

IN THE COURT OF SPECIAL APPEALS OF MARYLAND

September Term, 1997
No. 603

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, et. al.

Appellants,

v.

THE PROSSER COMPANY, INC.

Appellee.

APPEAL FROM THE CIRCUIT COURT FOR BALTIMORE COUNTY
(The Honorable Christian M. Kahl)

BRIEF AND APPENDIX OF APPELLEE,
THE PROSSER COMPANY, INC.

G. SCOTT BARHIGHT
JULIE D. WRIGHT
Whiteford, Taylor & Preston, LLP
210 West Pennsylvania Avenue
Towson, Maryland 21204
(410) 832-2000
Attorney for Appellee,
The Prosser Company, Inc.

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A. STATEMENT OF THE CASE

This appeal involves a 5.2 acre-parcel which is owned by Appellee, the Prosser Company, Inc. ("Prosser"), and which is situated on the southeast side of Long Green Pike and the northwest side of Glen Arm Road in Glen Arm, Maryland. The 5.2 acre-parcel consists of 3.300 acres zoned R.C.5¹ and 1.900 acres zoned R-O/C.R.² On August 31, 1993, Prosser filed a Petition for Reclassification with the County Board of Appeals for Baltimore County ("the Board"), requesting that the 5.2 acre-parcel be rezoned M.L.³, as limited and conditioned by a documented site plan pursuant to § 2-356(l) of the Baltimore County Code ("BCC"). Prosser asserted in its Petition that the County Council for Baltimore County ("County Council") made a mistake in the zoning classifications on the 5.2 acre-parcel when it adopted the 1992 Comprehensive Zoning Map ("1992 Map"), and that reclassification of the parcel to M.L., as limited and conditioned by the documented site plan was warranted.

After a series of evidentiary hearings, which occurred on April 6, 1994, June 16, 1994, July 19, 1994, and September 20, 1994 the Board granted Prosser's Petition by order dated December 13, 1994 ("First Board Order"). E 205. Appellants filed Petitions for Judicial Review of the Board's decision to the Circuit Court for Baltimore County. The Honorable J. William Hinkel affirmed the finding in the First Board Order that the

¹ The Baltimore County Zoning Regulations ("BCZR") set forth the requirements for zone classifications in Baltimore County. The "R.C. 5" zone allows development of rural-residential uses. BCZR § 1A04.

² The R-O zone allows residences to be used as offices. BCZR § 204. The C.R. district provides standards for rural commercial development. BCZR § 100.1.B.

³ The M.L. zone permits development of light manufacturing uses. BCZR § 253.

County Council made a mistake in the zoning classifications on the 5.2 acre-parcel when it adopted the 1992 Map; however, Judge Hinkel, by order dated December 7, 1995, remanded the matter to the Board, ordering the Board to articulate its findings with respect to whether the reclassification was warranted pursuant to the factors set forth in BCC § 2-356(j)(2). E. 248. Judge Hinkel also held that the parcel's lack of planned public water and sewer service did not preclude the Board from granting Prosser's Petition for Reclassification. E. 251-53.

On January 29, 1996 and February 1, 1996, Appellants filed appeals from Judge Hinkel's order to the Court of Special Appeals of Maryland (No. 169, September Term, 1996) ("CSA Appeal I"). E. 258. The record in CSA Appeal I was received and docketed on April 1, 1996; however, on April 15, and April 22, 1996, Appellants voluntarily dismissed CSA Appeal I, and on April 22, 1996, the Court of Special Appeals issued a mandate to that effect. E. 5.

By order dated September 16, 1996 ("Second Board Order"), the Board found on remand that, pursuant to BCC § 2-356(j)(2), the reclassification requested by Prosser was warranted. E. 5. On September 24, 1996, Appellants responded by filing, in the Circuit Court, Petitions for Judicial Review of the Second Board Order. E. 5.

While Appellants' Petitions for Judicial Review of the Second Board Order were pending, the Baltimore County Planning Staff, the Baltimore County Planning Board, and the County Council were reviewing the 5.2 acre-parcel as part of Baltimore County's 1996 quadrennial comprehensive zoning map process ("1996 CZMP"). The

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parcel was the subject of two 1996 Comprehensive Zoning Map Issues; Issues 6-001 and 6-017. Issue 6-001, which was created by the Baltimore County Planning Staff, requested that the existing zoning on the 5.2 acre parcel be changed from R.C. 5 and R-O/C.R. to M.L.. E. 338. Issue 6-017, which was created by the Long Green, Kingsville, and Glen Arm Improvement Associations, requested that the existing zoning on the 5.2 acre-parcel be changed from R.C. 5 and R-O/C.R. to R.C. 2. E. 338. Prosser did not create a map issue in the 1996 CZMP.

On October 8, 1996, the County Council adopted the 1996 Comprehensive Zoning Map ("1996 Map"). App. 93-94, 98. With respect to Issues 6-001 and 6-017, the County Council voted to retain the existing R.C. 5 and R-O/C.R. zoning classifications on the 5.2 acre-parcel. When the County Council adopted the 1996 Map, no changes were made in the zoning classifications on the 5.2 acre-parcel; the parcel presently consists of 3.300 acres of R.C. 5 zoned land and 1.900 acres of R-O/C.R. zoned land just as it did on the 1992 Map. The parcel's zoning classifications shown on the 1992 Map and the 1996 Comprehensive Zoning Map are identical. E. 196-201; App. 93-98.

On February 25, 1997, Appellants and Prosser appeared in the Circuit Court before the Honorable Christian M. Kahl, and presented oral argument regarding Appellants' Petitions for Judicial Review of the Second Board Order. E. 418. On March 7, 1997, Judge Kahl issued an opinion and order upholding the finding in the Second Board Order that reclassification of the 5.2 acre-parcel to M.L., as limited and

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conditioned by the documented site plan, was warranted and ruled that the 1996 CZMP did not render this case moot. E. 452.

From Judge Kahl's opinion and order dated March 7, 1997, affirming the Second Board Order, Appellants, on March 21, 1997, filed the instant appeals to this Court (CSA Appeal II). E. 6.

B. QUESTIONS PRESENTED

I. Were the First Board Order and the Second Board Order approving Prosser's Petition for Reclassification rendered moot by the County Council's subsequent enactment of the 1996 Map (Bill 133-96)?

II. Are Appellants precluded from raising, in CSA Appeal II, issues concerning "the parcel's lack of planned public water and sewer" and "zoning mistake" when Appellants already raised those issues in CSA Appeal I, and when the Second Board Order and Judge Kahl's decision, which are the subjects of this appeal, do not address or decide those issues?

III. Are the First Board Order and the Second Board Order approving Prosser's Petition for Reclassification unaffected by the holding in *People's Counsel v. Beachwood I*, 107 Md. App. 627 (1995)?

IV. In the Second Board Order, did the Board properly deny Appellants' request that a new evidentiary hearing be conducted on remand?

V. In the Second Board Order, did the Board properly articulate its findings on remand as required by BCC § 2-356(j)(2)?

C. LEGAL STANDARDS

I. General Standard of Appellate Review

"The standard of review of the action of an administrative agency is whether a reasoning mind could have reached the conclusion which the administrative agency reached." *State Ins. Comm'r v. National Bureau of Casualty Underwriters*, 248 Md. 292, 309

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this title that the proposed version of said map be recommended by the planning board, the council shall adopt the complete county-wide zoning map last so recommended with such revisions as may be made in accordance with section 26-124. (Code 1978, § 22-23).

