR : IN THE
BALTIMORE COUNTY, et al : CIRCUIT COURT
Appellants : FOR
V. : BALTIMORE COUNTY
307, INC., A MARYLAND : 87CG 4432
CORPORATION :
Appellee :
(Zoning Case No. R-87-451) :

MOTION FOR TRANSFER OF TRANSCRIPT

The People's Counsel for Baltimore County, Richard Decker, William Hawkins and Holmehurst Community Association, Appellants in captioned case, by R. Douglas Jones, Phyllis Cole Friedman and Peter Max Zimmerman, their respective counsel, hereby move for an Order authorizing the Clerk to transfer the transcript of the proceedings originally held before the County Board of Appeals (and which are now part of Appellate Case 87-CG-4432) to current Appellate Case 88-CG-3000 and for reasons states as follows:

1. On or about October 16, 1957, an Appeal was filed by from Opinion and Order of the County Board of Appeals of Baltimore County dated September 22, 1987 in Zoning Case R-87-451. The Appeal was assigned Case No. 87 CG 4432. By Order of the Circuit Court, the case was remanded back to the County Board of Appeals, which then issued a Supplementary Opinion and Order under date of June

15, 1988. An Appeal was filed from that Supplementary Opinion and Order, which Appeal was assigned Case No. 88-CG-3000.
2. The entire transcript of the original zoning case, which is filed with Case No. 87-CG-4432, is necessary for the Circuit Court's consideration of the present Appeal. The undersigned therefore seek an Order authorizing transfer of the entire transcript from Circuit Court Appellate Case 87-CG-4432 to the present case and making that entire transcript part of Appellate Case 88-CG-3000.

R. Douglas Jones
R. DOUGLAS JONES, Attorney
for Protestant/Appellants
Richard Decker, William
Hawkins and Holmehurst
Community Association

PHYLLIS COLE FRIEDMAN
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PETER MAX ZIMMERMAN
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BY: *R. Douglas Jones*
R. DOUGLAS JONES
Suite 201 Alex Brown Building
102 West Pennsylvania Avenue
Towson, Maryland 21204
296-1184

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of July, 1988, copy of the foregoing was mailed to Administrative Secretary, County Board of Appeals, Room 200, Court House, Towson, Maryland 21204; John P. Gelis, Esquire, 310 Frederick Road, Catonsville, Maryland 21049.

R. Douglas Jones
R. DOUGLAS JONES

PEOPLE'S COUNSEL FOR : IN THE
BALTIMORE COUNTY, et al : CIRCUIT COURT
Appellants : FOR
V. : BALTIMORE COUNTY
307, INC., A MARYLAND : 87CG 4432
CORPORATION :
Appellee :
(Zoning Case No. R-87-451) :

ORDER AUTHORIZING TRANSFER OF TRANSCRIPT

Upon the Motion of the Appellants to transfer the transcript in captioned case, the Clerk is hereby authorized and directed to transfer the entire transcript of Circuit Court Appellate Case No. 87-CG-4432 an to make that transcript part of the record of Case No. 88-CG-3000.

DATE

JUDGE

PEOPLE'S COUNSEL FOR : IN THE
BALTIMORE COUNTY, et al : CIRCUIT COURT
Appellants : FOR
V. : BALTIMORE COUNTY
307 INC., A MARYLAND : 88 CG 3000
CORPORATION :
Appellee :

APPELLANTS' MEMORANDUM

I. INTRODUCTION

This zoning reclassification case involves a residential-style property located in the Holmehurst subdivision at the southeast corner of Holmehurst Avenue and Frederick Road in Catonsville. The property in question is zoned D.R. 5.5 (Density Residential - 5.5 Units per acre) and in the past has been zoned and used exclusively for residential purposes. In January, 1966, the interior of the building was damaged by fire. The present Petitioner purchased the property in its fire-damaged condition, and now seeks to have the property rezoned R-O (Residential-Office).

II. RELEVANT STATUTES

The Comprehensive Zoning Process, in which the County Council has opportunity to review reports and recommendations and hear testimony following consideration by the Baltimore County Planning Board, is established, and

the process is outlined, in Sections 22-21 through 22-23 of the Baltimore County Code (1978, 1984 Cumulative Supplement).

The process in Baltimore County is cyclical and occurs every four years. It gives the legislature a unique opportunity to consider and appraise information on a relatively frequent basis so that comprehensive zoning in the county is tremendously dynamic. Its judicial approbation will be discussed below.

The administrative, or piecemeal, rezoning process, on the other hand, is set forth separately in Section 2-58.1 of the Code.

This includes, in Subsection (j), the "change/mistake" rule which has been a landmark of Maryland zoning for some time. In addition, importantly, the law requires that any finding of error in the existing zoning and any finding that the prospective reclassification is warranted, must be accomplished by explicit consideration of the elements of zoning, such as population, public facilities, compatibility with the character of the neighborhood, and consistency with the Master Plan.

In the present case, the focus is on residential and residential-office zoning. In Baltimore County, residential zoning is organized around the concept of density units. Thus, D.R. 5.5 permits 5.5 units per acre; residential-office zoning allows for moderate office use,

including both conversions of residences, and free-standing office buildings subject to the special exception process.

III. THE "CHANGE/MISTAKE" RULE IN THE COURTS

In Coppolino v. County Board of Appeals of Baltimore County, 23 Md. App. 358 at page 367 (1974), Judge Rita Davidson restated the applicable scope of judicial review:

"... 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. Montgomery County v. Pleasants, 266 Md. 462, 295 A.2d 216 (1972); Himmelheber v. Charnock, 258 Md. 636, 267 A.2d 179 (1970); Chevy Chase Village v. Mont. Co., 258 Md. 27, 264 A.3d 861 (1970); Smith v. Co. Comm'rs of Howard Co., 252 Md. 280, 249 A.3d 708 (1969). We shall follow that test in considering this appeal.

"While, in recent years, we have had occasion to enunciate a number of important principles applicable to the law of zoning, perhaps none is more rudimentary than the strong presumption of the correctness of original zoning and of comprehensive rezoning. To sustain a piecemeal change in circumstances such as those present here, strong evidence of mistake in the original zoning or comprehensive rezoning or evidence of substantial change in the character of the neighborhood must be produced. Rockville v. Henley, 268 Md. 469, 302 A.2d 45 (1973); Heller v. Prince George's Co., 264 Md. 410, 412, 286 A.2d 772 (1972); Creswell v. Baltimore Aviation, 257 Md. 712, 721, 264 A.2d 838 (1970). Since, as we have also said, this burden is onerous, Cabin Join Ltd. v. Montgomery Co., 259 Md. 661, 271 A.2d 174 (1970); Creswell v. Baltimore Aviation, supra; Wells v. Pierpont, 253 Md. 554, 253 A.2d 749 (1969), the task confronting appellants (appellees), whose application followed the comprehensive rezoning by merely four months, is manifestly a difficult one." (emphasis in original.) 23 Md. App. at 367, citing Stratakis v. Beauchamp, 268 Md. 643, 652-53 (1973).

Moreover, in meeting a challenge to the application of the "change/mistake" rule to the Baltimore County process, Judge Davidson said:

"We see nothing in the 'cyclical' zoning scheme adopted by the Council which impels a modification of this rule. The fact that comprehensive rezoning may occur in Baltimore County with greater frequency than has been the case in the past does not alter the fact that it will result from careful study of changes occurring in wide areas and an assessment of future public needs and purposes. Indeed, in our view, the system will enhance the stability and permanence of zoning classifications by assuring that the majority of zoning classifications are determined in accordance with a carefully considered integrated plan of development, based upon a full understanding of the present and future needs of a broad area, rather than upon a piecemeal review of limited scope." 23 Md. App. at 369-70.

