

REPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 239

September Term, 1995

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY, et al.

v.

BEACHWOOD I LIMITED PARTNERSHIP

Moylan,
Wenner,
Cathell,

JJ.

Opinion by Moylan, J.
Concurring Opinion by Cathell, J.

Filed: December 1, 1995

#94-CV-1196

BEACHWOOD I LIMITED
PARTNERSHIP
v.
PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY et al.

* In the
* Court of Appeals
* of Maryland
* Petition Docket No. 22, Sept.
Term 1996
* (No. 239, Sept. Term
1995, Court of Special Appeals)

ORDER

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

ORDERED, by the Court of Appeals of Maryland, that the petition be and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ ROBERT C. MURPHY
Chief Judge

Date: June 6, 1996

- 2 -

Prior to 1984, the property was zoned M.H.-I.H. (Manufacturing, Heavy--Industrial, Heavy), the most intense zoning classification in Baltimore County. The property was owned through the 1970's by the Bethlehem Steel Corporation. In the early 1980's, subsequent owners made efforts to develop the tract industrially, but the efforts came to naught. The tract is, in major measure, an isolated and undeveloped area that has been passed over by the industrial development of Sparrows Point and North Point Boulevard.

As part of its quadrennial comprehensive zoning process, the Baltimore County Council in 1984 changed the zoning classification of the property from M.H.-I.H. to D.R. 5.5, a classification that allows for residential development at a density of up to 5.5 dwelling units per acre. As part of the subsequent 1988 comprehensive zoning, the County Council continued the zoning classification of D.R. 5.5.

In 1988, the Chesapeake Bay Critical Areas Program went into effect and the subject property, located as it was near a tributary river, was designated a "limited development area." In such a limited development area, the permitted residential density ranges from a low of 1 unit per 5 acres up to a high of 4 units per acre. The then existing D.R. 5.5 zoning was denser than what was allowed in a limited development area.

Comprehensive Zoning of 1992

As part of the comprehensive zoning of 1992, the Baltimore County Council changed the zoning on the subject property from

The appellants, People's Counsel for Baltimore County and various neighbors of the property in question, initially appealed to the Circuit Court for Baltimore County the decision of the County Board of Appeals to grant a Petition for a Zoning Reclassification that had been submitted by the appellee, the Beachwood I Limited Partnership (Beachwood). In the circuit court, Judge John Grason Turnbull, II affirmed the decision of the Board of Appeals. This appeal has followed. The appellants present, in effect, three questions for resolution:

- 1) Was there substantial evidence to support the finding of the Board of Appeals that the County Council had made a mistake in its earlier comprehensive zoning decision?
- 2) Did the Board of Appeals fail to make the specific findings necessary to justify its decision?
- 3) Did the Board of Appeals participate in impermissible "contract zoning" in contravention of both the Maryland case law and Baltimore County regulations?

The 148-acre property, of which 144.9 acres were the subject of the reclassification petition, is located in the North Point area of southeastern Baltimore County along the Back River, a tributary of the Chesapeake Bay. The property is bound to the west by Morse Lane (a county road) and to the north and east by a small road called Todds Point (or "Shore") Road. The property is reached via a nearby intersection between Morse Lane and North Point Boulevard, a large state road with between four and six lanes. The intersection lies just to the south of the property.

Zoning History of the Tract

- 5 -

January 21, 1994, the Board, by a vote of 2-to-1, granted Beachwood's petition and reclassified the property as D.R. 3.5. The majority opinion found as a matter of fact that the County Council was in error when it zoned the property D.R. 1:

The Board has carefully reviewed and considered the evidence and testimony presented in these proceedings, and finds that the testimony presented by the Petitioner and, particularly, the expert testimony given by Mr. Crozier with his supporting reasons, supports a finding of fact that the subject property was erroneously zoned by the County Council, and that there is no logical reason for the property to be down-zoned from D.R. 5.5 to D.R. 1. We find that the facts presented by the Petitioner in its case indicate that the D.R. 1 zoning is in fact in error, and the Board will therefore find that the requested reclassification from D.R. 1 to D.R. 3.5 should be granted and will so order. (Emphasis supplied.)

The dissenting opinion concluded that no "error" had been committed by the County Council, as that term of art is defined in zoning law:

I have no doubt that the D.R. 1 zoning placed on this site following the recommendation of the Planning Board resulted from the intentional action of the Council and not as a result of any mistake, nor as the result of an error as the same is defined in the body of case law in Maryland interpreting that zoning concept.

The dissenting Board member concluded that the D.R. 1 zoning classification

result[ed] from the contemplative and deliberative process of the County Council, and not from any mistake or error, particularly in light of the fact that the D.R. 1 zoning permits a reasonable use of the land and residential development.

- 4 -

Resource Conservation Zone, permitting only 1 dwelling unit per 20 acres.

In any event, the County Council's comprehensive zoning of 1992 was presumptively correct and it is, therefore, the *status quo ante* from which we proceed in assessing the propriety of any changes made therefrom.

The County Board of Appeals

The comprehensive zoning of the subject parcel as D.R. 1 was promulgated by the Baltimore County Council as part of the Comprehensive Zoning Map it adopted on October 15, 1992. Four-and-a-half months later, on March 1, 1993, Beachwood petitioned the County Board of Appeals to reclassify the property from D.R. 1 to D.R. 3.5. It assigned as its reason for the reclassification the alleged error by the County Council in the Comprehensive Zoning Map process of 1992. The thrust of the allegation of error was that the 1992 "zoning is out of character with the zoning of the surrounding area." It was further alleged that it would be an economic hardship on the developer, effectively amounting to confiscation, to be required to develop the property at so low a level of residential density:

To be developed the site will require the construction of a sewage pumping station. Such facilities are impractical at the density of one dwelling per acre as limited in a D.R. 1 zone. The zone has the practical effect of making the property commercially undevelopable.

The Board of Appeals heard two days of testimony on the proposed reclassification, on November 2 and November 24, 1993. On

- 3 -

D.R. 5.5 to D.R. 1, thereby lowering the permitted residential density to 1 dwelling unit per acre. As a policy decision made by the legislative branch of a charter county, that comprehensive zoning requires no further justification to support it. It is presumptively correct. *Trainer v. Lipchin*, 269 Md. 667, 672-73, 309 A.2d 471 (1973); *Sratakis v. Beauchamp*, 268 Md. 643, 652-53, 304 A.2d 244 (1973). To place the remaining discussion in some context, however, we shall note at least several criticisms that could arguably be made of that 1992 legislation, just as we shall also note several arguments that could be made in support of it.

Two neighboring communities, Edgemere and Todd's Point, are both zoned D.R. 5.5. Land immediately to the west of the subject property is zoned for manufacturing and industrial purposes. The nearest significant D.R. 1 zone in Baltimore County is located some five miles away.

On the other hand, the community of Edgemere is separated from the subject property by a body of water, Greenhill Cove; the small community of Todd's Point, moreover, was in existence before either zoning or the Critical Area law came to Baltimore County. It is also of significance that a density of 1 unit per acre falls, in terms of the Chesapeake Bay Critical Area requirements, about halfway between the lowest permitted density of one unit per 5 acres and the highest permitted density of 4 units per acre. It may also be noted that other undeveloped areas along the shoreline of Back River are in one instance zoned D.R. 1 and in other instances subject to the more restrictive zoning of R.C. 20, a

- 6 -

People's Counsel, along with protesting neighbors, appealed that reclassification to the Circuit Court for Baltimore County. On October 12, 1994, the Circuit Court ruled that the issue of whether the County Council had made an error or mistake in the 1992 comprehensive zoning was fairly debatable. It, therefore, affirmed the reclassification order of the County Board of Appeals.

Deferential Review:
To Whom Is Due the Deference?

Ordinarily, when the judicial branch of government is called on to review a decision made by an administrative agency, the watchword is deference. Courts, at all levels, are enjoined not to substitute their judgment for that of the coordinate branch of government to whom such judgment has been, in our scheme of divided government, primarily entrusted. *Red Roof Inns, Inc. v. People's Counsel*, 96 Md. App. 219, 224, 624 A.2d 1281 (1993). Courts must strive, rather, to uphold the decision of the administrative agency, if there is any evidence which can be said to have made the issue for decision by the agency fairly debatable. *Eger v. Stone*, 253 Md. 533, 542, 253 A.2d 372 (1969). "[T]he same standard applies in both this court and the circuit court." *Relay v. Sycamore*, 105 Md. App. 701, 713, 661 A.2d 182 (1995).

In the less routine institutional configuration of this case, however, the deference that is due is exponential. Both the trial court and this Court are called upon to determine, albeit deferentially, whether the Baltimore County Board of Appeals was, in its turn, appropriately deferential to the Baltimore County

CYCLE ZONING PROCESS

EVERY SIX MONTHS, AS PERMITTED BY THE BALTIMORE COUNTY CODE, PROPERTY OWNERS OR THEIR REPRESENTATIVES MAY SUBMIT PETITIONS FOR ZONING RECLASSIFICATION TO THE COUNTY BOARD OF APPEALS

This is the popular name for the system under which rezoning petitions are considered between the periodic Comprehensive Zoning Map revisions. Petitions are submitted by property owners and acted upon by the County Board of Appeals. Decisions of the Board are subject to court review upon appeal.

Under the cycle zoning system, reclassification hearings are held by the County Board of Appeals during only two relatively brief periods of time each year. By scheduling rezoning hearings, contemporaneous rezoning petitions accumulated between the hearing periods can be grouped together and considered in relation to one another. Not only does this open the way for better zoning decisions, but the grouping of petitions, reflecting certain trends in types of demand for land utilization, also will provide valuable information for ongoing master-planning activities.

The cycle zoning process encompasses a constant, legislatively scheduled series of petition-review periods within an 18-month overlapping cycle recommending each spring and fall. During the rezoning cycle, there is no time period devoted exclusively to the filing of rezoning petitions. During each cycle, the rezoning petitions considered would be those filed during the preceding cycle. Only petitions for zoning reclassification are reviewed within these schedules; scheduling of petitions on variances, special use permits and other matters are not affected by this system. The four petition-review periods occur in the following sequence:

When is submission of zoning petitions: by property owners or planning staff and by the planning staff report	Filing deadline is March 1 April 16 - May 31	Filing deadline is August 31 October 16 - November 30
When is review of petitions, staff reports, and reports of other agencies: by the planning staff and the Planning Board	June 1 - July 31	December 1 - January 31
When is scheduling and advertisement of hearings	August	February
When is the County Board of Appeals	September 1 - December 31	March 1 - June 30

ZONING OVERVIEW

COMPREHENSIVE ZONING

Frequency — Quadrennial review; triggers a moratorium on cycle zoning
Applicant — Anyone can apply
Basis — Comprehensive (County-wide)

Advantages — Provides land use stability

Disadvantages — "Downzoning" may be proposed by anyone
"Upzoning" may increase property tax liability

Decision — Political process
Legislative action of County Council

Appeals — Legislative policy decisions not easily appealable
Property owner/representative may appeal through Cycle Zoning

* The burden of proof is placed on the petitioner to demonstrate a substantial change in the character of the neighborhood since the last comprehensive zoning or a mistake in the original zoning.

CYCLE ZONING

Semi-annual; occurs between, but not during C.Z.M. review
Only property owner, legal representative or contract purchaser may apply
Piecemeal (Individual property)

Petition must be based on Change/Mistake*

Provides administrative relief to property owners on an interim basis

Property is posted with a sign

A zoning change may create instability in the neighborhood

Fees include filing, posting, advertising charges

No mandated time frame for rendering decisions

Quasi-judicial process
County Board of Appeals

Aggrieved party may appeal to Circuit Court; Court of Special Appeals; Court of Appeals

Baltimore County Government
Planning Board

401 Bosley Avenue
Towson, MD 21204

(410) 887-4211
Fax (410) 887-4862

October 22, 1993

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

FROM: P. David Fields, Secretary
County Planning Board

SUBJECT: Amendment in Case No. R-93-309
Beachwood I Limited Partnership

The documented site plan and accompanying information submitted as amendments to the Petition by Beachwood I Limited Partnership were reviewed by the County Planning Board at yesterday's regular monthly meeting.

The Board's discussion focused especially on serious concerns about traffic conditions at the Morse Lane - North Point Boulevard intersection. Although County agencies had recommended approval of the documented site plan subject to conditions (among others) which would obligate the developer to construct certain improvements at the intersection, the Board concluded that the severity of the current traffic problems would nevertheless be exacerbated by a new residential development of such magnitude.

The Board was also concerned that, because the required Chesapeake Bay Critical Area Findings Plan had only been submitted to DEPRM two days previously, there was a lack of information about possible changes to the documented site plan for compliance with environmental regulations and/or possible requests for "variations" from Critical Area standards which lie exclusively within the Planning Board's approval authority.

The Planning Board voted, therefore, to uphold the recommendation it made regarding this property in the 1992 comprehensive zoning process, as affirmed by the County Council's decision, and recommends that the current D.R. 1 zoning on this property should remain unchanged.

P. David Fields

PDF/TD/mja
VOTE: PB/PZONE/TXTNJM

Enclosure

cc: John B. Gontrum
J. James Dieter
Peter Max Zimmerman
W. Carl Richards

Printed on Recycled Paper

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

December 9, 1993

Ms. Janet B. Wood
1926 Ormand Road
Baltimore, MD 21222

RE: Case No. R-93-309
Beachwood I Limited Partnership

Dear Ms. Wood:

The Board is in receipt of your letter dated December 8, 1993.

The deliberation set for December 29, 1993 in the subject matter will be held as scheduled.

The only business to be transacted at this meeting will be Board deliberation. There will be no hearing, nor will any evidence or testimony be taken.

Very truly yours,

Kathleen C. Weidenhammer
Administrative Assistant

cc: People's Counsel for Baltimore County
John B. Gontrum, Esquire

Baltimore County, Maryland

CAROL E. PERMAN
Deputy People's Counsel

9/01/93 -Following parties notified of open hearing to receive amended (documented) site plan only set for Tuesday, September 21, 1993 at 9:30 a.m.:

John B. Gontrum, Esquire
R. Bruce Alderman, President
Signal Development Corp.,
General Partner /Beachwood I
Ltd. Partnership
James Earl Kraft
People's Counsel for Baltimore County
P. David Fields
Lawrence E. Schmidt
Timothy H. Kotroco
W. Carl Richards, Jr.
Docket Clerk /ZADM
Arnold Jablon, Director /ZADM

9-21-93 -Wides interested parties to file at request of People's Counsel -- will advise them when amended/document plan is forwarded to Planning by copy of transmittal memo.

9-27-93 -Documented Site Plan and accompanying documentation accepted by the Board (L & B) in open hearing and on the record; forwarded to Planning and to ZADM for processing. Copy of transmittal sent to interested parties as requested by P. Zimmerman, and to Counsel for Petitioner.

10-12-93 -Hearing Day #1 on merits; continued to second day -11/24/93.

10-13-93 -Notice of Assignment sent to all parties /Day #2 scheduled for Wednesday, November 24, 1993 at 10:00 a.m.

10-24-93 -Hearing concluded on 11/24/93; Notice of Deliberation sent to parties; deliberation set for Wednesday, December 29, 1993 at 9:00 a.m.

12-23-93 -Deliberation held; Petition for Reclassification to D.R. 3.5 GRANTED by majority of two (Hackett and Sauer); Clark to write dissenting opinion. Written Opinion and Order to be issued; appeal period to run from date of that final written opinion and order.

Beachwood I Ltd. Partnership
No. R-93-309

March 1, 1993 Petition for Zoning Reclassification from D.R. 1 to D.R. 3.5 filed by John B. Gontrum, Esquire, in behalf of Beachwood I Limited Partnership, Petitioner.

September 21 Hearing held before the Board for the purpose of submitting in open hearing and on the record an Amended Documented Site Plan only; no evidence or testimony taken at this time.

November 2 Hearing held before the Board of Appeals.

November 29 Hearing completed before the Board of Appeals.

December 29 Open deliberation by the Board; majority decision of Board that Petition for Reclassification is granted; written Opinion and Order to be issued.

December 29 Opinion and Order of the Board that the Petition for Reclassification to D.R. 3.5 is GRANTED; Dissenting Opinion written by C. William Clark.

February 10, 1994 Petition for Judicial Review filed in the Circuit Court for Baltimore County by People's Counsel for Baltimore County.

February 15 Copy of Petition for Judicial Review received by the Board of Appeals from the Circuit Court for Baltimore County.

February 17 Certificate of Notice sent to interested parties.

February 18 Second Petition for Judicial Review filed in the Circuit Court by Ethel Weber and Cabrina Dembow.

February 22 Copy of second Petition for Judicial Review received by the Board from the Circuit Court.

February 24 Second Certificate of Notice sent to interested parties.

April 11 Transcript of testimony and Record of Proceedings filed in the Circuit Court for Baltimore County.

June 8 Amendment to Record Extract filed in the Circuit Court for B.C.

Beachwood I Ltd. Partnership
No. R-93-309

March 1, 1993 Petition for Zoning Reclassification from D.R. 1 to D.R. 3.5 filed by John B. Gontrum, Esquire, in behalf of Beachwood I Limited Partnership, Petitioner.

September 21 Hearing held before the Board for the purpose of submitting in open hearing and on the record an Amended Documented Site Plan only; no evidence or testimony taken at this time.

November 2 Hearing held before the Board of Appeals.

November 29 Hearing completed before the Board of Appeals.

December 29 Open deliberation by the Board; majority decision of Board that Petition for Reclassification is granted; written Opinion and Order to be issued.

December 29 Opinion and Order of the Board that the Petition for Reclassification to D.R. 3.5 is GRANTED; Dissenting Opinion written by C. William Clark.

February 10, 1994 Petition for Judicial Review filed in the Circuit Court for Baltimore County by People's Counsel for Baltimore County.

February 15 Copy of Petition for Judicial Review received by the Board of Appeals from the Circuit Court for Baltimore County.

February 17 Certificate of Notice sent to interested parties.

February 18 Second Petition for Judicial Review filed in the Circuit Court by Ethel Weber and Cabrina Dembow.

February 22 Copy of second Petition for Judicial Review received by the Board from the Circuit Court.

February 24 Second Certificate of Notice sent to interested parties.

April 11 Transcript of testimony and Record of Proceedings filed in the Circuit Court for Baltimore County.

June 8 Amendment to Record Extract filed in the Circuit Court for Baltimore County.

October 14, 1994 /E Opinion and Order of the CCT wherein C.BofA. is AFFIRMED.

Council. The Board of Appeals may not substitute its judgment for that of the County Council, even if it, had it been so empowered, might have made a diametrically different decision. The circumstances under which it may overturn or countermand a decision of the County Council are narrowly constrained. It may never simply second-guess.

The deference that is due by all, including the County Board of Appeals, to the decisions of the County Council is explained in part by the Jeffersonian homage that we pay to the legislative branch of government generally. Within its appropriate governmental sphere, the Baltimore County Council is the legislature for the citizens of Baltimore County. MARYLAND CONSTITUTION, Art. XI-A, § 3; *Richmond Partnership v. Board of Supervisors*, 283 Md. 48, 62-63, 388 A.2d 523 (1978) ("The effect of the language in the opening sentence of Sect. 3 is to render the council the ultimate repository of all legislative power possessed by the county.") When it undertakes, every four years, its comprehensive zoning function, it speaks with the voice of the people. *Hyson v. Montgomery County*, 242 Md. 55, 63, 217 A.2d 578 (1966). As with all legislative bodies, it may sometime make policy decisions that are, in the eyes of some observers, wrong. For the ordinary rightness or wrongness of their decisions, however, legislators are answerable only to their electorates at the next election--not to the courts and not to the County Board of Appeals.

Even in the face of comprehensive zoning or rezoning by the County Council, however, there are certain powers delegated to the

County Board of Appeals to effect zoning reclassifications with respect to particular pieces of property. The BALTIMORE COUNTY CODE (1978), § 2-356(a)(1) provides, in pertinent part:

The board of appeals shall have the power to make a change as to the district, division, or zone within which a particular piece of property is classified (zoning reclassification) as hereinafter provided.

Section 2-356(j) then imposes the limits on that power. The Board of Appeals may reclassify only if it is able to find at least one of two possible preconditions satisfied. Subsection (j) provides, in pertinent part:

Before any property is reclassified pursuant to this section, the board of appeals must find:

(1) That . . . there has occurred a substantial change in the character of the neighborhood in which the property is located since the property was last classified or that the last classification of the property was established in error. (Emphasis supplied.)

It is the second of the two preconditions that is involved in this case. The petition for the reclassification came a scant 4-1/2 months after the adoption of the 1992 Comprehensive Zoning Map, and it is clear that no substantial change occurred in the character of the neighborhood during those four months. Indeed, Beachwood made no allegation of substantial change. See, moreover, BALTIMORE COUNTY CODE (1978), § 2-356(k). The only question is whether the County Council was guilty of a mistake or error in the course of its 1992 comprehensive zoning. The issue is precisely as

we posed it in *Boyer v. Semby*, 25 Md. App. 43, 44, 334 A.2d 137 (1975):

This case presents the narrow question of whether the County Council of Baltimore County (Council) committed basic and actual "mistake" or "error" as those interchangeable terms are used in zoning law.

The Strong Presumption of Validity

When it undertakes to grant a zoning reclassification, the Board of Appeals does not enjoy the luxury of writing on a clean slate. For it to believe, as a value judgment or as a policy determination, that the County Council decision under review was wrong is not *ipso facto* to believe that the wrongful decision was necessarily a "mistake" or was based on an "error."

The deference in this regard due to the decision of the County Council by the Board of Appeals was well expressed by the Court of Appeals in *Stratkus v. Beauchamp*, 268 Md. 643, 304 A.2d 244 (1973). In that case, as here, the Baltimore County Board of Appeals issued a zoning reclassification pursuant to a reclassification petition. There, as here, the petition for reclassification was filed a bare four months after the County Council had promulgated its quadrennial comprehensive rezoning. There, as here, the comprehensive rezoning had lowered the permitted density of a parcel of land. There, as here, the reclassification by the Board of Appeals merely returned the zoning to a density more closely approaching its original classification. The Board of Appeals, as here, ruled that the County Council had been guilty of a mistake or error in its "down-zoning" of the property. The Court of Appeals

held that there was not sufficient evidence of a mistake on the part of the County Council to have made that issue fairly debatable. Judge Levine set out the stern standard of review:

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. . . . Since, as we have also said, this burden is onerous, . . . the task confronting appellants, whose application followed the comprehensive rezoning by merely four months, is manifestly a difficult one.

268 Md. at 652-53. (Emphasis in original) (Citations omitted). See also *Trainer v. Lipchin*, 269 Md. 667, 672-73, 309 A.2d 471 (1973); *Pattay v. Board of County Commissioners*, 271 Md. 352, 359, 317 A.2d 142 (1974).

Another articulation of the strong presumption of validity attaching to comprehensive zoning is found in *Wells v. Pierpont*, 253 Md. 554, 253 A.2d 749 (1969). That also was a case in which the Baltimore County Board of Appeals issued a zoning reclassification changing what the Baltimore County Council had earlier done in adopting its Comprehensive Zoning Map. In that case, the Board of Appeals found evidence of a substantial change in the intervening three-year period and the circuit judge affirmed that reclassification by the Board of Appeals. The Court of Appeals reversed the circuit court, holding that the heavy burden cast upon

one seeking a zoning reclassification had not been satisfied. Judge McWilliams there described the weight of the presumption of validity attending comprehensive rezoning:

It is now firmly established that there is a strong presumption of the correctness of original zoning and of comprehensive rezoning, and that to sustain a piecemeal change therefrom there must be produced strong evidence of mistake in the original zoning or comprehensive rezoning or else evidence of substantial change in the character of the neighborhood. . . . And, of course, the burden of proof facing one seeking a zoning reclassification is quite onerous.

263 Md. at 557. (Citations omitted). See also *Mayor and Council of Rockville v. Heller*, 268 Md. 469, 302 A.2d 45 (1973); *Heller v. Prince George's County*, 264 Md. 410, 412, 286 A.2d 772 (1972); *Cabin John Ltd. v. Montgomery County*, 269 Md. 461, 271 A.2d 174 (1970); *Creswell v. Baltimore Aviation*, 257 Md. 712, 711, 264 A.2d 838 (1970).

What Is A "Mistake" or An "Error"?

As helpful as the case law otherwise was in describing 1) the strong presumption of validity attending comprehensive zoning or rezoning by a county council and 2) the "onerous" burden on a landowner to show an error or mistake in the comprehensive zoning, it was only with a series of three opinions by Judge Rita Davidson, two for this Court and one for the Court of Appeals, that we at last got a firm handle on precisely what was meant by the terms of art "mistake" and "error." In the first place, "mistake" and "error" are "interchangeable terms [as] used in zoning law." *Boyer v. Semby*, 25 Md. App. 43, 44, 334 A.2d 137 (1975).

1. "Change or Mistake" Rule Inapplicable to Comprehensive Rezoning:

It is Judge Davidson's opinion in *Coppolino v. County Board of Appeals*, 23 Md. App. 358, 328 A.2d 55 (1974) that is particularly helpful in pinpointing which decision, in a series of possibly flip-flopping decisions, enjoys the strong presumption of validity and is due the deference of subsequent decision makers. That is the place where the mistake must be found.

In *Coppolino*, as in this case, the property owner had enjoyed a classification under an earlier comprehensive zoning that would have permitted a more intense development of the property. There, as here, a subsequent comprehensive zoning "downzoned" the property. In *Coppolino*, the 1971 comprehensive zoning downzoned to D.R. 5.5 Parcel C, which had enjoyed a D.R. 16 classification under the 1966 comprehensive zoning. In this case, the 1992 comprehensive zoning downzoned to D.R. 1 Beachwood's property, which had enjoyed a D.R. 5.5 classification under the comprehensive zonings of 1988 and 1984. In *Coppolino*, moreover, the 1971 downsizing by the County Council was not only a departure from the earlier 1967 comprehensive zoning, but was also contrary to the recommendations of the Planning Staff and the Planning Board. Moreover, "[t]he reason for these [downzoning] actions [did] not appear in the record." 23 Md. App. at 364. There, as here, the Baltimore County Board of Appeals, by a similar two-to-one vote, ruled that the County Council's comprehensive zoning had been flawed by a mistake or error.

But what, precisely, was the nature of the purported mistake or error which the Board of Appeals believed to have fatally infected the County Council's comprehensive zoning? The owners argued that the earlier "comprehensive zoning of 1966 [was] presumed to be correct," 23 Md. App. at 368, and "that there was error in the 1971 comprehensive zoning" for failing to honor that presumptive validity of the earlier comprehensive zoning:

The owners maintain that the then existing zoning of the subject property could not properly be altered by the Council unless there was evidence of error in the D.R.-16 classification assigned in 1966 or change in the character of the neighborhood subsequent to the assignment of that classification.

In support of this position the owners point out that Baltimore County Code (1972 Cum. Supp.) §§ 22-20 and 22-22.1 now require that a comprehensive rezoning of the entire county take place at least once in every four years. They argue that the frequent use of the comprehensive rezoning technique, absent the "change or mistake" rule, will permit arbitrary and capricious action on the part of the Council, which will undermine the permanence and stability of zoning classifications intended to be protected by the presumption of validity accorded comprehensive rezoning.

23 Md. App. at 368-69. (Footnote omitted) (Emphasis supplied).

In just such a fashion, the County Board of Appeals in the present case seemed to cast on the County Council a burden to justify why its 1992 comprehensive zoning had departed from its presumptively correct 1988 comprehensive zoning:

Originally the property was zoned Manufacturing Heavy (M.H.). In 1984 the property was rezoned from M.H. to D.R. 5.5, and the D.R. 5.5 zoning was reaffirmed in the 1988 map process. The Board can find, from

the testimony and evidence received, no specific reason for this down-zoning.

(There is no logical reason for the property to be down-zoned from D.R. 5.5 to D.R. 1. (Emphasis supplied.)

The circuit court, as well, seemed to cast a burden on the County Council to justify its 1992 departure from its earlier comprehensive zoning:

It is inconceivable to this Court that the Council could downgrade this property to D.R. 1 when that zoning would be completely incompatible with the surrounding zoning in this area. This Court questions why this property was ever changed from D.R. 5.5 . . . (Emphasis supplied.)

Coppolino, however, rejected such an approach, which, in effect, would have allocated to the County Council the burden of justifying any change it made in 1992 from the pre-1992 *status quo*. *Coppolino* pointed out that the "Court of Appeals and this Court have consistently held that the 'change or mistake' rule is not controlling in cases involving comprehensive rezoning." 23 Md. App. at 369. See also *Scull v. Coleman*, 251 Md. 6, 12, 246 A.2d 223 (1968); *Trustees v. Baltimore County*, 221 Md. 550, 560-61, 158 A.2d 637 (1960); *Roberts v. Grant*, 20 Md. App. 247, 253, 315 A.2d 103 (1974).

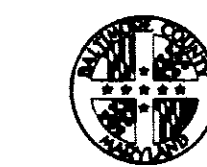
A subsequent comprehensive zoning is not, therefore, to be charged with mistake or error because of its failure to have found a mistake or error in earlier comprehensive zoning which it changed. It has no such burden. *Coppolino's* holding in this regard was clear:

November 1, 1994: Appeal filed in the Circuit Court to the Court of Special Appeals by People's Counsel for Baltimore County.

November 4: Appeal filed in the Circuit Court to the Court of Special Appeals by Francis X. Borgerding, Jr., Esquire, on behalf of Protestants.

November 15: Appeal filed in the Court of Special Appeals; Judgment by Judge Robert C. Murphy, Jr. (Concurring).

November 15: Appeal filed in the Court of Appeals; petition for a writ of certiorari granted; Judgment by Judge Robert C. Murphy, Jr. (Concurring).



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

November 29, 1993

NOTICE OF DELIBERATION

The County Board of Appeals has scheduled the following date and time for deliberation in the matter of:

BEACHWOOD I LIMITED PARTNERSHIP
CASE NO. R-93-309

DATE AND TIME : Wednesday, December 29, 1993 at 9:00 a.m.

LOCATION : Room 48, Basement, Old Courthouse

cc: John B. Gontrum, Esquire Counsel for Petitioner

R. Bruce Alderman, President Petitioner
Signal Development Corp.,
General Partner /Beachwood I
Limited Partnership

Ms. Virginia Tolbert
Ms. Ethel Weber
Mr. Jim Skarda
Ms. Janet Wood

James Earl Kraft
People's Counsel for Baltimore County
P. David Fields /Planning Director
Jeffrey Long /Planning
Lawrence E. Schmidt
Timothy H. Kotroco
W. Carl Richards, Jr. /ZADM
Docket Clerk /ZADM
Arnold Jablon, Director /ZADM

Kathleen C. Weidenhammer
Administrative Assistant

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF: Beachwood I Limited Partnership
Case No. R-93-309

DATE : December 29, 1993

BOARD /PANEL : William T. Hackett, Chairman (WTH)
C. William Clark (CWC)
Michael B. Sauer (MBS)

SECRETARY : Kathleen C. Weidenhammer
Administrative Assistant

Those present included John B. Gontrum, Esquire, and R. Bruce Alderman, on behalf of Petitioners; and Peter M. Zimmerman, People's Counsel for Baltimore County, and Carole S. Demillo, Deputy People's Counsel.

PURPOSE --to deliberate matter of Petition for Reclassification; testimony and evidence taken on November 2 and November 24, 1993. Opinion and Order to be issued by Board setting forth written findings of fact; dissenting opinion to be written by Mr. Clark.

Opening statement by Chairman Hackett included recitation of case number, name and subject of petition filed.

WTH: Briefly reviewed history of zoning on this property from M.H. to D.R. 5.5 to present D.R. 1; reviewed recommendations by County agencies for other than D.R. 1 zoning; reviewed plan and proposal of Petitioners, with only major issue being that of intersection; has been resolved if 3.5 is granted. Reviewed documented site plan and number of units proposed.

D.R. 3.5 should be granted.

MBS: Considered Petition for Reclassification and request for D.R. 3.5; as pointed out by WTH, present zoning is D.R. 1; pointed out that this classification came out of last comprehensive map process when County Council changed zoning from D.R. 5.5 to D.R. 1; also reviewed history of zoning on this property. Reviewed documents entered into evidence and testimony presented; principal issue is intersection; played significant role in Council's decision to down-zone. Looked at case very closely; believes that error was committed; believes that Petitioner has presented sufficient evidence to show that error was committed; also commented on number of units

Minutes of Deliberation /Beachwood I Ltd Partnership R-93-309

proposed (360 proposed v. 570 permitted under D.R. 3.5 zoning); does not believe that 360 units would result in adverse effect in the community and that petition should be granted.

Petition for Reclassification to D.R. 3.5 should be granted.

CWC: Basically disagreed with other two members; discussed presumption of validity accorded the maps, and that at time of adoption of maps, Council had all circumstances existing; reviewed grounds for proving error on part of the County Council. Clear from the evidence and documents contained in Councilman Mason's file that Council had records, letters from Weber, etc.; no congestion problem at D.R. 1; at present zoning there is no problem; also in the file was number of units for each zoning designation and reference to Chesapeake Bay Critical Area. Taking all into account, including Planning Board recommendation, believes no error for Council to do what they did; intentional act of County Council. Also discussed recent Oregon Supreme Court decision regarding reasonable relationship between that which is exacted from Developer and needs created by additional development.

Petition should be denied.

Closing statement by Chairman Hackett; majority opinion of Board that Petition for Reclassification to D.R. 3.5 is GRANTED with documented site plan; written opinion and order to be issued by the Board reflecting that decision, with dissenting opinion to be issued by Mr. Clark.

Respectfully submitted,

Kathleen C. Weidenhammer
Administrative Assistant

BALTIMORE COUNTY, MARYLAND

DEVELOPMENT PLAN COMMENT
DEVELOPMENT CONTROL

DPC DATE 4/26/95
10:00 a.m. Room 123
HOA DATE 5/17/95
9:00 a.m. Room 106

Beachwood Estates
REV

Worse Lane
Tobacco Point

REVISED PLAN KEY
(X) COMPLIANCE WITH COMMENT CHECKED
(O) NON-COMPLIANCE IS CIRCLED
(BA) BE ADVISED, NOT NECESSARY FOR CONCEPT
PLAN APPROVAL, BUT MUST BE ADDRESSED
PRIOR TO FINAL ZONING APPROVAL
ADDITIONAL COMMENTS ADDED LAST BY PLAN DATE

As stated in the concept plan comments. This site has been approved for development by the Board of Appeals in case #R-93-309. This site has been appealed to the Circuit Court. Final zoning approvals are dependent on the hearing and detailed agreement between the reclassification and development

As stated in the concept plan comments. Provide a zoning history by case number and date of the last order. What was requested, granted or denied, and whether or not the site was in compliance with any restrictions including, but not necessarily limited to, setbacks, lot coverage, etc. The developer's engineer confirms compliance with the zoning history. The developer's engineer confirms compliance in detail with the documented reclassification plan approved by the Board of Appeals in case #R-93-309. If this cannot be stated, provide a red-lined copy of the approved reclassification plan indicating and listing any and all changes as soon as possible to the Board of Appeals for review. In either case, provide a copy of the approved plan to this office for comparison. Plan changes must be approved by the Board of Appeals and/or the Circuit Court.