Sec. 26-126. Planning board reports.

(a) Within two (2) years after the county council has received a final report of the planning board concerning amendments to the zoning regulations, the county council by ordinance may act upon the report. If the county council fails to so act within the two-year period, the final report of the planning board is null and void, and any action upon the subject matter of the final report requires compliance with the provisions of sections 26-123 and 26-124 regarding amendments to the zoning regulations.

(b) Within two (2) years after the county council has acted pursuant to subsection (a) of this section, the council by ordinance may take further action upon any issue related to the subject matter of the final report without the necessity of compliance with the provisions of section 26-123 regarding a prior recommendation of the planning board. However, prior to taking such action, the council shall prepare a specific proposal and hold a hearing on the proposal. (Code 1978, § 22-24).

Sec. 26-127. Authority of zoning commissioner to provide for special exceptions and variances.

(a) Except as provided in section 2-356(p) of this Code and subject to the appropriate principles, standards, rules, conditions, and safeguards set forth in the zoning regulations, the zoning commissioner, upon petition, may grant variances from area and height regulations, may interpret the zoning regulations, and may make special exceptions to the zoning regulations in harmony with their general purpose and intent; provided that the issuance of all such special exceptions and variances shall be subject to appropriate principles, standards, rules, conditions, and safeguards set forth in the zoning regulations, and that all decisions of the zoning commissioner with respect

to such matters shall be subject to appeal to the board of appeals as provided in this article. The zoning commissioner shall schedule a public hearing on any petition for such a variance or special exception for a date not less than thirty (30) nor more than ninety (90) days after the petition is accepted for filing. For a period of at least fifteen (15) days prior to the time of such hearing, notice of the time and place of the hearing relating to the property under petition shall be conspicuously posted thereon and shall be given in at least two (2) newspapers of general circulation in the county. Such notice shall provide the address of the property under petition, but if not available, a description and the action requested thereon. Upon establishing a hearing date for such a petition, the zoning commissioner shall promptly forward a copy of the petition to the director of planning and zoning (or deputy) for consideration and written report thereon containing findings thereon with regard to planning factors.

(b) (1) Notwithstanding the above provisions, the zoning commissioner is hereby empowered to grant variances from area and height regulations, subject to the appropriate principles, standards, rules, conditions, and safeguards set forth in the zoning regulations, without a public hearing if the subject of the variance petition involves an owner-occupied lot zoned residential, as defined by the zoning regulations, and subject to the following conditions: (i) a supporting affidavit under oath made on the personal knowledge of the petitioner setting forth facts as to which would otherwise satisfy the petitioner's burden of proof as required by the zoning regulations if a hearing were to be required; (ii) the filing of such affidavit with the petition, to be in addition to the information required by the zoning commissioner on such petition; and (iii) on the lot in question, notice of the petition shall be conspicuously posted for a period of at least fifteen (15) days following the filing of the application. Within the fifteen-day posting period, any occupant or owner within one thousand (1,000) feet of the lot in question may file a formal request for a public hearing with the zoning commissioner, and such hearing shall be

PETITION OF:

Glen Arm Community Association, Inc.
11909 Long Green Pike
Glen Arm, Maryland 21057

and

T. Michael Reier
11909 Long Green Pike
Glen Arm, Maryland 21057

FOR JUDICIAL REVIEW OF DECISION OF:

County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204
(410) 887-3180

IN THE CASE OF:

IN THE MATTER OF
THE APPLICATION OF
THE PROSSER COMPANY, INC.
FOR A ZONING RECLASSIFICATION
ON PROPERTY LOCATED ON THE
SOUTHEAST SIDE LONG GREEN
PIKE AND THE NORTHWEST SIDE
GLEN ARM ROAD (12107 AND
12109 LONG GREEN PIKE AND
5328 GLEN ARM ROAD)
11TH ELECTION DISTRICT
6TH COUNCILMANIC DISTRICT

CASE NO. CR-94-143
CYCLE II, 1993 /94

CIVIL ACTION
NO. 100/243/95CV-00288

ORDER

UPON CONSIDERATION of the Suggestion of Mootness filed heretofore by Appellants, Glen Arm Community Association, Inc. and

IN THE

CIRCUIT COURT

FOR BALTIMORE COUNTY

T. Michael Reier, and any response thereto, and after hearing if required, it is by the Circuit Court for Baltimore County this _____ day of _____, 19____,

ORDERED, that, the County Council having rezoned the property on October 8, 1996 RC5 and RO-CR, the previous zoning, which is the subject of the pending Petition for Reclassification, the action of the action of the County Council renders this Petition for Reclassification moot; and it is further

ORDERED, that the Petition for Reclassification is dismissed as moot as prayed.

JUDGE

COPIES MAILED TO:

Robert Schuetz, Chairman
County Board of Appeals
Old Courthouse, Room 49
400 Washington Avenue
Towson, MD 21204

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

G. Scott Barhight, Esq.
Whiteford, Taylor & Preston
210 West Pennsylvania Avenue
Suite 400
Towson, MD 21204

Michael P. Tanczyn, Esq.
606 Baltimore Avenue, Suite 106
Towson, MD 21204

Law Offices MICHAEL P. TANCZYN, P.A.

Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
(410) 296-8823 - (410) 296-8824
Fax: (410) 296-8827
Computer Fax: (410) 296-2848

December 9, 1996

Honorable J. William Hinkel
Baltimore County Circuit Court
County Courts Building
401 Bosley Avenue
Towson, MD 21204

Re: Glen Arm Community Association v.
County Board of Appeals for Baltimore County
Case Number 100/243/95CV00288 - Non-Jury

Dear Judge Hinkel:

Enclosed herewith please find a courtesy copy of the Suggestion of Mootness with Points and Authorities, Request for Hearing and proposed Order in the above matter as filed on December 4, 1996. Since you heard the original case, this is being sent to you in the event you rule on the Motion.

Very truly yours,

Michael P. Tanczyn

MPT/ed
Enclosures

cc: County Board of Appeals
G. Scott Barhight, Esq.
Peter Max Zimmerman, Esq.
Mr. T. Michael Reier

Law Offices MICHAEL P. TANCZYN, P.A.

Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
(410) 296-8823 - (410) 296-8824
Fax: (410) 296-8827
Computer Fax: (410) 296-2848

December 4, 1996

G. Scott Barhight, Esq.
500 Court Towers
210 West Pennsylvania Avenue
Towson, MD 21204

Re: Glen Arm Community Association v.
County Board of Appeals for Baltimore County
Case Number 100/243/95CV00288 - Non-Jury

Dear Scott:

Enclosed herewith please find our request that your client's reclassification petition be declared moot based on the action of the Baltimore County Council in adopting the Quadrennial Maps on October 8, 1996 with an effective date of December 2, 1996 for the authorities cited therein.

The purpose of this letter is to inquire whether you will agree that this matter should not proceed with the additional work required and burden to our respective clients of preparing briefs and arguments pending the Court's decision on the instant Suggestion of Mootness. If you are agreeable to this, please indicate your agreement in writing.

By copy of this letter to Peter Max Zimmerman, I asking that he advise whether he is agreeable to a stay between the parties which can then be presented to the Court to obtain the Court's permission to stay further proceedings until the issue of mootness is resolved.

Please let me hear back from you as soon as possible as our brief may be otherwise due on Christmas day, or the day after, and we would like to avoid the work if it is agreeable among the parties if at all possible.