IV. SCOPE OF JUDICIAL REVIEW

The scope of judicial review in cases involving a challenge to comprehensive zoning is different from the usual administrative law case. Because of the favored position of comprehensive zoning, the courts have required "strong evidence" to support an administrative decision overturning the comprehensive map. In this context, judicial review of such a decision is far more strict than in ordinary cases, where the courts are in the habit of deferring to administrative expertise. The "strong evidence" rule is illustrated not only in Coppolino, supra, but also in another well-known case arising in Baltimore County: Boyce v. Sembly, 25 Md. App. 43, (1975).

Also see Anne Arundel County v. Maryland National Bank, 32 Md. App. 437 (1976) at page 440:

"There is a strong presumption of correctness of original zoning and comprehensive rezoning, so that to sustain a piecemeal change therefrom, there must be produced strong evidence of mistake in the original zoning or a change in the character of the neighborhood. The burden of proving such mistake or change is a heavy one."

Indeed, the Maryland courts have continued to follow the approach developed in these decisions of the 1970's. See Howard County v. Dorsey, 292 Md. 351, 439 A.2d 1339 (1982).

At the same time, the courts in recent years have also focused attention upon the reasoning of agency decisions. Thus, it is said that "... in judicial review of agency action the court may not uphold the agency order unless it is sustainable on the agency's findings and for the reasons stated by the agency." United Steel Workers v. Bethlehem Steel Corp., 298 Md. 665 (1984). Thus, it is not the job of the court to search the record to determine if evidence (in this case, "strong" evidence) exists sufficient to support the decision. Rather, it is necessary to examine carefully the reasoning of the officers performing the administrative function.

In addition, where a statute requires the agency to consider various facts on designated points, the failure to make specific findings in that connection itself requires reversal of the agency order. See Anne Arundel County v.

A-Pac Ltd., 67 Md. App. 122, 130 (1986). Section 2-58.1(j) of the County Code lists the factors which must be considered by the County Board of Appeals in the present case. Also see the recently decided case of People's Counsel for Baltimore County vs. Mockard, 73 Md. App. 340, wherein the Court of Special Appeals held that the terminology "consideration of factors" requires an articulation of the findings as to each of the applicable factors contained in Section 2-58.1(j)2. The Board must make such findings in both a finding of error in the comprehensive plan and in a decision that the reclassification was warranted."

V. THE COUNTY BOARD OF APPEALS OPINION

Despite the historic use of the subject property as a residence and its inclusion in an old residential subdivision, the County Board of Appeals found D.R. 5.5 zoning to be "unrealistic". The Board's Opinion dated September 22, 1987, as well as its Supplementary Opinion and Order dated June 15, 1988, merely restate Petitioner's/Appellee's arguments and thereafter make purely conclusory findings as to the unrealistic nature of the present zoning. Despite the fact that the case had previously been remanded to the Board for failure to set forth its analysis and findings as to each of the factors enumerated in Section 2-58.1(j) of the Code, the Board, in its Supplementary Opinion and Order, choose to simply "incorporate by

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reference the transcript of this case which addressed each applicable factor". The Board's Supplementary Opinion and Order of June 15, 1988, is no more in compliance with Section 2-58.1(j) than was the Board's original "Opinion" of September 22, 1987. There was no discussion of Master Plan consistency or compatibility as to population, water and sewer, and the various other services pertaining to land use classification. To add insult to injury, the Board's order requires vehicular access to the subject site is to be provided from Holmehurst Avenue rather than from Frederick Road, thus exacerbating the deleterious effect which the zoning change will have on the residents of the subdivision.

ARGUMENT

A. THE LEGISLATIVE ZONING IS REASONABLE AND FAIRLY DEBATABLE AND NOT IN ERROR: THE EXISTING ZONING PROVIDES FOR A REASONABLE USE: THE COUNTY BOARD OF APPEALS SUBSTITUTED ITS JUDGMENT FOR THAT OF THE COUNTY COUNCIL, SO THAT ITS FINDING OF ERROR WAS LEGALLY INSUFFICIENT.

The Court of Special Appeals has outlined three approaches which an applicant may take to sustain his petition. Since it is presumed "that at the time of the adoption of the map the Council had before it and did, in fact, consider all the relevant facts and circumstances then existing," (Boyce, supra, 25 Md. App. at 52; also see Transcript at pages 78-79 for Frank Fisher's testimony to support that presumption), the applicant must show:

"1. That specific physical facts were not readily visible or discernable at the time of the comprehensive zoning;

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2. That then existing facts were not taken in account;

3. Or, ...that the Council failed to make any provision to accommodate a project, trend, or need which it, itself, recognized as existing at the time of the comprehensive zoning." Ibid.

Rather than address these "change/mistake" requirements, the Appeller/Petitioner presented and the Board adopted an argument based on the best economic use of the building on the subject property, with great emphasis placed on its fire-damaged condition. The transcript and Order are devoid of specifics as to any changes (other than traffic flow) which have taken place in the neighborhood since 1984 or of any then-existing factors which the Council overlooked in considering and adopting the last maps. References were made by Petitioner's witnesses to nearby business zoning, but there was no testimony that these businesses constituted changes since the last zoning maps or that they were overlooked by the Council in adopting the present maps. Testimony on behalf of the Petitioner and reference to these "charges of surrounding conditions" was extremely general, without the slightest reference to any time-frame or to any prior zoning maps. The Board's Order refers to "the ever increasing intrusion of commercial use on both sides of Frederick Road", yet the record does not contain a single reference to any nearby zoning change to

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commercial or office zoning, nor is there any evidence as to when any "increasing commercial use" took place. The Board's failure to address these specifics in its Opinion and Supplementary Opinion is reason enough to find that the Board's opinion fails to meet the test set forth in United Steel Workers v. Bethlehem Steel Corp., (supra).

The factors which the Board's Opinion and Supplementary Opinion do cite in support of its decision are improper ones and also include at least one serious factual error which is contrary to the evidence presented at the hearing.

The improper considerations are the fire-damaged status of the building, the best commercially feasible use "concept", the increased traffic on Frederick Road, and the idea of rezoning this property to act as a buffer zone. The factual error deals with the present use of the adjoining property.

As to the first of these matters, the fire-damage, there was no testimony which would support a finding that the property could not be renovated for residential use. In fact, if the property is structurally salvagable for the R-O office use sought by the Petitioner, it logically follows that the structure would be sound enough to be used as a dwelling. The Petitioner's actual position is that it would be too costly to renovate the building if it were only to be used as a residence, but that the income from commercial utilization would justify the cost of renovation. As in the

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case of Cabin John Ltd. Partnership v. Montgomery Council, supra, the Petitioner apparently dwells on the idea that it is more commercially feasible to use his property for other than the purposes of the existing zoning. Judge Smith therein stated, beginning at page 670:

"To establish that a zoning classification amounts to confiscation it is incumbent upon the property owner to prove that the existing zoning deprives him of all reasonable use of his property and it is incumbent upon him to show that the property could not be used for any of the permitted uses in the existing zone. Zoning Bd. of Howard Co. v. Kanode, 258 Md. 586, 596, 267 A. 2d 138 (1970); Co. v. Kanode, 258 Md. 586, 596, 267 A. 2d 138 (1970); Montgomery Co. Council v. Kacur, 253 Md. 220, 229, 252 A. 2d 832 (1969), and cases cited in each ..."