As stated in the concept plan comments. This site has been approved for development by the Board of Appeals in case #R-93-309. This site has been appealed to the Circuit Court. Final zoning approvals are dependent on the hearing and detailed agreement between the reclassification and development

As stated in the concept plan comments. This site has been approved for development by the Board of Appeals in case #R-93-309. This site has been appealed to the Circuit Court. Final zoning approvals are dependent on the hearing and detailed agreement between the reclassification and development

As stated in the concept plan comments. This site has been approved for development by the Board of Appeals in case #R-93-309. This site has been appealed to the Circuit Court. Final zoning approvals are dependent on the hearing and detailed agreement between the reclassification and development

DEVELOPMENT PLAN COMMENTS
PROJECT NAME: Beachwood Estates
DPC DATE: 4/26/95
PAGE 2

3 State that the pool/recreational building/land boat storage complex is for the use of residents only. Show principal building setback compliance per Section 1801.2.C.1.a (BCZR). Provide adequate off-street parking and calculations per Section 409 (BCZR). State that the boat storage will be controlled by the HOA and that any fees are to be included in the HOA fees.

As previously stated in the concept plan comments: Final zoning approval is contingent first, upon all plan comments being addressed on the plan; and secondly, upon the final resolution of all comments and finally, the approval of a zoning final development plan and inclusion of the Final Development Plan checklist information being included on the building permit site plans.

JOHN L. LEWIS
Planner II

JLL:scj

RECEIVED SEP 22 1993
R-93-309

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

P. David Fields, Director
Office of Planning & Zoning
TO: Attention: Jeffrey Long Date: September 21, 1993

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

SUBJECT: Submittal of Amended/Documented Site Plan --
Case No. R-93-309 /Beachwood I Limited Partnership

Pursuant to the appropriate sections of the Baltimore County Code and a public hearing on September 21, 1993, we are transmitting to you a copy of the Documented Site Plan, amended description and environmental impact statement submitted to the County Board of Appeals. This documented site plan is being forwarded to you for processing with the Baltimore County Planning Board. Case No. R-93-309 is scheduled for hearing before the Board of Appeals on Tuesday, November 2, 1993.

By copy of this memorandum, we are also forwarding ten copies of this Documented Site Plan and accompanying documentation to the Office of Zoning Administration & Development Management.

William T. Hackett
William T. Hackett

Attachment (1 copy of Documented Site Plan and accompanying documentation)

cc: Pat Keller
W. Carl Richards, Jr. w/10 copies of Documented Site Plan and copies of accompanying documentation
People's Counsel for Baltimore County
Virginia Tolbert, Secretary
North Point Peninsula Community Coordinating Council
Ethel Weber
Jim Skarda
Janet Wood, Wells McComas Improvement Association
John B. Gontrum, Esquire

While development will reduce the area of open habitat, the areas lost are of minimal ecological value due to the existing use of the land and the poor quality of the existing vegetation that will be disturbed. The areas to be reforested will be significantly enhanced by the afforestation requirements and the use of the property as an illegal dump and model airplane flying will cease.

3. Any adverse environmental effects that cannot be avoided.

The proposed single family community will have no significant adverse environmental impact that could be avoided and allow the development to proceed. Vegetated areas lost will be compensated by enhanced forested areas and the developed acreage is so limited by existing site constraints such as wetlands and buffer that any less development would not be economically feasible due to the unusually high development costs to provide access, sewage disposal systems, grading, storm drainage system, etc.

4. Alternatives to the proposed action that might avoid some or all of the adverse environmental effects, including analysis of cost and environmental impact of these alternatives.

The extent of planned development is in keeping with the requested low density zoning for residential use and will be developed within the guidelines of the Chesapeake Bay Critical Area legislation. There are no viable alternative actions that would utilize the land as proposed to be zoned and there are no net significant adverse environmental effects from the proposed action due to the existing uses of the land and the proposed site enhancements.

5. An assessment of the cumulative, long-term effects of the proposed action including its relationship to short-term use of the environment versus the environment's long-term productivity.

The long term effects of the proposed action will be a reduction of vegetated open space, but offsetting this reduction in vegetated area will be the enhancement of the remaining undeveloped area through selective vegetation in afforested areas, the installation of water quality storm water management systems and most significant, the elimination of the pollution sources along the existing shoreline due to failing septic systems by virtue of providing a public sewage pumping station that will allow service to the existing homes along the shore of Back River, which service is not, otherwise economically feasible due to the excessive cost.

6. Any irreversible or irretrievable commitment of resources that might result from the action or which would curtail beneficial use of the environment. (Bill No. 98, 1975)

The planned action is a commitment of resources that will fulfill a real need in the general area for reasonably priced housing. The effect on the existing land use will result in a change from vacant land used by model airplane hobbyists, off-the-road vehicles as an illegal dump and a small barnyard operation to a well maintained residential community.

§ 2-356

BALTIMORE COUNTY CODE

neighborhood shall not be a basis for granting reclassification.

2. A reclassification involving growth allocation that does not require changes to the underlying zone or zones may be granted pursuant to the criteria set out in subsection (j)(3)(b) of this section.

- b. In evaluating requests for reclassification, the board shall consider the criteria in COMAR 14.15.02 and the standards in appendix IV-B of the local protection program adopted by county council Resolution No. 13-88. No reclassification may be granted unless the board has made written findings that the proposed reclassification will:

1. Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have runoff from surrounding lands;
2. Conserve fish, wildlife, and plant habitat; and
3. Be consistent with established land use policies for development in the Chesapeake Bay Critical Area which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement, and activities of persons in that area can create adverse environmental impacts.

- c. Reclassifications in cases involving growth allocation shall be referred to the county planning board by the board of appeals for consideration and written report thereon, subject to section 28-123(g) and (h) of this Code.

(k) Limitations on granting reclassification. No zoning reclassification of property shall, for a period of one (1) year after a zoning map applicable thereto may be by an ordinance of the county council have been adopted, be granted on the ground that the character of the neighborhood has changed.

(l) Documentation. If a zoning reclassification petition includes documentation relating to the proposed use of the property under petition, that documentation must include:

- (1) Elevation drawings and a plan satisfying the zoning commissioner's rules of practice and procedure and showing locations, coverage, floor areas, heights, character, and exterior materials of all proposed structures and all existing structures to be retained, signs visible outdoors; all principal uses; hours of operation, maximum number of employees, and maximum levels of emanations (including sound and other vibrations, dust, odors, gases, light, and heat); parking and loading facilities; existing and proposed public and quasi-public facilities on and adjacent to the site, including storm-drain systems, waterlines, sewerage, streets and drives, and railroad sidings; existing ponds and other bodies of water, watercourses, one-hundred-year floodplains, major vegetations, and unusual natural formations and proposed changes with respect to any of these; screening and landscaping; and existing topography and proposed major changes in grade; and

- (2) An environmental impact statement, as defined in the county zoning regulations, that concerns the proposed use of the property under petition and that has been competently prepared by a professional planner or engineer of appropriate qualifications.

A plan submitted pursuant to this subsection may show the location of a precise building envelope clearly delimited area within which a building is to be entirely located but which is larger than the area covered by the building itself. In lieu of the precise location of a building, may show precise maxima and minima in lieu of fixed values; may set forth lists of precisely described possible uses of a given space, in lieu of specifying a single use, and may otherwise reasonably allow for flexibility or alternatives, provided that appropriate precise limits are set forth.

(m) Amendments. A zoning reclassification petition (including any documentation relating to the proposed use of the property under petition)

may be amended only during a required public hearing proceeding on the petition. When a proposed amendment to such a petition is introduced, the hearing proceedings shall immediately be suspended, and, within two (2) business days thereafter, the hearing authority shall transmit a copy of the proposal to the director of planning and zoning, who:

1. In any case where a petition has been exempted under provisions of subsection (i) of this section, shall promptly refer the amendment to any agency that he considers appropriate, together with a request that the agency provide him with comments on the amendment. Within forty-five (45) days after the amendment has been transmitted to the director of the office of planning and zoning, he shall transmit to the hearing authority a report on the amendment.

2. In all other cases, the director of the office of planning and zoning shall promptly transmit copies to the members of the planning board. The director of planning and zoning shall also promptly refer the amendment to the office of the zoning commissioner and any other agency that he considers, upon reviewing files on the petition, to have an interest therein, together with a request that the agency provide him with comments on the amendment for distribution to the planning board, by a time he shall specify. Within forty-five (45) days after the copy of the amendments has been transmitted to the director of planning and zoning, the planning board shall adopt and transmit to the hearing authority a resolution embodying a report on the amendment.

3. Any documentation that relates to the proposed use of the property upon petition and that is submitted by the petitioner or his authorized agent after the first public newspaper advertisement of the filing of the petition as required in Period I shall be considered an amendment to the petition, whether or not documentation of that nature was included within the original petition, and shall be subject to the provisions of subsection (m) as well as this subsection.

ADMINISTRATION

§ 2-356

(n) Use of property. Property may be reclassified under this section only upon making the findings required under subsection (i) of this section. Property may not be reclassified solely on the basis of documentation relating to the property's proposed use. However, any provision of section 28-122 of the contrary notwithstanding, if the petition to reclassify the property does include such documentation and is granted, the property may be used only in accordance with the plan included within that documentation; the zoning classification of any such property will revert to the previous classification unless, within three (3) years after the date of the final order granting the petition, the property is being used in accordance with the plan or, in a case where development is necessary to implement the plan, unless the development either is completed or has been substantially undertaken and is being diligently pursued to completion. The requirement that such a property be utilized in accordance with a plan and the provision that otherwise the classification of the property will revert will not be affected by the subsequent enactment of a zoning map, pursuant to section 28-124 or 28-125 of this Code unless the zone classification of the property is further changed by that map.

(o) Considerations in making determination. In its hearing on any zoning reclassification petition, the county board of appeals shall consider in evidence without testimony thereto, absent objection by any party to the case, any report of the planning board of comments from the director of planning and zoning or other officer of the office of planning and zoning relating to the petition or any duly submitted relevant report or comments from any other county agency. If an objection is made by any party to the case, the item shall be entered by testimony of a proper witness, who shall be notified by the board of appeals.

(p) Special exceptions and variances. The board of appeals, subject to the appropriate principles, standards, rules, conditions, and safeguards as set forth in the zoning regulations, shall have original jurisdiction for the purpose of hearing and deciding petitions for special exceptions and/or variances, the granting of which is dependent upon the reclassification of the property involved in the petition for reclassification. Such special exceptions

179

93 DEC -9 AM 11:49

Ms. Janet B. Wood
1926 Ormand Road
Baltimore, Maryland 21222

December 8, 1993

Re: BEACHWOOD I LIMITED PARTNERSHIP
CASE NO. R-93-309

Honorable William T. Hackett
Chairman
County Board of Appeals of
Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

Dear Chairman Hackett:

I have received notice that the above referenced matter has been set in for deliberation on Wednesday, December 29, 1993 at 9:00 a.m.

I have made arrangements to be on vacation in order to spend this Holiday Season with my family during this Christmas Holy Week.

Therefore, I respectfully request that this hearing be postponed until after the Holiday Season.

Thanking you for your anticipated cooperation in this matter and Best Wishes to you for the Holiday Season, I am

Very truly yours,
Janet B. Wood

cc: Peter Zimmerman

ROMADKA, GONTRUM & McLAUGHLIN, P.A.

814 Eastern Boulevard
Baltimore, Maryland 21221

TELEPHONE: (410) 686-8774
FAX: (410) 686-0118

ROBERT J. ROMADKA
JOHN B. GONTRUM
MICHAEL McLAUGHLIN, JR.

ELIZABETH A. VANNI

*ALSO ADMITTED IN D.C.

Ms. Janet Wood
1926 Ormand Road
Baltimore, MD 21222

January 31, 1994

Re: Beachwood Estates Mobile Home Park
RGM File No.: 93.3025

Dear Janet:

I read with interest the Sunpaper article the other day pertaining to Beachwood. A comment which you made in the article drew my attention. It was to the effect that with the D.R. 3.5 zoning that had been granted on the Beachwood property that my client would be able to build upward of 500 units. Actually this is incorrect as the D.R. 3.5 zoning which was granted was granted conditioned on the specific site plan adopted. Consequently, in order for additional units to be placed on the property over and above that particular site plan a new site plan would have to be submitted and additional hearings would have to be conducted by the Board of Appeals.

In order to clarify this matter, and to give perhaps some measure of assurance to the community my client's are willing to covenant specifically with respect to the site plan which was adopted by the Board of Appeals. My client is willing to covenant that no additional units beyond that was proposed by the site plan will be placed on the subject property. By giving these covenants and allowing the community to enforce them with the costs to be assessed against the party found at fault my client believes that you would have assurances necessary that there would be no further development beyond the 360+ units indicated on the site plan. My client has been willing to discuss and are willing to discuss additional covenants along the lines previously communicated to the community. Please let us know if you are interested in any further discussions with respect to these matters.

Best wishes,

John B. Gontrum

JBG/bjb

cc: Baltimore County People's Counsel
Armando Cignarale

Janet B. Wood
1926 Ormand Rd.
Baltimore, Maryland 21222

February 7, 1994

John B. Gontrum, Esquire
814 Eastern Boulevard
Baltimore, Maryland 21221

Dear John:

Re: Beachwood Estates Mobile Home Park
RGM File No.: 93.3025

I am enclosing herewith, the "Sunpaper" article in which you made reference to me making a comment regarding zoning.

If you will re-read the article carefully, you will note that I made no reference in the newspaper concerning zoning.

I would appreciate if you would correct your error.

Very truly yours,

Janet B. Wood

91-1116-6-8346
FEB 11 1994
BALTIMORE COUNTY
CLERK

MARYLAND REGION **Edgemere development OK'd despite protests** **Council had voted to reduce density**

By Larry Carson

Potential traffic jams prompted most of the local opposition, said Janet Wood, president of the improvement association for nearby Edgemere.

"It's complete overkill," she said. Access to the site is from Morse Lane, off North Point Boulevard near the Baltimore Beltway.

Opponents say the spot is already a backstop on the peninsula. "It's one half of an acre to get out of or get into," said County Councilman Donald C. Mason, D-7th.

The developer, Beachwood Limited Partnership, has agreed to improve the intersection of Morse Lane and North Point Boulevard as part of its proposal.

An industrial park originally was planned for the site in 1979, but industrial and recreation killed that idea and the land was rezoned from industrial to residential in 1984. The county planning department did not oppose the current plan for 366 homes, which amounts to 3.6 homes per acre.

People's Counsel Peter Max Zimmerman opposed the developer, arguing that there was no real reason to conclude that the County Council erred in 1992.

C. William Clark, the dissenting board member, said it was clear that Mr. Mason reduced zoning density on the land because of residents' worries about traffic congestion and that no new facts had come to light to challenge his reasoning since 1992.

County Council members have almost complete authority over zoning laws in their districts, subject only to review by the Board of Appeals.

Mr. Zimmerman has until Feb. 20 to appeal the decision to Circuit Court but said he hasn't decided whether to do so.

A plan to build 366 homes on about one-half acre near Back River in Edgemere has been approved by the Baltimore County Board of Appeals despite residents' objections and a zoning change by the County Council in 1992 that would have prohibited a development that large.

The board's 5-1 ruling reversed a decision the council made during its last overall zoning review, when it reduced the land's density from 5.5 homes per acre to one home per acre. Before that decision, the zoning would have permitted as many as 814 homes.

The vital issue in the board's decision was whether the County Council erred in lowering the zoning density on the site. Error is 28% of the few arguments protesters can make in trying to overturn a council zoning decision, and experts for the developer testified that the council made a mistake in reducing the density so much. There are no other areas with a limit of one home per acre within five miles of the Back River site, according to testimony.

Residents opposing the development noted that the developer's original proposal called for 800 homes. Virginia Tolbert, president of the North Point Community Coordinating Council, said she fears that once permission to build 366 homes is granted, the developer may decide to build more units. Under the board's ruling, which calls for a density of as little as 3.5 homes per acre, the developer could build a maximum of 500 homes.

JOAN S. BISMILLER
4624 Todd Point Lane
Baltimore, Maryland 21219

October 1, 1993

Mr. Peter M. Zimmerman
Peoples Council
400 Washington Avenue, Rm. 47
Old Court House Building
Baltimore, Maryland 21204

RE: Development of Beachwood Estates (Property located on Todd Point Lane and Morse Lane)

Dear Mr. Zimmerman:

With reference to the above topic, I would like your advice on the subjects I plan to present.

I am enclosing the outline you requested with the information I thought would most directly affect us. When this ground was stripped in 1971 it created problems for the residents in this area. While the digging was going on and for several years after it stopped, until something began to grow, we were all affected by the dust and mess. I have some pictures showing what this field looked like when they finished and what it looks like now, 22 years later.

We are also disturbed by the fact that these proposed houses will be built so close to our property and that they are proposing a drainage ditch between the road and these new houses. Anyone familiar with living on the waterfront knows the possibility of trespassing by the people in these houses is very real.

We are seriously concerned about the fact that the builders are also planning to run a drainage pipe between two properties that will empty into the river. The exit point of this pipe will be on the only section of beach left along this road.

These problems concern this whole tract of ground planned for development. The more houses the more problems and the more ground destroyed.

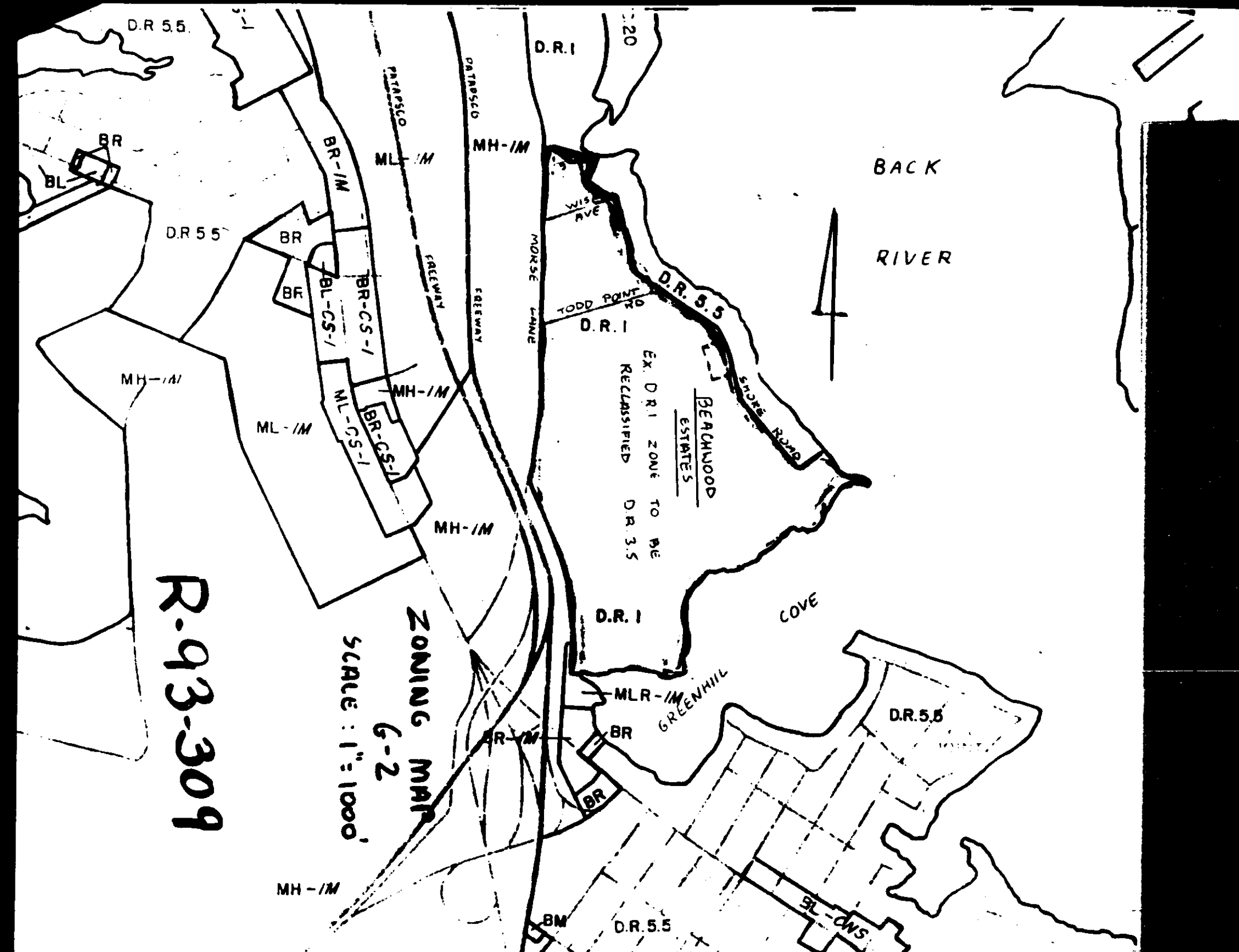
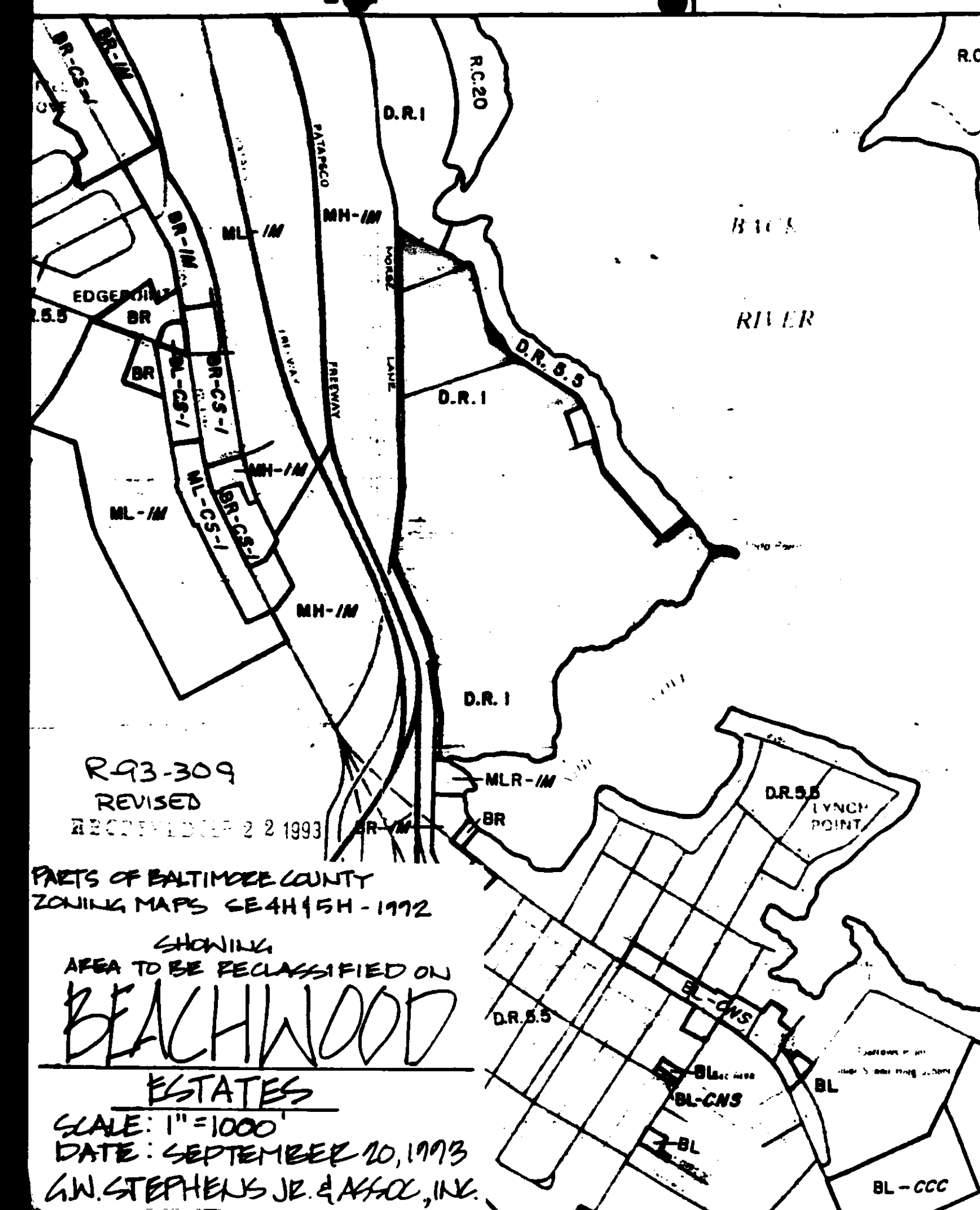
I would also like to say something about the traffic plans for North Point Road. The main problem regarding the turn into Edgemere from North Point Road will be discussed by some of the other people. I would just like to mention the problems that come from the other direction, such as making a right turn into Morse Lane from North Point Blvd. This subject doesn't seem to come up for discussion much and it is just as important as the other problems. I know this will be discussed at length by

others, so, I will try to be as brief as possible. If you have any suggestions or changes, please let me know.

Sincerely,

Joan S. Bismiller

JSB



ORIGINAL

IN THE
COUNTY OF BALTIMORE
COURT OF APPEALS
PAR
from a
on property
the east side
e, Northeast Side
atapsco Freeway)
uncilmanic District

3.5 on property
located on the east side
Morse Lane, Northeast Side
I-695 (Patapsco Freeway)
7th Councilmanic District

The above matter came on for hearing before
the County Board of Appeals of Baltimore County at the Old
Courthouse, 400 Washington Avenue, Towson, Maryland 2204
at 10 o'clock a.m., November 2, 1993.

Reported by:
C.E. Peatt

BOARD OF APPEALS

ORIGINAL

IN THE
COUNTY OF BALTIMORE
COURT OF APPEALS
PAR
from a
on property
the east side
e, Northeast Side
atapsco Freeway)
uncilmanic District

3.5 on property
located on the east side
Morse Lane, Northeast Side
I-695 (Patapsco Freeway)
7th Councilmanic District

The above matter came on for hearing before
the County Board of Appeals of Baltimore County at the Old
Courthouse, 400 Washington Avenue, Towson, Maryland 2204
at 10 o'clock a.m., November 24, 1993.

Reported by:
C.E. Peatt

BOARD OF APPEALS

MR. GONTRUM: Your Honor, you mentioned or asked
throughout the hearing, where's the error? Because I
don't want to get into the same kind of argument that I
heard at a hearing prior to this case as to what changes
occurred, things like that, I think one thing that has or
has not happened, there hasn't been much change. Over
thirty-some years, there hasn't been much change around
the area.

We think there is error in a number of respects.

First off, it's very, very clear in this case from the
testimony of Baltimore County how this issue came to be.
This issue came to be because of one particular issue,
traffic. Steven Weber testified from the stand he went to
Jack MacMillan and raised an issue with respect to
traffic.

You have in your file a memo to Jack McMillan,
the area planner for Baltimore County, dated January 29,
1992, from Steven Weber. On page two, he cites as follows:
"With improvements to Northpoint Boulevard as outlined
above, we do feel the Beachwood South property could be
developed without any significant problems at the existing

BOARD OF APPEALS

DIVISION OF TRAFFIC OPERATIONS
DEPARTMENT OF PUBLIC WORKS
BALTIMORE COUNTY, MARYLAND

DATE: September 23, 1993

TO: Peter Max Zimmerman
People's Counsel

FROM: Stephen E. Weber, P.E., Chief
Division of Traffic Operations

SUBJECT: Zoning Reclassification Cycle I (R93-309)
Beachwood I Limited Partnership

ITEM NUMBER: 7

The existing D.R. 1 zoning for this site can be expected to generate approximately 1,400 vehicle trips per day, and the proposed D.R. 3.5 zoning can be expected to generate approximately 4,800 vehicle trips per day. Please see comments on this property prepared by us to the Planning Office on January 29, 1992.

SEM/GMC/ldv
Attachment

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

DATE: September 11, 1992

TO: Jackie MacMillan, Community Planner
Office of Planning & Zoning

FROM: Stephen E. Weber, P.E., Chief
Assistant Traffic Engineer

SUBJECT: Beachwood Estates

This is to inform you that the proposed plan for Beachwood Estates Development has been reviewed by this office. We are generally in agreement with the attached State Highway Administration's memo dated September 1, 1992 regarding the proposed improvements at the intersection of North Point Boulevard and Morse Lane, as proposed in the traffic impact study performed by The Traffic Group, Inc. dated June 22, 1992. While we do not necessarily agree with all the assumptions made in the traffic impact study, we do feel the proposed intersection improvements could adequately handle the amount of development assumed in the report. We would have the same concern as the State regarding the community's reaction to prohibiting left turns from Morse Lane onto North Point Boulevard. However, the extra driving distance required to turn right and make a U-turn is minimal and the enhancement to safety is worth the slight inconvenience.

Should you need any more information, please let me know.

SEM/RIF/ldv

cc: Frederick Walker
Nehemiah Enterprises
40 W. Chesapeake Avenue
Suite 600
Towson, Maryland 21204

Maryland Department of Transportation
State Highway Administration

U. James Lightner
Secretary
Hal Kassoff
Administrator

September 1, 1992

Mr. Wes Guckert, President
The Traffic Group, Inc.
Suite 600
40 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Baltimore County
MD 151
Morse Lane
(Beachwood Estates)

Dear Mr. Guckert:

This is in follow-up to our meeting of August 27th with Fred Walker to discuss the above referenced development and review access alternatives for the existing MD 151/Morse Lane intersection.

As we indicated at our meeting, it appears the most desirable modification to the intersection would be to prohibit left turns from Morse Lane to southbound MD 151. This could be accomplished by constructing a channelized island at the Morse Lane/MD 151 intersection/ to physically preclude the left turn movement.

Additional improvements to support this change would be to construct channelization to close-up part of the median opening at Morse Lane; extend the left turn lane along MD 151 to enter Morse Lane; close the median opening just north of Morse Lane, and close the median break for left turns onto MD 20 and relocate it a minimum of 100 feet further to the south.

Mr. Walker, in representing the developer, indicated that he had no objection to funding the improvements noted above. In addition, he indicated he felt the developer and the community would be supportive of the changes.

An SHA concern, with restricting left turns, is the community's reaction. We indicated that a revised plan should be prepared, and a meeting held with the community to review and determine their opinion.

My telephone number is 301-333-1350 (Fax# 333-1041)

Teletypewriter for Impaired Hearing or Speech
303-7655 Baltimore Metro - 888-0481 D.C. Metro - 1-800-492-5992 Statewide Toll Free
707 North Calvert St., Baltimore, Maryland 21203-0717

BALTIMORE COUNTY COUNCIL MINUTES
LEGISLATIVE SESSION 1992, SPECIAL SESSION
OCTOBER 15, 1992 7:00 P.M.

A. The meeting was called to order by Chairman Howard at 7:20 P.M. The Chairman asked the audience to rise for a moment of silent meditation and the Pledge of Allegiance to the Flag. There were approximately 150 persons in attendance and the following Councilmembers were present:

BERNIE L. MANLEY	FIRST DISTRICT
MELVIN G. HINTZ	SECOND DISTRICT
C. A. DUTCH RUPPERSBERGER, III	THIRD DISTRICT
DOUGLAS B. RILEY	FOURTH DISTRICT
VINCENT J. GARDINA	FIFTH DISTRICT
WILLIAM A. HOWARD, IV	SIXTH DISTRICT
DONALD C. MASON	SEVENTH DISTRICT

B. CALL OF BILLS FOR FINAL READING AND VOTE

BILL 183-92, Comprehensive Zoning Maps - First District, was called. Councilwoman Manley moved to accept the Planning Board's recommendation on the following issues:

1-001	1-002	1-003	1-004	1-005
1-006	1-007	1-008	1-009	1-011
1-012	1-013	1-014	1-015	1-016
1-017	1-018	1-019	1-020	1-022
1-024	1-028	1-030	1-031	1-032
1-033	1-034	1-035	1-037	1-038
1-039	1-040	1-042	1-043	1-044
1-045	1-047	1-048	1-049	1-050
1-051	1-052	1-053	1-054	1-055
1-057	1-059	1-060		

Councilman Howard seconded the motion and these issues were passed unanimously.

Councilwoman Manley then moved for the following changes in the First District Comprehensive Zoning Map:

Issue 1-010 from RO to DR 5.5. Motion was seconded by Councilman Howard and passed unanimously.

Issue 1-021 from DR 3.5 to ROA. Motion was seconded by Councilman Howard and passed unanimously.

Issue 1-023 from RC 2 to RC 2 (13.2 ac.) & RC 5 (1.51 ac.), as shown on the overlay. Motion was seconded by Councilman Howard and passed unanimously.

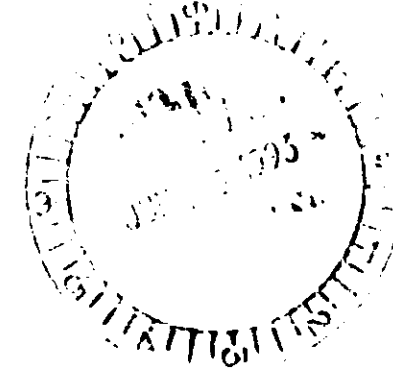
Issue 1-025 from RC 3 to DR 5.5. Motion was seconded by Councilman Howard and passed unanimously.

Report by the
Baltimore County
Office of Planning and Zoning
to the
Baltimore County Planning Board

**ZONING
RECLASSIFICATION
PETITIONS**

Cycle I, 1993

May 31, 1993



Baltimore County Government
Office of Planning and Zoning

401 Bosley Avenue
Towson, MD 21204

(410) 887-3211
Fax (410) 887-5862

DATE: October 12, 1993

TO: Members of the Baltimore
County Planning Board

FROM: P. David Fields, Director
Office of Planning and Zoning

SUBJECT: Beachwood I Limited Partnership
Case No. R-93-309
Amended (Documented) Site Plan

A Documented Site Plan was forwarded from the Board of Appeals on September 21, 1993, pursuant to Section 2-356 (m) of the Baltimore County Code. Based upon the analysis of this plan, staff offers the attached report and recommendation.