G. Scott Barhight, Esq.
Re: Glen Arm v. County Board of Appeals

December 4, 1996
Page 2

If you have any questions, don't hesitate to call me.

Very truly yours,

Michael P. Tanczyn

MPT/ed

cc: County Board of Appeals
Peter Max Zimmerman, Esq.
Mr. T. Michael Reier

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

PETITION OF GLEN ARM COMMUNITY ASSN.,
INC. 11909 Long Green Pike
Glen Arm, MD 21057

T. MICHAEL REIER
11909 Long Green Pike
Glen Arm, MD 21057

and

PETITION OF PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY
Room 47, Old Courthouse, 400 Washing-
ton Avenue, Towson, MD 21204

FOR JUDICIAL REVIEW OF THE DECISION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
Room 49, Old Courthouse, 400 Washing-
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LONG GREEN PIKE AND THE NORTHWEST SIDE
GLEN ARM ROAD (12107 AND 12109 LONG
GREEN PIKE AND 5328 GLEN ARM ROAD)
11TH ELECTION DISTRICT
6TH COUNCILMANIC DISTRICT

CASE NO. CR-94-143
(ITEM 3, CYCLE II, 1993/94)

CIVIL
ACTION
No. 95-CV-00288

(On remand from the
Circuit Court for
Baltimore County
95-CV-00288)

PROCEEDINGS BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come Robert O. Schuetz, Harry E. Buchheister, Jr., and S. Diane Levero, constituting the County Board of Appeals of Baltimore County, and in answer to the Petitions 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 documents on file in the Department of Permits and Development Management and the Board of Appeals of Baltimore County:

CR-94-143, The Prosser Company, Inc.
File No. 95-CV-00288 (on remand)

ENTRIES FROM THE DOCKET OF THE COUNTY BOARD OF APPEALS AND DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT

No. CR-94-143

December 3, 1995 Remand Order of the Circuit Court for Baltimore County; remanded for findings as to County Code Section 2-356(j)(2). (Hon. J. William Hinkel) Record Extract in Civil Action #95-CV-00288 attached herewith. (Transcript and Record of Proceedings previously filed by the Board on 5/17/95 #95-CV-00288 is returned herewith to the Circuit Court).

May 6, 1996 Amended Opinion Pursuant to Remand Order issued by Robert O. Schuetz (remaining member of CBA panel which sat for hearing on merits).

May 8 Letter from Michael P. Tanczyn, Esquire, requesting Reconsideration of the Board's May 6, 1996 Amended Opinion.

May 9 Letter from People's Counsel for Baltimore County requesting reconsideration, rescission and withdrawal of Order dated May 6, 1996.

May 17 Letter from G. Scott Barhight, Esquire, in response to requests from M. Tanczyn and P. Zimmerman.

May 20 Amended Opinion issued by the County Board of Appeals RESCINDED (matter to be scheduled for hearing as appropriate).

June 5, 1996 Hearing before the County Board of Appeals on Remand from the Circuit Court (Day #1).

July 3 Hearing before the County Board of Appeals on Remand from the Circuit Court (Day #2 /concluded).

August 8 Open deliberation for final determination. (Board unanimously found that reclassification is warranted).

September 19 Opinion and Order of the Board, AMENDING the decision dated December 13, 1994 as directed on Remand from the Circuit Court for Baltimore County, in that the proposed reclassification, as limited in the documented site plan, is warranted; Petition for Reclassification from R.O.C.R. and R.C. 5 to M.L. for some 5.2 combined acres on a documented site plan is GRANTED, pursuant to this Opinion and Board's Opinion and Order dated December 13, 1994.

CR-94-143, The Prosser Company, Inc.
File No. 95-CV-00288 (on remand)

September 23 Petition for Judicial Review filed in the Circuit Court for Baltimore County by Michael P. Tanczyn, Esquire, on behalf of the Glen Arm Community Association, Inc. and T. Michael Reier (copy received by Board of Appeals on 10/2/96).

September 30 Second Petition for Judicial Review filed in the Circuit Court for Baltimore County by People's Counsel for Baltimore County (copy received by Board of Appeals on 10/10/96).

October 4 Certificate of Notice sent to interested parties.

October 11 Second Certificate of Notice sent to interested parties.

November 25 Transcript of testimony filed.

Exhibits: No additional exhibits entered before the Board of Appeals; Argument only.

November 25, 1996 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 the transcript and Record of Proceedings previously filed in Civil Action 95-CV-00288.

Respectfully submitted,

Charlotte E. Radcliffe
Charlotte E. Radcliffe
Legal Secretary

County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204
(410) 887-3180

cc: G. Scott Barhight, Esquire
James J. Prosser /The Prosser Co., Inc.
Michael P. Tanczyn, Esquire
The Glen Arm Community Association, Inc.
T. Michael Reier
People's Counsel for Baltimore County
Virginia W. Barnhart, County Attorney

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

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

FOR JUDICIAL REVIEW OF THE DECISION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
Room 49, Old Courthouse, 400 Washing-
ton Avenue, Towson, MD 21204

IN THE CASE OF: IN THE MATTER OF
THE APPLICATION OF THE PROSSER COMPANY,
INC. FOR ZONING RECLASSIFICATION ON
PROPERTY LOCATED ON THE SOUTHEAST SIDE
LONG GREEN PIKE AND THE NORTHWEST SIDE
GLEN ARM ROAD (12107 AND 12109 LONG
GREEN PIKE AND 5328 GLEN ARM ROAD)
11TH ELECTION DISTRICT
6TH COUNCILMANIC DISTRICT

CASE NO. CR-94-143
(ITEM 3, CYCLE 11, 1993/94)

SECOND CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the provisions of Rule 7-202(e) of the Maryland Rules of Procedure, Robert O. Schuetz, Harry E. Buchheister, Jr., and S. Diane Levero, constituting 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, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland 21204; Michael P. Tanczyn, Esquire, 606 Baltimore Avenue, Suite 106, Towson, Maryland 21204, Counsel for Petitioners; the Glen Arm Community Association, Inc., 11909 Long Green Pike, Glen Arm, Maryland 21057, and T. Michael Reier, 11909 Long Green Pike, Glen Arm, Maryland 21057, Petitioners; James J. Prosser, The Prosser Company, Inc., P.O. Box 5036, Glen Arm, Maryland 21057; and G. Scott Barhight, Esquire,

RECEIVED AND FILED
56 OCT 11 PM 3:51

CR-94-143, The Prosser Company, Inc.
File No. 95-CV-00288 (Second Certificate of Notice)

WHITEFORD, TAYLOR & PRESTON, 500 Court Towers, 210 W. Pennsylvania Avenue, Towson, Maryland 21204, Counsel for The Prosser Company, Inc., a copy of which Second Notice is attached hereto and prayed that it may be made a part hereof.

Charlotte E. Radcliffe
Charlotte E. Radcliffe, Legal Secretary
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 Second Certificate of Notice has been mailed to Peter Max Zimmerman, People's Counsel for Baltimore County, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland 21204; Michael P. Tanczyn, Esquire, 606 Baltimore Avenue, Suite 106, Towson, Maryland 21204, Counsel for Petitioners; the Glen Arm Community Association, Inc., 11909 Long Green Pike, Glen Arm, Maryland 21057, and T. Michael Reier, 11909 Long Green Pike, Glen Arm, Maryland 21057, Petitioners; James J. Prosser, The Prosser Company, Inc., P.O. Box 5036, Glen Arm, Maryland 21057; and G. Scott Barhight, Esquire, WHITEFORD, TAYLOR & PRESTON, 500 Court Towers, 210 W. Pennsylvania Avenue, Towson, Maryland 21204, Counsel for The Prosser Company, Inc.; on this 11th day of October, 1996.