"If that were the criteria of confiscation, zoning restrictions in many areas would collapse like a house of cards."

Judge Smith pointed out at page 671 of his decision in the Cabin John case that "none of the witnesses presented by Cabin John said that no use could be made of the property under the present classification." Similarly, in the present case, no such testimony was offered. (In fact, the property was being used as a residence shortly before the fire.) The Board's finding that "the condition of the building on the site due to the January, 1986, fire makes highly impractical the renovation of the building for strictly residential use" is unsupported by any evidence and is also an irrelevant matter for consideration.

As for the general allegations that increased traffic on Frederick Road constitutes a "change", this theory was rejected by the Court of Appeals in Clayman v. Prince George's County, 266 Md. 409 (1972) at page 419: "...the District Council found that traffic has increased on

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Piscataway Road. This indefinite finding evidences no change in the character of the neighborhood."

As far as the Board's finding that the R.O. classification "... does provide an effective buffer for the houses on Holmehurst Avenue," the Board is improperly encroaching on the County Council's province. The Board of Appeals should not arbitrarily be permitted to substitute its judgment as to what would be a good place for a buffer because the presumption is that the County Council has already made this determination. See Diahl v. County Board of Appeals, 258 Md. 157 (1970) at 165:

"Hindsight might dictate that Riderwood-Lutherville Drive may have been a better choice for the boundary between M-L zone and the residential zone; however, this desirability falls far short of substantiating its adoption as error." In the case Greenblatt v. Toney Schloss Properties Corporation, 235 Md. 9,200 A. 2d 70 (1964), the expert witness stated that there had been error in the 1957 comprehensive rezoning plan because the legislative body had used the boundary lines of a tract of land rather than a natural drainage course as a dividing line between an R-40 and R-20 zone. After reaffirming the strong presumption attending original zoning and comprehensive rezoning, citing Shadybrook Imp. Assn. v. Molloy, 232 Md. 265, 269, 192 A. 2d 502 (1963), we stated: "... the use in 1957 of a property line which was then proper and appropriate ... was not error simply because it is now revealed that subsequent events (the manner of development of contiguous lands) have made it more logical or desirable or economically profitable that the division line be a natural contour line ... 235 Md. at 14.

Even if this buffer zone factor were a proper matter for consideration by the Board, it is indisputable that the present D.R. 5.5 zoning provides a much better "buffer" than an office building would.

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The Board of Appeals' decision should also be overturned because it is predicated on a clear misstatement of a significant fact relating to the use of the properties adjacent to the subject property. The "300 Block" of Frederick Road consists of four buildings which are constructed in the style of residential dwellings. The subject property is the westernmost of the four properties. To the east of the subject property is the residence of a doctor who maintains an office in his home. Next to the east is a residence. The fourth building in the block is a funeral home operating under a special exception. Considering that the subject property had always been used as a residence and has always been zoned residential, the Board should have found that three of the four buildings in the "300" Block of Frederick Road were in residential use, the funeral home being the only exception. Instead, the Board did not count the subject property as residential and erroneously considered the adjacent property as non-residential, referring to it as "a doctor's office" in the original Opinion and as a "residential building used as a doctor's office" in the Supplementary Opinion and Order. In fact, as testified to by the Petitioner himself at page 65 of the transcript, the building is used as a permanent residence with a doctor's office in the home. As a result the Board's Opinion states "In this block, only one site remains in residential use." The Board's characterization

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of one-out-of-four gives a vastly different picture than the three-out-of-four (or two-out-of-three if the subject property isn't counted) finding which the evidence supports. A further misstatement of facts is contained in the opinion where the Board states that the Petitioner intends to use the building "solely for his law office". In fact, Mr. Geiss, on behalf of 307 Inc., testified: (Transcript - Page 60) "I want to fix it and hopefully turn it into an office building that I can use, as well as rent part of it out". Although the Board properly ruled to strike Petitioner's stated intentions for use of the premises because no specific plan on the property had been prepared and filed, the Board's decision misstates Petitioner's testimony on this point and the Board's Order makes it obvious that the Board considered this testimony (i.e. use solely for a law office) in reaching its conclusion as to the reasonableness of the proposed R-O usage.

(Although this reasoning appears in the original Opinion and not in the Supplementary Opinion and Order, the characterization of the second Opinion as "Supplementary" indicates that it is indeed intended to supplement and not replace the first Order.)

CONCLUSION

Because the Petitioner/Appellant failed to present evidence which could support a spot zoning change and

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therefore failed to create a fairly debatable issue of change or mistake, because the Board of Appeals' decision failed to set forth bases for its findings which meet the requirements of the Baltimore County Code, because the Board of Appeals' decision contains erroneous and unsupported findings of fact, and because the Board of Appeals' Decision is otherwise clearly erroneous, the Order of the County Board of Appeals dated September 22, 1987, and the Supplementary Opinion and Order dated June 15, 1988, should be reversed and the reclassification of the subject property of 307, Inc., at 307 Frederick Road be vacated so that the comprehensive zoning designation of D.R. 5.5 is restored.

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I HEREBY CERTIFY that on this 25th day of August, 1988, a copy of the foregoing Notice of Appeal was served on the Administrative Secretary, County Board of Appeals, Room 315, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland 21204; and a copy of mailed to John P. Geiss, Esquire, 623 Edmondson Avenue, Baltimore, Maryland 21228, Attorney for Petitioner.

R. Douglas Jones
R. DOUGLAS JONES

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PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, et al.
Appellants
VS.
307, INC., A MARYLAND CORPORATION
Appellee
(Zoning Case No. R-87-451)

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
88 CG 3000

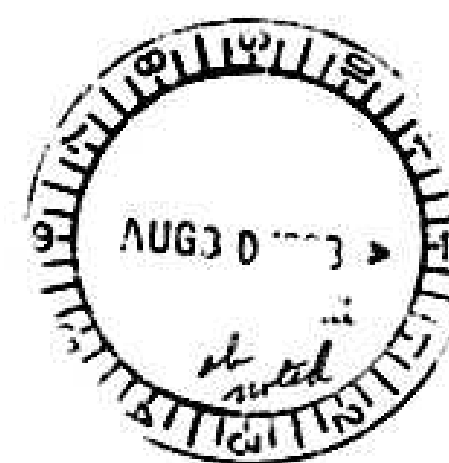
ORDER AUTHORIZING TRANSFER OF TRANSCRIPT

Upon the Motion of the Appellants to transfer the transcript in captioned case, the Appellee having consented to the relief prayed, the Clerk is hereby authorized and directed to transfer the entire transcript of Circuit Court Appellate Case No. 87-CG-4432 an to make that transcript part of the record of Case No. 88-CG-3000.

Aug. 26, 1988
DATE

Edward A. De Vetter
JUDGE

Two Copy Test
SUZANNE MENCH, CLERK
Per Glenn B. Burt
Deputy Clerk



PMZ

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, et al.
Appellants
VS.
307, Inc., A MARYLAND CORPORATION
Appellee

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
88 CG 3000

APPELLEES' MEMORANDUM

I. INTRODUCTION

This zoning reclassification case involves the property located at the southeast corner of Holmehurst Avenue and Frederick Road in Catonsville, Maryland. The property is known as 307 Frederick Road, Catonsville, Maryland 21228.