David Fields
P. David Fields

EDE:bjs

CYC293F, 309/PZONE/CYCLE

Printed on Recycled Paper

**BALTIMORE COUNTY
COMPREHENSIVE ZONING MAP**
Final Log of Issues
Adopted October 15, 1992

Baltimore County Government
Planning Board

401 Bosley Avenue
Towson, MD 21204

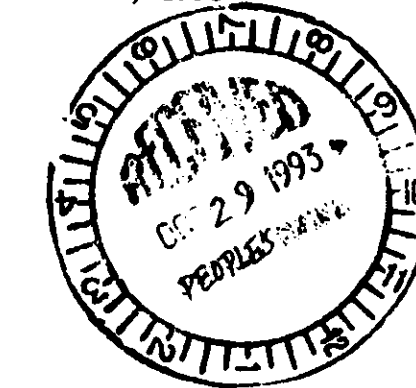
(410) 887-3211
Fax (410) 887-5862

October 22, 1993

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

FROM: P. David Fields, Secretary
County Planning Board

SUBJECT: Amendment in Case No. R-93-309
Beachwood I Limited Partnership



The documented site plan and accompanying information submitted as amendments to the Petition by Beachwood I Limited Partnership were reviewed by the County Planning Board at yesterday's regular monthly meeting.

The Board's discussion focused especially on serious concerns about traffic conditions at the Morse Lane - North Point Boulevard intersection. Although County agencies had recommended approval of the documented site plan subject to conditions (among others) which would obligate the developer to construct certain improvements at the intersection, the Board concluded that the severity of the current traffic problems would nevertheless be exacerbated by a new residential development of such magnitude.

The Board was also concerned that, because the required Chesapeake Bay Critical Area Findings Plan had only been submitted to DEPRM two days previously, there was a lack of information about possible changes to the documented site plan for compliance with environmental regulations and/or possible requests for "variations" from Critical Area standards which lie exclusively within the Planning Board's approval authority.

The Planning Board voted, therefore, to uphold the recommendation it made regarding this property in the 1992 comprehensive zoning process, as affirmed by the County Council's decision, and recommends that the current D.R. 1 zoning on this property should remain unchanged.

David Fields
P. David Fields

PDF/TD/mjm
VOTE: PB/PZONE/TXTLMJH

Enclosure

cc: John B. Gontum
J. James Dieter
Peter Max Zimmerman
W. Carl Richards



Printed on Recycled Paper

The Office of Planning and Zoning supports development of up to 580 units -- the number assumed in the study -- on the entire tract representing the two CZMP tracts, 7-005 and 7-016 on condition that, 1) the ultimate build-out of the project is limited as stated above, and 2) the proposed interconnection

[illegible]



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

March 1, 1994

John B. Gontrum, Esquire
ROMADKA, GONTRUM & McLAUGHLIN
814 Eastern Boulevard
Baltimore, MD 21221

RE: Civil Action No. 94-CV-01196
Beachwood I Ltd. Partnership
Amended Second Certificate of Notice

Dear Mr. Gontrum:

Enclosed is a copy of an Amended Second Certificate of Notice which was filed in the Circuit Court this date, the purpose of which is to include Notice to Counsel for Petitioners, inadvertently omitted from the original Second Certificate of Notice filed in the Circuit Court on February 24, 1994.

Very truly yours,

Kathleen C. Weidenhammer
Kathleen C. Weidenhammer
Administrative Assistant

Enclosure

cc: R. Bruce Alderman /Signal Development
Beachwood I Ltd. Partnership
Virginia Tolbert /North Point Peninsula
Community Coordinating Council
Jim Skarda
Janet Wood /Wells McComas Imp. Assn.
James Earl Kraft
People's Counsel for Baltimore County
P. David Fields
Jeffrey Long
Lawrence E. Schmidt
Timothy W. Kotroco
W. Carl Richards, Jr. /ZADM

Docket Clerk /ZADM
Arnold Jablon, Director /ZADM



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

March 1, 1994

Francis X. Borgerding, Jr., Esquire
DINENNA AND BRESCHI
Suite 600
Mercantile-Towson Building
409 Washington Avenue
Towson, MD 21204

RE: Civil Action No. 94-CV-01196
Beachwood I Ltd. Partnership
Amended Second Certificate of Notice

Dear Mr. Borgerding:

Enclosed is a copy of the Amended Second Certificate of Notice which has been filed in the Circuit Court this date in the subject matter. Also enclosed for your information is a copy of the original Second Certificate of Notice filed in the Circuit Court on February 24, 1994, from which you were inadvertently omitted, as well as a copy of the letter to Petitioners also dated February 24, 1994. The purpose of the enclosed Amended Notice is to correct that omission.

Very truly yours,

Kathleen C. Weidenhammer
Kathleen C. Weidenhammer
Administrative Assistant

Enclosure

cc: Ms. Ethel Weber
Ms. Cabrina Dembow

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
PETITION OF ETHEL WEBER
4506 Todd Point Lane, Balto., MD 21219
AND

CABRINA DEMBOW
4544 Todd Point Lane, Balto., MD 21219
FOR JUDICIAL REVIEW OF THE DECISION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
Room 49, Old Courthouse
400 Washington Ave., Baltimore, MD 21204

IN THE CASE OF: IN THE MATTER OF
BEACHWOOD I LIMITED PARTNERSHIP
FOR A ZONING RECLASSIFICATION FROM
D.R. 1 TO D.R. 3.5 ON PROPERTY LOCATED
ON THE EAST SIDE OF MORSE LANE, NE/SIDE
I-695 (PATAPSCO FREEWAY)
15TH ELECTION DISTRICT
7TH COUNCILMANIC DISTRICT
CASE NO. R-93-309
(ITEM 7, CYCLE I)

CIVIL
ACTION
No. 94-CV-01196
7/3780

RECEIVED AND FILED
94 FEB 24 AM 11:02
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

SECOND CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the provisions of Rule 7-202(e) of the Maryland Rules of Procedure, William T. Hackett and Michael B. Sauer, constituting a majority of the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely, Ethel Weber, 4506 Todd Point Lane, Baltimore, MD 21219, and Cabrina Dembow, 4544 Todd Point Lane, Baltimore, MD 21219, Petitioners; John B. Gontrum, Esquire, ROMADKA, GONTRUM & McLAUGHLIN, 814 Eastern Boulevard, Baltimore, MD 21221, Counsel for Beachwood I Ltd. Partnership; R. Bruce Alderman, President, Signal Development Corp./Beachwood I Ltd. Partnership,

R-93-309, Beachwood I Ltd. Partnership
File No. 94-CV-01196/73/80 /Second Notice

108 West Timonium Road, Timonium, MD 21093; Nancy E. Paige, Esquire, GORDON, FEINBLATT, ROTHMAN, HOFFBERGER & HOLLANDER, The Garrett Building, 133 E. Redwood Street, Baltimore, MD 21202, and Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Room 47, Old Courthouse, 400 Washington Avenue, Towson, MD 21204, a copy of which Notice is attached hereto and prayed that it may be made a part hereof.

Kathleen C. Weidenhammer
Kathleen C. Weidenhammer
Administrative Assistant
County Board of Appeals, Room 49 -Basement
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410) 887-3180

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to Ethel Weber, 4506 Todd Point Lane, Baltimore, MD 21219, and Cabrina Dembow, 4544 Todd Point Lane, Baltimore, MD 21219, Petitioners; John B. Gontrum, Esquire, ROMADKA, GONTRUM & McLAUGHLIN, 814 Eastern Boulevard, Baltimore, MD 21221, Counsel for Beachwood I Ltd. Partnership; R. Bruce Alderman, President, Signal Development Corp./Beachwood I Ltd. Partnership, 108 West Timonium Road, Timonium, MD 21093; Nancy E. Paige, Esquire, GORDON, FEINBLATT, ROTHMAN, HOFFBERGER & HOLLANDER, The Garrett Building, 133 E. Redwood Street, Baltimore, MD 21202, and Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Room 47, Old Courthouse, 400 Washington Avenue, Towson, MD 21204, this 24th day of February, 1994.

Kathleen C. Weidenhammer
Kathleen C. Weidenhammer
Administrative Assistant
County Board of Appeals, Room 49 -Basement
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410) 887-3180



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

February 24, 1994

John B. Gontrum, Esquire
ROMADKA, GONTRUM & McLAUGHLIN
814 Eastern Boulevard
Baltimore, MD 21221

RE: Civil Action No. 94-CV-01196
Beachwood I Ltd. Partnership
Second Petition for Judicial Review

Dear Mr. Gontrum:

Notice is hereby given, in accordance with the Maryland Rules of Procedure, that a Second Petition for Judicial Review was filed on February 18, 1994 in the Circuit Court for Baltimore County from the majority decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to Rule 7-202(d)(2)(B).

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, must be filed under Civil Action No. 94-CV-01196.

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

Very truly yours,

Kathleen C. Weidenhammer
Kathleen C. Weidenhammer
Administrative Assistant

Enclosure

cc: R. Bruce Alderman /Signal Development
Beachwood I Ltd. Partnership
Virginia Tolbert /North Point Peninsula
Community Coordinating Council
Jim Skarda
Janet Wood /Wells McComas Imp. Assn.
James Earl Kraft
People's Counsel for Baltimore County
P. David Fields
Jeffrey Long
Lawrence E. Schmidt
Timothy W. Kotroco
W. Carl Richards, Jr. /ZADM

Docket Clerk /ZADM
Arnold Jablon, Director /ZADM



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

February 24, 1994

Ms. Ethel Weber
4506 Todd Point Lane
Baltimore, MD 21219

Ms. Cabrina Dembow
4544 Todd Point Lane
Baltimore, MD 21219

RE: Civil Action No. 94-CV-01196
Beachwood I Ltd. Partnership
Second Petition for Judicial Review

Dear Petitioners:

In accordance with Rule 7-206(c) of the Maryland Rules of Procedure, the County Board of Appeals is required to submit the record of proceedings to the Circuit Court for Baltimore County in the above-entitled matter.

The cost of the transcript of the record must be paid by you. In addition, all costs incurred for 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 same to the Circuit Court, in accordance with Rule 7-206(c).

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

Very truly yours,

Kathleen C. Weidenhammer
Kathleen C. Weidenhammer
Administrative Assistant

Enclosure

PETITION OF ETHEL WEBER
4506 Todd Point Lane
Baltimore, MD 21219
AND
CABRINA DEMBOW
4544 Todd Point Lane
Baltimore, MD 21219
FOR JUDICIAL REVIEW OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

IN THE CASE OF: IN THE MATTER OF
BEACHWOOD I LIMITED PARTNER-
SHIP FOR ZONING
RECLASSIFICATION FROM D.R. 1
TO D.R. 3.5 ZONE ON PROPERTY
LOCATED ON THE EAST SIDE OF
MORSE LANE, NORTHEAST SIDE
I-695 (PATAPSCO FREEWAY)
15TH ELECTION DISTRICT
7TH COUNCILMANIC DISTRICT
CASE NO. R-93-309 CYCLE I 1993

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
Civil Action No.:

94CV1196 CV 73/0080

RECEIVED
94 FEB 22 PM 1:13
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

PETITION FOR JUDICIAL REVIEW

Ethel Weber and Cabrina Dembow, Petitioners, by their attorneys, Francis X. Borgerding, Jr. and DiNenna and Breschi, petition this Court for judicial review of the decision of the County Board of Appeals for Baltimore County and Order issued in the above-captioned case and in support thereof say:

1. That your Petitioners seek judicial review of the Order issued by the County Board of Appeals for Baltimore County in the case of: In the Matter of Beachwood I Limited Partnership for Zoning Reclassification from D.R. 1 to D.R. 3.5 Zone on Property Located on the East Side of Morse Lane, Northeast Side I-695 (Potapasco Freeway) 15th Election District 7th Councilmanic District, Case No. R-93-309 Cycle I 1993.

RECEIVED AND FILED
94 FEB 18 PM 12:13
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

2. That your Petitioners are aggrieved parties under Article 66B Section 4.08 of the Annotated Code of Maryland as well as being taxpayers for Baltimore County and were protestants before the Board. WHEREFORE, your Petitioners request that this Honorable Court:

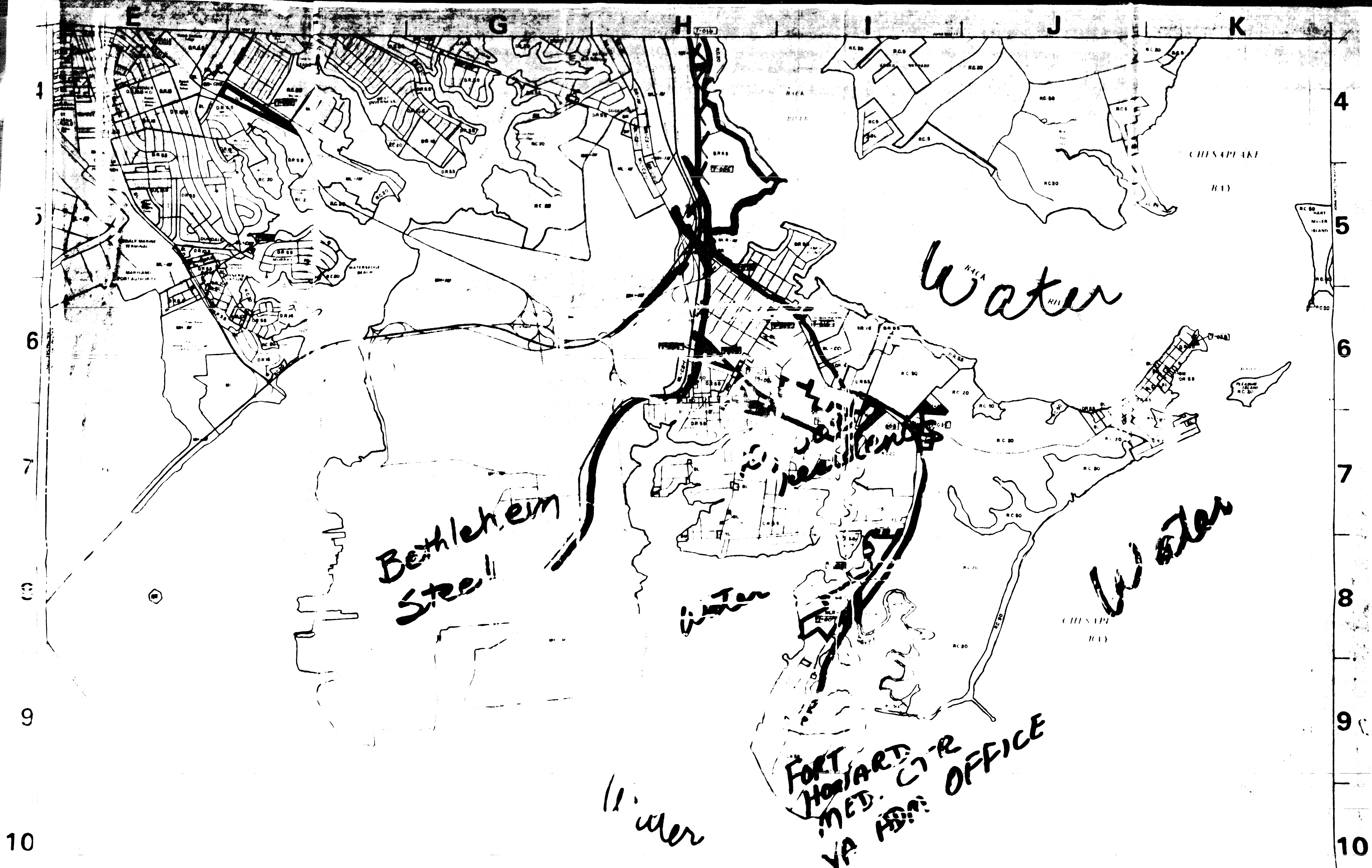
- Review the decision of the County Board of Appeals for Baltimore County;
- Overturn the decision of the Board; and
- For such other and further relief as this Honorable Court deems appropriate.

Ethel Weber
ETHEL WEBER
Cabrina Dembow
CABRINA DEMBOW
Francis X. Borgerding, Jr.
FRANCIS X. BORGERDING, JR.
DINENNA AND BRESCHI
409 Washington Avenue, Suite 600
Towson, Maryland 21204
(410) 296-6820

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of February, 1994, a copy of the foregoing was mailed, first-class, postage prepaid, to John B. Gontrum, Esquire, Attorney for Beachwood I Limited Partnership, 814 Eastern Boulevard, Baltimore, Maryland 21221 and People's Counsel for Baltimore County, Court House, 400 Washington Avenue, Towson, Maryland 21204.

Francis X. Borgerding, Jr.
FRANCIS X. BORGERDING, JR.



1992 COMPREHENSIVE ZONING ISSUES MAP

Baltimore County, Maryland

A1	A2		
B1	B2		
C1	C2	C3	
D1	D2	D3	D4
E1	E2	E3	E4
F1	F2	F3	F4
G1	G2	G3	G4

Map Index

Grid North

Scale: 1"=1000'

Miles

Feet

SHEET

G-2

January 29, 1993 FEB 4 1993
GEORGE WILLIAM STEPHENS JR & ASSOC., INC.

Mr. Robert Covahey, Chief
Bureau of Public Services
County Office Building
Towson, Maryland 21204
Re: Baltimore County
MD 151
Beachwood Estates
Concept Plan
DPW #922052
XV-594

Dear Mr. Covahey:
This office has reviewed the referenced plan and offer the following:

We previously reviewed a concept plan for the site which proposed a significant number of lots above that which the referenced plan would allow. Our major concern in reviewing that plan was the potential impact the anticipated traffic would have at the MD 151/Morse Lane intersection.

Although the current plan calls for less development than previously proposed, our concerns are still valid given the potential of 1521 average daily trips as noted on the plan. In addition, there appears to be a substantial amount of remaining property which could be developed in the future, which would result in an increase of average daily trips to and from the property.

Therefore, our comments relative to modifications to the MD 151/Morse Lane intersection as previously requested remain valid, as follows:

It appears the most desirable modification to the intersection would be to prohibit left turns from Morse Lane to southbound MD 151. This could be accomplished by constructing a channelized island at the Morse Lane/MD 151 intersection; to physically preclude the left turn movement.

My telephone number is 410-333-1350 (Fax# 333-1041)
Teletypewriter for Impaired Hearing or Speech
383-7555 Baltimore Metro - 565-0451 D.C. Metro - 1-800-492-5062 Statewide Toll Free
707 North Calvert St., Baltimore, Maryland 21203-0717

Minutes of the Meeting

Date: 3/2/93
NAME OF DEVELOPMENT: BEACHWOOD ESTATES
ED# 7 CD# 7 ZADW# XV-544
LOCATION: E/S MORSE LANE, NORTH OF GREENHILL COVE
DATE OF MEETING: 3/2/93
Start time: 7:10 P.M.
End time: 9:55 P.M.
Attendance: 30

The Development Manager, Joseph V. Maranto, called the Community Input Meeting to order and brief introductory comments were given about Baltimore County's development approval process and the purpose of the meeting. County staff was introduced, followed by an introduction of John Gentry, legal representative for the developer, who presented the development plan. The meeting was then opened for general discussion and questions from the public.

The following questions and issues were raised for response from the developer and the County:

1. When will the rezoning of this property occur? MAR 11 1993
A. The request for DR 3.5 zoning has been filed through the petition process & the filing deadline was March 1. The Planning staff report, Planning Board review & report to the County Board of Appeals on our reclassification petition will occur between June 1 & July 31 of this year. A hearing by the Board of Appeals will be scheduled between September 1 & December 31. As of this time, no hearing date has been set.
2. How much of the property will be developed for 368 homes.
A. That is not part of this proposal. At this point 145 homes are proposed on approximately 47 acres. For the zoning reclassification request, the entire tract is obviously not developable. Under an open site plan, there is no requirement to show a specific delineation or layout.

November 30, 1992

Mr. Robert Covahey, Chief
Bureau of Public Services
County Office Building
Towson, Maryland 21204
Re: Baltimore County
MD 151
Beachwood Estates
DPW # 922052
XV-594

Dear Mr. Covahey:

This office has reviewed the referenced plan and offer the following:

The State Highway Administration has previously reviewed a traffic impact study of the property, submitted by the developer, to identify what improvements could be made to the MD 151/Morse Lane intersection to minimize developmental impacts.

The impact study was based and contingent upon a rezoning approval to allow 580 s.f.d. units. An updated report would be warranted if approval to rezone the site is denied. Development as presently zoned, which could allow 900 s.f.d. units and 650,000 square feet of industrial space, could generate more trips and consequently, further impact traffic operations along MD 151.

It appears the most desirable modification to the intersection would be to prohibit left turns from Morse Lane to southbound MD 151. This could be accomplished by constructing a channelized island at the Morse Lane/MD 151 intersection; to physically preclude the left turn movement.

Additional improvements to support this change would be to: construct channelization to close-up part of the median opening at Morse Lane; extend the left turn lane along MD 151 to enter Morse Lane; close the median opening just north of Morse Lane, and close the median break for left turns onto MD 20 and relocate it a minimum of 100 feet further to the south.

The developers representative indicated that he had no objection to funding the improvements noted above. In addition, he indicated he felt the developer and the community would be supportive of the changes.

My telephone number is 410-333-1350 (Fax# 333-1041)
Teletypewriter for Impaired Hearing or Speech
383-7555 Baltimore Metro - 565-0451 D.C. Metro - 1-800-492-5062 Statewide Toll Free
707 North Calvert St., Baltimore, Maryland 21203-0717

BALTIMORE COUNTY, MARYLAND INTER-OFFICE CORRESPONDENCE

CONCEPT PLAN COMMENTS

TO: Arnold Jablon, Director - Zoning Administration & Development Management
VIA: Pat Keller, Deputy Director - Office of Planning and Zoning
FROM: P. David Fields, Director - Office of Planning and Zoning
DATE: January 28, 1993
PROJECT NAME: BEACHWOOD ESTATES (2nd REVISED PLAN)
PROJECT NUMBER: XV-594 (922052)

GENERAL INFORMATION:

Applicant Name: Beachwood Estates Ltd Partnership
108 W. Timonium Rd - STE 200
Timonium, MD 21093
Location: E side Morse Ln - S and W of Shore Rd
Councilmanic District: 7th
Growth Management Area: Community Conservation Area
Zoning: DR 1 = 150.36 acres, DR 5.5 = 3.71 acres
MIR-1M = 0.14 acres, MH-1M = 0.40 acres
Acres: 154.0 acres

Project Proposal:
The Applicant for Beachwood Estates (2nd revised plan) proposes 145 single-family dwellings on 154.0 acres of land zoned DR 1, DR 5.5, MH-1M, MIR-1M. The developer also proposes a community pier and recreation complex. A stormwater management area of 3.74 acres is provided. Tracts A, B, C, D and E (78.93 acres) are reserved for future development. Variations of critical area standards have been requested. A total of 36.15 acres of local open space is provided. The site is partially wooded and contains nontidal wetlands. A request for a waiver of Public Works Standards has also been requested (widening on Morse Lane, Todd Point Lane and Wise Avenue; mountable curb and gutter on both sides of new streets; filling of 5500+ sq. ft. of wetland area).

Project History:
In a previous Concept Plan proposal (Conference 10/26/92) The applicant proposed 378 single-family dwellings on 154.0 acres of land zoned DR 5.5. The zoning of 150.36 acres was changed to DR 1 by the County Council in the 1992 Comprehensive Zoning Map Process.

92-2052-17-02/CONCEPT

THE TRAFFIC ENGINEER
BALTIMORE COUNTY, INTER-OFFICE CORRESPONDENCE
TO: Councilman Donald Mason, Fifth District
FROM: P. David Fields, Director, Office of Planning & Zoning
SUBJECT: CZMP ISSUE 7-005 and 7-016, BEACHWOOD ESTATES

The two CZMP issues cited above were raised by the Office of Planning and Zoning. Issue 7-005 was raised because of a concern that the amount of development permitted under D.R. 5.5 zoning would exacerbate sight distance and turning movement problems at the intersection of North Point Boulevard and Morse Lane. Our concern was shared by the County Bureau of Traffic Engineering which recommended that, given existing conditions, the zoning should be no greater than D.R. 2, with D.R. 1 being preferable.

Issue 7-016 was raised to change the zoning from manufacturing (MH-1M) to residential. The property has an approved CRG plan for a mobile home park. The proposed change to D.R. 1 would not affect this project; mobile home or "trailer" parks are permitted by special exception in both MH-1M and D.R. 1.

The Office of Planning and Zoning was approached by the developer of Beachwood Estates several months ago concerning the zoning issues. We indicated to them at the time that we would not continue to press for a zoning change on Issue number 7-005 if, 1) a solution to the traffic problems could be found which was satisfactory to both the County's Traffic Engineering and the State Highway Administration (SHA), and 2) the implementation of such a solution could be guaranteed.

At the time of the Planning Board meeting in which CZMP recommendations were finalized, the developer had not yet completed a traffic study and the Board recommended a down shift to D.R. 1. That traffic study has now been completed and reviewed by both the SHA and Traffic Engineering, along with proposed geometric improvements to the intersection in question. In addition the developer has agreed to pay for the proposed improvements.

It is our understanding based on the attached correspondence that both SHA and Traffic Engineering believe the proposed improvements represent an appropriate solution to the intersection problems, and that these improvements would adequately handle the amount of development assumed in the traffic study.

The Office of Planning and Zoning supports development of up to 580 units -- the number assumed in the study -- on the entire tract representing the two CZMP issues, 7-005 and 7-016 on condition that, 1) the ultimate build-out of the project is limited as stated above, and 2) the proposed intersection

HEADQUARTERS
2200 Avenue Highway, Suite 102
Baltimore, Maryland 21224
Phone: (410) 333-1350
Fax: (410) 333-1041
EASTERN BALTIMORE AREA
Chamber of Commerce
REVITALIZATION OFFICE:
2 Dunsmuir, Suite 238
Dundalk, Maryland 21222
Phone: (410) 282-9100
Fax: (410) 282-9103

RESOLUTION # 1-1993

BE IT HEREBY RESOLVED BY THE BOARD OF DIRECTORS OF THE EASTERN BALTIMORE AREA CHAMBER OF COMMERCE

that in all matters pertaining to the economic development committee, legislative committee, or any other Committee of the Chamber of Commerce, Patricia A. Winter, Executive Director of the Eastern Baltimore Area Chamber of Commerce, is authorized to speak on behalf of the Board of Directors and the Membership of the Eastern Baltimore Area Chamber of Commerce before any Federal, State, or County Government, or any legal commission or body thereof.

Janet L. Rafky
JANET L. RAFKY
President

Patricia A. Winter
PATRICIA A. WINTER
Secretary

Adopted: 10/27/93

Dundalk • Eastern Baltimore • Edgemere • Kingsville • Parkville • Perry Hall • Rosedale • Rossville • White Marsh

The Traffic

Revised
Traffic Impact Analysis
for
BEACHWOOD ESTATES
Baltimore County, Maryland

Prepared for
BEACHWOOD ESTATES LIMITED PARTNERSHIP

November 23, 1992



BALTIMORE COUNTY
GROWTH MANAGEMENT PROGRAM
GUIDELINES
FOR
THE 1992 COMPREHENSIVE ZONING MAP PROCESS

As Adopted by the
Baltimore County Planning Board
September 10, 1991
and
Baltimore County Council
January 23, 1992



BALTIMORE COUNTY GROWTH MANAGEMENT PROGRAM
Proposed Land Use

SINGLE FAMILY DETACHED	MIXED USE COMMERCIAL	PARK / RECREATION
SINGLE FAMILY DETACHED WITH PORCH	OFFICE	AGRICULTURE / OPEN SPACE
SINGLE FAMILY ATTACHED	REGIONAL COMMERCIAL	FOREST
MULTI-FAMILY	INDUSTRIAL	UNDEVELOPED URBAN LAND
	INSTITUTIONS	

Prepared by Information Systems, Baltimore County Office of Planning and Zoning
Date: July, 1991 Scale: 1" = 1 Mile

EXHIBIT 1

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

DATE: January 29, 1992

TO: Jackie MacMillan, Community Planner
Office of Planning & Zoning

FROM: Stephen E. Weber, P.E.
Assistant Traffic Engineer

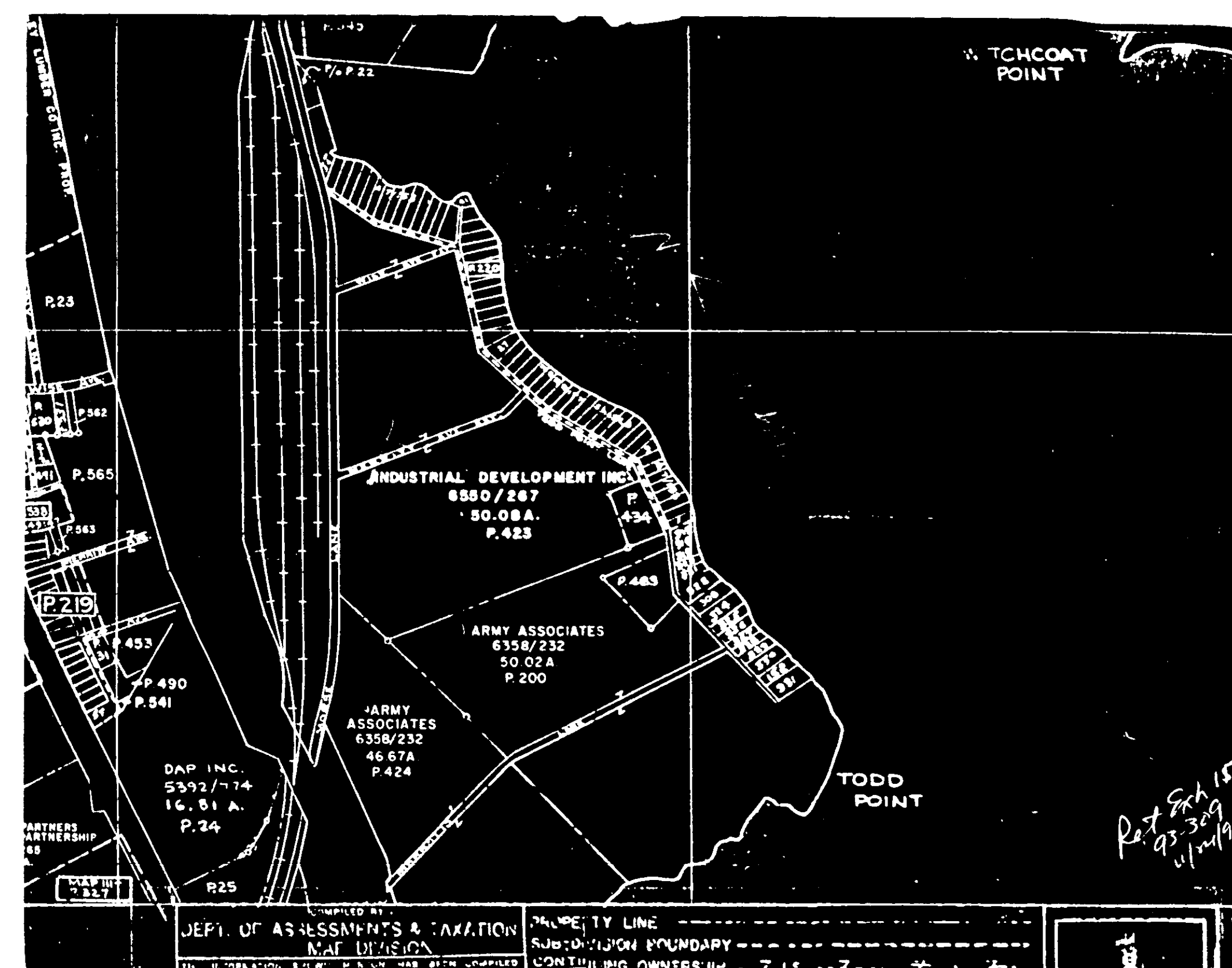
SUBJECT: North Point Boulevard & Morse Lane
Zoning Issue - Beachwood South

We have examined the intersection of North Point Boulevard & Morse Lane and are aware of the sight distance limitations at this intersection. The limitation is caused by a pier in the median of North Point Boulevard to support a railroad bridge just east of Morse Lane. At the current time this does not appear to be causing any unusually high number of accidents but that may be due to the fact that Morse Lane carries a low volume of traffic and thus the conflicts in traffic are minimal. Certainly a substantial increase in traffic on Morse Lane would likely cause an operational and/or safety problem here since left turns from Morse Lane to go to the Beltway interchange with North Point Road would increase significantly. These left turns conflict with both left-turning traffic going onto Morse Lane as well as thru traffic in the left lane of eastbound North Point Boulevard, who move into a left turn bay just east of Morse Lane to turn onto North Point Road to Edgemere. Both of these movements on eastbound North Point Boulevard are obscured by the bridge pier.

Regarding the Beachwood South property, if 600 units were placed on this property it would generate approximately 6,000 trips per day. Such a development would add significantly more traffic to Morse Lane than the total it currently carries. Having such a development would very likely cause traffic problems at North Point Boulevard and Morse Lane which would then be placed in State Highway's lap to resolve. Depending upon availability of funds and how bad the problem became, it could take a number of years if ever for the problem to be addressed.

Certainly one way to lessen the impacts would be for the Beachwood South property to be rezoned so that traffic from the site could be adequately handled with the current deficiencies. Based on the existing situation, full development of the property at D.R. 2 would be the maximum we would recommend with D.R. 1 being preferable.

The other way to address the problem would be to make improvements to the geometrics in this area. We would propose relocating the eastbound left-turn lane into North Point Road from immediately east of Morse Lane to be east of the Beltway bridge. Doing this would allow for the median of North Point Boulevard at Morse Lane to provide a protected area for left turns coming out of Morse Lane to then sit in the median and have a clear line of sight of approaching eastbound traffic. It would also serve to help separate left turns going into Morse Lane from those going into North Point Road. All improvements would be within State right-of-way so no acquisition of private property would be required.



[We hold that under the cyclical zoning process established by Baltimore County the "change or mistake" rule is not controlling and that the absence of a showing of either change or mistake prior to a comprehensive rezoning does not constitute error.

23 Md. App. at 370. *McBee v. Baltimore County*, 221 Md. 312, 317, 157 A.2d 258 (1960), spoke to the same point:

When such a new [comprehensive zoning] map is adopted, it is entitled to the same presumption that it is correct as is an original zoning.

The Board of Appeals' finding in this case of "no specific reason for this down-zoning" is, therefore, readily explained by the self-evident fact that the County Council was under no obligation to give any specific reason for the downzoning. In no event does it constitute the requisite mistake or error, without a proper finding of which the reclassification made by the county Board of Appeals was unjustified.

2. Mistake or Error is Something Other Than a Questionable Choice:

It was in the second of the series of three opinions, *Boyce v. Semblly*, 25 Md. App. 43, 334 A.2d 137 (1975), that Judge Davidson set out explicitly that a conclusion on the part of the County Board of Appeals that the comprehensive zoning of the County Council under review was wrong, ill-advised, or unsuitable is not an adequate finding of an actual mistake or error within the contemplation of zoning law. The legal meaning of "mistake" or "error" is far more restricted:

In order to assess the evidence before the Board, it is necessary to understand the inherent nature of the terms "mistake" or

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

25 Md. App. at 50-51. (Emphasis supplied).

To grasp this limited content of the terms "mistake" and "error" in zoning law, it may be helpful to draw an analogy to a flaw in the syllogistic process. The finding of a mistake or error is not so much concerned with the logical validity or merit of ultimate conclusion-drawing as it is with the adequacy and accuracy of the factual premises that underlie the conclusion-drawing. A conclusion based on a factual predicate that is incomplete or inaccurate may be deemed, in zoning law, a mistake or error; an allegedly aberrant conclusion based on full and accurate information, by contrast, is simply a case of bad judgment, which is immunized from second-guessing.