Charlotte E. Radcliffe
Charlotte E. Radcliffe, Legal Secretary
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

October 4, 1996

G. Scott Barhight, Esquire
WHITEFORD, TAYLOR & PRESTON
500 Court Towers
210 W. Pennsylvania Avenue
Towson, MD 21204-4515

RE: Civil Action No. 95-CV-00288
THE PROSSER COMPANY, INC.

Dear Mr. Barhight:

Notice is hereby given, in accordance with the Maryland Rules of Procedure, that a Second Petition for Judicial Review was filed on September 30, 1996 in the Circuit Court for Baltimore County from the 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. 95-CV-00288.

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

Very truly yours,

Charlotte E. Radcliffe
Charlotte E. Radcliffe
Legal Secretary

Enclosure

cc: James J. Prosser /The Prosser Company, Inc.
Michael P. Tanczyn, Esquire
James Earl Kraft
Pat Keller
Jeffrey Long
Lawrence E. Schmidt
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney
Glen Arm Community Association, Inc.
T. Michael Reier



County Board of Appeals of Baltimore County

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

October 11, 1996

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

RE: Civil Action No. 3-C-96-009573
THE PROSSER COMPANY, INC.

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, in addition to all costs incurred for certified copies of documents, must be paid prior to transmittal of the record to the Circuit Court for Baltimore County.

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

Very truly yours,

Charlotte E. Radcliffe
Charlotte E. Radcliffe
Legal Secretary

Enclosure

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF GLEN ARM COMMUNITY
ASSOCIATION, INC.
11909 Long Green Pike
Glen Arm, Maryland 21057

and

T. MICHAEL REIER
11909 Long Green Pike
Glen Arm, Maryland 21057

FOR JUDICIAL REVIEW OF THE DECISION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
Room 49, Old Courthouse, 400 Washing-
ton Avenue, Towson, MD 21204

IN THE CASE OF: IN THE MATTER OF
THE APPLICATION OF THE PROSSER COMPANY,
INC. FOR ZONING RECLASSIFICATION ON
PROPERTY LOCATED ON THE SOUTHEAST SIDE
LONG GREEN PIKE AND THE NORTHWEST SIDE
GLEN ARM ROAD (12107 AND 12109 LONG
GREEN PIKE AND 5328 GLEN ARM ROAD)
11TH ELECTION DISTRICT
6TH COUNCILMANIC DISTRICT

CASE NO. CR-94-143
(ITEM 3, CYCLE 11, 1993/94)

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the provisions of Rule 7-202(e) of the Maryland Rules of Procedure, Robert O. Schuetz, Harry E. Buchheister, Jr., and S. Diane Levero, constituting 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, Michael P. Tanczyn, Esquire, 606 Baltimore Avenue, Suite 106, Towson, Maryland 21204, Counsel for Petitioners; the Glen Arm Community Association, Inc., 11909 Long Green Pike, Glen Arm, Maryland 21057, and T. Michael Reier, 11909 Long Green Pike, Glen Arm, Maryland 21057, Petitioners;

CR-94-143, The Prosser Company, Inc.
File No. 95-CV-00288

James J. Prosser, The Prosser Company, Inc., P.O. Box 5036, Glen Arm, Maryland 21057; G. Scott Barhight, Esquire, WHITEFORD, TAYLOR & PRESTON, 500 Court Towers, 210 W. Pennsylvania Avenue, Towson, Maryland 21204, Counsel for The Prosser Company, Inc.; and Peter Max Zimmerman, People's Counsel for Baltimore County, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland 21204, a copy of which Notice is attached hereto and prayed that it may be made a part hereof.

Charlotte E. Radcliffe
Charlotte E. Radcliffe, Legal Secretary
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 Michael P. Tanczyn, Esquire, 606 Baltimore Avenue, Suite 106, Towson, Maryland 21204, Counsel for Petitioners; the Glen Arm Community Association, Inc., 11909 Long Green Pike, Glen Arm, Maryland 21057, and T. Michael Reier, 11909 Long Green Pike, Glen Arm, Maryland 21057, Petitioners; James J. Prosser, The Prosser Company, Inc., P.O. Box 5036, Glen Arm, Maryland 21057; G. Scott Barhight, Esquire, WHITEFORD, TAYLOR & PRESTON, 500 Court Towers, 210 W. Pennsylvania Avenue, Towson, Maryland 21204, Counsel for The Prosser Company, Inc.; and Peter Max Zimmerman, People's Counsel for Baltimore County, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland 21204, on this 4th day of October, 1996.

Charlotte E. Radcliffe
Charlotte E. Radcliffe, Legal Secretary
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

October 4, 1996

G. Scott Barhight, Esquire
WHITEFORD, TAYLOR & PRESTON
500 Court Towers
210 W. Pennsylvania Avenue
Towson, MD 21204-4515

RE: Civil Action No. 95-CV-00288
THE PROSSER COMPANY, INC.

Dear Mr. Barhight:

Notice is hereby given, in accordance with the Maryland Rules of Procedure, that a Petition for Judicial Review was filed on September 23, 1996 in the Circuit Court for Baltimore County from the 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. 95-CV-00288.

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

Very truly yours,

Charlotte E. Radcliffe
Charlotte E. Radcliffe
Legal Secretary

Enclosure

cc: James J. Prosser /The Prosser Company, Inc.
People's Counsel for Baltimore County
James Earl Kraft
Pat Keller
Jeffrey Long
Lawrence E. Schmidt
Arnold Jablon, Director /PDM

(1967) (cited with approval in *Nnoli v. Nnoli*, 101 Md. App. 243, 261 (1994)). “[T]he order of an administrative agency must be upheld on judicial review if it is not based on an error of law, and if the agency’s conclusions reasonably may be based upon the facts proven.” *Peoples Counsel v. Mangione*, 316 Md. 491, 496-97 (1989). A reviewing court, however, is under no constraint in reversing an administrative decision that is premised solely upon an erroneous conclusion of law. *Id.* at 497. Once the court determines that the administrative agency applied the proper legal standards, judicial review of the agency’s conclusions is then tested by the substantial evidence test. *Montgomery County v. Buckman*, 333 Md. 516, 519-20 (1994).

In the instant matter, “[this] court must consider all of the evidence in the administrative record. [This] court’s role, however, is confined to determining the legality of the procedure employed and whether the decision was fairly debatable in light of the evidence adduced before the zoning authority.” *Cromwell v. Ward*, 102 Md. App. 691, 709 (1995).

II. Relevant Statutory Law

a. The Comprehensive Zoning Map Process for Baltimore County

Baltimore County is divided into seven Councilmanic Districts; each of which is represented by an elected County Councilperson who sits on the County Council. “The ‘comprehensive map’ for Baltimore County which is adopted by the County Council during the quadrennial comprehensive rezoning process is actually a series of

comprehensive maps [adopted] on a district by district basis.” *Stump v. The Grand Lodge of Ancient, Free and Accepted Masons of Maryland*, 45 Md.App. 263, 269 n. 3 (1980).