Prior to the Opinion and Order of the County Board of Appeals of Baltimore County on September 22, 1987, and the Supplemental Opinion and Order of June 15, 1988, the subject property was zoned D.R.5.5. (Density Residential 5.5. Units per acre). As a result of the Orders of the County Board of Appeals of Baltimore County, the zoning was changed to R.O. (Residential - Office). It is the Supplemental Opinion and Order which is the subject matter of this appeal.

The subject property was purchased by 307, Inc. in a badly fire damaged condition as a result of a fire in January 1986.

II. RELEVANT STATUTES

The Baltimore County Code (1978, 1984 Cumulative Supplement), Section 2-58.1 allows for the administrative rezoning process, which was followed by Appellee. The Appellee proceeded under Subsection (j), the

People 9/26/88
C.B.A.

"change/mistake" rule of Section 2-58.1.

III. THE "CHANGE/MISTAKE" RULE

In Overton et al. v. Board of County Commissioners of Prince George's County et al., 225 Md. 212, 170 A. 2d 172 (1960) at page 218, the Court restated the applicable scope of judicial review:

"The basic rules governing the exercise of the legislative function of rezoning, and the scope of judicial review thereof, have been enunciated in a long line of cases in this Court. They were summarized by Chief Judge Brune, speaking for the Court in a recent case of West Ridge, Inc. v. McManara, 222 Md. 448, 160 A. 2d 907 (1960). Judge Brune said (at page 454 of 222 Md.):

"In the trial court as in this Court, the chief question was and is whether the action of the County Commissioners in rezoning part of the West Ridge property as Commercial was or was not within the proper exercise of their legislative power. There have been so many cases in this Court in which the basic test has been stated that we think it unnecessary to do more than refer to four cases (three of them very recent) and to the cases therein cited. See Eckes v. Board of Zoning Appeals, 209 Md. 432, 121 A. 2d 249; City of Baltimore v. N. A.A.C.P., 221 Md. 329, 157 A. 2d 433; County Commissioners of Howard County v. Merryman, 222 Md. 314, 159 A. 2d 854; and Pressman v. City of Baltimore, 222 Md. 330, 160 A. 2d 379. These cases recognize the familiar rules that in the case of piecemeal rezoning, there must be a showing of either an error in original comprehensive zoning or such a change in conditions as to warrant rezoning, that if either of these is shown, or if there are facts from which the legislative body could reasonably have made such a finding (i.e. that the matter is at least fairly debatable), the courts may not interfere with the legislative action, and that since there is a presumption in favor of the validity of the legislative action, the burden is on those objecting to the rezoning to show the absence of error in the original zoning and the lack of any such change in conditions as would warrant the rezoning."

In Offutt et al. v. Board of Zoning Appeals of Baltimore County et al., 204 Md. 551, 105 A. 2d 219 (1953) at page 557, the Court stated:

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"It is universally recognized that zoning is not static. If it could not change with the changing conditions and the complexities of the modern world, progress would be retarded. A restriction of property use which might be considered reasonable today could be so unreasonable under changed conditions as to amount to confiscation."

And further at page 557:

"When an application is made for reclassification of a tract of land from one zone to another, there is a presumption that the zones established by the original zoning ordinance were well planned and arranged and were intended to be more or less permanent, subject to change only when there are genuine changes in conditions. Therefore, before a zoning board rezones a property, there should be proof either that there was some mistake in the original zoning or that the character of the neighborhood had changed to such an extent that reclassification ought properly to be made."

IV. SCOPE OF JUDICIAL REVIEW

The scope of judicial review in cases involving a challenge to rezoning, by the appropriate administrative agency, is different from the usual administrative law case. The Comprehensive Zoning Process has long been held to have a favored position. Anne Arundel County v. Maryland National Bank, 32 Md. App. 437 (1976).

The burden was upon the Appellee to overcome the presumption by presentation of legally sufficient evidence as would make the question fairly debatable. Haldemann v. Board of County Commissioners of Howard County, et al., 253 Md. 298, 252 A. 2d 792 (1968); Wheaton Moose Lodge No. 1775 et al. v. Montgomery County, Maryland, 41 Md. App. 401, 397 A. 2d 250 (1979).

The burden then shifts to the Appellants in the Circuit Court, to show that the inferences and findings drawn by the County Board of Appeals were incorrect, arbitrary, capricious or illegal. Largo Civic Association et al. v. Prince George's County, Maryland et al., 21 Md. App. 76, 318 A. 2d 834 (1974).

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The question for review by this Court is "... whether a reasoning mind could reasonably have reached the result the Council reached upon a fair consideration of the fact picture painted by the entire record". Wheaton Moose Lodge, supra, 41 Md. App. at 421.

V. THE OPINION OF THE COUNTY BOARD OF APPEALS

Although the historic use of the subject property has been residential, the County Board of Appeals found the D.R.5.5 zoning to be unrealistic. The Board found, as fact, that the D.R.5.5 zoning was in error and also found a significant change in the neighborhood, based on the evidence provided by the Appellee. The Board considered the evidence concerning traffic and found a substantial increase, which it considered prohibitive for use of the property for residential use. The Board also determined that only one (1) site remained in residential use. To insure that the change in zoning to R.O. would have the least amount of impact upon the neighborhood, the Board also established three (3) restrictions.

VI. ARGUMENT

THE DECISION OF THE BALTIMORE COUNTY BOARD OF APPEALS IS REASONABLE AND FAIRLY DEBATABLE AND WAS NOT INCORRECT, ARBITRARY, CAPRICIOUS OR ILLEGAL.

The Court of Special Appeals in Boyce v. Sembly, 25 Md. App. 43 (1975) at 52, in part states:

"... that the Council failed to make any provision to accommodate a project, trend, or need which it, itself, recognized as existing at the time of the comprehensive zoning".

In argument, the Appellee refers to the transcript at pages 89,90 for Frank Fisher's testimony in reference to traffic in Baltimore County and also

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Mr. Fisher's testimony in the transcript at pages 75 and 85, as to testimony concerning previous trend.

The Appellee presented and the Board adopted, the evidence presented by the Appellee concerning a drastic increase in traffic count from 16,250 in 1983; 19,075 in 1984, to 21,200 in 1986 (a traffic increase of approximately 31%, measured in terms of thousands of cars per day). The Board also considered the transcript at pages 60, 61, and 63, from the testimony of John P. Geiss, which presented unrefuted evidence that the present property was unfit for residential use, and also the testimony of Frank Fisher at page 102.

The present property is one (1) of six (6) which faces Frederick Road and is part of the subdivision known as Holmehurst. The testimony indicated that the two (2) properties on the west side of Holmehurst were either B.L. or R.O.. Of the remaining four (4) properties facing Frederick Road, only one (1) still maintains a strictly residential use.

In reviewing the testimony of William Hawkins, representing the Holmehurst Improvement Association, at pages 111, 117, 118, and 119, it is clear that the Association has made little or no effort to include the houses, which are in the subdivision, but which face Frederick Road, as a part of the Association. The Appellee proffers that in fact, those houses which face Frederick Road, are no longer considered a part of the Association by the Association's members; except of course in matters of zoning. Not for the reason that those houses on Frederick Road are an intricate part of the subdivision, as the Appellants contend, but "to maintain some sort of buffer to protect our properties...", testimony of William Hawkins at 126. Also as reiterated by Richard Decker in his testimony on pages 141, 143, and 144. Appellee argues that the Protestant's opposition to the rezoning is based on an impermissible

-6-

desire to protect their homes by attempting to establish the subject property as a buffer zone. Mayor and Council of Rockville v. Cotler et al., 230 Md. 335, 187 A. 2d 94 (1962); Hoffman v. Mayor and City Council of Baltimore et al., 197 Md. 294, 79 A. 2d 367 (1950); Hedin v. Board of County Commissioners of Prince George's County, 209 Md. 224, 120 A. 2d 663 (1955).