Boyce furthermore makes it clear that the burden is on those seeking a reclassification to show both 1) the then-existing conditions that allegedly made the comprehensive zoning incorrect and also 2) the literal failure of the County Council even to have considered those conditions:

It is presumed, as part of the presumption of validity accorded comprehensive zoning, that at the time of the adoption of the map the Council had before it and did, in fact, consider all of the relevant facts and circumstances then existing. Thus, in order to establish error based upon a failure to take existing facts or events reasonably foreseeable of fruition into account, it is necessary not only to show the facts which existed at the time of the comprehensive zoning but also which, if any, of those facts were not actually considered by the Council. This evidentiary burden can be accomplished by showing that specific physical facts were not readily visible or discernible at the time of the comprehensive zoning. . .

25 Md. App. at 51-52. (Emphasis supplied).

In the present case, there is no shred or hint of suggestion in either the opinion of the circuit court or the majority opinion of the County Board of Appeals that at the time of the comprehensive zoning in 1992 there were then existing conditions with respect to the Beachwood property or with respect to surrounding areas that were not known to the County Council. There was, *ipso facto*, no showing of the requisite mistake or error on which a reclassification would necessarily depend. We find appropriate in this regard the conclusion we reached under similar circumstances in *Boyce*:

Thus, unless there is probative evidence to show that there were then existing facts which the Council, in fact, failed to take into account, or subsequently occurring events which the Council could not have taken into account, the presumption of validity accorded to comprehensive zoning is not overcome and the question of error is not "fairly debatable."

25 Md. App. at 52. (Footnote omitted) (Emphasis supplied).

A classic instance in which the Baltimore County Board of Appeals erroneously attributed a "mistake" to the County Council simply on the basis of the Board's conclusion that the Comprehensive Zoning had involved a questionable choice was the case of *Trainer v. Lipchin*, 269 Md. 667, 309 A.2d 471 (1973). The Board of Appeals "concluded that the Council had been 'at least partially in error' in placing the front part of the property in D.R. 16, since it had 'completely lost its residential character.'" 269 Md. at 670. In substituting its judgment for that of the County Council, the Board of Appeals relied on one expert witness who testified "that it would not be 'practical' to build apartments on the subject parcel," 269 Md. at 674, and another witness who offered his conclusion that the Comprehensive Zoning was erroneous because "in our estimation the best suitable use for that is commercial." 269 Md. at 675. The Court of Appeals held that such evidence was insufficient to make the issue of mistake fairly debatable. Indeed, Judge Lavine disdainfully characterized the case as "yet another assault on the county-wide Comprehensive Zoning Maps adopted by the Baltimore County Council." 269 Md. at 668.

And see *Shadynook Imp. Ass'n v. Molloy*, 232 Md. 265, 192 A.2d 502 (1963), as yet another occasion 1) on which the Baltimore County Board of Appeals, in effect, second-guessed the County Council, essentially because of its conclusion that the Comprehensive Zoning had been wrong; 2) on which the Baltimore County Circuit Court affirmed the zoning reclassification by the County Board of

Appeals; and 3) on which the Court of Appeals reversed both the Circuit Court and the Board of Appeals holding that the evidence before the Board of Appeals was not legally sufficient to make the issue of a possible mistake on the part of the County Council even fairly debatable.

When reviewing a legislative action by the County Council, such as comprehensive zoning, even the courts, with broad inherent powers not vested in the County Board of Appeals, are limited in their power of review. In *County Council for Montgomery County v. District Land Corp.*, 274 Md. 691, 337 A.2d 712 (1975), the Court of Appeals pointed out:

It is well settled that the judicial branch of government cannot institute an inquiry into the motives of the legislature in the enactment of laws, lest the legislature be subordinated to the courts. . .

274 Md. at 704. The *District Land* opinion quoted with approval from C. Rhyme, *Municipal Law*, § 9-4 at 229-30 (1957):

"As a general rule, the motives, wisdom or propriety of a municipal governing body in passing an ordinance are not subject to judicial inquiry. . . ."

274 Md. at 705. Judge Singley then made it clear that the same deference was due by courts to the passing of zoning ordinances:

The same principle applies to zoning ordinances, which are presumed to be valid. As a consequence, courts will not pass on the wisdom of such measures. (Emphasis supplied.)

Id. *A fortiori*, the County Board of Appeals may not "pass on the wisdom of such measures."

This is not to say that the County Council may operate with impunity without any restraints on its legislative function. The general guidelines within which it must operate when engaged in comprehensive zoning were well spelled out by Chief Judge Hammond in *Norbeck v. Baltimore County*, 254 Md. 59, 66, 254 A.2d 700 (1969):

The broad test of the validity of a comprehensive rezoning is whether it bears a substantial relationship to the public health, comfort, order, safety, convenience, morals and general welfare, and such zoning enjoys a strong presumption of validity and correctness. A property owner has no vested right to the continuance of the zoning status of his or neighboring property, merely the right to rely on the rule that a change will not be made unless it is required for the public good.

(Citations omitted). See also *County Council for Montgomery County v. District Land Corp.*, *supra*, 274 Md. at 699-702.

There resides in the courts the ultimate authority to determine whether the action of the County Council was "arbitrary, capricious, discriminatory, or illegal." *Ark Read-Mix Concrete Corp. v. Smith*, 251 Md. 1, 4, 246 A.2d 220 (1968); *Hewitt v. Baltimore County*, 220 Md. 48, 56-57, 151 A.2d 144 (1959); *Wakefield v. Kraft*, 202 Md. 136, 141, 96 A.2d 27 (1953). The County Board of Appeals, however, does not enjoy any supervisory power or appellate jurisdiction over the actions of the Baltimore County Council. Express Powers Act, Md. Code (1957, 1994 Repl. Vol.), Art. 25A, § 5(V); BALTIMORE COUNTY CHARTER, § 602(a); *United Parcel v. People's Counsel*, 336 Md. 569, 587-590, 650 A.2d 226 (1994).

With respect to petitions for zoning reclassifications, the County Board of Appeals enjoys "original and exclusive jurisdiction." BALTIMORE COUNTY CHARTER, § 602(e); *United Parcel v. People's Counsel*, 336 Md. at 587. That original jurisdiction is, however, expressly confined by the provisions of BALTIMORE COUNTY CODE, §§ 2-356(a) and (j), which limit the reclassifying authority of the County Board of Appeals to those instances wherein they find evidence of either "a substantial change in the character of the neighborhood" or a "mistake" or "error" in the comprehensive zoning. That is a far cry from appellate jurisdiction over the comprehensive zoning of the County Council on the ground that it may have been "arbitrary, capricious, discriminatory, or illegal." Original jurisdiction over zoning reclassification petitions is not coterminous with appellate jurisdiction over the zoning actions of the County Council.

2. The Conclusion of an Expert That a Mistake Was Made:

The third of the series of opinions by Judge Davidson clarifying the concept of "mistake" or "error" was *Howard County v. Dorsey*, 292 Md. 351, 438 A.2d 1339 (1982). In part, the *Dorsey* opinion served to place the imprimatur of the Court of Appeals on the definition of mistake or error that Judge Davidson had earlier hammered out for this Court in *Boyce v. Semblly*. A significant part of the *Dorsey* opinion, 292 Md. at 356-359, consisted of extensive quotation, with approval, from the *Boyce v. Semblly* opinion, 25 Md. App. at 50-52.

A part of that *Boyce v. Semblly* opinion, 25 Md. App. at 53, not yet discussed in this opinion, and quoted with approval by the *Dorsey* opinion, observed:

The Court of Appeals and this Court have stated that an opinion, even that of an expert, is not evidence strong or substantial enough to show error in a comprehensive rezoning unless the reasons given by the witness as the basis for his opinion, or other supporting facts relied upon by him, are themselves substantial and strong enough to do so.

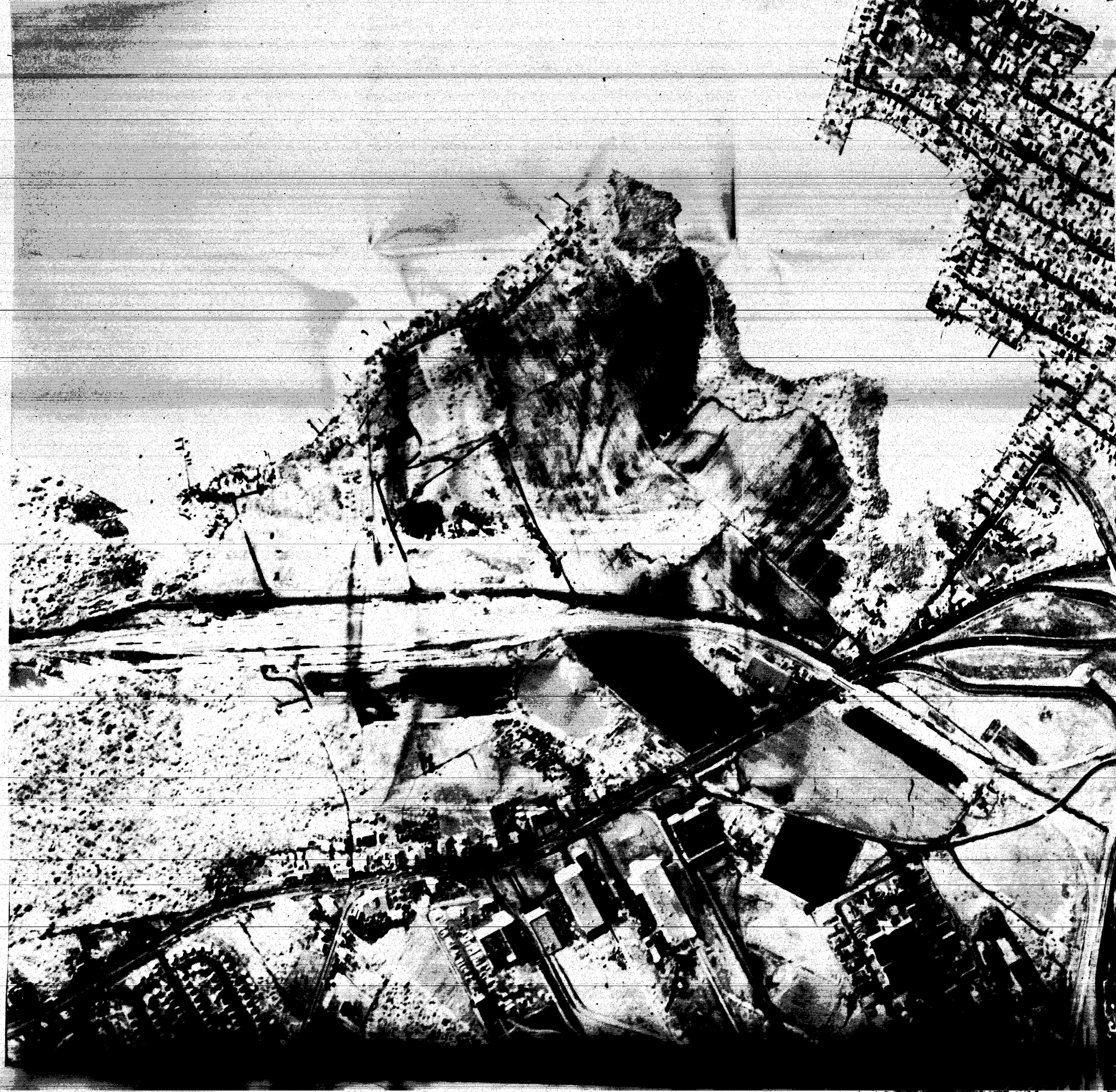
292 Md. at 359.

The appellate decisions holding that the testimony of an expert that a "mistake" had been made in comprehensive zoning was not sufficient to generate a fairly debatable issue as to "mistake" have done so for various reasons, sometimes for a confusing admixture of reasons in a single case. In the furtherance of analytic clarity, however, some of those reasons can be sorted out into discrete sub-groups.

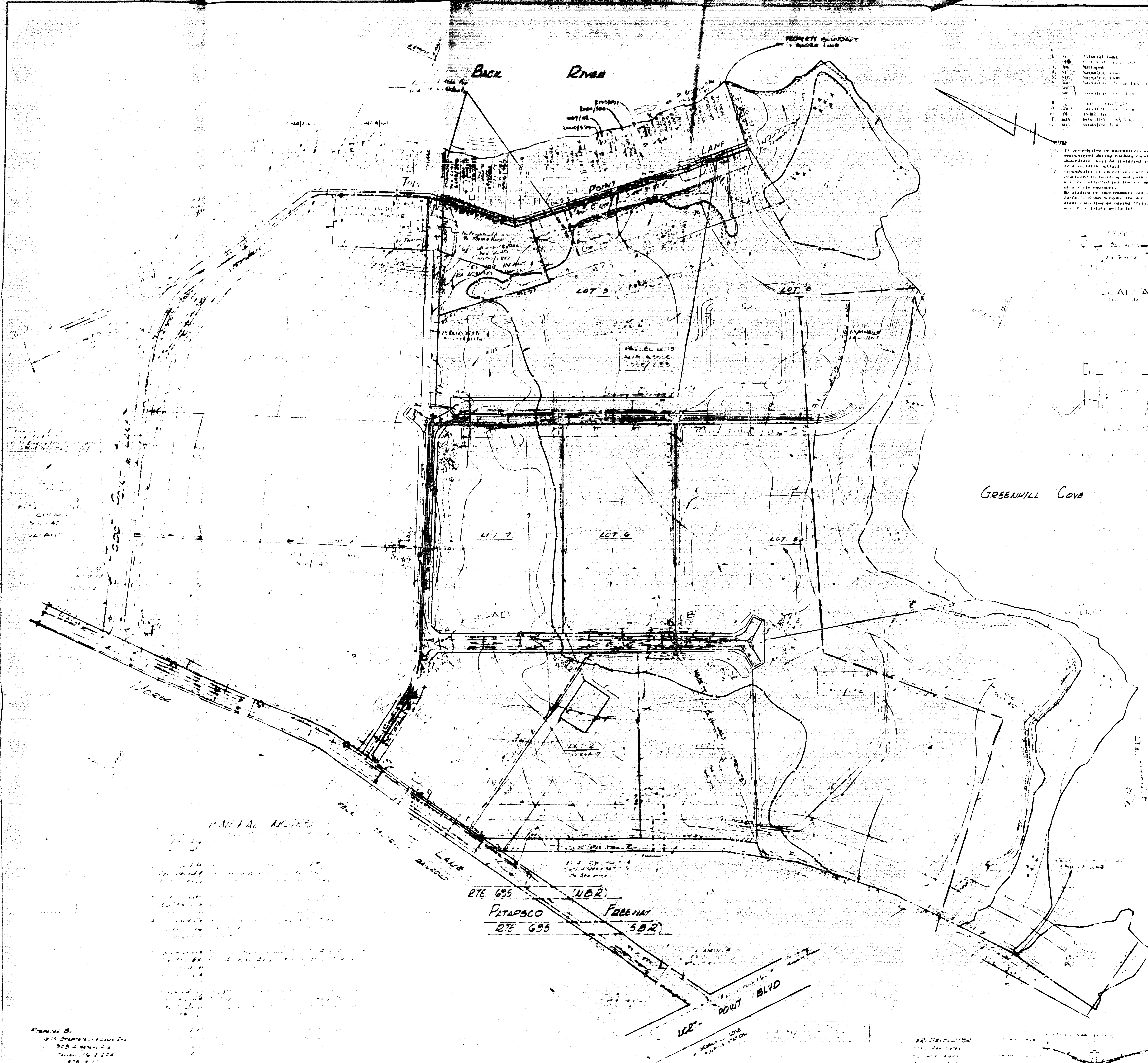
a. Inadequate Expert Testimony: Conclusive or Quasi-Conclusive Opinions

A self-evident reason for rejecting as an effective catalyst an expert opinion that a mistake was made is the fact that the opinion is merely conclusory or is, at best, quasi-conclusory. Illustrative of the principle that the opinion of an expert is of little or no weight in the absence of strong supporting facts is *Mayor and Council of Rockville v. Henley*, 268 Md. 469, 473-74, 302 A.2d 45 (1973):

The only testimony on the question was the bald assertion by appellee's expert witness,

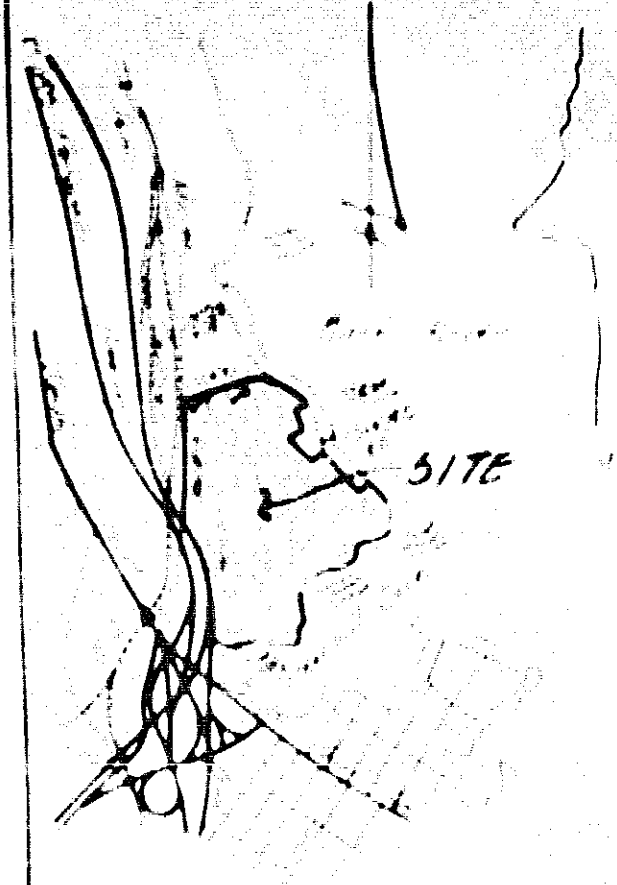






- 1. All
- 2. All
- 3. All
- 4. All
- 5. All
- 6. All
- 7. All
- 8. All
- 9. All
- 10. All
- 11. All
- 12. All
- 13. All
- 14. All
- 15. All
- 16. All
- 17. All
- 18. All
- 19. All
- 20. All
- 21. All
- 22. All
- 23. All
- 24. All
- 25. All
- 26. All
- 27. All
- 28. All
- 29. All
- 30. All
- 31. All
- 32. All
- 33. All
- 34. All
- 35. All
- 36. All
- 37. All
- 38. All
- 39. All
- 40. All
- 41. All
- 42. All
- 43. All
- 44. All
- 45. All
- 46. All
- 47. All
- 48. All
- 49. All
- 50. All
- 51. All
- 52. All
- 53. All
- 54. All
- 55. All
- 56. All
- 57. All
- 58. All
- 59. All
- 60. All
- 61. All
- 62. All
- 63. All
- 64. All
- 65. All
- 66. All
- 67. All
- 68. All
- 69. All
- 70. All
- 71. All
- 72. All
- 73. All
- 74. All
- 75. All
- 76. All
- 77. All
- 78. All
- 79. All
- 80. All
- 81. All
- 82. All
- 83. All
- 84. All
- 85. All
- 86. All
- 87. All
- 88. All
- 89. All
- 90. All
- 91. All
- 92. All
- 93. All
- 94. All
- 95. All
- 96. All
- 97. All
- 98. All
- 99. All
- 100. All

Soil Map



VICINITY MAP

REFERENCE DEEDS

- 78-0800
- 78-0801
- 78-0802
- 78-0803
- 78-0804
- 78-0805
- 78-0806
- 78-0807
- 78-0808
- 78-0809
- 78-0810
- 78-0811
- 78-0812
- 78-0813
- 78-0814
- 78-0815
- 78-0816
- 78-0817
- 78-0818
- 78-0819
- 78-0820
- 78-0821
- 78-0822
- 78-0823
- 78-0824
- 78-0825
- 78-0826
- 78-0827
- 78-0828
- 78-0829
- 78-0830
- 78-0831
- 78-0832
- 78-0833
- 78-0834
- 78-0835
- 78-0836
- 78-0837
- 78-0838
- 78-0839
- 78-0840
- 78-0841
- 78-0842
- 78-0843
- 78-0844
- 78-0845
- 78-0846
- 78-0847
- 78-0848
- 78-0849
- 78-0850
- 78-0851
- 78-0852
- 78-0853
- 78-0854
- 78-0855
- 78-0856
- 78-0857
- 78-0858
- 78-0859
- 78-0860
- 78-0861
- 78-0862
- 78-0863
- 78-0864
- 78-0865
- 78-0866
- 78-0867
- 78-0868
- 78-0869
- 78-0870
- 78-0871
- 78-0872
- 78-0873
- 78-0874
- 78-0875
- 78-0876
- 78-0877
- 78-0878
- 78-0879
- 78-0880
- 78-0881
- 78-0882
- 78-0883
- 78-0884
- 78-0885
- 78-0886
- 78-0887
- 78-0888
- 78-0889
- 78-0890
- 78-0891
- 78-0892
- 78-0893
- 78-0894
- 78-0895
- 78-0896
- 78-0897
- 78-0898
- 78-0899
- 78-0900
- 78-0901
- 78-0902
- 78-0903
- 78-0904
- 78-0905
- 78-0906
- 78-0907
- 78-0908
- 78-0909
- 78-0910
- 78-0911
- 78-0912
- 78-0913
- 78-0914
- 78-0915
- 78-0916
- 78-0917
- 78-0918
- 78-0919
- 78-0920
- 78-0921
- 78-0922
- 78-0923
- 78-0924
- 78-0925
- 78-0926
- 78-0927
- 78-0928
- 78-0929
- 78-0930
- 78-0931
- 78-0932
- 78-0933
- 78-0934
- 78-0935
- 78-0936
- 78-0937
- 78-0938
- 78-0939
- 78-0940
- 78-0941
- 78-0942
- 78-0943
- 78-0944
- 78-0945
- 78-0946
- 78-0947
- 78-0948
- 78-0949
- 78-0950
- 78-0951
- 78-0952
- 78-0953
- 78-0954
- 78-0955
- 78-0956
- 78-0957
- 78-0958
- 78-0959
- 78-0960
- 78-0961
- 78-0962
- 78-0963
- 78-0964
- 78-0965
- 78-0966
- 78-0967
- 78-0968
- 78-0969
- 78-0970
- 78-0971
- 78-0972
- 78-0973
- 78-0974
- 78-0975
- 78-0976
- 78-0977
- 78-0978
- 78-0979
- 78-0980
- 78-0981
- 78-0982
- 78-0983
- 78-0984
- 78-0985
- 78-0986
- 78-0987
- 78-0988
- 78-0989
- 78-0990
- 78-0991
- 78-0992
- 78-0993
- 78-0994
- 78-0995
- 78-0996
- 78-0997
- 78-0998
- 78-0999
- 78-1000

THE POINT

MORE LANE & ROUTE 695

DATE 10-00

REVISION 01-00

REVISION 02-00

REVISION 03-00

REVISION 04-00

REVISION 05-00

REVISION 06-00

REVISION 07-00

REVISION 08-00

REVISION 09-00

REVISION 10-00

REVISION 11-00

REVISION 12-00

REVISION 13-00

REVISION 14-00

REVISION 15-00

REVISION 16-00

REVISION 17-00

REVISION 18-00

REVISION 19-00

REVISION 20-00

REVISION 21-00

REVISION 22-00

REVISION 23-00

REVISION 24-00

REVISION 25-00

REVISION 26-00

REVISION 27-00

REVISION 28-00

REVISION 29-00

REVISION 30-00

REVISION 31-00

REVISION 32-00

REVISION 33-00

REVISION 34-00

REVISION 35-00

REVISION 36-00

REVISION 37-00

REVISION 38-00

REVISION 39-00

REVISION 40-00

REVISION 41-00

REVISION 42-00

REVISION 43-00

REVISION 44-00

REVISION 45-00

REVISION 46-00

REVISION 47-00

REVISION 48-00

REVISION 49-00

REVISION 50-00

REVISION 51-00

REVISION 52-00

REVISION 53-00

REVISION 54-00

REVISION 55-00

REVISION 56-00

REVISION 57-00

REVISION 58-00

REVISION 59-00

REVISION 60-00

REVISION 61-00

REVISION 62-00

REVISION 63-00

REVISION 64-00

REVISION 65-00

REVISION 66-00

REVISION 67-00

REVISION 68-00

REVISION 69-00

REVISION 70-00

REVISION 71-00

REVISION 72-00

REVISION 73-00

REVISION 74-00

REVISION 75-00

REVISION 76-00

REVISION 77-00

REVISION 78-00

REVISION 79-00

REVISION 80-00

REVISION 81-00

REVISION 82-00

REVISION 83-00

REVISION 84-00

REVISION 85-00

REVISION 86-00

REVISION 87-00

REVISION 88-00

REVISION 89-00

REVISION 90-00

REVISION 91-00

REVISION 92-00

REVISION 93-00

REVISION 94-00

REVISION 95-00

REVISION 96-00

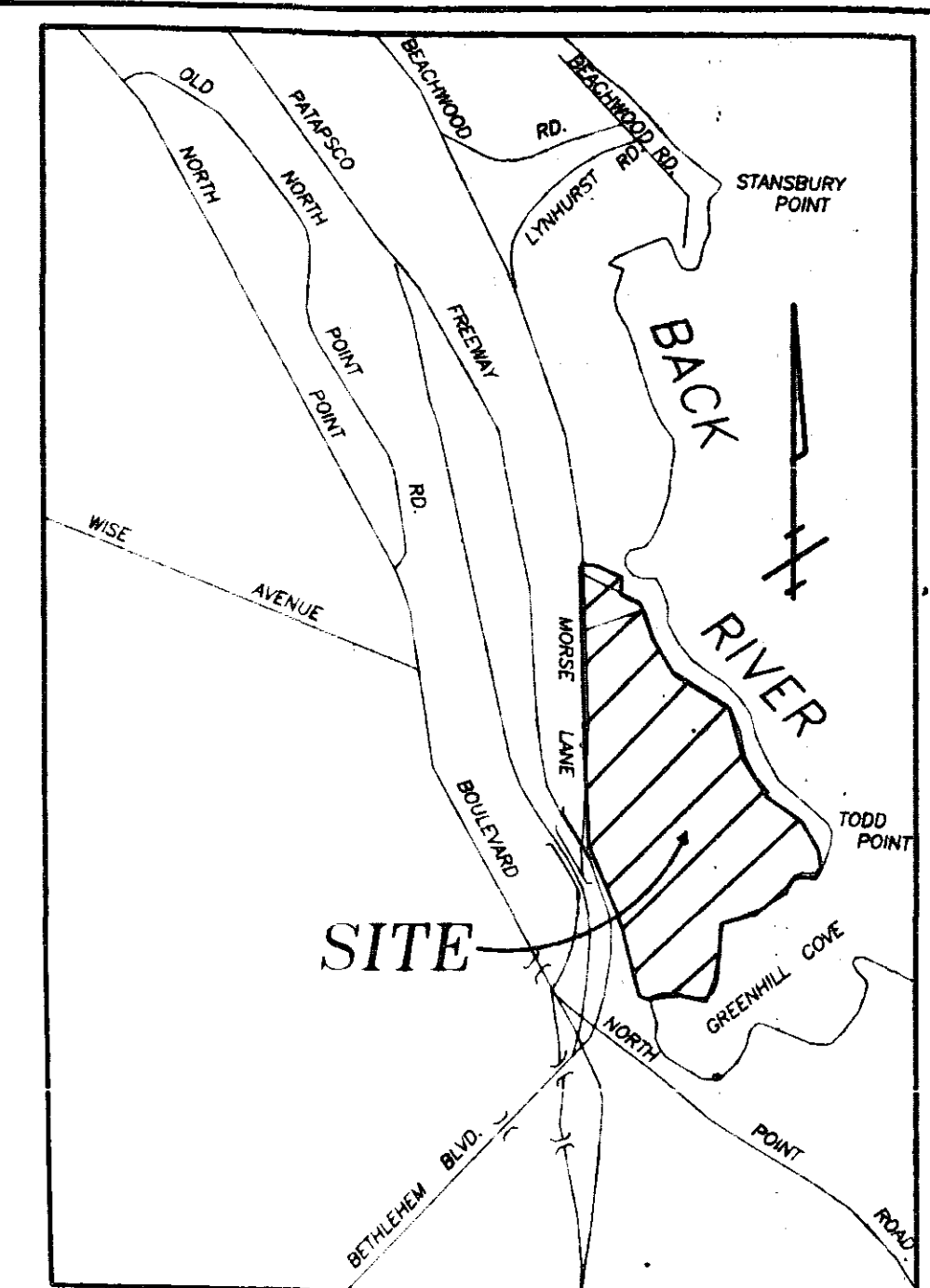
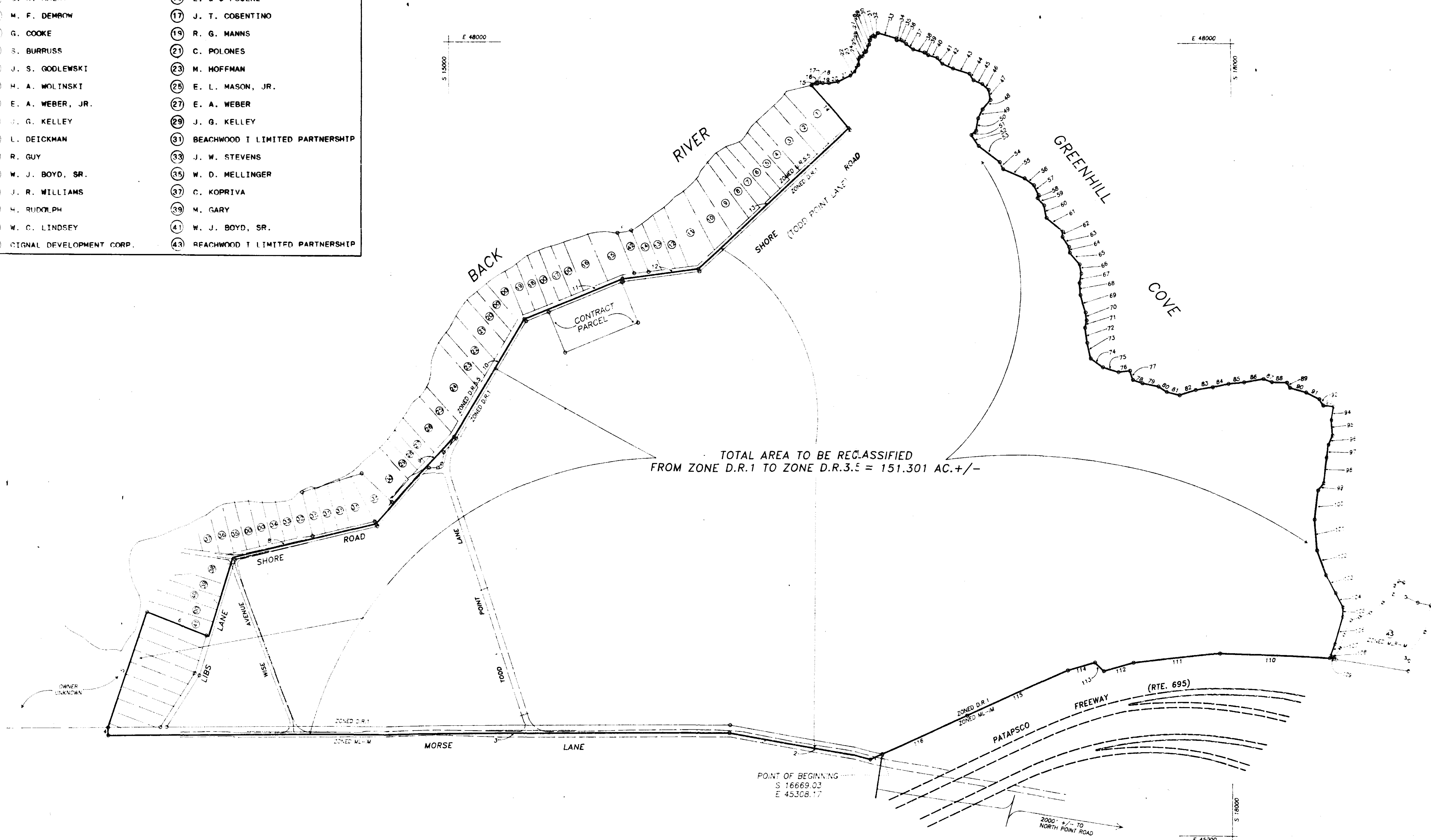
REVISION 97-00

REVISION 98-00

REVISION 99-00

REVISION 100-00

ADJACENT PROPERTY OWNERS	
1 UNKNOWN	1 N.H. MEYER
2 G. BLOOM	3 J. WILLS
4 D. C. DIENER	5 W. J. SAUERWEIN
6 C. ROHLFING	7 J. S. BIEMILLER
8 V. KERING, SR.	9 R. SAVER
10 H. M. FUNAZI	11 G. E. HOGUE
12 S. SOWINSKI	13 P. J. CARLO
14 G. H. AMENT	15 E. & J. FOULKE
16 M. F. DEMROW	17 J. T. COSENTINO
18 G. COOKE	19 R. G. MANNS
20 S. BURRUSS	21 C. POLONES
22 J. S. GOOLEWSKI	23 M. HOFFMAN
24 H. A. WOLINSKI	25 E. L. MASON, JR.
26 E. A. WEBER, JR.	27 E. A. WEBER
28 J. G. KELLEY	29 J. G. KELLEY
30 L. DEICKMAN	31 BEACHWOOD I LIMITED PARTNERSHIP
32 R. GUY	33 J. W. STEVENS
34 W. J. BOYD, SR.	35 W. D. MELLINGER
36 J. R. WILLIAMS	37 C. KOPRIVA
38 R. RUDOLPH	39 M. GARY
40 W. C. LINDSEY	41 W. J. BOYD, SR.
42 SIGNAL DEVELOPMENT CORP.	43 BEACHWOOD I LIMITED PARTNERSHIP



LOCATION MAP
SCALE: 1" = 200'