Every four years, the County Council reviews Baltimore County’s comprehensive zoning map. During the CZMP, a property owner may request a change in his property’s zoning classification by filing a petition with the Office of Planning and Zoning for Baltimore County (“OPZ”). Additionally, the OPZ Staff, the Baltimore County Planning Board Members, the County Council, and citizens at large may request zoning changes to the comprehensive zoning maps for any parcel in Baltimore County. All of the petitions filed pursuant to the CZMP are assigned a CZMP Map Issue Number.

After a series of public hearings on the CZMP Map Issues, the County Council meets and votes on each CZMP Map Issue. When voting on CZMP Map Issues, “[t]he Council is required to take into account only existing facts and those projects or trends which are reasonably probable of fruition in the foreseeable future.” *Boyce v. Sembly*, 25 Md. App. 43, 57 (1975). When all Map Issues have been considered and resolved, the County Council adopts, through legislative action, their decisions on the Map Issues, thereby creating a “new” official comprehensive zoning map for Baltimore County.

b. Interim Zoning

Although original zoning and comprehensive rezoning enjoy strong presumptions of correctness, a property owner may, during a comprehensive rezoning interim, request a change in the zoning classification of his property. BCC § 2-356

delegates to the Board the interim power to change the zoning classifications adopted by the County Council during the CZMP. Specifically, § 2-356(a)(1) provides that the Board has “the power to make a change as to the district, division or zone within which a particular piece of property is classified. . . .” This delegation of power recognizes that, although comprehensive rezoning enjoys a strong presumption of correctness, the County Council may make a zoning mistake, or a change in the neighborhood may occur which requires a change in the zoning.

Unlike the CZMP, during which the County Council reevaluates and adopts zoning classifications for the entire county, interim re-zoning focuses on the zoning classification of a single property. To sustain an interim change from original or comprehensive rezoning, the Board must find “strong evidence of mistake in the original zoning or comprehensive rezoning or evidence a change in the character of the neighborhood.” *Stratakis v. Beauchamp*, 268 Md. 643, 653 (1973). *See also* BCC § 2-356(j)(1). To prove that the County Council made a mistake, the petitioner must show that, during the CZMP, the County Council failed to take into account existing facts, or that “events occurring subsequent to the comprehensive zoning have proven that the Council’s initial premises were incorrect. *See Boyce v. Sembly*, 25 Md. App. 43, 50-51 (1975).

The Board’s decision to rezone a property is a two-step process. In the first step, the Board determines whether the County Council has made a zoning mistake or whether a change in the neighborhood has occurred. *See* BCC § 2-356(j)(1). If the Board

finds that a zoning mistake exists or a change in the neighborhood has occurred, then the Board proceeds to the second step and analyzes whether the zoning requested by the Petition for Reclassification is warranted. *See* BCC § 2-356(j)(2). The Board must base its findings of mistake and change, as well as its determination that the requested reclassification is warranted, upon consideration of several zoning-related factors, including, but not limited to the factors listed in BCC § 2-356(j)(2).

A Petition for Reclassification may be filed with or without a documented site plan. If the Petition for Reclassification is filed with a documented site plan and is granted, then the subject property may only be developed in accordance with the documented site plan. If the Petitioner does not develop the parcel pursuant to the documented site plan within three years from the date of the final order granting the Petition for Reclassification, the zoning classification in existence prior to the approval of the Petition for Reclassification is reinstated. BCC § 2-356(n).

D. STATEMENT OF FACTS

The subject site originally consisted of three parcels; two parcels zoned R-O/C.R. and one parcel zoned R.C. 5. Prosser purchased the three parcels on July 15, 1992⁴, and combined them into one 5.2 acre-parcel for development purposes. E. 24. After the 1992 CZMP, the 5.2 acre-parcel was split-zoned: 3.300 acres zoned R.C. 5 and 1.900 acres zoned R-O/C.R. E. 70. On August 31, 1993, Prosser filed its petition to reclassify the

⁴ The purchase occurred after the deadline for filing CZMP Map Issues. Prosser was unaware of, and did not participate in, the 1992 CZMP. E. 30-31.

subject property from R-O/C.R. and R.C. 5 to M.L., as limited and conditioned by the documented site plan. E. 11.

During a four-day hearing before the Board, testimony revealed that Prosser sought the M.L. reclassification in order to relocate two of its subsidiaries to the site. Joseph L. Prosser, Jr., Prosser’s president, testified that Prosser could obtain no R-O use for the property and that the continued residential use of the site was not economically feasible.⁵ E. 27, 29. Mr. Prosser also testified that, at the time of purchase, he did not know about the parcels’ failing septic systems. E. 43.

In addition to Mr. Prosser’s testimony, Peter Swanson, Joseph Bittener, Barbara Amerein, Parker Watson, Patrick Ford, Jeffrey Long, and George Gavrelis testified in support of Prosser’s Petition for Reclassification. Peter Swanson, of the Baltimore County Economic Development Office, stated that the County supports the proposed reclassification as limited by the documented site plan. E. 46, 47. Mr. Swanson further stated that the reclassification was consistent with the Master Plan. E. 47.

Patrick Ford, who developed the documented site plan for the subject site, testified regarding the industrial character of the locale surrounding the site. E. 57. Mr. Ford analyzed the site’s existing land uses, and the soils, hydrology, slopes, and existing vegetation on the site. According to Mr. Ford, all three of the septic systems on the site are failing and the systems do not meet County or State standards. E. 87-90, 208. Mr.

⁵ At the time of the first Board hearing, the parcel was improved with three houses. Those houses have since been razed in accordance with the Baltimore County Code and the BCZR.

Ford also testified that the proposed reclassification would have no significant environmental impact. E. 208.

Jeffrey Long, the Planning Staff member who drafted the Planning Staff’s report and recommendations for the 1992 Map, testified that the County supports and recommends the proposed M.L. reclassification because the Master Plan identifies the property for industrial and employment uses. E. 64-65. Mr. Long stated that the proposed rezoning to M.L. was a reasonable extension of the M.L. zone which abuts the subject site on three sides, and that the documented site plan provides adequate protection for adjacent properties. E. 64-65, 76, 208.

Mr. Long also testified regarding the 1992 CZMP, during which the subject site was considered for a C.R.-district overlay. According to Mr. Long, the C.R.-district overlay was applied to all R-O properties as a matter of course and the Planning Staff did not conduct thorough reviews for each property affected. E. 68. Mr. Long testified that, during the 1992 CZMP, the County Council made its decision, with regard to the instant site, on the best information available at that time. E. 65. Mr. Long testified that when the 1992 Map was adopted, there was nothing in the Planning Staff file to indicate that the septic systems on the site were failing and that the Planning Staff did not become aware of the failing septic systems until after the 1992 CZMP. E. 77.

George Gavrelis, an expert in planning and zoning, testified that because Prosser purchased and combined the three parcels after the commencement of the 1992 CZMP, the County Council could not have had an opportunity to review the documented site

plan, proposed uses or the combination of the lots until after the adoption of the 1992 Map. Mr. Gavrelis also testified that the proposed reclassification complies with the Master Plan and complies with the 1992 Proposed Use Map, and that the reclassification to ML was warranted. E. 209.

In addition to expert testimony, three community residents, Joseph Bittener, Barbara Amerein, and Parker Watson, testified in favor of the proposed reclassification and the proposed development for the site. E. 60. Prosser submitted into evidence numerous letters of support from the community, and many local residents attended the Board hearing in support of Prosser’s proposed development and Petition for Reclassification.