The second reason raised by the Protestants/Appellants, is traffic congestion on Holmehurst, created by the R.O. property located at 401 Frederick Road (the McCarty property); see testimony of Hawkins at pages 112, 121, 124; and also the testimony of Decker at pages 133 - 137, and again at pages 144-147. The Appellants argue that an increase in volume of traffic would result from the rezoning of the subject property to R.O.. The Appellee argues that the Appellants are confusing volume with congestion. Congestion is often, as here, the result of a disorderly flow of a small volume of traffic. Vestry of St. Mark's on the Hill Episcopal Church et al. v. Doub et al., 219 Md. 387, 149 A. 2d 779 (1958); Southland Hills Improvement Association of Baltimore County v. Raine et al., 220 Md. 213, 151 A. 2d 734 (1958).

The Appellants also argue that the Board of Appeals' decision is, in addition, based on several other clear misstatements of fact. The first being that only one (1) site remains in residential use. The Board, however, goes on to state that the house next to the subject property is a doctor's office; then next, the one (1) residence and next to that a large funeral home. In answer, the Appellee would argue that the inference could be made that the Board was referring to a strictly/solely residential use when it stated that only one (1) residential use existed. The subject property is a vacant, fire damaged house, and is not being used at all. The other two (2) properties in the block, the funeral home and residence/doctor's office, are not used solely

for residential purposes, see testimony of Frederick P. Kleus at pages 43, 44.

The Appellants also argue that it was improper for the Board to consider the fire damaged status of the building and its best feasible use. The Appellee would state that People's Counsel, in his opening statement, transcript at page 9, clearly indicated, and the testimony of Fisher at page 77, subsequent to the testimony of Geiss, confirmed that the subject property was included in the 1988 Comprehensive Zoning Process. The Appellee full well knew the consequences of proceeding with the hearing before a two (2) person Board, rather than the customary three (3) person Board; and therefore, by the testimony of Geiss, tried to overcome the principal objection of People's Counsel's witness that the subject property should be considered comprehensively.

The Appellant argues that there was no testimony which would support a finding that the property could not be renovated residential use. In answer, the Appellee states that the Board did not state that the building could not be renovated for residential use. It stated that the condition of the building made it highly impractical to renovate it for strictly residential use. Appellee argues that this statement is a follow-up of the same inference made in reference to the Board's alleged misstatement of facts. Obviously, the Board is fully aware of the Zoning Laws of Baltimore County, and the permitted uses of a property zoned D.R.5.5; example: a doctor maintaining an office in her home.

Appellant further seems to be upset by the best commercially feasible use "concept". Appellant seems to believe that Appellee attempted to prove that the zoning classification of D.R.5.5 was a confiscatory taking of its property. In fact, in its cross-examination of Frank Fisher, the county's expert witness, in the testimony of Fisher at pages 90 - 92. Appellees not

only obtained in evidence, the various zonings which the county considered reasonable, but also the fact that the County Zoning Office was looking into the entire block and considering either D.R.5.5. or R.O. for the 1988 Comprehensive Zoning Process. The Appellee argues that if the Board believed Appellee's evidence, then it disagreed with the reasonableness of the existing zoning, and selected the R.O. zone from the other reasonable zones which the county's expert witness testified to, and which Appellee had requested. Temink et al. v. Board of Zoning Appeals for Baltimore County et al., 205 Md. 489, 109 A. 2d 85 (1954).

VII. CONCLUSION

The Petitioner/Appellee believes that it presented sufficient legal evidence for the Board to consider that an error had been made in the classification of the property as D.R.5.5. In the last Comprehensive Zoning Map. Petitioner/Appellee also believes that it presented sufficient evidence to show a substantial change so as to create a fairly debatable issue. If the Baltimore County Board of Appeals determined that the issues raised by the Petitioner/Appellee were fairly debatable, then this Court should sustain the decision of the Baltimore County Board of Appeals and should confirm the Order of that Board, dated September 22, 1987 and of the Supplemental Order of the Board, dated June 15, 1988.

JOHN P. GEISS, ESQUIRE
623 Edmondson Avenue
Baltimore, Maryland 21228
(301) 788-9422
Attorney for Petitioner/Appellee

I HEREBY CERTIFY, that on this 24 day of Sept, 1988, a copy of the foregoing Appellees' Memorandum was mailed to the Administrative Secretary County Board of Appeals, Room 200, Court House, Towson, Maryland 21204; and a copy of was mailed to Phyllis Cole Friedman, Esquire, and to Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County, Room 223, Court House, Towson, Maryland 21204; and a copy was mailed to R. Douglas Jones, Esquire, Lerch and Huesman, Suite 504, 16 S. Calvert Street, Baltimore, Maryland 21202.

JOHN P. GEISS, ESQUIRE

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY, et al
Appellants
VS
307, INC., A MARYLAND
CORPORATION
Appellee

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
87-CG-4432

ANSWER TO MOTION FOR TRANSFER OF TRANSCRIPT

307, Inc., Appellee, by its attorney, John P. Geiss, Esquire, herein files its Answer to Motion for Transfer of Transcript, and states as follows:

The Appellee consents to the transfer of the entire transcript from Case Number 87-CG-4432 to Case Number 88-CG-3000.

JOHN P. GEISS, ESQUIRE
623 Edmondson Avenue
Baltimore, Maryland 21228
(301) 788-9422
Attorney for Appellee

RECEIVED
CBA
8-11-88
11:55 AM

CERTIFICATE OF MAILING

I HEREBY CERTIFY, that on this 9th day of August, 1988, a copy of the foregoing Answer to Motion for Transfer of Transcript was mailed to the Administrative Secretary, County Board of Appeals, Room 200, Court House, Towson, Maryland 21204; and a copy was mailed to Phyllis Cole Friedman, Esquire, and to Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County, Room 223, Court House, Towson, Maryland 21204; and a copy was mailed to R. Douglas Jones, Esquire, Suite 201, Alex Brown Building, 102 West Pennsylvania Avenue, Towson, Maryland 21204, Attorney for Protestants.

JOHN P. GEISS, ESQUIRE

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY, et al
Appellants
VS
307 INC., A MARYLAND
CORPORATION
Appellee

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
88-CG-3000

ANSWER TO PETITION ON APPEAL

307, Inc., Appellee, by its attorney, John P. Geiss, Esquire, herein files its Answer to Petition on Appeal, pursuant to the Maryland Rules 89 and states as follows:

That the decision of the County Board of Appeals was not illegal, arbitrary and capricious. The decision of the County Board of Appeals was based on the substantial evidence in reference to the issues of error in the prior Comprehensive Zoning Map and also in finding a change in the neighborhood. Said issues were fairly debatable, and the decision of the County Board of Appeals should be upheld.

WHEREFORE, Appellee prays that the Opinion and Order of the Board of Appeals of Baltimore County, dated June 15, 1988, be affirmed, and that subject property be zoned R.O..