BEARING & DISTANCES

1 N 24°10'27" W 53.30'	59 S 46°58'50" W 36.14'
2 N 03°56'12" W 50.22'	60 S 78°14'40" W 47.70'
3 N 03°21'35" W 23.88'	61 S 39°29'30" W 79.48'
4 N 88°58'23" E 30.00'	62 N 86°09'00" W 20.65'
5 S 71°02'24" E 46.55'	63 S 55°24'50" W 45.01'
6 S 71°02'24" E 46.55'	64 S 83°14'30" W 22.51'
7 S 71°02'24" E 46.55'	65 S 49°23'20" W 57.55'
8 S 71°02'24" E 46.55'	66 S 79°43'50" W 34.98'
9 S 49°11'05" E 45.74'	67 N 29°13'50" W 28.14'
10 S 49°11'05" E 45.74'	68 S 65°13'50" W 45.27'
11 S 22°09'05" E 40.22'	69 S 72°45'30" W 68.25'
12 S 07°41'22" E 29.80'	70 S 72°45'30" W 68.25'
13 S 42°31'22" E 78.16'	71 N 19°19'40" W 28.34'
14 W 47°26'38" E 216.91'	72 S 61°58'40" W 77.55'
15 S 21°43'10" E 17.32'	73 S 72°45'30" W 68.25'
16 S 18°46'00" E 6.00'	74 S 61°58'40" W 77.55'
17 S 70°25'10" W 2.00'	75 S 72°45'30" W 68.25'
18 S 04°33'40" E 20.63'	76 S 06°44'50" E 43.45'
19 S 05°24'40" W 24.84'	77 S 71°24'30" W 61.36'
20 S 10°18'00" E 35.57'	78 S 20°03'00" W 36.02'
21 S 25°04'00" E 57.20'	79 S 11°24'30" W 61.36'
22 S 40°00'00" E 24.36'	80 S 33°16'30" W 37.24'
23 S 55°45'30" E 31.30'	81 S 14°51'30" W 50.12'
24 S 80°07'40" E 27.81'	82 S 11°46'30" E 64.49'
25 S 20°30'00" E 11.97'	83 S 20°45'50" E 65.47'
26 S 59°06'30" E 17.79'	84 S 12°34'10" E 60.89'
27 S 18°32'00" E 6.98'	85 S 09°25'30" E 59.44'
28 S 66°24'50" E 29.31'	86 S 10°10'10" E 75.81'
29 S 77°09'00" E 17.22'	87 S 21°03'40" W 31.53'
30 S 38°50'10" E 16.67'	88 S 01°56'40" W 36.98'
31 S 13°20'10" W 11.06'	89 S 59°48'50" W 22.37'
32 S 47°26'40" E 18.27'	90 S 17°03'00" W 64.31'
33 S 17°11'30" W 71.89'	91 S 27°24'40" W 56.51'
34 S 75°08'30" W 7.15'	92 S 58°28'20" W 22.98'
35 S 04°19'50" W 19.32'	93 S 04°16'20" W 42.01'
36 S 37°18'00" W 25.24'	94 S 65°37'10" W 51.71'
37 S 37°28'20" W 33.46'	95 S 86°37'20" W 56.47'
38 S 16°08'00" W 43.89'	96 S 63°49'30" W 38.79'
39 S 34°12'20" W 17.99'	97 N 79°54'30" W 50.38'
40 S 18°06'00" W 25.88'	98 N 82°08'10" W 86.52'
41 S 32°36'10" W 29.64'	99 S 32°36'10" W 34.40'
42 S 24°07'20" W 44.37'	100 N 83°13'40" W 106.60'
43 S 17°38'10" W 65.10'	101 S 82°14'20" W 116.40'
44 S 07°23'10" W 29.57'	102 S 69°18'50" W 98.87'
45 S 22°31'40" W 35.68'	103 S 59°51'40" W 78.62'
46 S 41°29'00" W 32.92'	104 S 59°31'10" W 63.33'
47 S 79°58'30" W 59.15'	105 N 89°13'30" W 33.00'
48 N 49°21'20" W 46.95'	106 N 71°57'00" W 106.65'
49 N 64°58'30" W 37.27'	107 N 67°07'50" W 47.25'
50 N 80°40'20" W 47.86'	108 S 41°32'00" W 18.39'
51 N 41°19'20" W 24.42'	109 N 09°56'22" E 18.47'
52 S 55°55'10" W 49.74'	110 N 01°47'17" E 45.50'
53 S 37°15'00" W 100.07'	111 N 06°45'23" W 329.14'
54 S 63°24'10" W 30.51'	112 N 15°52'21" W 116.04'
55 S 22°50'00" W 88.89'	113 N 43°54'24" E 46.74'
56 S 35°43'40" W 44.12'	114 S 16°08'25" W 107.38'
57 S 64°23'50" W 40.09'	115 N 24°10'45" W 418.89'
58 N 71°38'10" W 12.85'	116 N 24°10'27" W 355.98'

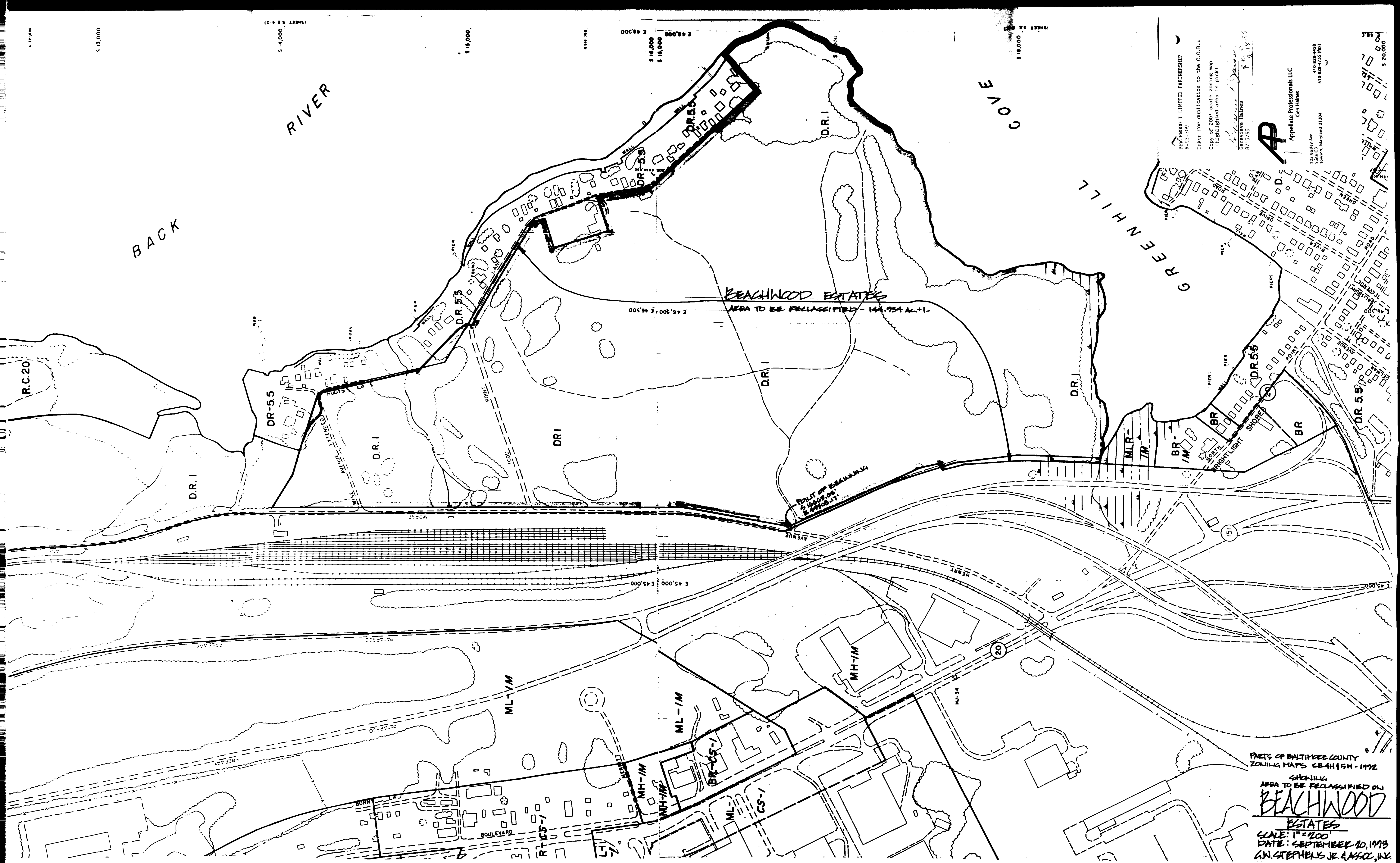
R-93-309

GEORGE WILLIAM STEPHENS, JR.
AND ASSOCIATES, INC.
CIVIL ENGINEERS & LAND SURVEYORS
658 KENILWORTH DRIVE, SUITE 100
TOWSON, MARYLAND 21204
(410) 825-8120

OWNER/DEVELOPER
BEACHWOOD I LIMITED PARTNERSHIP
108 W. TIMONIUM ROAD
SUITE 200
TIMONIUM, MARYLAND 21093

Scale 1" = 200'

PLAT TO ACCOMPANY PETITION FOR
RECLASSIFICATION
FROM D.R.1 TO D.R.3.5
BEACHWOOD ESTATES
15TH ELECTION DISTRICT COUNCILMANIC DISTRICT #7
BALTIMORE COUNTY, MARYLAND
FEBRUARY 25, 1993 SCALE: 1" = 200'



BEACHWOOD I LIMITED PARTNERSHIP
11-93-309
Taken for duplication to the C.O.B.
Copy of 200' scale zoning map
(highlighted area in pink)
Genevieve Haines
8/17/93

Appellate Professionals LLC
Gen Haines
220 E. Bay Ave.
Suite C3
Towson, Maryland 21204
410-828-4450
410-828-4752 (fax)

PARTS OF BALTIMORE COUNTY
ZONING MAPS CE4H15H-1992
SHOWING
AREA TO BE RECLASSIFIED ON
BEACHWOOD
ESTATES
SCALE: 1"=200'
DATE: SEPTEMBER 10, 1993
A.W. STEPHENS JR. & ASSOC., INC.

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY
Room 47, Old Courthouse
400 Washington Ave., Baltimore, MD 21204

FOR JUDICIAL REVIEW OF THE DECISION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
Room 49, Old Courthouse
400 Washington Ave., Baltimore, MD 21204

CIVIL
ACTION
No. 94-CV-01196
7/3/80

IN THE CASE OF: IN THE MATTER OF
BEACHWOOD I LIMITED PARTNERSHIP
FOR A ZONING RECLASSIFICATION FROM
D.R. 1 TO D.R. 3.5 ON PROPERTY LOCATED
ON THE EAST SIDE OF MORSE LANE, NE/SIDE
I-695 (PATAPSCO FREEWAY)
15TH ELECTION DISTRICT
7TH COUNCILMANIC DISTRICT
CASE NO. R-93-309
(ITEM 7, CYCLE 1)

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the provisions of Rule 7-202(e) of the Maryland
Rules of Procedure, William T. Hackett and Michael B. Sauer,
constituting a majority of the County Board of Appeals of Baltimore
County, have given notice by mail of the filing of the Petition for
Judicial Review to the representative of every party to the
proceeding before it: namely, Peter Max Zimmerman, PEOPLE'S COUNSEL
FOR BALTIMORE COUNTY, Room 47, Old Courthouse, 400 Washington
Avenue, Towson, MD 21204, Petitioner; John B. Gontrum, Esquire,
ROMADKA, GONTRUM & McLAUGHLIN, 814 Eastern Boulevard, Baltimore, MD
21221, Counsel for Beachwood I Ltd. Partnership; R. Bruce Alderman,
President, Signal Development Corp./Beachwood I Ltd. Partnership,
108 West Timonium Road, Timonium, MD 21093; and Nancy E. Paige,
Esquire, GORDON, FEINBLATT, ROTHMAN, HOFFBERGER & HOLLANDER, The
Garrett Building, 133 E. Redwood Street, Baltimore, MD 21202, this
17th day of February, 1994.

RECEIVED AND FILED
94 FEB 17 PM 1:41
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

R-93-309, Beachwood I Ltd. Partnership
File No. 94-CV-01196/73/80

Esquire, GORDON, FEINBLATT, ROTHMAN, HOFFBERGER & HOLLANDER, The
Garrett Building, 133 E. Redwood Street, Baltimore, MD 21202, a
copy of which Notice is attached hereto and prayed that it may be
made a part hereof.

Kathleen C. Weidenhammer
Kathleen C. Weidenhammer
Administrative Assistant
County Board of Appeals, Room 49 - Basement
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410) 887-3180

I HEREBY CERTIFY that a copy of the foregoing Certificate of
Notice has been mailed to Peter Max Zimmerman, PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY, Room 47, Old Courthouse, 400 Washington Avenue,
Towson, MD 21204, Petitioner; John B. Gontrum, Esquire, ROMADKA,
GONTRUM & McLAUGHLIN, 814 Eastern Boulevard, Baltimore, MD 21221,
Counsel for Beachwood I Ltd. Partnership; R. Bruce Alderman,
President, Signal Development Corp./Beachwood I Ltd. Partnership,
108 West Timonium Road, Timonium, MD 21093; and Nancy E. Paige,
Esquire, GORDON, FEINBLATT, ROTHMAN, HOFFBERGER & HOLLANDER, The
Garrett Building, 133 E. Redwood Street, Baltimore, MD 21202, this
17th day of February, 1994.

Kathleen C. Weidenhammer
Kathleen C. Weidenhammer
Administrative Assistant
County Board of Appeals, Room 49 - Basement
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410) 887-3180

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

February 17, 1994

John B. Gontrum, Esquire
ROMADKA, GONTRUM & McLAUGHLIN
814 Eastern Boulevard
Baltimore, MD 21221

RE: Civil Action No. 94-CV-01196
Beachwood I Ltd. Partnership

Dear Mr. Gontrum:

Notice is hereby given, in accordance with the Maryland Rules
of Procedure, that a Petition for Judicial Review was filed on
February 10, 1994 in the Circuit Court for Baltimore County from
the majority decision of the County Board of Appeals rendered in
the above matter. Any party wishing to oppose the petition must
file a response within 30 days after the date of this letter,
pursuant to Rule 7-202(d)(2)(B).

Please note that any documents filed in this matter,
including, but not limited to, any other Petition for Judicial
Review, must be filed under Civil Action No. 73/80/94-CV-01196.

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

Very truly yours,

Kathleen C. Weidenhammer
Kathleen C. Weidenhammer
Administrative Assistant

Enclosure

cc: R. Bruce Alderman /Signal Development
/Beachwood I Ltd. Partnership
Virginia Tolbert /North Point Peninsula
Community Coordinating Council
Ethel Weber
Cabrins Dumbow
Jim Skarda
Janet Wood /Wells McComas Imp. Assn.
James Earl Kraft
People's Counsel for Baltimore County
P. David Fields
Jeffrey Long
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards, Jr. /ZADM
Docket Clerk /ZADM
Arnold Jablon, Director /ZADM

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

February 17, 1994

Peter Max Zimmerman
People's Counsel
for Baltimore County
Room 47, Old Courthouse
400 Washington Avenue
Towson, MD 21204

RE: Civil Action No. 94-CV-01196
Beachwood I Ltd. Partnership

Dear Mr. Zimmerman:

In accordance with Rule 7-206(c) of the Maryland Rules of
Procedure, the County Board of Appeals is required to submit the
record of proceedings of the petition for judicial review which you
have taken to the Circuit Court for Baltimore County in the above-
entitled matter within sixty days.

The cost of the transcript of the record must be paid by you.
In addition, all costs incurred for 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 within sixty
days, in accordance with Rule 7-206(c).

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

Very truly yours,

Kathleen C. Weidenhammer
Kathleen C. Weidenhammer
Administrative Assistant

Enclosure

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF PEOPLE'S COUNSEL
FOR BALTIMORE COUNTY
Room 47, Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

FOR JUDICIAL REVIEW OF THE
DECISION OF THE COUNTY BOARD OF
APPEALS OF BALTIMORE COUNTY
Room 49, Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

CIVIL
ACTION
No.

IN THE CASE OF: IN THE MATTER OF
BEACHWOOD I LIMITED PARTNERSHIP
FOR RECLASSIFICATION FROM D.R. 1 TO
D.R. 3.5 ZONE ON PROPERTY LOCATED
ON THE EAST SIDE OF MORSE LANE,
NORTHEAST SIDE I-695 (PATAPSCO
FREEWAY)
15TH ELECTION DISTRICT
7TH COUNCILMANIC DISTRICT
CASE NO. R-93-309,
(ITEM 7, CYCLE 1)

PETITION FOR JUDICIAL REVIEW

People's Counsel for Baltimore County hereby requests judicial
review of the decision of the County Board of Appeals, in the case of:
In The Matter of Beachwood I Limited Partnership for a Reclassification
from D.R. 1 to D.R. 3.5 Zone, Case No. R-93-309 (Item 7, Cycle 1) dated Jan. 21, 1994.
People's Counsel was a party to the proceeding before the County Board
of Appeals of Baltimore County in this matter.

Peter Max Zimmerman
Peter Max Zimmerman
People's Counsel for
Baltimore County

Carole S. Demilio
Carole S. Demilio
Deputy People's Counsel for
Baltimore County
Room 47, Courthouse
400 Washington Avenue
Towson, Maryland 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Petition for
Judicial Review has been mailed to Gontrum, Romadka, Gontrum & McLaughlin,
814 Eastern Boulevard, Baltimore, Maryland, 21221; and to Nancy E.
Paige, Gordon, Feinblatt, Rothman, Hoffberger & Hollander, The Garrett
Building, 133 E. Redwood Street, Baltimore, Maryland, 21202, on February 17, 1994.

Carole S. Demilio
Carole S. Demilio

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

January 21, 1994

John B. Gontrum, Esquire
ROMADKA, GONTRUM & McLAUGHLIN
814 Eastern Boulevard
Baltimore, MD 21221

RE: Case No. R-93-309
Beachwood I Ltd. Partnership

Dear Mr. Gontrum:

Enclosed please find a copy of the final Opinion and Order
issued this date by the County Board of Appeals of Baltimore County
in the subject matter. Also enclosed is a copy of Mr. Clark's
Dissenting Opinion.

Very truly yours,

Kathleen C. Weidenhammer
Kathleen C. Weidenhammer
Administrative Assistant

Enclosure

cc: R. Bruce Alderman, President
Signal Development Corp., Gen. Partner
Beachwood I Ltd. Partnership
Virginia Tolbert, Secretary
North Point Peninsula Comm. Coord. Council
Ms. Ethel Weber
Mr. Jim Skarda
Ms. Janet Wood, Wells McComas Imp. Assn.
Mrs. Cabrins Dumbow
Mr. James Earl Kraft
People's Counsel for Baltimore County
P. David Fields
Jeffrey Long
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards, Jr. /ZADM
Docket Clerk /ZADM
Arnold Jablon, Director /ZADM

IN THE MATTER OF
THE APPLICATION OF
BEACHWOOD I LIMITED PARTNERSHIP
FOR A ZONING RECLASSIFICATION
FROM D.R. 1 TO D.R. 3.5 ON
PROPERTY LOCATED ON THE EAST SIDE
MORSE LANE, NORTHEAST SIDE I-695
(PATAPSCO FREEWAY)
15TH ELECTION DISTRICT
7TH COUNCILMANIC DISTRICT

BEFORE THE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY

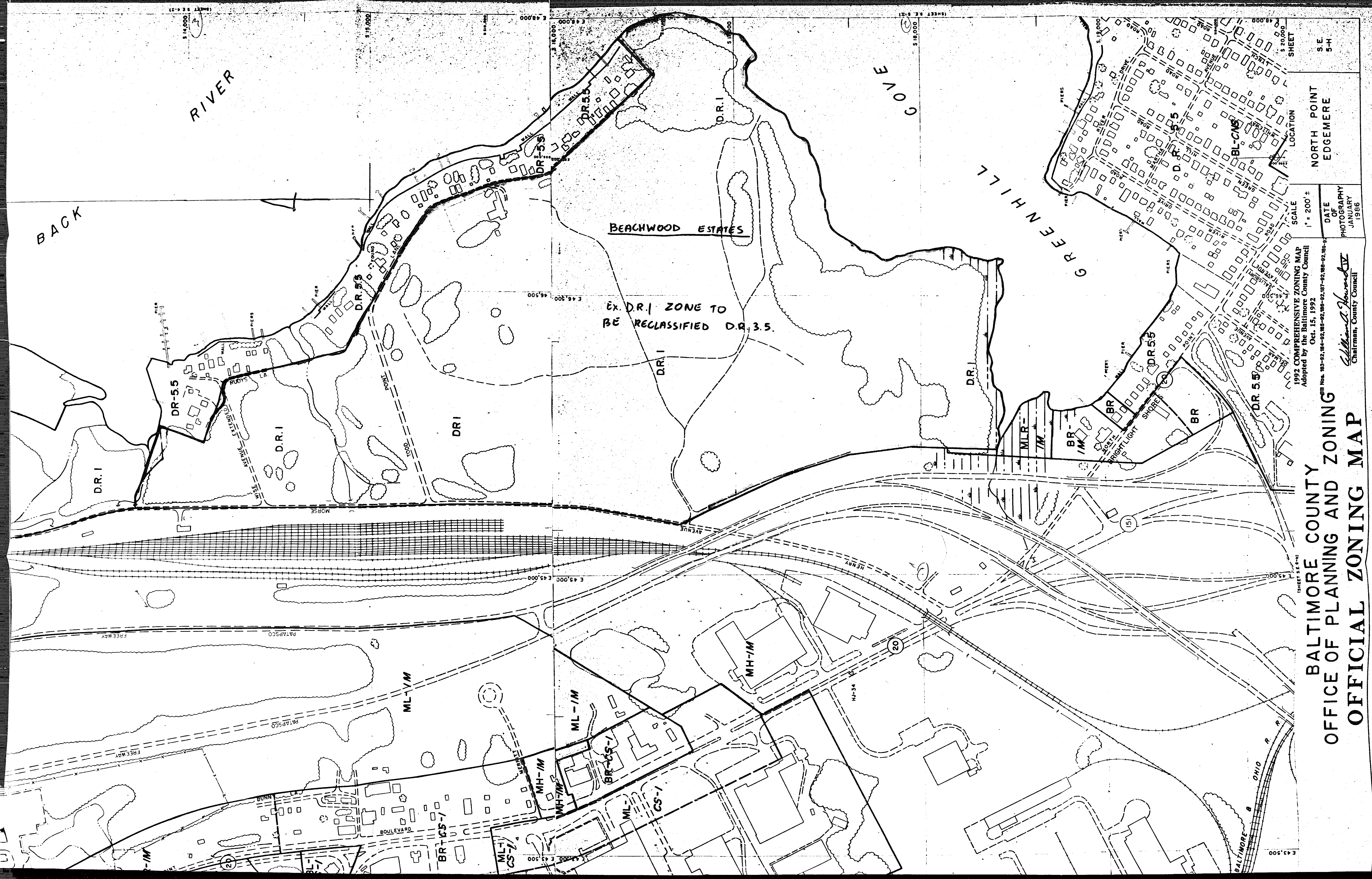
CASE NO. R-93-309
Cycle 1, 1993

OPINION

This case comes before the Board on a Petition for
Reclassification from D.R. 1 to D.R. 3.5 on a parcel of land
containing some 148 acres located in the Fifteenth Election
District, known as Beachwood I Limited Partnership. Testimony and
evidence in this case consumed some 2 full days of said testimony.
The issue in this case is solely whether or not the County Council
in the 1992 Comprehensive Map Process committed error when they
down-zoned the property from D.R. 5.5 to D.R. 1.

Originally the property was zoned Manufacturing Heavy (M.H.).
In 1984 the property was rezoned from M.H. to D.R. 5.5, and the
D.R. 5.5 zoning was reaffirmed in the 1988 map process. The Board
can find, from the testimony and evidence received, no specific
reason for this down-zoning.

John J. Stamm, Civil Engineer, testified that he started work
on this piece of property in 1979 as an industrial park. In 1982,
a CRG plan for industrial use was approved. However, financial
considerations caused this project to be abandoned. The present
plan was presented to his office in June of 1992, with the
understanding that there would be no County department aid or
assistance as to the intersection with North Point Boulevard, and
the need for a pumping station. He testified that the documented



BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
OFFICIAL ZONING MAP

1992 COMPREHENSIVE ZONING MAP
Adopted by the Baltimore County Council
Oct. 15, 1992

Billiam C. Howard
Chairman, County Council

DATE
PHOTOGRAPHY
JANUARY
1986

SCALE
1" = 200'

LOCATION
NORTH POINT
EDGE MERE

5/11/92
D. J. [unclear]
[unclear]

RIVER

**EXISTING
FOREST TO
BE CLEARED
9.94 AC.**

	Empty Wetland
	Empty Forest
	Proposed Wetland
	Proposed Forest

LEGEND

copy

GREENHILL

TYPICAL
SETBACK & PARKING LAYOUT

CRITICAL AREAS FINDINGS PLAN
AND
CONCEPTUAL FOREST CONSERVATION PLAN

BEACHWOOD ESTATES

BALTIMORE COUNTY, MD ELECTION DIST # ELEC
SCALE 100 DATE

OWNER/DEVELOPER



Mr. Dieudonne, a qualified realtor and appraiser, who simply responded to the question "do you think the present zoning is the correct zoning, R-60?" by saying "No, sir, I think that is wrong." And then, when asked what would be the proper classification, answered, "R-1, and I think that would stabilize that area and I don't believe there would be an infiltration into the Lincoln Park sector of residential homes." These naked declarations, unsubstantiated by facts, are insufficient to overcome the presumption of correctness which attaches with the adoption of a comprehensive zoning plan.

See also *Smith v. County Comm'n of Howard County*, 252 Md. 280, 249 A.2d 708 (1969).

There have been numerous occasions when the Court of Appeals has held that the testimony of expert witnesses that there had been a mistake was not sufficient to generate a fairly debatable issue with respect to mistake. On a number of occasions reclassifications by the County Board of Appeals, finding a mistake on the basis of such opinions, were overturned. *Pahl v. County Bd. of Appeals*, 237 Md. 294, 206 A.2d 245 (1965); *Brenbrook Const. Co. v. Dahne*, 254 Md. 443, 255 A.2d 32 (1969); *Crenwell v. Baltimore Aviation*, 257 Md. 712, 264 A.2d 828 (1970); *Smash v. Beachcamp*, 268 Md. 643, 304 A.2d 244 (1973). On another occasion, it was a reclassification by the zoning Commissioner of Baltimore County based on an unsupported expert opinion that was held to have been without the benefit of substantial evidence of mistake. *Applique Inc. v. Lucas*, 247 Md. 612, 232 A.2d 757 (1967).

**d. Inadequate Expert Testimony:
Predicated on Economic Disadvantage**

Sometimes, by contrast, the expert opinion that a "mistake" had been made in the comprehensive zoning was based on a clearly identified and extensively developed predicate. Even in some of those cases, however, the expert opinions have been dismissed as insufficient to generate a fairly debatable issue as to "mistake" for the very different reason that the predicates themselves are immaterial on the issue of actual "mistake" or "error," as those precise terms of art are used in zoning law.

One particular type of support for an expert opinion that has generally been found to have been inadequate to show "mistake" is the expert's conclusion that the Comprehensive Zoning in question will render the property unsuitable for development at all or, at least, unsuitable for development with economic feasibility.

In *Coppolino*, the developers had offered as an alternative, or additional, reason why the County Council had been guilty of a mistake in downzoning the subject property the testimony of a "number of expert witnesses express[ing] the opinion that the subject property was 'unsuitable' for development in the D.R. 5.5 zone because of its topography, rock outcroppings, and proximity to Ebenezer Road and the proposed Perry Hall Boulevard." 23 Md. App. at 370. This Court pointed out, however, that the experts had "conceded that single-family houses could be developed on the property" and concluded that the mere fact that the property might not be suitable for development in a more economically advantageous way was not evidence of mistake in the Comprehensive Zoning. In overturning the reclassification by the County Board of Appeals, we

held that the evidence was not sufficient to make the issue of mistake fairly debatable. 23 Md. App. at 371-72.

In a similar vein, *Beachwood* argues in this case that the County Council was guilty of a "mistake" in zoning the property D.R. 1 because of its "erroneous assumption" that the property could be developed in an economically feasible way with that density. *Beachwood's* brief before us is very clear in this regard:

A final erroneous assumption of the Council was that the property could be developed at all at a D.R. 1 density. As the testimony indicated, the property needed public sewer service. If the cost of the road improvements required by the County after the fiftieth unit is built is added to the cost of the sewer needed both to serve the project and the surrounding houses, then the infrastructure alone mandates that to have marketable prices on homes more density than D.R. 1 permits is necessary to build the project. Without the D.R. 3.5 zone making the necessary improvements to the roads and bringing sewer to the site becomes virtually impossible. These financial considerations alone would justify reasoning based on the incorrect assumptions of the Council. (Emphasis supplied.)

Indeed, in *Coppolino*, the County Board of Appeals had gone so far as to rule not simply that the comprehensive downzoning had been a "mistake" but also that it had amounted to a confiscation of the property. In pointing out that economic disadvantage is not synonymous with confiscation, we concluded:

The Court of Appeals and this Court have stated that an opinion, even that of an expert, is not evidence strong or substantial enough to show error in the comprehensive rezoning or confiscation unless the reasons given by the expert as the basis for his opinion, or other supporting facts relied upon

by him, are themselves substantial and strong enough to do so. Moreover, the Court of Appeals has repeatedly held that in order to obtain a rezoning on the basis of an unconstitutional confiscation, an applicant must show that he has been deprived of all reasonable use of his property and that it cannot be used for any of the permitted uses in the existing zone. Viewed in this light the expert testimony presented here does not pass muster.

23 Md. App. at 371-72. (Citations omitted) (Emphasis supplied). *Cabin John, Ltd. v. Montgomery County*, 259 Md. 661, 671, 271 A.2d 174 (1970), also observed:

Neither the fact that rezoning may result in a more profitable use of land nor that hardship may follow the retention of an existing classification is sufficient justification for rezoning.

In *Boyce*, the developers, in an effort to show that the County Board of Appeals had been correct in finding a mistake in the Comprehensive Zoning, offered a number of conclusory arguments as to why "the subject property was then unsuitable for residential development." 25 Md. App. at 53-54. In addition, they offered a "witness qualified in the fields of real estate and real estate appraisal and the contract purchaser of the subject property [who] testified that it was 'unsuitable' for residential development because of its physical characteristics and its proximity to the railroad tracks." 25 Md. App. at 54. This Court concluded that the evidence was not legally sufficient to make the issue of mistake or error fairly debatable for two reasons. The second of these, the absence of any evidence that the County Council had been unaware of these conditions, has already been discussed.

and the surrounding industrial property was "insufficient to make the question of 'error' or 'mistake' fairly debatable." 292 Md. at 364-65.

The *Howard County v. Dorsey* situation, in that regard, bears a strong resemblance to the situation before us, in which a similar opinion as to "incompatibility" also played a major role. In this case, the only testimony before the County Board of Appeals to the effect that the County Council's 1992 Comprehensive Zoning had been a mistake was that of Samuel Crozier, an expert land planner. Indeed, this was the only basis for the finding by the Board of Appeals that a mistake had been made by the County Council:

The Board . . . finds that the testimony presented by the Petitioner and, particularly, the expert testimony given by Mr. Crozier with his supporting reasons, supports a finding of fact that the subject property was erroneously zoned by the County Council.

Early in its majority opinion, the County Board of Appeals summed up in full detail the testimony of Mr. Crozier:

Samuel Crozier, an expert land planner, testified that he has studied this site, and it was his opinion that the D.R. 1 zoning is in error. He noted that one has to go almost 2 miles from the site to find any D.R. 1, which makes it totally out of character with the area. He further testified that it is recommended for low density urban residential, and low density refers to 3.5. He further testified that the Growth Management Plan should conform to the "built-out" area nearby, and that D.R. 1 does not comply with this and D.R. 3.5 does. It was his expert opinion that there is no reason to zone this property D.R. 1 since all services are available, there are no problems D.R. 3.5 under the documented site plans, the proposed use is compatible with all other uses in the area, and D.R. 3.5 and not

D.R. 1 was the proper zoning for this parcel. (Emphasis supplied.)

A large part of Mr. Crozier's testimony consisted simply of describing the zoning of surrounding tracts and pointing out that the nearest D.R. 1 zone was approximately five miles away. His conclusion was that the proposed reclassification of D.R. 3.5 was compatible with the surrounding area and not that the comprehensive D.R. 1 zoning was, *per se*, incompatible. In any event, all of the facts as to which Mr. Crozier testified would not establish mistake or error for the reason noted by *Howard County v. Dorsey*:

Thus, there was no evidence to show that the initial premises of the Council with respect to the subject property were incorrect and that consequently the classification assigned at the time of the comprehensive rezoning was improper.

When all is said and done, this record is totally devoid of any evidence to show that at the time of the comprehensive zoning of the subject property the Council failed to take into account any facts or circumstances then existing relevant to the subject property and its environs so that its initial assumptions and premises in determining the appropriate classification for the subject property were erroneous.

292 Md. at 365-66.

With respect to the failure of an applicant for rezoning to show mistake or error based on alleged incompatibility with surrounding zoning classifications, *Boyce* similarly concluded:

There is not an iota of evidence in the record to indicate that at the time of the comprehensive zoning of the subject property the Council was unaware of either the zoning reclassifications or development which had taken place between 1955 and 1971.

25 Md. App. at 56.

**d. Inadequate Expert Testimony:
Predicated on Divergence From Master Plan**

The testimony of Mr. Crozier also made it clear that his conclusion that the 1992 Comprehensive Zoning had been a mistake was based in part on its failure to conform to the Baltimore County Master Plan and with the attendant Growth Management Program Guidelines. He pointed out that the Baltimore County Master Plan, adopted in February of 1990, labeled the area under discussion as "Low Density Urban Residential," which is defined as zoning between D.R. 3.5 and D.R. 5.5. He further pointed out that the Baltimore County residential zoning guidelines state that residential zoning should be equivalent to the existing ("built out") density within the surrounding area or neighborhood and that the surrounding densities to the Beachwood tract were considerably greater than D.R. 1.

Howard County v. Dorsey, however, was very emphatic that

there is no requirement that a comprehensive zoning plan must conform to the recommendations of an applicable master plan.

292 Md. at 363. Holding to a similar effect was *Pattay v. Board of County Commissioners*, 271 Md. 352, 360, 317 A.2d 142 (1974):

As we have said, a master plan is only a guide and is not to be confused with a comprehensive zoning, zoning map, or zoning classification.

In *Montgomery County v. Woodward & Lothrop*, 280 Md. 686, 704, 376 A.2d 483 (1977), Chief Judge Murphy observed:



Nor is there any requirement, absent a statute, that the map amendment must adhere to the recommendations of the General or Master Plan. Such land use planning documents represent only a basic scheme generally outlining planning and zoning objectives in an extensive area, and are in no sense a final plan; they are continually subject to modification in the light of actual land use development and serve as a guide rather than a strait jacket.