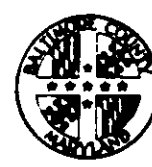
Robert Powell, a DEPRM representative, testified that DEPRM was concerned over the availability of a septic reserve area but agreed that, if building permits were issued, DEPRM would have full authority and opportunity to insure proper septic services on the 5.2 acre-parcel. E. 210.

In a 2-1 decision, based on the above-referenced testimony, the Board approved Prosser’s Petition for Reclassification. Specifically, the Board found that the proposed development on the 5.2 acre-parcel was in keeping with the adjacent land uses and that no practical use for the 5.2 acre-parcel existed under its present zoning designations. E. 211. According to the Board, regardless of the use proposed or undertaken, the septic systems on the parcel failed to comply with Baltimore County regulations. E. 212. The Board also recognized the comment issued by the OPZ Staff stating that the C.R.-district

overlay was applied “as a matter of course” without due consideration for each property affected by the issue during the 1992 CZMP. E. 208. The Board found that the OPZ Staff unknowingly misled the County Council in its advice to apply the C.R. designation to the instant site. E. 212. The Board also found that when it adopted the 1992 Map, the County Council could not have known that Prosser would combine, for development purposes, the two R.C. 5 parcels with the R-O/C.R. parcel to form one 5.2 acre-parcel. E. 212. The Board concluded from its factual findings that the proposed use under the documented site plan complied with the Master Plan and the 1992 Proposed Land Use Map, and that the proposed use would remove the health hazard produced by the three failing septic systems, as evidenced by the documented site plan. E. 212-13. The Board also concluded that it would have been virtually impossible for the County Council to have known of or to have foreseen that the parcels can only be used “if the three septic systems are destroyed, and the one area that appears to be usable is incorporated into the requested zoning to permit the industrial use.” E. 212.

From the First Board Order, Appellants filed Petitions for Judicial Review to the Circuit Court. As stated *supra*, Judge Hinkel issued an opinion and order dated December 7, 1995, affirming the finding in the First Board Order that a zoning error “occurred subsequent to the Comprehensive Zoning Map Process in 1992.” Judge Hinkel held that:

At the time of the comprehensive zoning, there is evidence that the lots were presented to the Council as three individual lots. The fact that the lots were owned by a single owner does not affect this finding. Each lot currently has a non-functioning septic system. Only a small area on one of the lots can be developed for septic use. Thus, the three lots must



County Board of Appeals of Baltimore County

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

October 4, 1996

Michael P. Tanczyn, Esquire
606 Baltimore Avenue
Suite 106
Towson, MD 21204

RE: Civil Action No. 95-CV-00288
THE PROSSER COMPANY, INC.

Dear Mr. Tanczyn:

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,

Charlotte E. Radcliffe
Charlotte E. Radcliffe
Legal Secretary

Enclosure

c: Glen Arm Community Association, Inc.
T. Michael Reier

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

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

IN THE CASE OF: IN THE MATTER OF THE APPLICATION OF THE PROSSER CO., INC. FOR A ZONING RECLASSIFICATION ON PROPERTY LOCATED ON THE SOUTHEAST SIDE LONG GREEN PIKE AND THE NORTHWEST SIDE GLEN ARM ROAD (12107 AND 12109 LONG GREEN PIKE AND 5328 GLEN ARM ROAD) 11TH ELECTION DISTRICT 6TH COUNCILMANIC DISTRICT

IN THE BALTIMORE COUNTY BOARD OF APPEALS, CASE NO.: CR-94-143 (Cycle II, 1993/94)

Circuit Court

FOR

BALTIMORE COUNTY

Civil Action No. 95-CV-0288

PETITION FOR JUDICIAL REVIEW

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY hereby requests judicial review of the decision of the County Board of Appeals dated September 19, 1996 in the above case, CBA Case Nos. CR-94-143. PEOPLE'S COUNSEL was a party to the proceeding before the County Board of Appeals of Baltimore County in this matter.

This Petition is filed pursuant to Rule 7-202 of the Maryland Rules of Procedure.

Peter Max Zimmerman
PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

RECEIVED AND FILED

96 SEP 30 PM 4:21

CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

Carole S. Demilio
CAROLE S. DEMILIO
Deputy People's Counsel
Room 47, Courthouse
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of September, 1996, a copy of the foregoing Petition for Judicial Review was mailed to G. Scott Barhight, Esq., Whiteford, Taylor & Preston, 210 W. Pennsylvania Avenue, Suite 400, Towson, MD 21204, and to Michael P. Tanczyn, Esq., 606 Baltimore Avenue, Suite 106, Towson, MD 21204.

Peter Max Zimmerman
PETER MAX ZIMMERMAN

PETITION OF: Glen Arm Community Association, Inc. 11909 Long Green Pike Glen Arm, Maryland 21057

and

T. Michael Reier 11909 Long Green Pike Glen Arm, Maryland 21057

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

FOR JUDICIAL REVIEW OF THE DECISION OF:

County Board of Appeals of Baltimore County
31d Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204
(410) 887-3180

IN THE CASE OF: IN THE MATTER OF THE APPLICATION OF THE PROSSER COMPANY, INC. FOR A ZONING RECLASSIFICATION ON PROPERTY LOCATED ON THE SOUTHEAST SIDE LONG GREEN PIKE AND THE NORTHWEST SIDE GLEN ARM ROAD (12107 AND 12109 LONG GREEN PIKE AND 5328 GLEN ARM ROAD) 11TH ELECTION DISTRICT 6TH COUNCILMANIC DISTRICT

CASE NO. CR-94-143
CYCLE II, 1993 /94

CIVIL ACTION NO. 95-CV-0288

PETITION

GLEN ARM COMMUNITY ASSOCIATION, INC. and T. MICHAEL REIER, Appellants and parties in the above-referenced case, by Michael P. Tanczyn, Esq., their legal counsel, in accordance with

RECEIVED AND FILED

96 SEP 23 PM 3:28

Maryland Rule 7-202, hereby request judicial review of the September 19, 1996 Decision of the County Board of Appeals of Baltimore County in the above-captioned matter granting the reclassification of The Prosser Company, Inc. for zoning reclassification.

Michael P. Tanczyn
MICHAEL P. TANCZYN, ESQ.
606 Baltimore Avenue, Suite 106
Towson, Maryland 21204
Telephone: (410) 296-8823
Attorney for the Appellants

I HEREBY CERTIFY that, on this 29th day of September, 1996, a copy of the foregoing was mailed, postage prepaid, to G. Scott Barhight, Esquire, Whiteford, Taylor & Preston, 500 Court Towers, 210 West Pennsylvania Avenue, Towson, Maryland, 21204-4515, attorney for The Prosser Company, Inc.; to Peter Max Zimmerman, Esquire, Baltimore County People's Counsel, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland, 21204; and to County Board of Appeals of Baltimore County, Old Courthouse, 400 Washington Avenue, Room 49, Towson, Maryland, 21204.

Michael P. Tanczyn
MICHAEL P. TANCZYN, ESQ.

Law Offices
MICHAEL P. TANCZYN, P.A.
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
(410) 296-8823 - (410) 296-8824
Fax: (410) 296-8827

September 23, 1996

Kathleen C. Bianco, Legal Administrator
County Board of Appeals for Baltimore County
400 Washington Avenue, Room 49
Towson, MD 21204

Re: The Prosser Company, Inc.
Remand / Case No. CR-94-143
Civil Action No. 95-CV-0288

Dear Kathy:

Enclosed herewith please find Petition for Judicial Review in the above matter filed on behalf of Glen Arm Community Association, Inc. and T. Michael Reier together with our check to cover costs.