JOHN P. GEISS, ESQUIRE
623 Edmondson Avenue
Baltimore, Maryland 21228
(301) 788-9422
Attorney for Appellee

RECEIVED
CBA
8-11-88
11:55 AM

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY, et al
Appellants
VS
307, Inc., A MARYLAND
CORPORATION
Appellee

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
88 CG 3000

MOTION TO DISMISS

Comes Now, the Appellee, 307, Inc., by its attorney, John P. Geiss, Esquire, and moves this Honorable Court to dismiss the Appeal and hearing scheduled for December 2, 1988 and for reason states as follows:

1. That on October 13, 1988, the County Council, under the Comprehensive Zoning Map process, did by Bill 144-88, re-zone the property which is the subject of this Appeal, DR 5.5..
2. That in view of the re-zoning by the Comprehensive Zoning Map process, the Appeal is moot, as the property will be re-zoned effective January 1, 1989, DR 5.5..
3. That no useful purpose is served by continuing the Appeal.

WHEREFORE, the Appellee prays:

- A. That the Appeal be dismissed as moot.
- B. And for such other and further relief as justice may require.

JOHN P. GEISS, ESQUIRE
623 Edmondson Avenue
Baltimore, Maryland 21228
(301) 788-9422
Attorney for Appellee

RECEIVED
CBA
8-11-88
11:55 AM

CERTIFICATE OF MAILING

I HEREBY CERTIFY, that on this 11 day of November, 1988, a copy of the foregoing Motion to Dismiss was mailed postage prepaid to the ADMINISTRATIVE SECRETARY, COUNTY BOARD OF APPEALS, Room 200, Court House, Towson, Maryland 21204; and to PHYLLIS COLE FRIEDMAN, ESQUIRE, and to PETER MAX ZIMMERMAN, ESQUIRE, People's Counsel for Baltimore County, Room 223, Court House, Towson, Maryland 21204; and to R. DOUGLAS JONES, ESQUIRE, Lerch and Huesman, Suite 504, 16 S. Calvert Street, Baltimore, Maryland 21202.

JOHN P. GEISS, ESQUIRE



Maryland Department of Transportation

State Highway Administration

William K. Hoffmann
Secretary
Hal Kassoff
Administrator

April 14, 1987

Mr. William Hackett
Chairman
Board of Appeals
County Office Building
Towson, Maryland 21204

Zoning Reclassification
Cycle V
April 1987-Oct. 1987

Att: James Dyer

Dear Mr. Hackett:

On review of the submittal of February 17, 1987, the State Highway Administration finds the site plan generally acceptable, with access to the site by way of Holmehurst Avenue.

Very truly yours,

Charles Lee

Charles Lee, Chief
Bureau of Engr. Access Permits

by: George Wittman

CL-GW/es

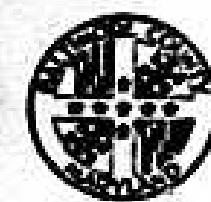
cc: J. Ogle

John P. Geiss, Esq.

62-11-1 02 MAR 20 1987
COUNTY BOARD OF APPEALS
OFFICE

My telephone number is 301-333-1350

Teletypewriter for Impaired Hearing or Speech
363-7555 Baltimore Metro - 565-0451 D.C. Metro - 1-800-492-5062 Statewide Toll Free



County Board of Appeals of Baltimore County

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

July 15, 1988

R. Douglas Jones, Esq.
Lerch and Huesman
Suite 201, Alex Brown Bldg.
102 W. Pennsylvania Ave.
Towson, Md. 21204

Re: Case No. R-87-451
307, Inc., A Md. Corp.

Dear Mr. Jones:

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

Enclosure
cc: Phyllis C. Friedman, Esq.



County Board of Appeals of Baltimore County

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

July 15, 1988

John P. Geiss, Esq.
623 Edmondson Ave.
Catonsville, MD. 21228

Dear Mr. Geiss:

Re: Case No. R-87-451
307, Inc., A Md. Corp.

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

Enc.

cc: John P. Geiss, 307, Inc.
James E. Kraft
David Fields
James Hoswell
Robert Haines
Ann Nastarowicz
James Dyer
Docket Clerk

LAW OFFICES

LERCH AND HUESMAN

ALEX BROWN BUILDING

SUITE 201

102 WEST PENNSYLVANIA AVENUE

TOWSON, MARYLAND 21204

July 27, 1988

Clerk, Circuit Court for
Baltimore County
County Courts Building
401 Bosley Avenue
P. O. Box 6754
Towson, Maryland 21204

Attn: Ms. Gloria

Re: People's Counsel for Baltimore County, Inc.
v. 307, Inc. a Maryland Corporation
87-CG-4432

Dear Madam Clerk:

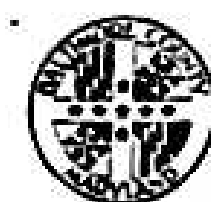
Following up on our recent telephone conversation, I am enclosing our Motion to transfer the transcript from Case No. 87-CG-4432 to have it made part of the record in Case No. 88-CG-3000. I am enclosing an extra copy of the proposed Order and our self addressed envelope for the Court's convenience in returning the conformed copy to me.

Thank you.

Sincerely yours,

R. Douglas Jones
R. Douglas Jones

RDJ/cmb-enc.



County Board of Appeals of Baltimore County

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

October 16, 1987

John P. Geiss, Esq.
623 Edmondson Ave.
Catonsville, Md. 21228

Dear Mr. Geiss:

Re: Case No. R-87-451
307, Inc., A Md. Corp.

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.

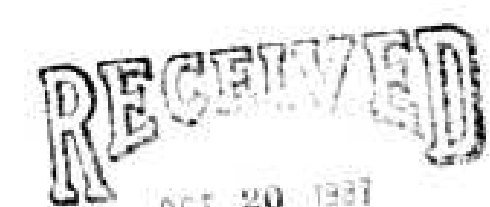
Enclosed is a copy of the Certificate of Notice.

Very truly yours,

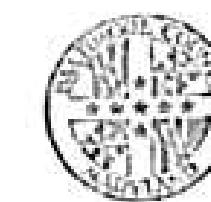
June W. Holmen
June W. Holmen, Secretary

Encl.

cc: James E. Kraft
Norman E. Gerber
James G. Hoswell
J. Robert Haines
Ann Nastarowicz
James E. Dyer
Margaret E. duBois



ZONING OFFICE



County Board of Appeals of Baltimore County

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

June 15, 1988

John P. Geiss, Esquire
623 Edmondson Avenue
Catonsville, MD 21228

Dear Mr. Geiss:

Enclosed is a copy of the Supplementary Opinion and Order issued this date by the County Board of Appeals in the subject case.

Sincerely,

Kathleen C. Weidenhammer
Kathleen C. Weidenhammer
Administrative Secretary

Encl.

cc: 307, Inc., a Maryland Corp.
John P. Geiss, President
R. Douglas Jones, Esquire
Phyllis Cole Friedman, Esquire
James Earl Kraft
P. David Fields
James G. Hoswell
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
Docket Clerk -Zoning
Arnold Jablon, County Attorney



ZONING OFFICE



County Board of Appeals of Baltimore County

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

September 22, 1987

John P. Geiss, Esq.
623 Edmondson Ave.
Catonsville, Md. 21228

Dear Mr. Geiss:

Re: Case No. R-87-451
307, Inc., A Maryland Corporation

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

Very truly yours,

June Holmen
June Holmen, Secretary

Encl.

cc: Phyllis C. Friedman
James Earl Kraft
Norman E. Gerber
James G. Hoswell
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
Margaret E. duBois
R. Douglas Jones



ZONING OFFICE

John P. Geiss

ATTORNEY & COUNSELOR AT LAW
310 FREDERICK ROAD
CATONSVILLE MARYLAND 21228

February 27, 1987

OF COUNSEL
ROBERT A. GEISS, ESQ.
1125 N.E. 125TH STREET, SUITE 250
N. MIAMI, FLORIDA 33161
(305) 893-9300

PHONE (301) 788-9422

TO: Baltimore County Board of Appeals

FROM: John P. Geiss

RE: 307 Frederick Road

Enclosed please find Petition for Rezoning Reclassification to be filed on behalf of 307, Inc., a Maryland closed corporation. Enclosed also please find all other documents relative to and necessary to be filed with said zoning reclassification.