See also *People's Counsel v. Webster*, 65 Md. App. 694, 701-03, 501 A.2d 1343 (1986); *Floyd v. County Council of Prince George's County*, 55 Md. App. 246, 258-59, 461 A.2d 76 (1983).

A definitive statement on this subject is that found in *Nottingham Village v. Baltimore County*, 166 Md. 339, 292 A.2d 680 (1972). In that case, Nottingham Village and The Rouse Company sought a declaratory judgment that the comprehensive zoning promulgated by the Baltimore County Council in 1971 was invalid because of its failure to conform to the Master Plan for Baltimore County. In rejecting the argument made by the developers, Judge Singley stated for the Court of Appeals:

Underlying this argument is a common misconception--a confusion between the planning function, the end product of which is the Master Plan, specifically provided for in County Code, Art. 21, Planning, §§ 22-12 through 22-17, and the zoning function, covered by Code, Art. 21A, Zoning, §§ 22-18 through 22-31. Zoning or rezoning in accordance with a comprehensive plan is a legislative function. There is no requirement that the comprehensive plan adopted by the legislative body must conform to the recommendations of the Master Plan.

166 Md. at 354. Citations omitted. (Emphasis supplied).

Particularly pertinent to the case now before us was the further observation of the Court of Appeals:

While it is true that other jurisdictions have by statute required that zoning ordinances be in accordance with the master plan, Baltimore County has not.

M. (Citation omitted).

**The Fairly Debatable Issue
As To "Mistake" In Comprehensive Zoning**

We hold that the evidence before the County Board of Appeals was not sufficient to generate a fairly debatable issue that there had been a mistake in the 1992 Comprehensive Zoning of the County Council. Absent such mistake, the County Board of Appeals should not have granted the rezoning classification and the Circuit Court for Baltimore County should not have affirmed that action by the Board of Appeals.

The fact that the 1992 Comprehensive Zoning departed from earlier comprehensive zonings is of no consequence. The fact that the D.R. 1 zoning is out of character with surrounding zoning does not *per se* establish a mistake on the part of the County Council. The fact that the County Master Plan, as a set of guidelines, may have suggested a more intensive zoning does not establish a mistake on the part of the County Council. The fact that a more intense residential zoning would have been compatible with surrounding circumstances does not, *ipso facto*, establish that the D.R. 1 zoning was not also compatible. The fact that a more intense residential zoning would have made development of the tract more economically

advantageous to the property owner does not establish a mistake in the Comprehensive Zoning.

Independent of all other considerations, moreover, is the over-arching consideration that none of the circumstances argued by Beachwood were shown to have been unknown to the County Council at the time of the 1992 Comprehensive Zoning. It follows that the issue of mistake was not fairly debatable before the County Board of Appeals and its decision cannot be sustained.

**People's Counsel v. Mockard:
The Procedural Flaw**

Our reversal of the Circuit Court for Baltimore County and, indirectly, our overturning of the zoning reclassification granted by the Baltimore County Board of Appeals rests on two independent grounds. We conclude not only that the decision of the County Board of Appeals was substantively flawed because the issue of "mistake" was not fairly debatable, but also that the opinion announcing the decision was procedurally flawed. Dispositive of this fatal procedural flaw is our decision in *People's Counsel for Baltimore County v. Mockard*, 73 Md. App. 340, 347-51, 533 A.2d 1344 (1987).

BALTIMORE COUNTY CODE (1978), § 2-356(j) explicitly spells out what must be done by the County Board of Appeals before the zoning of a property may be reclassified:

(j) Findings prior to reclassification. Before any property is reclassified pursuant to this section, the board of appeals must find . . .

Subsection (j)(1), as has already been discussed, requires an explicit finding of either "a substantial change in the character of the neighborhood" or "that the last classification of the property was established in error." It is subsection (j)(2) that then sets forth in detail a list of the factors that must be considered and as to which findings must be made. The factors must be considered and the findings must be made, moreover, both with respect to the finding of change or mistake, in the first instance, and also with respect to the prospective reclassification of the property that is to be made, in the second instance. Subsection (j)(2) requires a finding:

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

With respect to the property that was reclassified in this case, there was an additional set of procedural requirements imposed on the opinion of the County Board of Appeals. Since 1988,

Its inadequacy to satisfy the Code provision is palpable. Quite aside from the almost cavalier attempt to finesse the requirement of precise and considered findings of fact by the casual incorporation of all of the testimony of Mr. Crozier into a brief allusion to it, it is transparent that even that attempted incorporation is offered only to support "a finding of fact that the subject property was erroneously zoned by the County Council." It does not even purport to deal with the additionally required companion finding that, even following a finding of error in the Comprehensive Plan, the reclassification itself was warranted. It does not, moreover, even remotely allude to the required findings of subsection (j)(3)(b) with respect to a reclassification in the Chesapeake Bay Critical Area.

In *People's Counsel v. Mockard*, this Court analyzed at length the requirements spelled out in subsection (j)(2) and concluded that a zoning reclassification by the Baltimore County Board of Appeals must be reversed because of the failure of the Board's opinion to satisfy the requirements of the subsection. In that opinion, Judge Rosalyn Bell very explicitly set out:

Under that provision, the Board must make two findings: 1) that there was error in the comprehensive zoning, and 2) that the prospective reclassification is warranted. Both of those findings may be made "only upon consideration of factors . . . including, but not limited to, all of the following. . . ."

73 Md. App. at 347.

The appellees in that case, very much as Beachwood here, suggested that it would be enough to satisfy the subsection if the

Board, in the course of listening to the evidence, could thereby be deemed to have "considered" each of the required factors. It argued that the subsection by no means requires specific findings on the record. We squarely rejected that argument:

Appellees filed a cross-appeal, arguing that § 2-58.1(j)(2) does not require the Board to enter specific findings as to each factor. They claim that the Board is only required to "consider" the factors. . . .

[T]hey claim that the Baltimore County Board need only "consider" certain factors, hence the Board did not need to objectively deal with the factors. We do not agree with appellees' conclusion.

73 Md. App. at 348 (Emphasis in original).

Judge Bell analyzed in detail why clear findings of fact are necessary when dealing with appeals from administrative agencies. She quoted from *United Steelworkers of America AFL-CIO, Local 610 v. Bethlehem Steel Corp.*, 298 Md. 665, 679, 272 A.2d 62 (1984):

"Judicial review of administrative action differs from appellate review of a trial court judgment. In the latter context the appellate court will search the record for evidence to support the judgment and will sustain the judgment for a reason plainly appearing on the record whether or not the reason was expressly relied upon by the trial court. However, 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."

73 Md. App. at 348-49.

Judge Bell pointed out that in dealing with administrative appeals, the appellate court may not supply factual findings which were not made by the administrative agency. It would only be when

the findings of the Board of Appeals were uncontradicted and where only one conclusion could be reached that a lack of such findings would not warrant remand. See also *Ocean Hideaway Condominium Ass'n v. Boardwalk Plaza Venture*, 68 Md. App. 650, 664-65, 515 A.2d 485 (1986); *Gough v. Board of Zoning Appeals for Calvert County*, 21 Md. App. 697, 704, 321 A.2d 315 (1974).

It is not for us to search the record before the County Board of Appeals in an effort to construct a possible rationale that might support its zoning reclassification. Robert M. Anderson, 3 *American Law of Zoning* (3d ed. 1986), § 16.41 succinctly states the reason why administrative agencies are required to make express findings:

Given express findings, the court can determine whether the findings are supported by substantial evidence, and whether the findings warrant the decision of the board. If no findings are made, and if the court elects not to remand, its clumsy alternative is to read the record, speculate upon the portions which probably were believed by the board, guess at the conclusions drawn from credited portions, construct a basis for decision, and try to determine whether a decision thus arrived at should be sustained. In the process, the court is required to do much that is assigned to the board, and the latter becomes a relatively inefficient instrument for the construction of a record. (Emphasis supplied.)

In the absence of required findings by the Board, the conclusion of this Court in *Mockard* was clear:

Hence, we hold that "consideration of factors" requires an articulation of the findings as to each of the applicable factors contained in [§ 2-356(j)(2)]. The Board must

most of the tract involved in this litigation has been designated as a "limited development area" within the Chesapeake Bay Critical Area. Subsection (j)(2) provides that any "reclassification pertaining to land within the Chesapeake Bay Critical Area is subject to" additional limitations. The additional limitation pertinent in this case is contained in subsection (j)(3)(b):

No reclassification may be granted unless the Board has made written findings that the proposed reclassification will:

1. Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have runoff from surrounding lands;
2. Conserve fish, wildlife, and plant habitats; and
3. Be consistent with established land use policies for development in the Chesapeake Bay Critical Area which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement, and activities of persons in that area can create adverse environmental impacts. (Emphasis supplied.)

The opinion of the Board of Appeals abjectly failed to satisfy the requirements of either subsection (j)(2) or subsection (j)(3)(b). Indeed, the feeble argument that Beachwood makes in this regard is based on the single sentence at the end of the Board's opinion:

The Board has carefully reviewed and considered the evidence and testimony presented in these proceedings, and finds that the testimony presented by the Petitioner and, particularly, the expert testimony given by Mr. Crozier with his supporting reasons, supports a finding of fact that the subject property was erroneously zoned by the County Council. (Emphasis supplied.)

make such findings in both a finding of error in the comprehensive plan and in a decision that the reclassification was warranted.

73 Md. App. at 349. (Emphasis in original).

We there rejected the finding of error in the comprehensive zoning because of the failure of the Board of Appeals to render an opinion in compliance with § 2-356(j). We held that the opinion of the Board was "conclusory in nature and lack[ed] sufficient indication of which, if any, factors the Board considered in making its determination." 73 Md. App. at 350. It is not enough, moreover, for the findings of the Board to be implicit. We made the requirement for express and precise findings very clear:

As discussed earlier, in finding error or that a reclassification is warranted, the Board must consider factors, "including, but not limited to, all of the following. . . ." Section 2-58.1(j)(2). This means that, in order to make either of those findings, the Board must at least articulate its findings as to the 13 identified factors.

Id. (Emphasis in original).

The Spectral Apparition of Contract Zoning

There hovers on the edges of this case, albeit only in the shadows, the almost spectral apparition of contract zoning. Because neither the comprehensive zoning of the County Council nor the zoning reclassification of the County Board of Appeals expressly contains any forbidden *quid pro quo*, we do not treat what is before us as an actual instance of contract zoning. *Somerset v. Montgomery County*, 229 Md. 42, 50-52, 181 A.2d 671 (1962); *Pressman v.*

Baltimore, 222 Md. 330, 343-45, 106 A.2d 379 (1960). So strong, however, is the sense of the unseen presence that it ill behooves us to depart the scene without at least acknowledging the apparition.

To change the metaphor, Beachwood raises the weapon of contract zoning very gingerly. This is understandable, for it is, most assuredly, a two-edged sword. After suggesting that Baltimore County, through its Office of Planning and Zoning, sought to use the comprehensive zoning and reclassifying processes as a means to pressure Beachwood into financing an off-site traffic improvement, Beachwood, in its brief before us, noted the impropriety:

Appellants . . . may be correct in that the county's motivation and means may be improper. The comprehensive zoning process approach to this site to coerce improvements that are truly the responsibility of government was improper.

Whether the suggested contract zoning that permeates the atmosphere of this case was real or imaginary, proved or unproved, proper or improper, it is clear that the subject matter of the alleged zoning contract was an off-site traffic improvement to an intersection near the Beachwood property. Were the Beachwood property to be developed residentially, most of the residents would use, on a regular basis, the nearby intersection of Morse Road and North Point Boulevard. It is conceded by all parties that there is at that intersection an undesirable configuration that creates a potential traffic hazard.

It is not, however, a problem that would *per se* be created by more intensive traffic use nor one that would *per se* be eliminated by less intensive traffic use. It is a problem that would exist whether one car per day or 5,000 cars per day should use the intersection. It is described as a "sight-distance" problem with respect to vehicles moving onto Morse Road from North Point Boulevard and vehicles moving onto North Point Boulevard from Morse Road. Both suffer obstructions to their line of vision as they prepare to make the necessary turn.

Self-evidently, the more cars that pass through the intersection, the greater the likelihood that an accident may occur. Although the traffic problem is not the result of traffic volume, an increase in traffic volume would quite obviously exacerbate the problem, just as a decrease in traffic volume would quite obviously mitigate it.

Nowhere in the majority opinion of the Board of Appeals is there an indication that its finding that the County Council's comprehensive zoning had been a mistake in any way hinged on the existence of the traffic hazard or its possible amelioration. Notwithstanding that silence on the subject in explaining the rationale for its decision, the majority opinion, in summarizing the testimony of the witnesses before it, was nonetheless very generous in its allusions to the traffic situation.

One key witness before the County Board was John J. Stama, a civil engineer working with Beachwood in its projected development of the property. It was Mr. Stama who estimated that the cost for

the traffic improvement would be in the neighborhood of \$125,000. It was through Mr. Stama that there was introduced a January 29, 1993 letter from the Maryland State Highway Administration with respect to Beachwood's site plan for the property and with respect to the traffic problem. That letter included the following paragraph:

SHA currently has no plans for funding improvements to MD 151 within this area. The developer's representative indicated a willingness to fund the above improvements in previous meetings. However, since the developer does not require direct access onto MD 151, we must request that the county require the developer fund and construct these improvements as a condition of plan approval.

Another key witness before the County Board was Stephen Weber, the Chief of the Division of Traffic Operations for Baltimore County. After testifying with respect to the traffic hazard and the disinclination of the State to fund any improvement to the intersection, it was Mr. Weber, in a conversation with a representative of the County Planning Office, who suggested a possible way to persuade Beachwood to pay for the traffic improvement. Mr. Weber testified:

The issue is because [that] had been offsite improvement, how could the county reasonably get those improvements from the developer?

Sometimes [they] may be successful if the developer is willing to cooperate, but there's no certainty that the county would be able to force the developer to do offsite improvements to rectify the problem.

When I spoke with Mr. MacMillan, I said, well, certainly, one very roundabout way that could possibly be done, to force the

issue, would be to go ahead and recommend downzoning of the property based on the current limitations; if they could come back to the zoning process and certainly they could submit a documented site plan showing how the traffic would be accommodated, or what geometric improvements could be made to safely accommodate that additional development, and that way those improvements could then be tied to the development plan showing how, one, how the improvements would be able to support the proposed development.

I'm not saying that's a good way of doing it, but it was certainly one method that could be done or used. (Emphasis supplied.)

A third witness before the Board of Appeals was Jeffrey Long, a planner with the Baltimore County Office of Planning and Zoning. His testimony indicated that the positions taken by his office implemented the strategy suggested by Mr. Weber. The members of the planning staff and the Planning Board itself took various positions on the zoning of the Beachwood property, sometimes in favor of the comprehensive downsizing and at other times in favor of the requested reclassification. One question to Mr. Long was very point blank, "Would it be safe to say that the planning staff and planning board agreed to disagree?" He frankly responded, "Yes, I think that would be a fair statement to make." His position was to be against the proposed reclassification to D.R. 3.5 initially, but then to change positions once Beachwood had committed itself to funding the improvement to the off-site intersection:

Well, obviously, rezoning to D.R. 3.5 would result in increased trips. It would, you know, exacerbate any existing deficiency.

So we felt it was essential to have the developer agree to make these improvements prior to any rezoning of the property.

And that was accomplished through the filing of the documented site plan. (Emphasis supplied.)

One reason the allusions to contract zoning in this case have such a phantom-like quality is that neither the case law, here and abroad, nor the academic commentary seems to have a firm grip on exactly what is meant by the term "contract zoning" or by its doctrinal doppelganger, "conditional zoning." In the broadest of senses, both involve some sort of understanding between the governmental unit and the developer, whereby the doing of certain acts by the developer will result in favorable rezoning treatment by the governmental unit. Beyond that, the definitions begin to blur.

Some academic authorities treat "contract zoning" as the more generic phenomenon, with "conditional zoning" as a special instance thereof. Donald G. Hagman, *Urban Planning and Land Development Control Law* (1975), § 94 at 74-75. Others treat "conditional zoning" as the generic phenomenon, with "contract zoning" as the special instance. Robert M. Anderson, 2 *American Law of Zoning* (3d ed. 1986), §§ 9.20 and 9.21 at 159-72. Yet other authorities treat the two terms as closely-related but distinct phenomena, with "contract zoning" being beyond the pale of legality but with "conditional zoning" slowly emerging therefrom into general acceptance. Arden H. Rathkopf and Daren A. Rathkopf, 2 *The Law of Zoning and Planning*, § 29A.03 at 29A-22 through 29A-30.

The Maryland cases have treated "contract zoning" narrowly as a situation wherein the developer of property enters into an express and legally binding contract with the ultimate zoning authority. In such circumstances, the Maryland cases have not hesitated to hold such contract zoning to be null and void. Part of the reason why the governmental authority may not enter into such a contract is because the governmental unit may not bargain away its future use of the police power. Maryland's treatment of contract zoning is consistent with the definition of "illegal contract zoning" set out in Arden H. Rathkopf and Daren A. Rathkopf, 2 *The Law of Zoning and Planning*, § 29A.03(b) at 29A-25:

Illegal contract rezoning is said to involve the process by which a local government enters into an agreement with a developer whereby the government exacts a performance or promise from the developer in exchange for its agreement to rezone the property. The developer may agree to restrict development of the property, make certain improvements, dedicate a portion of land to the municipality, or make payments to the municipality. Numerous state court decisions have held such express or implied agreements invalid as illegal contract zoning. (Footnotes omitted.)

The first Maryland case to find that illegal contract zoning had occurred was *Boyls v. City of Baltimore*. 219 Md. 164, 148 A.2d 429 (1959). The vocabulary was still in a state of flux but the decision was clear. The Baltimore City Council, the repository of ultimate zoning authority, granted a zoning reclassification to a property owner, conditioned on a binding agreement by the property owner to use the benefit of the reclassification only for the

purpose of building a funeral home. The City Council Ordinance that granted the reclassification expressly incorporated the agreement by the property owner that was the consideration for the reclassification:

In its final form, the Ordinance made the reclassification conditional upon the execution of an agreement, set out in the Ordinance, between the owners and the City, and the recording of such agreement among the Land Records of Baltimore City, so as to be binding upon the property owners, their successors, heirs and assigns.

The agreement provided that, in consideration of the rezoning, the owners would develop and maintain the property as a funeral home only . . .

219 Md. at 166.

Without using the term "contract zoning" *per se*, the Court of Appeals held that the zoning was illegal. Among its reasons was the fact that "the resulting 'contract' is nugatory because a municipality is not able to make agreements which inhibit its police powers." 219 Md. at 170.

In stark contrast to *Boyls v. City of Baltimore* is *Pressman v. City of Baltimore*, 222 Md. 330, 160 A.2d 379 (1960). Whereas in *Boyls* the Baltimore City Council had entered into an express zoning contract, in *Pressman* it did not. The property owners, Food Fair and Stewart's, did, however, enter into a formal and undisputed Agreement with the Baltimore City Planning Commission. The property owners made certain commitments "in consideration of the

Planning Commission's approval of the rezoning." Pursuant to that Agreement, the Planning Commission recommended to the City Council that the rezoning be granted. The rezoning was subsequently granted.

In declining to hold that the Agreement constituted illegal contract zoning, the Court of Appeals restricted the application of the ban on contract zoning to those instances wherein the legislative body itself, as opposed to some other governmental agency, is a party to the illegal contract. Chief Judge Brune pointed out for the Court of Appeals:

Whatever the reasons for the Council's omission of reference to the Agreement may have been, it is clear that in this case, unlike *Avus*, the legislative body has not itself sought to impose conditions and has certainly not stated that its own action is dependent upon compliance with any conditions.

222 Md. at 343 (citations omitted).

The Court of Appeals also distinguished the Planning Commission, which possessed only the power to make recommendations, from the City Council, which alone possessed the power to pass a zoning ordinance:

We thus have a situation in which the City Council was not bound by the recommendations of the Planning Commission, in which that Commission sought to impose conditions that it was not authorized to exact and that are therefore invalid, and in which the Council did not undertake or attempt to incorporate the invalid conditions in its rezoning ordinance and did not even refer to them.

222 Md. at 344.

In *Beshore v. Town of Bel Air*, 237 Md. 398, 206 A.2d 678 (1965), the Court of Appeals also held that no illegal contract zoning had occurred. In that case, however, it was not because the alleged contract had not been struck between the property owner and the arm of government empowered to carry out the ultimate rezoning. The Town Commissioners of Bel Air were so empowered. What was missing in *Beshore* was definitive evidence that the Bel Air Town Commissioners had entered into such an illegal zoning contract. The evidence put forth by the protestants was circumstantial, based essentially on the principle of *post hoc, ergo propter hoc*. The Court of Appeals commented on the speculative nature of the evidence:

There is no evidence supporting the appellants' assertion that the property owners and the town of Bel Air entered into any agreement in regard to the zoning of their respective properties. The most that can be extracted from the record is that the property owners let their desires in regard to zoning be known and that the town fulfilled these desires. Ordinance No. 157 makes no reference to any agreement and cannot be termed special interest legislation since it applies to any property which is proposed to be annexed. Nor does Resolution No. 20 make any reference to any agreement, or state any conditions to the annexation or zoning.

237 Md. at 415-16.

The Court of Appeals attached great significance to the fact that the zoning act in question contained no reference to the allegedly illegal agreement:

We think the case before us presents no problem of zoning by contract, since the legislative body of Bel Air has made no provision in Ordinance No. 157 or Resolution No. 20 conditioning their action in zoning on

annexation upon any acts of the property owners.

237 Md. at 416.

In the case before us, Beachwood argues that the Baltimore County Council, in its 1992 comprehensive zoning, somehow engaged in illegal contract zoning. What pertinence that would have, even if true, to the limited decision before the County Board of Appeals is not clear. More to the point, however, is the fact that, just as in *Pressman* and just as in *Beshore*, there was no reference in the 1992 comprehensive zoning act to any agreement with Beachwood or to the fact that the 1992 zoning was in any way related to any past or future commitment by Beachwood. The evidence of contract zoning is even more bereft than was such evidence in *Beshore*, which was found to have been only speculative.

The point that Beachwood seems to be trying to make is that the Baltimore County Planning Board brought pressure to bear on Beachwood, thereby forcing Beachwood to enter into an unlawful zoning contract with the Planning Board. The contract would have been a favorable zoning recommendation by the Planning Board in consideration of a \$125,000 commitment by Beachwood to improve the intersection. Where Beachwood seeks to go with the argument is by no means clear, especially in the light of *Greenbelt v. Bresler*, 248 Md. 210, 236 A.2d 1 (1967). The situation of the Baltimore County Planning Board in this case is indistinguishable from the situation of the City of Greenbelt in that case. In *Bresler*, the ultimate zoning authority resided in the Prince George's County Council, as

in this case it resided in the Baltimore County Council. In that case, the Prince George's County Council was required, before engaging in any reclassification of its zoning, to submit the proposed change "to the governing body of the municipality [the City of Greenbelt] for its recommendation." 248 Md. at 215. Such a recommendation, however, was only of "an advisory nature . . . and not binding on the [County] Council." *Id.*

In the *Bresler* case, the Court of Appeals held that the City of Greenbelt had entered into a binding contract with the Breslers. "As an inducement to obtaining favorable recommendation from the City, the Breslers entered into two agreements." 248 Md. at 212. In one of those agreements, the Breslers entered into a sealed declaration of covenants and recorded them among the Land Records. In the second agreement, the Breslers agreed to donate 3.3 acres of land to the City of Greenbelt for use as a park and recreational area. "This agreement was expressly conditioned upon the favorable granting of the requested rezoning." 248 Md. at 213. Pursuant to the agreements, the City of Greenbelt forwarded its favorable recommendation to the Prince George's County Council, which, in turn, granted the Bresler's rezoning application. The Breslers subsequently argued that the agreements were null and void as an instance of illegal contract zoning. The Court of Appeals thoroughly reviewed the case law dealing with illegal contract zoning and pointed out that contract zoning only takes place when the contract is with the ultimate zoning authority and not with

analysis of which must abide some future occasion. See, however, *Wickfield v. Kraft*, 202 Md. 136, 96 A.2d 27 (1953); *Rose v. Paape*, 221 Md. 169, 176-77, 157 A.2d 618 (1960); *Carole Highlands Citizens Assoc. v. Prince George's County*, 222 Md. 44, 158 A.2d 663 (1960); *Montgomery County v. Nat'l Capital Realty*, 267 Md. 364, 373-75, 297 A.2d 675 (1972); *Bd. of County Comm'rs v. Holtz*, 65 Md. App. 574, 501 A.2d 489 (1985); *People's Counsel v. Mockard*, 73 Md. App. 340, 343-47, 533 A.2d 1344 (1967).

Whatever may have been the twistings and turnings of the Planning Board, there is no suggestion, let alone compelling evidence, and certainly no suggestion in the majority opinion of the Board of Appeals that the County Council, in its comprehensive zoning of 1992, was implicated in those twistings and turnings. There was no evidence that the County Council was involved in any scheming and plotting, let alone any contract zoning, to procure funding for the desired highway improvement. For all of the reasons discussed, the allegation of improper contract zoning is a non-issue in this case.

Were the ban on contract zoning far broader in its sweep, as seems to be urged by Beachwood, the allegation of contract zoning in this case would, indeed, be a two-edged sword. If we were to speculate that it was not the Planning Board specifically but Baltimore County generally, operating through all of its governmental arms, that sought to enter into a contractual relationship with Beachwood, we might have an instance of contract zoning far more subtle and far more devious than any that we have

thus far encountered in the case law. Ordinarily, a disfavored zoning contract consists of a single governmental agency offering favorable zoning in return for a commitment by the property owner.

The speculative scheme in this case, by contrast, would involve two separate actions by the County government undertaken by two different arms of that government. The first would consist of the County Council's taking away of preexisting favorable zoning. The second would then consist of the Board of Appeals's offering to give it back, totally or nearly, in return for a \$125,000 contribution to highway improvement. Ironically, Beachwood charges the County Council with engaging in forbidden contract zoning even as the appellants charge the Board of Appeals and Beachwood with violating the same taboo.

If the plot were as widespread as the appellants' and the appellee, in combination, suggest, Beachwood would find itself on the horns of a dilemma. If the comprehensive zoning of the County Council could be faulted for having set up an illegal contract zoning "deal," then the reclassification by the County Board of Appeals could with equal fervor be faulted for having consummated that "deal." Mercifully, this is a non-issue.

JUDGMENT REVERSED;
COSTS TO BE PAID BY APPELLEE.

R-93-309 /Beachwood I Ltd. Partnership
CSA REVERSED CCL (CCL AFFIRMED CBA)
(Moylan, Wenner, Cathell, JJ.) 12/1/95
(Concur. Opinion by Cathell, J.)

REPORTED

IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 239

September Term, 1995

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY, et al.

v.

BEACHWOOD I LIMITED PARTNERSHIP

Moylan,
Wenner,
Cathell,

JJ.

Concurring Opinion by Cathell, J.

Filed: December 1, 1995

some other governmental entity that is empowered to give recommendations

However, all of the foregoing cases involve a contract with the delegating authority, the agency which had formal control over the granting or denial of the requested zoning reclassification. We think there is a significant distinction between those cases where the contract is made between the developer and the zoning authority and those cases involving a contract entered into in good faith between the developer and a municipality which does not have control over the classification and whose authority is limited to recommendation.

248 Md. at 215-216.

A similar result was reached in *Faber v. Town of Somerset*, 249 Md. 211, 239 A.2d 748 (1968). The Court of Appeals agreed that a contract had been entered into by the property owners and the Town of Somerset. The Town of Somerset agreed to recommend to the Montgomery County Council the rezoning sought by the property owners. The property owners, in return, made commitments to the Town of Somerset. Significantly, however, the contract was only made with a governmental entity with the power to pass on a recommendation and not with a governmental entity empowered to enact the rezoning. The Court of Appeals held, citing *Greenbelt v. Bresler*, "This agreement was valid and was not contract zoning." 249 Md. at 328.

Because it is the only form of suspect zoning charged by Beachwood in this case, we have confined our analysis to contract zoning specifically and not to conditional zoning generally, a full

I agree with that portion of the opinion that holds that the Board, in its reclassification, failed to make sufficient findings required by the Chesapeake Bay Critical Area law. While the case is as to findings runs the gauntlet from "complete and comprehensive" to "findings sufficient to apprise one of the reasons for an administrative decision," what occurred here, in respect to the additional requirements of the "critical area" law, fails to meet the findings of fact conclusions of law" standard. Thus, while I do not necessarily agree with all of the reasoning of the balance of the opinion nor with my interpretations of the late Judge David-son's cases, *Re. Coppolino, Boyce, Dorsey*, I concur with the result reached. I also would reverse.

CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL CATEGORY 94CV1196/73/80 JUDICIAL REVIEW

PETITION OF PEOPLE'S COUNSEL
FOR BALTIMORE COUNTY

ATTORNEYS
PETER MAX ZIMMERMAN
PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

FOR JUDICIAL REVIEW OF THE
DECISION OF THE COUNTY BOARD OF
APPEALS OF BALTIMORE COUNTY

IN THE CASE OF: IN THE MATTER OF
BEACHWOOD I LIMITED PARTNERSHIP
FOR RECLASSIFICATION FROM D.R.1 to
E.R.3.5 ZONE ON PROPERTY LOCATED ON THE
EAST SIDE OF MORSE LANE,
NORTHEAST SIDE I-695 (POTAPSCO FREEWAY)
15th ELECTION DISTRICT
7th COUNCILMANIC DISTRICT
CASE NO. R-93-309m
(LITE) 7, CYCLE I)

PETITION OF ETHEL WEBER and
CABRINA DEMBOW
PETITION OF NORTH POINT COMMUNITY COUNCIL

John B. Gontrum, Esq. (Beachwood I Limited Partnership)
Romada, Gontrum & McLaughlin
P.A. 814 Eastern Blvd.
Essex, Md. 21221(410) 686-8211
Francis X. Borgerding, Jr.
409 Washington Ave. Suite 600
Towson, MD 21204 296-6820 Weber/Dembow
Virginia Tolbert, President (P.P.)
7741 North Point Creek Rd. 21219
(North Pt. Pen. Comm. Council)

- HJ (1) Feb. 10, 1994 Petition for Judicial Review, fd. Notice sent.
- (2) Feb. 18, 1994 Petition of Ethel Weber and Cabrina Dembow for Judicial Review, fd. Notice sent.
- (3) February 25, 1994 Certificate of Notice pursuant to MD Rule 7-202(e), fd. (rec'd 2-17-94)
- (4) February 25, 1994 Petition of NORTH POINT PENINSULA COMMUNITY COORDINATING COUNCIL for the Judicial Review of the decision of the County Board of Appeals, fd. (rec'd 2-16-94)
- (5) Feb. 25, 1994. Response To Petition For Judicial Review, fd. (rec'd 2-22-94)
- Feb. 29, 1994 Second Certificate of Notice fd. (rec'd 2-24-94)
- March 7, 1994. Claimant Amended Second Certificate of Notice, fd. (rec'd 3-1-94)

Mar. 4, 1994. Response of Beachwood I Limited Partnership to Petition of Ethel Weber and Cabrina Dembow for Judicial Review, fd. (received 3/7/94)

True Copy Test
Suzanne M. Mendenhall, Clerk

Case 94CV 01196

CASE NO. 94CV1196 73/80

*df (9) April 11, 1994 - Transcript of Record fd.

*df (10) April 11, 1994 - Notice of Filing of Record fd. Copies Sent.

(12) May 10, 1994 Stipulation of Delay in Filing of Appellants' Memorandum fd. (rec'd 5-9-94)

(13) May 11, 1994 People's Counsel's memorandum, fd.

(14) May 20, 1994 Petitioners ETHEL WEBER & CABRINA DEMBOW's Statement of the Case fd. rec'd 5-20-94

(15) June 14, 1994 - Amendment to Record Extract fd. (Filed 6/8/94.)

(16) June 14, 1994 - Stipulation that filing of the Memorandum has been extended through and until June 20, 1994 fd. (Filed 6/8/94).

(17) June 23, 1994 Appellee BEACHWOOD I LIMITED PARTNERSHIP's Statement of the Case fd. rec'd 6-23-94

TRANSCRIPT IN BASEMENT
LOCATION: 30x200

Sept. 22, 1994 Hon. John G. Turnbull, II. Hearing had. Case held sub-Curia. Opinion and Order to be filed.

(18) October 14, 1994 Order of Court AFFIRMING the reclassification granted by the Board of Appeals from D. R. 1 to D. R. 3.5, etc., fd. (JGTII)

CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL CATEGORY JUDICIAL REVIEW 68/143/93CV10861

PETITION OF THE PERRY HALL UNITED
METHODIST CHURCH
AND
KENNETH H. MASON, Individually

FOR JUDICIAL REVIEW OF THE COUNTY BOARD OF
APPEALS OF BALTIMORE COUNTY

CASE NO. 93-214-SPHX
AND
CASE NO. CBA 93-133

PETITION OF PEOPLE'S COUNSEL
FOR BALTIMORE COUNTY

ATTORNEYS

Francis X. Borgerding, Jr.
Suite 600
409 Washington Avenue
21204 296-6822

Charlotte E. Radcliffe
Legal Secretary, County Board
of Appeals, Rm. 49, Basement -
Old Courthouse, 400 Washington Ave.
21204 887-3180

John B. Gontrum
814 Eastern Blvd.
21221 686-8274
(Orville Jones)

TRANSCRIPT IN BASEMENT
LOCATION: Box 129

(19) Oct. 21, 1993 Petition for Judicial Review, fd. Notice sent.

(20) Dec. 23, 1993 Certificate of Notice from the County Board of Appeals fd. (rec'd 12-7-93)

(21) Dec. 30, 1993 - PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Petition for JUDICIAL REVIEW, fd. Filed 12/10/93.

(22) Jan. 7, 1994 Orville M. Jones answer to Petition for Judicial Review, fd. Rec'd 12/10/93.

(23) Jan. 11, 1994 - Second Certificate of Notice fd. (Filed 1/4/94).

(24) Feb. 1, 1994 - Transcript of Record fd.

(25) Feb. 1, 1994 - Notice of Filing of Record fd. Copies Sent.

(26) Feb. 15, 1994 Amended Answer of Orville M. Jones to Petition for Judicial Review, fd. (received 2/17/94)

(27) Feb. 28, 1994. People Counsel's Memorandum, fd. (rec'd 2/22/94)

(28) March 1, 1994 Appellants, Perry Hall United Methodist Church, memorandum, fd. (rec'd 3-1-94)

(29) March 21, 1994 - Stipulation of Delay in Filing of Appellees' Memorandum fd.