Please docket the Petition and send me a receipt at your earliest convenience.

Very truly yours,

MPT
Michael P. Tanczyn

MPT/ed
Enclosures

cc: G. Scott Barhight, Esq.
Peter Max Zimmerman, Esq.
Mr. T. Michael Reier

IN THE MATTER OF THE APPLICATION OF THE PROSSER COMPANY, INC. SOUTHEAST SIDE LONG GREEN PIKE AND NORTHWEST SIDE GLEN ARM ROAD (12107 AND 12109 LONG GREEN PIKE AND 5328 GLEN ARM ROAD) 11TH ELECTION DISTRICT 6TH COUNCILMANIC DISTRICT

ON REMAND FROM THE CIRCUIT COURT FOR BALTIMORE COUNTY

Circuit Court

FOR

BALTIMORE COUNTY

CIVIL ACTION No. 95-CV-00288

(Case No. CR-94-143)

This case is on remand from the Circuit Court, with the mandate of the Court directing the County Board of Appeals, "...to articulate its findings with respect to the factors set forth in Baltimore County Code Section 2-356(j)(2)." The original triers of fact were then-Chairman William T. Hackett, C. William Clark, and Robert O. Schuetz. Messrs. Hackett and Schuetz were in the majority on the issues of error in the 1992 Comprehensive Zoning Map Process by the County Council and whether the proposed zoning classification was warranted. Mr. Clark dissented on the issue of error; concerning the proposed zoning classification, Mr. Clark wrote, "There was ample testimony to support a finding that the proposed reclassification is warranted. Any number of uses to which any particular piece of property might be put are acceptable and reasonable uses of property. The process of zoning is one of drawing lines; however, that is not the critical issue in this case." The Court affirmed the Board on the issue of error by the County Council in the 1992 Comprehensive Zoning Map Process; in the period between the date of the Board's original order and the date of the intermediate decision by the Court, Messrs. Hackett and

Case No. CR-94-143 /95-CV-00288 Prosser Company, Inc. /Remand 2

Clark left County service.

As the sole remaining Board panel member and in the majority opinion of this case, in response to the literal reading of the mandate of the Court, Mr. Schuetz issued findings in an Amended Opinion Pursuant to Remand Order. Upon receipt of Motions for Reconsideration by Protestants and People's Counsel, the Amended Order was rescinded and a hearing scheduled to consider issues raised in the motions. At that hearing, two new panel members joined Mr. Schuetz to consider the issues and respond to the mandate of the Court.

Petitioner argued that the Board is bound to act in strict accord with the mandate of the Court, requiring written findings whether the proposed classification is warranted, without the need for a de novo hearing before a new panel.

People's Counsel, joined by Protestants, brought several cases to support their contentions. Of all the cases brought to the attention of this Board, only Prince George's County v. Zayre Corp., 70 Md.App. 392 (1987) contains procedural facts which parallel those here: the evidentiary proceeding was closed, appealed, appeal heard and the case remanded by the Court, with the remand order containing explicit instructions for the respective triers of fact. People's Counsel and Protestants seek a de novo proceeding on both issues, the issue of error by the Council in the 1992 Comprehensive Zoning Map Process, as well as the issue of whether the proposed zoning classification is warranted following the 1992 Comprehensive Zoning Map Process. Further, People's

Case No. CR-94-143 /95-CV-00288 Prosser Company, Inc. /Remand 3
Counsel sought a public deliberation, as the term has come to be for this Board, on the Board's modus operandi in the instant intermediate proceeding. Finally, People's Counsel sought to enter new evidence in any proceeding pursuant to the remand order, such new evidence being information related to the current 1996 Comprehensive Zoning Map Process, as well as case law already ruled-upon during the intermediate Court's proceeding.

Protestants argued that the public trust is violated if the Board proceeded as offered in the hearing of June 5, 1996. Protestants also argued that the public is due its day in court and that the Board must adhere to an interpretation of the Board's Rule 1.c which Protestants construe to extend to this proceeding, a remand from an intermediate Court and not an evidentiary proceeding before the original triers of fact. Finally, standing alone, Protestants moved for Mr. Schuetz's recusal because of an alleged predisposition he would carry into any proceeding pursuant to the remand order.

Petitioner (Appellee) argued that the Board may sit in this remand proceeding without the need for a de novo hearing, citing contextual disparities between Clark v. County Board of Appeals, 235 Md. 320, 210 A.2d 499 (1964) and this case to exhibit how Protestants have had opportunity for a fair and open airing of the issues. Also, Appellee contends that the delay in conclusion of the matter is detrimental to him and that any proceeding, de novo or non, is limited to the issues contained in the mandate of the Court. Citing Citizens for Rewastico Creek v. Commissioners of

Case No. CR-94-143 /95-CV-00288 Prosser Company, Inc. /Remand 4
Hebron, 67 Md.App. 466 (1986) and the Van Teslaar Rule [see Van Teslaar v. Bender, 365 F.Supp. 1996 (D.Md. 1974)], Appellee contended that facts brought on the issue of whether the proposed zoning classification is warranted are facts which are best brought by expert witnesses since those factors which appear in Baltimore County Code Section 2-356(j)(2) relate to subjects which are routine to the respective experts' professions. On that basis, Appellee asserted that, on the issue of warranted zoning classification, the lay testimony is not of such substance that the credibility and demeanor of lay witnesses would be a material factor in this Board's decision as to its consideration of the issue on remand and, therefore, to this Board's modus operandi in this remand proceeding. Appellee pointed to the lack of accepted experts in opposition to the issue on remand, in light of the technical requirements under Baltimore County Code Section 2-356(j)(2), to further his argument.

Finally, Appellee contended that Mr. Schuetz need not recuse himself as he is one of the remaining panel members of the evidentiary proceeding and that the Court has remanded the case back to that panel to articulate its findings. Board Rule 4.b requires the Chairman preside over administrative matters before the Board, subject to consensus of other sitting panel members. Clark differs from this case so substantially as to the issue of the modus operandi of this proceeding that it is of no value in examining the issue. In Clark, an original proceeding was held wherein only two of five panel members actually heard live

Case No. CR-94-143 /95-CV-00288 Prosser Company, Inc. /Remand 5
testimony and made findings pursuant to the proceeding. In this case, the required three members participated in strict accord with the Board's rules; the parties had full and fair opportunity to air the issues for the Board's consideration. In this case, although one panel member dissented in the final decision, that member joined the majority in the finding that the proposed zoning classification was indeed warranted.

Rewastico, while most instructive, is not quite the parallel case that Appellee claims it to be. In that case, the triers of fact were not the final decision-making body, but were in a role which made recommendations to that decision-maker. The relevant issue in Rewastico is the review of Van Teslaar and the standard set in deciding whether a de novo hearing is required. In this case, we have no adverse expert testimony on the issue on remand, that issue being of a technical nature which is routine to the respective experts' professions. The issue of error by the County Council is always the most difficult to prove for a Petitioner; this Appellee proved his case on error and this Board was affirmed by the Court on that difficult and contested issue. While Zayre provides guidance as to the Court's ability to direct this Board to conduct a de novo hearing, such right of the Court is not a de facto exercising of that right as People's Counsel and Protestants inferred. Since the evaluation of lay witness credibility and demeanor was not a material factor in the evaluation of the technical merits of the proposed zoning classification, the Chairman ruled from the bench that the Board need only review the

Case No. CR-94-143 /95-CV-00288 Prosser Company, Inc. /Remand 6
testimony of those witnesses who testified to that issue. Nonetheless, Zayre does remind the Board that this remand proceeding is interlocutory and that the case remains in the jurisdiction of the Court.