At the last comprehensive zoning map review, I believe that an error was committed and that subsequent to said review a change in circumstances justifies the reclassification of the subject property from DR5.5 to RD.

The south side of the 300 block of Frederick Road is zoned DR5.5. On that block there are four buildings/individually owned structures, odd numbered 307 through 301. 301 Frederick Road is currently the site of McNabb Funeral Home, an allowed use by special exception filed in 1971 numbered 71-243-1. 303 Frederick Road is a private residence. 305 Frederick Road is a residence at which live a doctor and her husband and at which the doctor maintains a private pediatric practice. The south side of the 300 block of Frederick Road is bordered by Holmehurst and Wade Avenues. The property between Wade Avenue and the Beltway is zoned RD. The RD classification exists on the north side of Frederick Road on all the properties except 308. Directly opposite the property subject to the proposed classification is located a house converted to office with an RD classification and adjacent to that, property within O-1 classification. The Paradise-East Catonsville Enhancement Study, adopted July 15, 1982, includes all of the property on the south side of Frederick Road between Holmehurst and Bishop Lane and Bishop Lane and Glenwood Avenue on the north side. East Catonsville ends at the Beltway which should have included the 300 block of Frederick Road as well, an error on the part of the Office of Planning and Zoning.

The previous owner, Louise Elliott, attempted to reclassify the property to allow for a multiple-family dwelling unit, however, this effort was initiated after she had remodeled the property, moved the tenants in and after the neighbors had complained to the proper authorities. Her efforts were unsuccessful. The proposed use for which I would be using the property would be to establish an office at which

John P. Geiss
ATTORNEY & COUNSELOR AT LAW
310 FREDERICK ROAD
CATONSVILLE, MARYLAND 21228

OF COUNSEL
ROBERT A. GEISS, ESQ.
1125 N.E. 125TH STREET, SUITE 200
N. MIAMI, FLORIDA 33181
(305) 893-9300

PHONE: (301) 788-9422

I would maintain my law practice with the intent of remaining there for the balance of my professional career so as to remain an on-site landlord. When the property was initially put on the market, the former owner found no buyers. Subsequently, the property was considerably damaged by fire. The only people interested in possibly buying the property were all investors, including myself, all of whom had the same intent as I had; to convert the building to an office use. The heavy amount of traffic on Frederick Road at this location and its close proximity to the Beltway has long ago removed this site as a desirable property for residential purposes for a family with children. The doctor and her husband, the immediate neighbor, have no minor children residing with them and consider the office-in-home use more valuable than the disadvantage of traffic and noise.

John P. Geiss

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

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

August 25, 1987

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 P. Geiss, Esquire
310 Frederick Road
Catonsville, Maryland 21228

RE: Reclassification Petition
Item No. 1 - Cycle No. V
Petitioner: 307, Inc., a Maryland Corporation
Case No. R-87-451

Dear Mr. Geiss:

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

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.

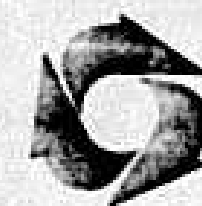
If you have any questions concerning the enclosed comments, please feel free to contact the Zoning Office at 494-3391 or the commenting agency.

Very truly yours,

James E. Dyer, Jr.
JAMES E. DYER, Chairman
Zoning Plans Advisory Committee

JED:bjs

cc: File



Maryland Department of Transportation
State Highway Administration

William K. Hollman
Secretary
Hal Kasowitz
Administrator

April 14, 1987

Mr. William Hackett
Chairman
Board of Appeals
County Office Building
Towson, Maryland 21204

RE: Baltimore County
Item No. 1
Property Owner: 307, Inc., a Maryland Corp.
Location: SE/corner Frederick Road (Route 144) and Holmehurst Avenue
Existing Zoning: D.R. 5.5
Election District: 1st
Councilmanic District: 1st
Acres: Approx. .275
Proposed Zoning: R.O.

Zoning Reclassification
Cycle V
April 1987-Oct. 1987

Att: James Dyer

Dear Mr. Hackett:

On review of the submittal of February 17, 1987, the State Highway Administration finds the site plan generally acceptable, with access to the site by way of Holmehurst Avenue.

Very truly yours,

Charles Lee
Charles Lee, Chief
Bureau of Engr. Access Permits
by: George Wittman

CL-GW/es

cc: J. Ogle
John P. Geiss, Esq.

RECEIVED
APR 22 1987

ZONING OFFICE

My telephone number is 301-333-1351
Telewriter for Impaired Hearing or Speech
383-7555 Baltimore Metro - 565-0451 D.C. Metro - 1-800-492-5062 Statewide Toll Free
P.O. Box 717 / 707 North Calvert St., Baltimore, Maryland 21203 - 0717



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

STEVEN COLLINS
C. Richard Moore
Acting Director

May 8, 1987

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

Property Owner:
Contract Purchaser:
Location:
Existing Zoning:
Election District:
Councilmanic District:
Acres:
Proposed Zoning:

307, Inc., a Maryland Corporation
SE/corner Frederick Rd. & Holmehurst Ave.
D.R. 5.5
1st
Approximately .275
R.O.

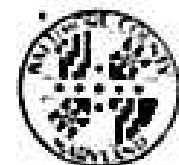
Dear Mr. Hackett:

The requested zoning reclassification of this site from D.R. 5.5 to R.O. can be expected to increase the traffic generation from 10 trips per day to 40 trips per day as general offices or 120 trips per day as medical offices. Adequate parking should be provided with any use.

Very truly yours,

Michael S. Flanigan
Michael S. Flanigan
Traffic Engineer Associate II

MSF:lt



BALTIMORE COUNTY
FIRE DEPARTMENT
TOWSON, MARYLAND 21204-2560
494-4500

PAUL H. REINCKE
CHIEF

April 13, 1987

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: 307 Inc., a Maryland Corporation

Location: SE/corner Frederick Rd., and Holmehurst Avenue

Item No.: 1 Zoning Agenda: Cycle V 04/87 - 10/87

Gentlemen:

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

- () 1. Fire hydrants for the referenced property are required and shall be located at intervals or _____ 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: *Paul H. Reincke* Noted and Approved: *John P. Geiss*
Planning Group Fire Prevention Bureau
Special Inspection Division

/mb

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: William F. Hackett, Chairman, Appeals Board Date: May 5, 1987

FROM: Charles E. Burcham, Plans Review Chief - Department of Permits & Licenses CEB

SUBJECT: April - October 1987 - Zoning Classification - Cycle V

Item # 1 Property Owner: 307, Inc. a Maryland Corporation
Contract Purchaser: -
Location: SE corner Frederick Road and Holmehurst Ave.
Existing Zoning: D.R. 5.5
Proposed Zoning: R.O.
Acres: approximately .275
District: 1st

The proposed change in use from a dwelling to a business use requires a change of occupancy, an alteration permit to upgrade the structure to the Code requirements for a public use (offices), and to the Code of Maryland Regulations 05.01.07 (State Handicapped Code).