(30) April 11, 1994. Appellee's Memorandum, fd. (rec'd 4/8/94)

CIVIL COSTS 9310861
CV CLK 80.00
B LBY 10.00
CKCHECK TL 90.00
MSCKP CONC RM 75.00
10.00

Page 68 Page 143 Case 93CV 10861

The Circuit Court for Baltimore County
JUDICIAL REVIEW

PLAINTIFFS: THE PERRY HALL UNITED METHODIST CHURCH AND KENNETH H. MASON
DEFENDANTS: PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

CAUTION AND NOTICE

It has been called upon to review a ruling by the County Board of Appeals wherein it granted a petition for a property consisting of 144.9 acres from D.R. 3.5. The Court has reviewed the testimony, the record and argument by counsel. There were two periods, however, before considering the issues the fact it is necessary to expound upon the history of the property.

Perry is located in Back River area of Baltimore of Greenhill Cove and east of Morse Lane. Morse Lane from the property is an extensive Conrail

FILED OCT 13 1994

From the beginning of the zoning process until 1984 the property was zoned heavy manufacturing (MH-IM), which is the most intense industrial zoning allowed in Baltimore County. Plans had been proposed at that time to develop the property as an industrial park, but said plan never came to fruition.

In 1984 the zoning was changed from MH-IM to D.R. 5.5 which would have permitted five and one-half dwelling units per acre on the property. That zoning remained on the property until 1992 when the site was down-zoned to D.R. 1, which would allow one dwelling unit per acre. The residential property to the east is currently zoned D.R. 5.5 and as previously stated much of the adjacent property is zoned manufacturing, either MH-IM (manufacturing heavy) or MLR-IM (manufacturing light). The Board, after a hearing, found that the property had been erroneously downgraded to D.R. 1 and consequently granted the requested reclassification for D.R. 3.5. The Appellants raised several issues on appeal which will be addressed by this Court:

1. DID THE BOARD ERR IN GRANTING THE RECLASSIFICATION.

The law is clear that a reclassification may only be granted upon a showing of substantial probative evidence that there was mistake or error in the comprehensive zoning which took place in 1992. *Boyce v. Sembly*, 25 Md. App. 43, 50 (1975). This Court finds that there was such substantial evidence provided to the Board that they could indeed make a finding that there was error and accordingly could properly grant the reclassification.

There was clearly sufficient testimony and sufficient exhibits to support the findings of the Board, and one of the more dramatic exhibits which was used during argument before this Court was the aerial photograph of the subject property showing the uses and density of the surrounding area.

It is inconceivable to this Court that the Council could downgrade this property to D.R. 1 when that zoning would be completely incompatible with the surrounding zoning in this area. This Court questions why this property was ever changed from D.R. 5.5 when that is indeed the zoning of the adjacent property, saving and excepting the manufacturing zones hereinbefore referred to.

As quoted in *Tennison v. Shomette*, 38 Md. App. 1-5 (1977):

"once evidence strong enough to render the issue of rezoning fairly debatable is produced, the change in zoning will be upheld since it is not the function of the Court to substitute their judgment for that of the zoning authority".

Certainly a review of record in this case and a review of the testimony specifically renders that issue fairly debatable. Thus, this Court must affirm the Board of Appeals reclassification of the subject property. *Peoples' Council v. Williams*, 45 Md. App. 617 (1980).

2. DID THE BOARD MEET THE REQUIREMENTS OF THE BALTIMORE COUNTY CODE SECTION 2-356(j).

The Board under the code must consider various factors concerning water quality, conservation of habitat and consistency with critical area land use policies.

The Board had testimony before it provided by the Appellees land planning expert with regard to these areas. The Board addressed the various areas of concern and set forth its reasoning. Although it may not have been as articulate as Appellants desire, it satisfies the requirements of the Baltimore County Code.

3. DID THE COUNTY BOARD OF APPEALS MAKE SUFFICIENT FINDINGS OF FACT.

The Board, after due consideration, wrote a four page opinion setting forth the history of the property, testimony from various experts, i.e. a civil engineer, chief of traffic operations of Baltimore County, a planner from Baltimore County's Office of Planning and Zoning and traffic engineer.

The opinion not only sets forth the Board's reasoning but cites facts and the underlying basis for its opinion regarding error.

This Court finds that the Board complied with the requirements of the Baltimore County Code.

4. DID THE BOARD'S DECISION AMOUNT TO CONTRACT ZONING.

The Appellants last contend there was illegal contract zoning. This Court does not find that this allegation is substantiated from a review of the record. The allegation that somehow Petitioners had "contracts" with the Office of Planning and Zoning is mere allegation that there was contact between the owners of the property and the Office of Planning and Zoning. There is no evidence that there was a "contract" between the parties.

site plan as submitted proposed 366 units which computes to a density of 2.6. Under the 3.5 requested density, 507 units would be possible. He further testified that the documented site plan addresses all community concerns, and further noted that there are no failing intersections presently on-site and that there is no school moratorium in the area, and it was his opinion that the D.R. 1 was in fact in error.

Steven Weber, Chief of the traffic operation for Baltimore County, noted the problems with the intersection. His office approved the traffic situation as allowed under D.R. 1 and D.R. 2, and that improvements to the intersection were necessary under the proposed zoning. He testified that the Developer agreed to the intersection improvements, and that the State Highway Administration, after much consultation, also approved the changes to the intersection.

Jeffrey Long, Planner for Baltimore County's Office of Planning & Zoning, testified that the Developer must make the intersection improvements, and once these improvements were made, his office was in agreement that the D.R. 3.5 was an acceptable zone. The Master Plan says that D.R. 1, D.R. 2 or D.R. 3.5 are all acceptable zoning designations for the site. He testified further that the Planning staff has met with the Developer, and all of the conditions requested will be complied with. On redirect, he testified that P. David Fields, Director of the Office of Planning & Zoning, also agreed that the proposed zoning was reasonable.

Robert Small, the area engineer in the Access Permits

Division, State Highway Administration (SHA), testified that if the zoning is approved the County must comply with SHA's comments.

Patricia Winter, from the Chamber of Commerce in Dundalk, and Patrick Welch, from O'Connor, Piper & Flynn, both testified as to the need for single-family homes in this area.

Wes Guckert, a Traffic Engineer, studied this site extensively and considered all the nearby intersections and sight distances, and it was his determination that, if the intersection were improved, there would be no problem from traffic use.

Samuel Crozier, an expert land planner, testified that he has studied this site, and it was his opinion that the D.R. 1 zoning is in error. He noted that one has to go almost 5 miles from the site to find any D.R. 1, which makes it totally out of character with the area. He further testified that it is recommended for low density urban residential, and low density refers to 3.5. He further testified that the Growth Management Plan should conform to the "built-out" area nearby, and that D.R. 1 does not comply with this and D.R. 3.5 does. It was his expert opinion that there is no reason to zone this property D.R. 1 since all services are available, there are no problems at D.R. 3.5 under the documented site plan, the proposed use is compatible with all other uses in the area, and D.R. 3.5 and not D.R. 1 was the proper zoning for this parcel.

In addition to the above witnesses, the Protestants offered the testimony of several neighbors in the area who testified in opposition to the D.R. 3.5 zoning, and also offered the expert

testimony of Norman Gerber. Mr. Gerber's testimony was to the effect that D.R. 1 zoning was the "best" middle road proposed use and that, in his expert opinion, he did not consider it to be error committed by the County Council in zoning the property D.R. 1.

The Board has carefully reviewed and considered the evidence and testimony presented in these proceedings, and finds that the testimony presented by the Petitioner and, particularly, the expert testimony given by Mr. Crozier with his supporting reasons, supports a finding of fact that the subject property was erroneously zoned by the County Council, and that there is no logical reason for the property to be down-zoned from D.R. 5.5 to D.R. 1. We find that the facts presented by the Petitioner in its case indicate that the D.R. 1 zoning is in fact in error, and the Board will therefore find that the requested reclassification from D.R. 1 to D.R. 3.5 should be granted and will so order.

ORDER

IT IS THEREFORE this 21st day of January, 1994 by the County Board of Appeals of Baltimore County

ORDERED that the Petition for Reclassification from D.R. 1 to D.R. 3.5 be and is hereby GRANTED.

Any petition for judicial review from this decision must be made in accordance with Rules 7-201 through 7-210 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett
William T. Hackett, Chairman
Michael B. Sauer

IN THE MATTER OF
THE APPLICATION OF
BEACHWOOD I LIMITED PARTNERSHIP
FOR A ZONING RECLASSIFICATION
FROM D.R. 1 TO D.R. 3.5 ON
PROPERTY LOCATED ON THE EAST SIDE
OF MORSE LANE, NORTHEAST SIDE I-695
(PATAPSCO FREEWAY)
15TH ELECTION DISTRICT
7TH COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. R-93-309
* Cycle I, 1993

DISSENTING OPINION

This matter comes before the Board on a Petition for Zoning Reclassification filed by the Petitioner, Beachwood I Limited Partnership, requesting a change from existing D.R. 1 zoning classification to D.R. 3.5. The Petitioner appeared represented by John B. Gontrum, Esquire. People's Counsel for Baltimore County participated in the proceedings, and evidence and testimony was taken before this Board on November 24, 1993.

The basic test considered in a contention of error is whether the County Council made a basic and actual mistake, as that term is used in zoning law, when it adopted a comprehensive zoning map placing the subject property in its present classification.

The burden of proof on a petitioner alleging error or mistake in the original or last comprehensive zoning of a property is described as onerous since a strong presumption of correctness attaches to such zoning, requiring a substantial demonstration that the legislative body made a basic and actual mistake at the time it classified the property through the original or last comprehensive zoning. Bartnik v. Calvert County Hosp., 262 Md. 434, 277 A.2d 596 (1971)

It is presumed, as part of the presumption of validity accorded comprehensive zoning, that at the time of the adoption of the map the Council had before it and did, in fact, consider all of

the relevant facts and circumstances then existing. Thus, in order to establish error based upon a failure to take existing facts or events reasonably foreseeable of traction into account, it is necessary not only to show the facts that existed at the time of the comprehensive zoning but also which, if any, of those facts were not actually considered by the Council. This evidentiary burden can be accomplished by showing that specific physical facts were not readily visible or discernible at the time of the comprehensive zoning...by adducing testimony on the part of those preparing the plan that then existing facts were not taken into account, ...or by producing evidence that the Council failed to make any provision to accommodate a project, trend or need which it, itself, recognized as existing at the time of the comprehensive zoning...

...[U]nless there is probative evidence to show that there were then existing facts which the Council, in fact, failed to take into account, or subsequently occurring events which the Council could not have taken into account, the presumption of validity accorded to comprehensive zoning is not overcome.... Boyce v. Sembly, 25 Md. App. 43, 334 A.2d 137 (1975)

It is clear from the evidence in this case that the traffic problem about which Petitioner offers much proof and evidence as the main force behind the Council's down-zoning this property from D.R. 3.5 to D.R. 1 was clearly in existence as a fact at the time of the adoption of the map that the Council had before it. Furthermore, upon examining People's Counsel Exhibit 13, which comprises the file kept by Councilman Mason on this matter, that it

contains the letters dated September 11, 1992 from Steven E. Weber, Assistant Traffic Engineer, to Jackie MacMillan, Community Planner in the Office of Planning & Zoning, as well as the attached letters from John Contestabile, Chief of the Engineering Access Permits Division, State Highway Administration, directed to Wes Guckert of The Traffic Group, Inc., Petitioner's expert witness, as well as a letter dated October 5, 1992 from P. David Fields, Director of Planning & Zoning, to Councilman Mason. In each of those letters, one can find a discussion of the sight distance and turning movement problems at the intersection of North Point Boulevard and Morse Lane. Section 2-356 requires the Board to consider the availability and adequacy of present and proposed transportation facilities. The letter from Mr. Weber observes that, while at D.R. 1 a sight problem exists, the thrust of his testimony demonstrates that even with development at D.R. 1 no congestion will result in the streets.

It is a well-known but not well-documented practice in Baltimore County that each Council person, when adopting the comprehensive zoning map and deciding upon the issues contained in the Log of Issues for changes to the map, defers to the other with regard to the issues raised in each respective Council district. While we cannot divine the actual legislative intent of the Council, clearly the Council had before it, through Mr. Mason's files, who would be the Council person in whose district the Petitioner's land lies, the existence of these traffic problems. Certainly the Council had before it all of the relevant facts and circumstances then existing concerning the problem at the

intersection of Morse Lane and North Point Boulevard, and the evidence before us demonstrates that it did. Additionally, Councilman Mason's file contains a memorandum to the Councilman and to Mike Johnson from Jackie MacMillan, the Area Planner, dated October 8, 1992, which shows the potential number of dwelling units that could be built under different zoning designations, and refers to the fact that a large portion of both areas to be considered under Issues 7-005 and 7-016 fall within the Chesapeake Bay Critical Areas, and are designated Limited Development Areas. Furthermore, an explanation is contained in that memorandum as to the limitations on gross density, and how one calculates the density for permitted development given the amount of acreage and the different prospective zonings that could be applied to the site. Furthermore, Councilman Mason's file contains comments from J. James Dieter, Director of DEPRM, indicating that, with respect to Issue 7-005, the proposed zoning (D.R. 1) was consistent with the goals of the Department because of the necessity to protect erodible slopes, streams and wetlands, and forests on the subject site. The evidence persuades me that the County Council had before it all of the relevant facts and circumstances then existing, not only as to the traffic issue but as to the environmental constraints placed on the site.

I have no doubt that the D.R. 1 zoning placed on this site following the recommendation of the Planning Board resulted from the intentional action of the Council and not as a result of any mistake, nor as the result of an error as the same is defined in the body of case law in Maryland interpreting that zoning concept.

Although I am mindful of the provisions of the Baltimore County growth management program guidelines for the comprehensive zoning map process as they are outlined for community conservation areas, and as referenced in the opinion of Mr. Crozier, Petitioner's land planning expert, to the effect that, where a community plan had not yet been approved by the Planning Board, residential zoning of land should be elevated to the existing ("built-out") density in the surrounding area or neighborhood, this remains a guideline. Certainly it ought not outweigh the specific decision made by the Planning Board with regard to the particular Issues #7-005 and #7-016 as presented to the County Council. Furthermore, even the decision of the Planning Board does not bind the County Council, but since it is consistent with the zoning placed upon the subject site by the County Council, it lends further credence to the rationale that the D.R. 1 zone placed upon the subject site results from the contemplative and deliberative process of the County Council, and not from any mistake or error, particularly in light of the fact that the D.R. 1 zoning permits a reasonable use of the land and residential development. Therefore, I would deny the Petition.

William Clark
C. William Clark

DATE: January 21, 1994

The simple answer to this allegation is that the Board had more than sufficient testimony before to find the issue fairly debatable and this Court will not substitute its judgment for that of the Board of Appeal.

Accordingly, it is this 12th day of October, 1994,

ORDERED, by the Circuit Court for Baltimore County, that the reclassification granted by the Board of Appeals from D.R. 1 to D.R. 3.5 be, and the same is hereby AFFIRMED.

True Copy Test
for People's Counsel

JOHN GRASON TURNBULL, II
JUDGE

Copies sent to: John B. Gontrum, Esquire
Francis X. Borgerding, Esquire
Peter Max Zimmerman, Esq./Carole S. Demilio, Esq.

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITIONS OF
PEOPLE'S COUNSEL FOR BALTIMORE COUNTY
Room 47, Old Courthouse
400 Washington Avenue, Baltimore, MD 21204 AND

ETHEL WEBER
4506 Todd Point Lane, Balto., MD 21219

CABRINA DEMBOW
4544 Todd Point Lane, Balto., MD 21219

FOR JUDICIAL REVIEW OF THE DECISION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
Room 49, Old Courthouse
400 Washington Ave., Baltimore, MD 21204

IN THE CASE OF: IN THE MATTER OF
BEACHWOOD I LIMITED PARTNERSHIP
FOR A ZONING RECLASSIFICATION FROM
D.R. 1 TO D.R. 3.5 ON PROPERTY LOCATED
ON THE EAST SIDE OF MORSE LANE, NE/SIDE
I-695 (PATAPSCO FREEWAY)
15TH ELECTION DISTRICT
7TH COUNCILMANIC DISTRICT
CASE NO. R-93-309
(ITEM 7, CYCLE 1)

PROCEEDINGS BEFORE THE
COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come William T. Hackett and Michael B. Sauer, constituting a majority of the County Board of Appeals of Baltimore County, and in answer to the Petition for Judicial Review 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 Zoning Administration and Development Management and the Board of Appeals of Baltimore County:

ENTRIES FROM THE DOCKET OF THE BOARD OF APPEALS AND
OFFICE OF ZONING ADMINISTRATION AND DEVELOPMENT MANAGEMENT
OF BALTIMORE COUNTY

No. R-93-309

March 1, 1993 Petition for Zoning Reclassification from D.R.

CIVIL
ACTION
No. 94-CV-01196
7/3/80

RECEIVED AND FILED
APR 11 AM 11:17
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

R-93-309, Beachwood I Ltd. Partnership
File No. 94-CV-01196/73/80

1 to D.R. 3.5 filed by John B. Gontrum, Esquire, in behalf of Beachwood I Limited Partnership, Petitioner.

September 16, 1993 Publication in newspapers.

September 21 Hearing held before the Board for the purpose of submitting in open hearing and on the record an Amended Documented Site Plan only; no evidence or testimony taken at this time.

October 22 Planning Board Comments.

November 2 Hearing held before the Board of Appeals.

November 29 Hearing completed before the Board of Appeals.

December 29 Open deliberation by the Board; majority decision of Board that Petition for Reclassification is granted; written Opinion and Order to be issued.

December 29 Opinion and Order of the Board that the Petition for Reclassification to D.R. 3.5 is GRANTED; Dissenting Opinion written by C. William Clark.

February 10, 1994 Petition for Judicial Review filed in the Circuit Court for Baltimore County by People's Counsel for Baltimore County.

February 15 Copy of Petition for Judicial Review received by the Board of Appeals from the Circuit Court for Baltimore County.

February 17 Certificate of Notice sent to interested parties.

February 18 Second Petition for Judicial Review filed in the Circuit Court for Baltimore County by Francis X. Borgerding, Jr., Esquire, on behalf of Ethel Weber and Cabrina Dembow, Petitioners.

February 22 Copy of Second Petition for Judicial Review received by the Board of Appeals from the Circuit Court for Baltimore County.

February 24 Second Certificate of Notice sent to interested parties.

March 1 Amended Second Certificate of Notice sent to interested parties (amended to include Notice to Counsel for Petitioners, inadvertently omitted from Second Certificate of Notice).

April 11 Transcript of testimony filed.

R-93-309, Beachwood I Ltd. Partnership
File No. 94-CV-01196/73/80

Petitioner's Exhibits No. 1 -1000 scale zoning map /color coded.
2 -200 scale zoning map
3A-Aerial Photo 1963
3B-Aerial Photo 1977
3C-Aerial Photo 1992 (#3A thru #3C in Board's exhibit closet)
4 -Site Plan
5 -CRG Plan /December 22, 1982
6 -St. Highway Comments 1/29/93
7 -Community Impact Minutes 3/12/93
8 -St. Highway Admin Ltr 11/30/92
9 -Inter-Off. Corresp. /Fields to Jablon 1/28/93
10 -Cr Areas Finding Plan
11 -Interoffice corresp. -Fields to Mason 10/05/92
12 -Resolution Eastern Balto Area Ch of Comm
13 -Traffic Group Report
14A-D -Photographs
15A-Growth Mgmt Guidelines
B-Land Use Map
16 -1/29/92 Memo from Weber
17 -Plat of Todd Point Land

People's Counsel Exhibits No. 1 -9/23/93 Memo from Traffic to People's Counsel
2 -9/11/92 Memo from Traffic to Planning
3 -9/01/92 Memo from St. Highway Admin
4 -Bill 189 /Council Minutes
5 -Comments of OPZ
6 -10/12/93 Comments to OPZ to Pl Bd
7 -Log of Issues
8 -Memo 10/22/93 Fields to Hackett
9 -PC Attendance List
10 -11/08/93 Ltr from St Highway to C. Minton
11 -Photo I-695/Md 151/MD 158 Interchange
12 -Log of Issues
13 -Folder from Don Mason
13A -1/30/92 Comment 7-005
B -Letters stapled together re traffic
C -Inter Off Corresp
D -Traffic Letters
E -Memo from McMillan 10/08/92 7-005/7-016

R-93-309, Beachwood I Ltd. Partnership
File No. 94-CV-01196/73/80

F -Tax Map
G -Handwritten list of names
14 -Appendix 4-B Co Reg Cr Area Doc
15 -Chesapeake Bay Ltd Dev Area
16 -CV of Norman Gerber
17 -Photos
18 -1000 scale zoning map (large w/overlay)
19 -Planning Bd Report Oct. 20, 1997
20 -Bill 122-78
21 -Attendance Sheet

April 11, 1994 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,

Charlotte E. Radcliffe
Kathleen C. Weidenhammer
Administrative Assistant
County Board of Appeals of Baltimore County, Room 49, Basement - Old Courthouse
400 Washington Avenue
Towson, MD 21204 (410) 887-3180

cc: People's Counsel for Baltimore County
John B. Gontrum, Esquire
Nancy E. Paige, Esquire
R. Bruce Alderman /Beachwood I Ltd. Partnership
Francis X. Borgerding, Jr., Esquire
Ms. Ethel Weber
Ms. Cabrina Dembow

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITIONS OF
PEOPLE'S COUNSEL FOR BALTIMORE COUNTY
Room 47, Old Courthouse
400 Washington Avenue, Baltimore, MD 21204 AND

ETHEL WEBER
4506 Todd Point Lane, Balto., MD 21219

CABRINA DEMBOW
4544 Todd Point Lane, Balto., MD 21219

FOR JUDICIAL REVIEW OF THE DECISION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
Room 49, Old Courthouse
400 Washington Ave., Baltimore, MD 21204

IN THE CASE OF: IN THE MATTER OF
BEACHWOOD I LIMITED PARTNERSHIP
FOR A ZONING RECLASSIFICATION FROM
D.R. 1 TO D.R. 3.5 ON PROPERTY LOCATED
ON THE EAST SIDE OF MORSE LANE, NE/SIDE
I-695 (PATAPSCO FREEWAY)
15TH E.D.; 7TH C.D.
CASE NO. R-93-309
(ITEM 7, CYCLE 1)

AMENDMENT TO RECORD EXTRACT
The following dates are corrected pursuant to this amendment to the Record Extract filed with the Circuit Court for Baltimore County on April 11, 1994 in Case No. 94-CV-01196:

November 24, 1993 Hearing completed before the Board of Appeals.

January 21, 1994 Opinion and Order of the Board that the Petition for Reclassification to D.R. 3.5 is GRANTED; Dissenting Opinion written by C. William Clark.

Respectfully submitted,
Charlotte E. Radcliffe
Kathleen C. Weidenhammer
Administrative Assistant
County Board of Appeals of Baltimore County, Room 49, Basement - Old Courthouse
400 Washington Avenue
Towson, MD 21204 (410) 887-3180

cc: People's Counsel for Baltimore County
John B. Gontrum, Esquire
Nancy E. Paige, Esquire
R. Bruce Alderman /Beachwood I Ltd. Partnership
Francis X. Borgerding, Jr., Esquire
Ms. Ethel Weber
Ms. Cabrina Dembow

RECEIVED AND FILED
JUN -8 PM 12:34
BALTIMORE COUNTY

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF ETHEL WEBER
4506 Todd Point Lane, Balto., MD 21219

AND
CABRINA DEMBOW
4544 Todd Point Lane, Balto., MD 21219

FOR JUDICIAL REVIEW OF THE DECISION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
Room 49, Old Courthouse
400 Washington Ave., Baltimore, MD 21204

IN THE CASE OF: IN THE MATTER OF
BEACHWOOD I LIMITED PARTNERSHIP
FOR A ZONING RECLASSIFICATION FROM
D.R. 1 TO D.R. 3.5 ON PROPERTY LOCATED
ON THE EAST SIDE OF MORSE LANE, NE/SIDE
I-695 (PATAPSCO FREEWAY)
15TH ELECTION DISTRICT
7TH COUNCILMANIC DISTRICT
CASE NO. R-93-309
(ITEM 7, CYCLE 1)

AMENDED SECOND CERTIFICATE OF NOTICE
(Amended to include Notice to Attorney for Petitioners)
Madam Clerk:

Pursuant to the provisions of Rule 7-202(e) of the Maryland Rules of Procedure, William T. Hackett and Michael B. Sauer, constituting a majority of the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely, Francis X. Borgerding, Jr., Esquire, and DINENNA AND BRESCHI, 409 Washington Avenue, Suite 600, Towson, MD 21204, Counsel for Petitioners; Ethel Weber, 4506 Todd Point Lane, Baltimore, MD 21219, and Cabrina Dembow, 4544 Todd Point Lane, Baltimore, MD 21219, Petitioners; John B. Gontrum, Esquire, ROMADKA, GONTRUM & MCLAUGHLIN, 814 Eastern Boulevard, Baltimore, MD 21221, Counsel for Beachwood I Ltd. Partnership; R. Bruce Alderman, President, Signal Development Corp./Beachwood I Ltd. Partnership, 108 West Timonium Road, Timonium, MD 21093; Nancy E. Paige, Esquire, GORDON, FEINBLATT, ROTHMAN, HOFFBERGER & HOLLANDER, The Garrett Building, 233 E. Redwood Street, Baltimore, MD 21202; and Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Room 47, Old Courthouse, 400 Washington Avenue, Towson, MD 21204, this 1st day of March, 1994.

R-93-309, Beachwood I Ltd. Partnership
File No. 94-CV-01196/73/80 /Second Notice

108 West Timonium Road, Timonium, MD 21093; Nancy E. Paige, Esquire, GORDON, FEINBLATT, ROTHMAN, HOFFBERGER & HOLLANDER, The Garrett Building, 233 E. Redwood Street, Baltimore, MD 21202; and Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Room 47, Old Courthouse, 400 Washington Avenue, Towson, MD 21204, a copy of which Notice is attached hereto and prayed that it may be made a part hereof.

Kathleen C. Weidenhammer
Administrative Assistant
County Board of Appeals, Room 49 -Basement
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410) 887-3180

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to Francis X. Borgerding, Jr., Esquire, and DINENNA AND BRESCHI, 409 Washington Avenue, Suite 600, Towson, MD 21204, Counsel for Petitioners; Ethel Weber, 4506 Todd Point Lane, Baltimore, MD 21219, and Cabrina Dembow, 4544 Todd Point Lane, Baltimore, MD 21219, Petitioners; John B. Gontrum, Esquire, ROMADKA, GONTRUM & MCLAUGHLIN, 814 Eastern Boulevard, Baltimore, MD 21221, Counsel for Beachwood I Ltd. Partnership; R. Bruce Alderman, President, Signal Development Corp./Beachwood I Ltd. Partnership, 108 West Timonium Road, Timonium, MD 21093; Nancy E. Paige, Esquire, GORDON, FEINBLATT, ROTHMAN, HOFFBERGER & HOLLANDER, The Garrett Building, 233 E. Redwood Street, Baltimore, MD 21202; and Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Room 47, Old Courthouse, 400 Washington Avenue, Towson, MD 21204, this 1st day of March, 1994.

Kathleen C. Weidenhammer
Administrative Assistant
County Board of Appeals, Room 49 -Basement
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410) 887-3180

Description to Accompany Petition
for Zoning Reclassification
"BEACHWOOD ESTATES"

September 17, 1993
page -2-

- 11A) South 67 degrees 49 minutes 25 seconds West 165.00 feet,
11B) South 22 degrees 09 minutes 05 seconds East 300.00 feet and
11C) North 67 degrees 49 minutes 25 seconds East 165.00 feet to the
southwest side of said Shore Road (20 feet wide), running thence
binding on the southwest side of said Shore Road, the two
following courses, viz:
11D) South 22 degrees 09 minutes 05 seconds East 5.27 feet and
11E) South 07 degrees 31 minutes 22 seconds East 0.23 feet to the
beginning of the 9th line of said First Parcel, running thence
continuing to bind on the southwest side of said Shore Road (20
feet wide) and binding on all of said 9th line and all of the 10th
line of said First Parcel, in all,
12) South 07 degrees 31 minutes 22 seconds East 292.44 feet, running
thence continuing to bind on the southwest side of said Shore Road
(20 feet wide) and binding on all of 11th and 12th lines of said
First Parcel, in all,
13) South 42 degrees 31 minutes 22 seconds East 790.31 feet to the end
of said Shore Road, running thence binding on the end of said
Shore Road and binding on all of the 13th line of said First
Parcel,
14) North 47 degrees 28 minutes 36 seconds East 226.97 feet to the
apparent mean high water line of Back River, thence binding on the
apparent mean high water line of Back River and on the 14th thru
the 31th lines of said First Parcel, the eighteen following
courses, viz:
15) South 21 degrees 32 minutes 10 seconds East 17.32 feet,
16) South 18 degrees 48 minutes 00 seconds East 6.00 feet,
17) South 10 degrees 25 minutes 10 seconds West 2.00 feet,
18) South 04 degrees 35 minutes 40 seconds East 20.65 feet,
19) South 00 degrees 24 minutes 40 seconds East 24.84 feet,
20) South 10 degrees 18 minutes 00 seconds East 35.57 feet,
21) South 25 degrees 54 minutes 00 seconds East 57.20 feet,
22) South 40 degrees 00 minutes 00 seconds East 24.36 feet,
23) South 66 degrees 47 minutes 50 seconds East 31.30 feet,
24) South 40 degrees 07 minutes 40 seconds East 27.61 feet,
25) South 25 degrees 30 minutes 00 seconds East 13.97 feet,
26) South 59 degrees 06 minutes 30 seconds East 17.79 feet,
27) South 18 degrees 32 minutes 00 seconds East 6.56 feet,
28) South 66 degrees 24 minutes 50 seconds East 29.31 feet,
29) South 11 degrees 09 minutes 00 seconds East 17.52 feet,
30) South 44 degrees 48 minutes 10 seconds East 16.67 feet,
31) South 13 degrees 20 minutes 10 seconds West 11.06 feet and
32) South 47 degrees 26 minutes 40 seconds East 19.27 feet to the
apparent mean high water line of Greenhill Cove, thence binding on

Description to Accompany Petition
for Zoning Reclassification
"BEACHWOOD ESTATES"

September 17, 1993
page -3-

- the apparent mean high water line of Greenhill Cove and on the
32th thru the 107th lines of said First Parcel, the seventy six
following courses, viz:
33) South 17 degrees 11 minutes 30 seconds West 71.89 feet,
34) South 75 degrees 58 minutes 30 seconds West 7.15 feet,
35) South 04 degrees 19 minutes 50 seconds West 19.32 feet,
36) South 37 degrees 58 minutes 00 seconds West 22.24 feet,
37) South 37 degrees 28 minutes 20 seconds West 33.46 feet,
38) South 16 degrees 00 minutes 00 seconds West 43.89 feet,
39) South 34 degrees 12 minutes 20 seconds West 17.99 feet,
40) South 18 degrees 26 minutes 00 seconds West 35.58 feet,
41) South 48 degrees 18 minutes 10 seconds West 29.64 feet,
42) South 24 degrees 07 minutes 20 seconds West 44.37 feet,
43) South 17 degrees 36 minutes 18 seconds West 65.10 feet,
44) South 67 degrees 23 minutes 10 seconds West 25.57 feet,
45) South 22 degrees 31 minutes 40 seconds West 35.58 feet,
46) South 41 degrees 29 minutes 00 seconds West 32.92 feet,
47) South 79 degrees 58 minutes 30 seconds West 39.15 feet,
48) North 49 degrees 21 minutes 20 seconds West 48.95 feet,
49) North 44 degrees 58 minutes 30 seconds West 37.27 feet,
50) North 00 degrees 40 minutes 20 seconds West 47.98 feet,
51) North 41 degrees 19 minutes 20 seconds West 24.42 feet,
52) South 55 degrees 36 minutes 10 seconds West 48.74 feet,
53) South 37 degrees 15 minutes 00 seconds West 100.07 feet,
54) South 63 degrees 24 minutes 10 seconds West 30.01 feet,
55) South 22 degrees 50 minutes 00 seconds West 88.89 feet,
56) South 35 degrees 43 minutes 40 seconds West 44.12 feet,
57) South 64 degrees 23 minutes 50 seconds West 40.08 feet,
58) North 71 degrees 38 minutes 10 seconds West 12.65 feet,
59) South 44 degrees 58 minutes 10 seconds West 36.14 feet,
60) South 79 degrees 14 minutes 40 seconds West 47.70 feet,
61) South 38 degrees 29 minutes 30 seconds West 79.48 feet,
62) North 66 degrees 09 minutes 00 seconds West 20.65 feet,
63) South 55 degrees 24 minutes 50 seconds West 45.01 feet,
64) South 63 degrees 34 minutes 20 seconds West 22.31 feet,
65) South 49 degrees 23 minutes 20 seconds West 57.55 feet,
66) South 79 degrees 43 minutes 50 seconds West 67.92 feet,
67) North 79 degrees 14 minutes 50 seconds West 36.14 feet,
68) South 65 degrees 47 minutes 30 seconds West 45.27 feet,
69) South 72 degrees 42 minutes 30 seconds West 68.55 feet,
70) South 82 degrees 50 minutes 50 seconds West 30.02 feet,
71) North 77 degrees 39 minutes 40 seconds West 28.34 feet,
72) South 61 degrees 56 minutes 40 seconds West 57.38 feet,
73) South 77 degrees 51 minutes 50 seconds West 60.39 feet,

Description to Accompany Petition
for Zoning Reclassification
"BEACHWOOD ESTATES"

September 17, 1993
page -4-

- 74) South 35 degrees 45 minutes 30 seconds West 56.99 feet,
75) South 17 degrees 52 minutes 30 seconds West 61.20 feet,
76) South 08 degrees 44 minutes 50 seconds West 43.45 feet,
77) South 72 degrees 11 minutes 40 seconds West 36.20 feet,
78) South 20 degrees 03 minutes 00 seconds West 38.02 feet,
79) South 11 degrees 24 minutes 30 seconds West 61.38 feet,
80) South 33 degrees 16 minutes 30 seconds West 37.34 feet,
81) South 14 degrees 31 minutes 30 seconds West 50.12 feet,
82) South 17 degrees 48 minutes 30 seconds East 64.45 feet,
83) South 09 degrees 45 minutes 50 seconds East 65.47 feet,
84) South 12 degrees 34 minutes 10 seconds East 60.89 feet,
85) South 06 degrees 25 minutes 30 seconds East 59.44 feet,
86) South 10 degrees 10 minutes 10 seconds East 75.81 feet,
87) South 21 degrees 03 minutes 40 seconds West 33.39 feet,
88) South 01 degrees 58 minutes 40 seconds West 56.98 feet,
89) South 59 degrees 48 minutes 50 seconds West 22.37 feet,
90) South 17 degrees 03 minutes 00 seconds West 64.31 feet,
91) South 27 degrees 24 minutes 40 seconds West 58.61 feet,
92) South 58 degrees 28 minutes 20 seconds West 27.99 feet,
93) South 04 degrees 18 minutes 20 seconds West 42.01 feet,
94) North 78 degrees 37 minutes 20 seconds West 51.71 feet,
95) South 88 degrees 37 minutes 20 seconds West 56.47 feet,
96) North 63 degrees 49 minutes 30 seconds West 38.29 feet,
97) North 79 degrees 54 minutes 30 seconds West 50.38 feet,
98) North 63 degrees 08 minutes 10 seconds West 98.52 feet,
99) North 52 degrees 38 minutes 10 seconds West 34.40 feet,
100) North 63 degrees 13 minutes 40 seconds West 109.60 feet,
101) South 85 degrees 14 minutes 50 seconds West 116.40 feet,
102) South 68 degrees 18 minutes 50 seconds West 98.67 feet,
103) South 59 degrees 57 minutes 40 seconds West 78.62 feet,
104) South 59 degrees 37 minutes 10 seconds West 63.33 feet,
105) North 89 degrees 13 minutes 30 seconds West 35.00 feet,
106) North 71 degrees 57 minutes 00 seconds West 106.65 feet,
107) North 67 degrees 07 minutes 50 seconds West 47.25 feet and
108) South 44 degrees 32 minutes 00 seconds West 18.39 feet to
intersect the easterly Right of Way Line of Through Highway and
Right of Way Line of the Baltimore Beltway (Maryland Route No.
695) shown on State Roads Commission of Maryland Right of Way
Plat No. 42010 and No. 42012, thence leaving the waters of said
Greenhill Cove, binding on said easterly Right of Way Line of
Through Highway and Right of Way Line shown on said Plat No. 42010
binding on the 108th thru the 111th lines of said First Parcel,
the four following courses, viz:
109) North 09 degrees 56 minutes 22 seconds East 19.47 feet,

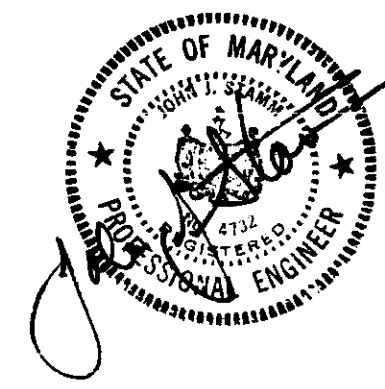
Description to Accompany Petition
for Zoning Reclassification
"BEACHWOOD ESTATES"

September 17, 1993
page -5-

- 110) North 01 degrees 47 minutes 17 seconds East 415.50 feet,
111) North 06 degrees 45 minutes 23 seconds East 329.14 feet and
112) North 15 degrees 55 minutes 21 seconds West 116.04 feet, running
thence binding on the 112th line of said First Parcel,
113) North 43 degrees 54 minutes 24 seconds East 46.74 feet, to the
easterly Right of Way Line shown on said Plat No. 42012,
running thence binding on said easterly Right of Way Line the
right of way line, binding on the 113th, 114th and 115th
lines of said First Parcel, the three following courses, viz:
114) North 18 degrees 09 minutes 25 seconds West 107.39 feet,
115) North 24 degrees 10 minutes 45 seconds West 418.89 feet and
116) North 24 degrees 10 minutes 27 seconds West 355.98 feet to the
point of beginning.

Containing 144.9339 Acres of Land more or less.

NOTE: THE ABOVE DESCRIPTION IS FOR ZONING PURPOSES ONLY AND IS NOT TO
BE USED FOR CONVEYANCES OR AGREEMENTS.



Description to Accompany Petition
for Zoning Reclassification
"BEACHWOOD ESTATES"

February 25, 1993
page -2-

- Beginning for the same at the intersection of the easternmost
right of way line of the Baltimore Beltway (Maryland Route No. 695)
shown on State Roads Commission Plat No. 42012 and the eastern right of
way line of Morse Lane (66 feet wide), said point of beginning having
Baltimore County Metropolitan District Coordinates of South 16669.03
and East 45308.17, said point of beginning also being at the end of the
108th of North 24 degree 10 minutes 27 seconds West 355.98 foot line of
that First Parcel of land described in a Deed dated November 19, 1981
between The Penn Central Corporation and Arroy Associates, recorded
among the Land Records of Baltimore County, Maryland in Liber E.H.K.,
Jr., 635A folio 232, running thence leaving said point of beginning,
1) North 24 degrees 10 minutes 27 seconds West 355.98 feet to a point
in the bed of Morse Lane, running thence parallel with and 30.00
feet westerly from the eastern right of way line of Morse Lane (66
feet wide), binding in the bed of said Morse Lane, the two
following courses, viz:
2) North 29 degrees 56 minutes 12 seconds East 560.22 feet and
3) North 00 degrees 23 minutes 35 seconds West 2388.99 feet, running
thence,
4) North 89 degrees 36 minutes 25 seconds East 30.00 feet to the
easterly right of way line of said Morse Lane, running thence
leaving said right of way line of Morse Lane,
5) South 71 degrees 02 minutes 24 seconds East 462.55 feet to the
dividing line between Lot Nos. 46 and 47 as shown on a plat
prepared by S.J. Martenet and Co. and recorded among the Plat
Records of Baltimore County, Maryland in Plat Book W.P.C. No. 7,
folio 163, running thence for part of the distance binding
on all of said dividing line and for part of the distance binding
on one-half of Shore Road (20.00 feet wide), in all,
6) South 21 degrees 05 minutes 52 seconds West 255.02 feet to the
center of said Shore Road (20.00 feet wide) as shown on said Plat
(W.P.C. No. 7, folio 163), running thence binding
in the center of said Shore Road (20.00 feet wide), the seven
following courses, viz:
7) South 72 degrees 15 minutes 05 seconds East 314.91 feet,
8) South 13 degrees 04 minutes 35 seconds East 564.26 feet,
9) South 47 degrees 31 minutes 05 seconds East 457.14 feet,
10) South 59 degrees 01 minutes 05 seconds East 520.51 feet,
11) South 22 degrees 09 minutes 05 seconds East 403.22 feet,
12) South 07 degrees 31 minutes 22 seconds East 290.80 feet and
13) South 42 degrees 31 minutes 22 seconds East 787.16 feet to the end

Description to Accompany Petition
for Zoning Reclassification
"BEACHWOOD ESTATES"

February 25, 1993
page -2-

- of said Shore Road, running thence binding for part of the
distance on one-half of the end of said Shore Road and for part of
the distance binding on the 7th line of said First Parcel,
14) North 47 degrees 28 minutes 36 seconds East 216.97 feet to the
apparent mean high water line of Back River thence binding on the
apparent mean high water line of Back River and on the 8th thru
the 25th lines of said Second First Parcel, the eighteen following
courses, viz:
15) South 21 degrees 32 minutes 10 seconds East 17.32 feet,
16) South 18 degrees 48 minutes 00 seconds East 6.00 feet,
17) South 10 degrees 25 minutes 10 seconds West 2.00 feet,
18) South 04 degrees 35 minutes 40 seconds East 20.65 feet,
19) South 00 degrees 24 minutes 40 seconds East 24.84 feet,
20) South 10 degrees 18 minutes 00 seconds East 35.57 feet,
21) South 25 degrees 54 minutes 00 seconds East 57.20 feet,
22) South 40 degrees 00 minutes 00 seconds East 24.36 feet,
23) South 66 degrees 47 minutes 50 seconds East 31.30 feet,
24) South 40 degrees 07 minutes 40 seconds East 27.61 feet,
25) South 25 degrees 30 minutes 00 seconds East 13.97 feet,
26) South 59 degrees 06 minutes 30 seconds East 17.79 feet,
27) South 18 degrees 32 minutes 00 seconds East 6.56 feet,
28) South 66 degrees 24 minutes 50 seconds East 29.31 feet,
29) South 11 degrees 09 minutes 00 seconds East 17.52 feet,
30) South 44 degrees 48 minutes 10 seconds East 16.67 feet,
31) South 13 degrees 20 minutes 10 seconds West 11.06 feet and
32) South 47 degrees 26 minutes 40 seconds East 19.27 feet to the
apparent mean high water line of Greenhill Cove thence binding on
the apparent mean high water line of Greenhill Cove and on the
26th thru the 101st lines of said First Parcel, the seventy six
following courses, viz:
33) South 17 degrees 11 minutes 30 seconds West 71.89 feet,
34) South 75 degrees 58 minutes 30 seconds West 7.15 feet,
35) South 04 degrees 19 minutes 50 seconds West 19.32 feet,
36) South 37 degrees 58 minutes 00 seconds West 22.24 feet,
37) South 37 degrees 28 minutes 20 seconds West 33.46 feet,
38) South 16 degrees 00 minutes 00 seconds West 43.89 feet,
39) South 34 degrees 12 minutes 20 seconds West 17.99 feet,
40) South 18 degrees 26 minutes 00 seconds West 35.58 feet,
41) South 48 degrees 18 minutes 10 seconds West 29.64 feet,
42) South 24 degrees 07 minutes 20 seconds West 44.37 feet,
43) South 17 degrees 36 minutes 18 seconds West 65.10 feet,
44) South 67 degrees 23 minutes 10 seconds West 25.57 feet,

Description to Accompany Petition
for Zoning Reclassification
"BEACHWOOD ESTATES"

February 25, 1993
page -3-

- 45) South 22 degrees 31 minutes 40 seconds West 35.59 feet,
46) South 41 degrees 29 minutes 00 seconds West 32.92 feet,
47) South 79 degrees 58 minutes 30 seconds West 39.15 feet,
48) North 49 degrees 21 minutes 20 seconds West 48.95 feet,
49) North 44 degrees 58 minutes 30 seconds West 37.27 feet,
50) North 00 degrees 40 minutes 20 seconds West 47.98 feet,
51) North 41 degrees 19 minutes 20 seconds West 24.42 feet,
52) South 55 degrees 36 minutes 10 seconds West 48.74 feet,
53) South 37 degrees 15 minutes 00 seconds West 100.07 feet,
54) South 63 degrees 24 minutes 10 seconds West 30.01 feet,
55) South 22 degrees 50 minutes 00 seconds West 88.89 feet,
56) South 35 degrees 43 minutes 40 seconds West 44.12 feet,
57) South 64 degrees 23 minutes 50 seconds West 40.08 feet,
58) North 71 degrees 38 minutes 10 seconds West 12.65 feet,
59) South 44 degrees 58 minutes 10 seconds West 36.14 feet,
60) South 79 degrees 14 minutes 40 seconds West 47.70 feet,
61) South 38 degrees 29 minutes 30 seconds West 79.48 feet,
62) North 66 degrees 09 minutes 00 seconds West 20.65 feet,
63) South 55 degrees 24 minutes 50 seconds West 45.01 feet,
64) South 63 degrees 34 minutes 20 seconds West 22.31 feet,
65) South 49 degrees 23 minutes 20 seconds West 57.55 feet,
66) South 79 degrees 43 minutes 50 seconds West 67.92 feet,
67) North 79 degrees 14 minutes 50 seconds West 36.14 feet,
68) South 65 degrees 47 minutes 30 seconds West 45.27 feet,
69) South 72 degrees 42 minutes 30 seconds West 68.55 feet,
70) South 82 degrees 50 minutes 50 seconds West 30.02 feet,
71) North 77 degrees 39 minutes 40 seconds West 28.34 feet,
72) South 61 degrees 56 minutes 40 seconds West 57.38 feet,
73) South 77 degrees 51 minutes 50 seconds West 60.39 feet,
74) South 35 degrees 45 minutes 30 seconds West 56.99 feet,
75) South 17 degrees 52 minutes 30 seconds West 61.20 feet,
76) South 08 degrees 44 minutes 50 seconds West 43.45 feet,
77) South 72 degrees 11 minutes 40 seconds West 36.20 feet,
78) South 20 degrees 03 minutes 00 seconds West 38.02 feet,
79) South 11 degrees 24 minutes 30 seconds West 61.38 feet,
80) South 33 degrees 16 minutes 30 seconds West 37.34 feet,
81) South 14 degrees 31 minutes 30 seconds West 50.12 feet,
82) South 17 degrees 48 minutes 30 seconds East 64.45 feet,
83) South 09 degrees 45 minutes 50 seconds East 65.47 feet,
84) South 12 degrees 34 minutes 10 seconds East 60.89 feet,
85) South 06 degrees 25 minutes 30 seconds East 59.44 feet,
86) South 10 degrees 10 minutes 10 seconds East 75.81 feet,
87) South 21 degrees 03 minutes 40 seconds West 33.39 feet,
88) South 01 degrees 58 minutes 40 seconds West 56.98 feet,
89) South 59 degrees 48 minutes 50 seconds West 22.37 feet,
90) South 17 degrees 03 minutes 00 seconds West 64.31 feet,
91) South 27 degrees 24 minutes 40 seconds West 58.61 feet,
92) South 58 degrees 28 minutes 20 seconds West 27.99 feet,
93) South 04 degrees 18 minutes 20 seconds West 42.01 feet,
94) North 78 degrees 37 minutes 20 seconds West 51.71 feet,
95) South 88 degrees 37 minutes 20 seconds West 56.47 feet,
96) North 63 degrees 49 minutes 30 seconds West 38.29 feet,
97) North 79 degrees 54 minutes 30 seconds West 50.38 feet,
98) North 63 degrees 08 minutes 10 seconds West 98.52 feet,
99) North 52 degrees 38 minutes 10 seconds West 34.40 feet,
100) North 63 degrees 13 minutes 40 seconds West 109.60 feet,
101) South 85 degrees 14 minutes 50 seconds West 116.40 feet,
102) South 68 degrees 18 minutes 50 seconds West 98.67 feet,
103) South 59 degrees 57 minutes 40 seconds West 78.62 feet,
104) South 59 degrees 37 minutes 10 seconds West 63.33 feet,
105) North 89 degrees 13 minutes 30 seconds West 35.00 feet,
106) North 71 degrees 57 minutes 00 seconds West 106.65 feet,
107) North 67 degrees 07 minutes 50 seconds West 47.25 feet and
108) South 44 degrees 32 minutes 00 seconds West 18.39 feet to
intersect the easterly Right of Way Line of Through Highway and
Right of Way Line of the Baltimore Beltway (Maryland Route No.
695) shown on State Roads Commission of Maryland Right of Way
Plat No. 42010 and No. 42012, thence leaving the waters of said
Greenhill Cove, binding on said easterly Right of Way Line of
Through Highway and Right of Way Line shown on said Plat No. 42010
binding on the 108th thru the 111th lines of said First Parcel,
the four following courses, viz:
109) North 09 degrees 56 minutes 22 seconds East 19.47 feet,

Description to Accompany Petition
for Zoning Reclassification
"BEACHWOOD ESTATES"

February 25, 1993
page -4-

- 87) South 21 degrees 03 minutes 40 seconds West 33.39 feet,
88) South 01 degrees 58 minutes 40 seconds West 56.98 feet,
89) South 59 degrees 48 minutes 50 seconds West 22.37 feet,
90) South 17 degrees 03 minutes 00 seconds West 64.31 feet,
91) South 27 degrees 24 minutes 40 seconds West 58.61 feet,
92) South 58 degrees 28 minutes 20 seconds West 27.99 feet,
93) South 04 degrees 18 minutes 20 seconds West 42.01 feet,
94) North 78 degrees 37 minutes 20 seconds West 51.71 feet,
95) South 88 degrees 37 minutes 20 seconds West 56.47 feet,
96) North 63 degrees 49 minutes 30 seconds West 38.29 feet,
97) North 79 degrees 54 minutes 30 seconds West 50.38 feet,
98) North 63 degrees 08 minutes 10 seconds West 98.52 feet,
99) North 52 degrees 38 minutes 10 seconds West 34.40 feet,
100) North 63 degrees 13 minutes 40 seconds West 109.60 feet,
101) South 85 degrees 14 minutes 50 seconds West 116.40 feet,
102) South 68 degrees 18 minutes 50 seconds West 98.67 feet,
103) South 59 degrees 57 minutes 40 seconds West 78.62 feet,
104) South 59 degrees 37 minutes 10 seconds West 63.33 feet,
105) North 89 degrees 13 minutes 30 seconds West 35.00 feet,
106) North 71 degrees 57 minutes 00 seconds West 106.65 feet,
107) North 67 degrees 07 minutes 50 seconds West 47.25 feet and
108) South 44 degrees 32 minutes 00 seconds West 18.39 feet to
intersect the easterly Right of Way Line of Through Highway and
Right of Way Line of the Baltimore Beltway (Maryland Route No.
695) shown on State Roads Commission of Maryland Right of Way
Plat No. 42010 and No. 42012, thence leaving the waters of said
Greenhill Cove, binding on said easterly Right of Way Line of
Through Highway and Right of Way Line shown on said Plat No. 42010
binding on the 108th thru the 111th lines of said First Parcel,
the four following courses, viz:
109) North 09 degrees 56 minutes 22 seconds East 19.47 feet,
110) North 01 degrees 47 minutes 17 seconds East 415.50 feet,
111) North 06 degrees 45 minutes 23 seconds East 329.14 feet and
112) North 15 degrees 55 minutes 21 seconds West 116.04 feet, running
thence binding on the 108th line of said First Parcel,
113) North 43 degrees 54 minutes 24 seconds East 46.74 feet, to the
easterly Right of Way Line shown on said Plat No. 42012,
running thence binding on said easterly Right of Way Line the
right of way line, binding on the 107th, 108th and 109th
lines of said First Parcel, the three following courses, viz:
114) North 18 degrees 09 minutes 25 seconds West 107.39 feet,
115) North 24 degrees 10 minutes 45 seconds West 418.89 feet and

September 1, 1993

NOTICE OF HEARING

CASE NO. R-93-309
Morse Lane, NE/S I-695 (Patapsco Freeway)
15th Election District
7th Councilmanic District
Petitioner: Beachwood I Limited Partnership

Request to reclassify the property's zoning from D.R.-1 to D.R.-3.5.

DATE: TUESDAY, NOVEMBER 2, 1993 at 10:00 a.m.

LOCATION: COUNTY COURTHOUSE, ROOM 48
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

William T. Hackett
W. T. HACKETT, ESQUIRE
BOARD OF APPEALS
Beachwood I Limited Partnership
c/o Gortum, Esq.

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue
September 1, 1993

NOTICE OF ASSIGNMENT /To Submit Amended/Documented Plan

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. R-93-309 BEACHWOOD I LIMITED PARTNERSHIP E/s
Morse Lane, NE/S I-695
(Patapsco Freeway)
15th Election District
7th Councilmanic District
Reclassification: From D.R. 1 TO D.R. 3.5
3/01/93 -Petition for Reclassification
filed.

HAS BEEN SCHEDULED FOR OPEN HEARING ON TUESDAY, SEPTEMBER 21, 1993 FOR THE PURPOSE OF SUBMITTING AN AMENDED/DOCUMENTED SITE PLAN ONLY; NO EVIDENCE OR TESTIMONY WILL BE TAKEN ON THE MERITS OF THE CASE AT THAT TIME.

ASSIGNED FOR: TUESDAY, SEPTEMBER 21, 1993 at 9:30 a.m.

cc: John B. Gortum, Esquire Counsel for Petitioner

R. Bruce Alderman, President
Signal Development Corp.,
General Partner /Beachwood I
Ltd. Partnership
Petitioner
James Earl Kraft
People's Counsel for Baltimore County
P. David Fields
Lawrence E. Schmidt
Timothy H. Kotroco
W. Carl Richards, Jr.
Docket Clerk /ZADM
Arnold Jablon, Director /ZADM

Kathleen C. Weidenhammer
Administrative Assistant

Printed with Soy-based Ink
on Recycled Paper

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue
September 1, 1993

NOTICE OF ASSIGNMENT /To Submit Amended/Documented Plan

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. R-93-309 BEACHWOOD I LIMITED PARTNERSHIP E/s
Morse Lane, NE/S I-695
(Patapsco Freeway)
15th Election District
7th Councilmanic District
Reclassification: From D.R. 1 TO D.R. 3.5
3/01/93 -Petition for Reclassification
filed.

HAS BEEN SCHEDULED FOR OPEN HEARING ON TUESDAY, SEPTEMBER 21, 1993 FOR THE PURPOSE OF SUBMITTING AN AMENDED/DOCUMENTED SITE PLAN ONLY; NO EVIDENCE OR TESTIMONY WILL BE TAKEN ON THE MERITS OF THE CASE AT THAT TIME.

ASSIGNED FOR: TUESDAY, SEPTEMBER 21, 1993 at 9:30 a.m.

cc: John B. Gortum, Esquire Counsel for Petitioner

R. Bruce Alderman, President
Signal Development Corp.,
General Partner /Beachwood I
Ltd. Partnership
Petitioner
James Earl Kraft
People's Counsel for Baltimore County
P. David Fields
Lawrence E. Schmidt
Timothy H. Kotroco
W. Carl Richards, Jr.
Docket Clerk /ZADM
Arnold Jablon, Director /ZADM

Kathleen C. Weidenhammer
Administrative Assistant

Submitted open to documented plan
Amended description
No objection - required public hearing
not adopted
not adopted
not adopted

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue
November 3, 1993

NOTICE OF ASSIGNMENT -Hearing Day #2

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. R-93-309 BEACHWOOD I LIMITED PARTNERSHIP
Item #7, Cycle I E/s Morse Lane, NE/S I-695
1993 (Patapsco Freeway)
15th Election District
7th Councilmanic District
Day #2 /cont'd from 11/02/93.
Reclassification: From D.R. 1 TO D.R. 3.5
3/01/93 -Petition for Reclassification
filed.

ASSIGNED FOR: WEDNESDAY, NOVEMBER 24, 1993 at 10:00 a.m.

cc: John B. Gortum, Esquire Counsel for Petitioner

R. Bruce Alderman, President
Signal Development Corp.,
General Partner /Beachwood I
Ltd. Partnership
Petitioner
Ms. Virginia Tolbert
Ms. Ethel Weber
Mr. Jim Skarda
Ms. Janet Wood

James Earl Kraft
People's Counsel for Baltimore County
P. David Fields
Lawrence E. Schmidt
Timothy H. Kotroco
W. Carl Richards, Jr.
Docket Clerk /ZADM
Arnold Jablon, Director /ZADM

Kathleen C. Weidenhammer
Administrative Assistant

Printed with Soy-based Ink
on Recycled Paper

April 30, 1993

(410) 887-3353

John B. Gortum, Esquire
Boulevard
MD 21201

RE: Item No. 339
Case No. R-93-309
Petitioner: Beachwood I Limited
Partnership, et al
Reclassification Petition

MEMORANDUM

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

It has been suggested that the petition forms, descriptions, site plans, and/or the site plans be amended so as to reflect better with the zoning regulations and/or commenting agencies' policies; you are requested to review these comments, make your own judgment as to their accuracy and submit the necessary amendments and appropriate fee to this office on or before May 6, 1993. In the event that any requested amendments are not received by this date, the petition will be advertised as originally submitted.

Because of the fact that the submitted site plan does not show the proposed use at this time, the comments from this office are general in nature. If the request is granted, an additional hearing is required at a later date, more comments will be submitted at that time.

John B. Gortum, Esquire
April 30, 1993
Page 2

If you have any questions concerning the enclosed comments, please feel free to contact the Zoning Office at 887-3391 or the commenting agency.

Very truly yours,

W. Carl Richards, Jr.

W. CARL RICHARDS, JR.
Zoning Coordinator

WCR:hck
Enclosures

BALTIMORE COUNTY, MARYLAND
INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director DATE: April 21, 1993
Zoning Administration and Development Management

FROM: Robert W. Bowling, Senior Engineer
Development Plan Review

RE: Zoning Advisory Committee Meeting
for Zoning Reclassification Cycle I
April, 1993 - October, 1993
Case No. R-93-309 Item 7 339

The Development Plan Review Division has reviewed the subject zoning item. The site is subject to State Highway Administration approval. Some intersection modifications at the intersection of Morse Lane and North Point Boulevard will definitely be necessary.

RWB:s

O. James Lighthizer
Secretary
Hal Kassoff
Administrator

May 12, 1993

Ms. Helene Kehring
Zoning Administration and
Development Management
County Office Building
Room 109
111 W. Chesapeake Avenue
Towson, Maryland 21204
Re: Baltimore County
MD 151 - North Point
Boulevard and Morse Lane
Beachwood I Limited
Partnership
Zoning Reclassification

Dear Ms. Kehring:

This office has reviewed the plan for the referenced zoning reclassification and offer the following:

In a letter to Mr. Robert Covahey, dated January 29th (attached), we indicated concerns regarding the potential impact the anticipated traffic this development would have on the MD 151/Morse Lane intersection.

We have met on several occasions with the developer's engineers to discuss possible modifications to this intersection which we feel may improve the traffic operations.

In addition, there had been some discussion by the developer of investigating a realignment of Morse Lane, which would result in its intersecting MD 20, thereby eliminating the concerns regarding the existing Morse Lane/MD 151 intersection. However, the developer's engineer has indicated that due to several issues (environmental impacts, right of way, funding, etc.), this proposal may not be feasible.

If the county elects to approve the rezoning request, we request that the MD 151/Morse Lane intersection concerns be addressed.

If you have any questions, please contact Robert Small of this office at (410) 333-1350.

RECEIVED
MAY 17 1993
ZADM

My telephone number is 410-333-1350 (Fax# 333-1350)
Teletypewriter for Impaired Hearing or Speech
383-7555 Baltimore Metro - 585-0451 D.C. Metro - 1-800-492-5082 Statewide Toll Free
707 North Calvert St., Baltimore, Maryland 21203-0717

Mr. Robert Covahey
Baltimore County
January 29, 1993

Thank you for the opportunity to review this plan.

Very truly yours,

John Contestabile
John Contestabile, Chief
Engineering Access Permits
Division

cc: Mr. Stephens Jr. & Assoc.
cc: Wood Estates Limited Partnership
cc: Steve Weber
cc: Charles Harrison
cc: Charles Miles



Maryland Department of Transportation
State Highway Administration

O. James Lightizer
Secretary
Hal Kassoff
Administrator

January 29, 1993

Mr. Robert Covahey, Chief
Bureau of Public Services
County Office Building
Towson, Maryland 21204

Re: Baltimore County
MD 137 - Mount Carmel Rd.
Greenside Vista
Section 2 - Plats 1 and 2
Final Check Prints
Project No. 88121

Dear Mr. Covahey:

This office has reviewed the plans for the referenced project and offers the following.

We have no objection to approval of the Final Check Prints for Section 2 - Plats 1 and 2.

However, we want to take this opportunity to comment on the MD 137 entrance improvements required for the entire development.

A deceleration lane, 425' full width paving (195' curbed section from the P.C. of the radius, set 24' from the centerline of the roadway).

An acceleration lane, 250' full width paving (150' curbed section from the P.C. of the radius, 24' from the centerline of the roadway).

A 30' entrance with 30' radii will be required for this site.

Entrance construction shall be subject to the terms and conditions of an access permit issued by this office, with the following submittals required:

- Eight (8) copies of the site plan showing the SHA requirements.
- Completed application.

My telephone number is 410-333-1350 (Fax# 333-1041)

Teletypewriter for Impaired Hearing or Speech
383-7555 Baltimore Metro - 565-5451 D.C. Metro - 1-800-492-5082 Statewide Toll Free
707 North Calvert St., Baltimore, Maryland 21203-9717

Mr. Robert Covahey
Page -2-
January 29, 1993

- Performance bond, letter of credit, or certified check (include Federal ID number or social security number on certified checks only) in the amount of 150% of the actual entrance construction cost and in an even thousand dollar increment. These must be made payable to the State of Maryland. (Please note that it takes 6-8 weeks for a certified check to be returned after project completion and SHA final inspection)
- An engineering fee check in the amount of \$50.00 for each point of access, made payable to the State of Maryland.
- A letter of authorization from the appropriate agency relative to the relocation of any utilities which may be necessitated by this construction. Or, a letter from the developer acknowledging and agreeing to the financial responsibility for relocating any affected utilities.

The surety for the access permit must be received by this office prior to SHA approving any building permits for the site.

If you have any questions, please contact Bob Small of this office at 333-1350.

Very truly yours,

John Contestabile
John Contestabile, Chief
Engineering Access Permits
Division

BS:maw

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT
INTER-OFFICE CORRESPONDENCE

May 12, 1993

TO: Mr. Arnold Jablon, Director
Zoning Administration and
Development Management

FROM: J. Lawrence Pilson
Development Coordinator, DEPRM

SUBJECT: Zoning Item #R-93-309
Beachwood I Limited Partnership
Zoning Advisory Committee Meeting of Reclassification and
Redistricting - April 1993-October 1993

The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item.

- The Department of Environmental Protection and Resource Management requests an extension for the review of the above-referenced zoning item because the property is located in the Chesapeake Bay Critical Area. The applicant may contact the Environmental Impact Review Division of the Department at 887-3980 for details.

JLP:jbm

BEACHWD/TXTRMP

Baltimore County Government
Office of Zoning Administration
and Development Management



100 West Avenue
Baltimore, MD 21201

(410) 887-3353

JUNE 4, 1993

Beachwood I Limited Partnership
P. Bruce Alderman
100 W. Lombard Road
Baltimore, Maryland 21093

RE: PAYMENT OF POSTING AND ADVERTISING FEES - RECLASSIFICATION PETITION
CASE NUMBER: R-93-309
E/S Morse Lane, NE/S I-695 (Patapsco Freeway)
15th Election District - 7th Councilmanic
Petitioner(s): Beachwood I Limited Partnership

Dear Petitioners:

Be advised that a new policy has been established to handle the fees with regard to property posting and legal advertising. As in the past, this office will ensure that the legal requirements for posting and advertising are satisfied; the policy change will effect to whom and when these fees are paid.

Cycle Reclassification Petitions are required to be heavily advertised. The initial ads, one-half page in size and running in four separate newspaper issues, contained a map of Baltimore County and a listing of all the reclass petitions in the cycle. The newspapers have billed the County \$2,740.50, this is charged back to you, equally divided among the petitioners.

Posting charges of \$35.00 and advertising charges of \$391.50, for a total of \$426.50, are now due. Your check in this amount should be made payable to "Baltimore County, Maryland" and immediately mailed to this office.

Individual ads for each petition will run approximately one month before the scheduled hearing date. Billing for the individual ads, due upon receipt, will come from and should be remitted directly to the newspaper.

Non-payment of fees will stay the issuance of the Order. If you have any questions concerning this letter, you may contact Gwen Stephens at 887-3391.

Arnold Jablon
ARNOLD JABLON
DIRECTOR

Ad:998

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: Mr. Robert Covahey, Chief
Bureau of Public Services
County Office Building
Towson, Maryland 21204

FROM: Mr. Robert Covahey, Chief
Bureau of Public Services
County Office Building
Towson, Maryland 21204

SUBJECT: Beachwood I Limited Partnership
Zoning Item #R-93-309

RE: Beachwood I Limited Partnership
Zoning Item #R-93-309

Comments:

1. Buildings on site shall comply with the applicable provisions of the 1990 Life Safety Code and the Baltimore County Fire Prevention Code.
2. Posted fire lanes shall be provided on site for Fire Department access.

3. Site and proposed buildings on site shall, at the time of development, shall comply with applicable provisions of the 1990 Life Safety Code and the Baltimore County Fire Prevention Code.

4. The zoning variance is approved. There may be the need at the time of concept and development plan submittal to locate some buildings to provide better fire access.

5. Posted fire lanes shall be provided on site for Fire Department access.
35' turning radius shall be maintained on site for Fire equipment maneuverability.

6. No comments

RECEIVED
APR 23 1993
ZADM

Office of Zoning Administration
and Development Management
Office of Planning & Zoning



March 20, 1992

(410) 887-3353

Charles E. Wehland, Esquire
100 West Avenue
Baltimore City, MD 21201-1596

RE: Beachwood, Parcel II
Proposed Trailer Park
E/S Morse Lane, S of Lynhurst Road
Zoning Case #84-360-XA
Planning File #KV-357
Zoned M.H.-I.M. (90 acres)
15th Election District

Dear Mr. Wehland:

Reference is made to your letter to the Director of the Office of Planning and Zoning, which has been referred to this office for reply. As you stated, you have requested on behalf of your client the approved status of the proposed trailer park on the above referenced property relative to zoning and a recorded record plat and what procedures are necessary before development of the trailer park can commence.

On April 2, 1985, in zoning case #84-360-XA the then Zoning Commissioner Arnold Jablon granted a special exception for a trailer park in accordance with Petitioner's Exhibit #1A and variances on the above referenced property, subject to three restrictions:

- The trailer park must comply with all of the subsections of Section 414 (B.C.Z.R.).
- The Petitioners must obtain approval by the County Review Group (C.R.G.). If the C.R.G. determines that the site plan introduced as Petitioners' Exhibit 1A requires further revision, the Petitioners shall submit that revised site plan to the Zoning Commissioner for approval.
- The special exception and variance granted herein shall be dependent on a letter of compliance from the Office of Planning and Zoning to the Zoning Commissioner, pursuant to Section 2-1813, indicating that the proposed project satisfies its requirement.

Charles E. Wehland, Esquire
March 20, 1992
Page 2

*Note: The development area was reduced on Exhibit #1A to 26.2 acres and 203 proposed trailers. As discussed in the Order, the Petitioner would maintain the northern portion of the property in its natural state.

On February 24, 1988 a record plat was recorded in the land records of Baltimore County under Book 58/22 for Parcel II, Beachwood, 46 acres (the southern portion of the 76 acres development area approved for 203 trailers in the above referenced zoning case).

Pursuant to Section 502.3 (B.C.Z.R.) and absent any extensions granted in accordance with this Section (which cannot be documented), the special exception for a trailer park would be void if not utilized within the 2-year period. Utilization as established by the courts to determine "reasonable diligence" would be measured by the standard two prong test:

- The commencement of some readily identifiable work; and
- The work begun with the intention then formed to continue said work to its completion.

Obviously, if no work has commenced to develop the trailer park, the test would fail, the special exception would be void, and if the owner/developer wishes to proceed a new special exception for a trailer park must be petitioned for.

The validity of the subdivision record plat and any sunset provisions as regulated by Section 22-68 (26-216), Title 22, Article V, Baltimore County Code, would be applicable to the division of land and would not supersede the B.C.Z.R., increase the permitted number of trailers or extend the special exception utilization provisions as outlined above.

I am returning your plat as requested and am enclosing a copy of the Zoning Order and Section 502.3 (B.C.Z.R.) for your information. If I can provide any additional zoning clarification or assist you or your client with any future development or applications on the property, please do not hesitate to contact me at 887-3391.

Very truly yours,

W. Carl Richards, Jr.
W. Carl Richards, Jr.
Zoning Coordinator

MCR:scj

cc: Mitchell Kellman

Enclosures