See BOCA Code Section 103.2, Section 301., Section 303.0, Section L01., Section 501., Section 800.1, Section 903.1, Section 1702.1 for further details.

cc: Zoning Advisory Committee

CEB:bac

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, et al

IN THE CIRCUIT COURT

FOR

vs.

BALTIMORE COUNTY

Docket 58 Folio 200

Case No. 88CG3000

NOTICE OF FILING OF RECORD

301 Phyllis Cole Friedman R. Douglas Jones June Holmen
Peoples Counsel for Balto Co. Ste 201, Alex Brown Bldg Co Rd of Appeal Balto Co
Room 223, Court House 102 W. Pennsylvania Ave Rm 315 Co Office Bldg
Baltimore, MD 21204 Baltimore, MD 21204 111 W Chesapeake Ave (04)

In accordance with Maryland Rule of Procedure 812, you are notified that
the record in the above entitled case was filed on July 15, 1988

Clerk

Paul Lee P.E.

Paul Lee Engineering Inc.
304 W. Pennsylvania Ave
Towson, Maryland 21204
301-821-5341

DESCRIPTION

307 FREDERICK ROAD - FIRST ELECTION DISTRICT - BALTIMORE COUNTY, MD.

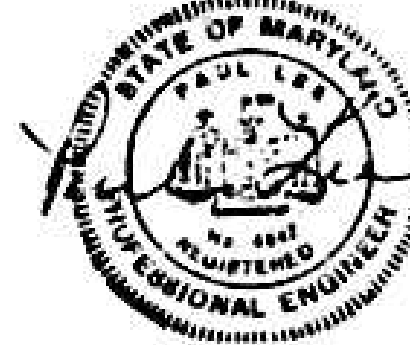
Beginning for the same at a point, said point being located on
the south side of Frederick Road, 20 feet more or less from the center
of Holmehurst Avenue; thence binding on the south side of Frederick
Road (1) N 78°31'00" E 75.00 feet; thence leaving said south side of
Frederick Road

(2) S 11°45'00" E - 150.00 feet, and

(3) S 78°31'00" W - 75.00 feet

to the east side of Holmehurst Avenue; thence binding on the east side
of Holmehurst Avenue (4) N 11°45'00" W 160.00 feet to the point of
beginning.

Containing 12,000 s.f. (0.275 acre) of land, more or less.



Engineers - Surveyors - Site Planners 2/16/87

PETITION FOR RECLASSIFICATION

1st Councilmanic District

LOCATION: Southeast Corner Frederick Road and Holmehurst Avenue

PUBLIC HEARING: Tuesday, September 1, 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 a D.R. 5.5 Zone to an R.O. Zone

All that parcel of land in the 1st Election District of Baltimore County

Beginning for the same at a point, said point being located on
the south side of Frederick Road, 20 feet more or less from the center
of Holmehurst Avenue; thence binding on the south side of Frederick
Road (1) N 78°31'00" E 75.00 feet; thence leaving said south side of
Frederick Road

(2) S 11°45'00" E - 150.00 feet, and

(3) S 78°31'00" W - 75.00 feet

to the east side of Holmehurst Avenue; thence binding on the east side
of Holmehurst Avenue (4) N 11°45'00" W 160.00 feet to the point of
beginning.

Containing 12,000 s.f. (0.275 acre) of land, more or less.

Being the property of 307, Inc., a Maryland Corporation
as shown on the plat plan filed with the Zoning Department.

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

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
494-3555

J. Robert Haines
Zoning Commissioner

August 26, 1987

John P. Geiss, Esquire
310 Frederick Road
Catonsville, Maryland 21228

RE: PETITION FOR ZONING RECLASSIFICATION
SE/cor. Frederick Rd. and Holmehurst Ave.
1st Election District - 1st Councilmanic District
307, Inc., a Maryland Corporation - Petitioner
Case No. R-87-451 (Cycle V, Item No. 1)

Dear Mr. Geiss:

This is to advise you that \$445.41 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
rem it to Ms. Margaret E. du Bois, Zoning Office, Room 113, County
Office Building, 111 West Chesapeake Avenue, Towson, Maryland 21204, before
the hearing.

Sincerely,

J. Robert Haines

J. ROBERT HAINES
Zoning Commissioner

JRH:med

John P. Geiss, Esquire
310 Frederick Road
Catonsville, Maryland 21228

August 3, 1987

NOTICE OF HEARING

RE: PETITION FOR ZONING RECLASSIFICATION
SE/cor. Frederick Rd. and Holmehurst Ave.
1st Election District - 1st Councilmanic District
307, Inc., a Maryland Corporation - Petitioner
Case No. R-87-451 (Cycle V, Item No. 1)

TIME: 10:00 a.m.

Tuesday, September 1, 1987

DATE:

PLACE: Room 218, Courthouse, Towson, Maryland

WTH:med

cc: John P. Geiss, Esquire
c/o 307, Inc.
2407 Harborwood Road
Catonsville, Maryland 21228

People's Counsel for Baltimore County

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.
THE FEE MUST BE PAID AND THE SIGN AND POST RETURNED TO THE ZONING OFFICE, ROOM 113,
COUNTY OFFICE BUILDING, 111 WEST CHESAPEAKE AVENUE, TOWSON, MARYLAND, ON THE DAY OF
THE HEARING OR THE ORDER WILL NOT BE ISSUED.

W.T.H.

"DUPLICATE"
CERTIFICATE OF PUBLICATION

TOWSON, MD., August 13, 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
August 13, 1987

THE JEFFERSONIAN,

Susan Sander Orest
Publisher

PETITION FOR
RECLASSIFICATION
1st Councilmanic District
LOCATION: Southeast Corner
Frederick Road and Holmehurst
Avenue
PUBLIC HEARING: Tuesday, Sep-
tember 1, 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 a D.R.
5.5 Zone to an R.O. Zone
All that parcel of land in the 1st Elec-
tion District of Baltimore County
Beginning for the same at a point,
said point being located on the south
side of Frederick Road, 20 feet more
or less from the center of Holme-
hurst Avenue; thence binding on the
south side of Frederick Road (1) N
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11°45'00" W 160.00 feet to the
point of beginning.
Containing 12,000 s.f. (0.275 acre)
of land, more or less.
Being the property of 307, Inc., a
Maryland Corporation, as shown on
the plat plan filed with the Zoning
Department.
By Order of
WILLIAM T. HACKETT,
Chairman
County Board of Appeals
Baltimore County
Aug. 13

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 1st
Posted for: Reclassification
Petitioner: 307, Inc., a Maryland Corporation
Location of property: SE/cor. Frederick Rd. and Holmehurst Ave.

Location of Sign: SE/cor. Frederick Rd. and Holmehurst Ave.

Remarks:
Posted by: J. Geiss
Signature
Date of return: August 14, 1987

Number of Signs: 1

Office of
PATUXENT
Publishing Corp.

10750 Little Patuxent Pkwy
Columbia, MD 21044

August 24 19 87

THIS IS TO CERTIFY, that the annexed advertisement of

PETITION FOR RECLASSIFICATION
90705

was inserted in the following

X Catonsville Times \$22.57
X Arbutus Times

weekly newspapers published in Baltimore County, Maryland
once a week for one successive weeks before
the 15 day of August 1987, that is to say,
the same was inserted in the issues of

August 13, 1987

PATUXENT PUBLISHING CORP.
By: J. Geiss

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY, IN EQUITY

Plaintiff

Defendant

vs.

CERTIFICATE OF PUBLICATION OF