Again, under the Board's Rule 4.b, the Chairman is charged with the process of administrative matters of the case, subject to a consensus of the sitting panel. The Chairman ruled that this Board need not deliberate the method by which this case will move forward, subject to comment from the other panel members on the record. The matter proceeded as offered: the other two panel members considered the entire transcript and evidence of the case brought in the original s. At a later date, the full panel then openly deliberated the very narrow issue of whether the proposed zoning classification is warranted in accordance with Baltimore County Code Section 2-356(j)(2). Therefore, the motion for a de novo hearing was denied.

As for Protestant's motion for Mr. Schuetz's recusal, this Board believes that the Court acknowledges that Mr. Schuetz has a position on the issue on remand, having been one of the triers of fact in the evidentiary proceeding. All that has been required by the Court is for this Board to articulate its findings. In any other case where sitting panel members are still available, the case is brought back to that panel for action in strict accord with the mandate of the Court. Here we have a remand on a narrow technical issue and that remand is therefore construed to mean that Mr. Schuetz is required to continue in the instant case. The

Case No. CR-94-143 /95-CV-00288 Prosser Company, Inc. /Remand 7
motion for recusal was therefore denied.

Concerning People's Counsel's motion for additional evidence, such evidence to include information of the current, mid-process 1996 Comprehensive Zoning Map Process, we believe that the issue here is a remand from the Court which has mandated this Board to articulate its findings. Those findings were made subsequent to the 1992 Comprehensive Zoning Map Process and included facts which were revealed pursuant to that process and whether the prospective zoning classification was appropriate at that time, not this date and at this juncture relative to a new set of facts. To consider such evidence eschews the clear language of the mandate of the Court. Nonetheless, having ruled that this panel will consider the issue on remand from the record, the motion to submit additional evidence and testimony is moot.

This is a most difficult situation for all concerned. The Appellee sought lawful reclassification to property in a very tight schedule, that schedule being the less-than-four-year period between comprehensive map processes. In that cycle process, it is contemplated that a petitioner may enter any cycle, first to the fifth, in a period which is already constricted by preclusions in the schedule due to the administration of the ensuing map process. That petitioner assumes it possible to reclassify the property and work through the appeals process within the period between map processes. Unfortunately for the petitioner, such is not always the case. The Comprehensive Zoning Maps carry with them a tremendous influence in the County and therefore require scrutiny

Case No. CR-94-143 /95-CV-00288 Prosser Company, Inc. /Remand 8
wherever a change might occur. That scrutiny is supplied by protestants of the given case, and, in the case of Baltimore County, People's Counsel. Those most able entities are charged with a responsibility to defend the maps and accept that charge in the spirit in which it was intended.

Finally, the Board notes that the decision by Protestants' counsel to quote one of the original panel member's statements made off the record in the deliberations of the case has cast a shadow over these proceedings and the deliberation process in general. The sanctity of the deliberation process cannot be invaded in the attempt to discredit the panel, lest the process be diminished so as to only reflect a count of votes borne out of a fear of being misquoted, out of context, thus eliminating the free exchange of thoughts on the merits. This Board is a quasi-judicial administrative panel, not a court of law; therefore, this Board cannot sanction one for such a gross misdeed by an officer of the court.

Turning to the issue at hand, Baltimore County Code Section 2-356(j) (2), reads:

"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

Case No. CR-94-143 /95-CV-00288 Prosser Company, Inc. /Remand 9
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. [Bill No. 46, 1979.]"

The Board also notes that the Petitioner brought a documented site plan and, with it, the restrictions associated with a documented site plan, which serves to provide safeguards against uses not specifically part of that documented plan. Mr. Jeffrey Long, of the former Office of Planning and Zoning, testified that the staff conclusion in review of the instant case is that the request was appropriate and was consistent with the Master Plan. The Planning Board agreed, subject to a revision with regard to the Landmarks Preservation Commission's concerns about the three existing houses on the instant site. Mr. Long specifically noted that the Glen Arm area is noted as an industrial development area as part of the Master Plan. At the time of the Office of Planning and Zoning review, the staff position was to eliminate proposed Building "B," in deference to septic issues raised by the Department of Environmental Protection & Resource Management (DEPRM) in its discussions with the Petitioner. Mr. Long testified that if the septic issue is remediated, then the staff has no problem with proposed Building "B."

Ms. Ruth Mascari, Chairman of the Landmarks Preservation Commission, testified that none of the three existing buildings on the instant site is on the Baltimore County Landmarks Preservation List, further stating that the property owner has the right to raze the existing structures. In light of the documented site plan, the

Case No. CR-94-143 /95-CV-00288 Prosser Company, Inc. /Remand 10
known failing existing septic systems, and the improvements necessary to proceed in mitigating the existing septic problems for the new structures, the Board finds that adverse impacts to water supply facilities are mitigated by the proposed reclassification; that sewerage would be improved by the proposed reclassification; and that the general welfare of the community concerning environmental issues would be enhanced by the proposed reclassification and its resultant improvements on the property.

Mr. George Gavrellis, in his testimony regarding whether the proposed zoning reclassification is warranted, testified that the documented site plan is within the spirit and intent of the Baltimore County Zoning Regulations as the plan is in keeping with the Baltimore County Comprehensive Plans. He testified that there would be no impact on existing transportation facilities, utilities, and schools. Concerning solid waste disposal, the documented plan provides for a manufacturing enterprise; therefore, private solid waste disposal services would be employed, and there would be no additional burden on County services. He indicated that the proposed classification is compatible with the surrounding, historically manufacturing area and is in strict accordance with existing and prospective classifications with the Master Plan, the County plan for sewerage and water supply facilities, and that the proposed reclassification has no impact to the capital program. The Board is persuaded by the testimony of Mr. Gavrellis concerning these factors.

The Board notes that The Prosser Company is but part of three

Case No. CR-94-143 /95-CV-00288 Prosser Company, Inc. /Remand 11
affiliated companies: The Amerihm Company, a miscellaneous metals
manufacturing company located on Overton Avenue at Belair Road and
Interstate 695 in Baltimore County, as well as El-Tex, an
electrical control panel manufacturing facility. The expansion of
Belair Road at Overton Avenue, as well as constraints at the El-Tex
facility in Baltimore City, has the Petitioner in a position of not
being able to expand to meet his company's needs and the needs of
his clients. Mr. Peter Swanson, of the Baltimore County Department
of Economic Development (DED), testified that DED supported the
Petition, citing improved efficiency of the Petitioner, consistency
with the Master Plan for the area, additional employment in
Baltimore County, and an increased tax base.

Mr. Patrick Ford, an expert in land planning, analyzed the
zoning in the Glen Arm area, and found the area to be predominantly
business and industrial in use.

The Board also notes that the Petition was supported by
numerous residents of the area, despite opposition by a few, as
evidenced by the myriad of non-form letters of support. In finding
the testimony of Messrs. Long, Gavrelis, Swanson, and Ford
persuasive, this Board finds that the proposed reclassification, as
limited in the documented site plan, is indeed warranted, and will
so order.

ORDER

ACCORDINGLY, IT IS this 19th day of September, 1996
by the County Board of Appeals of Baltimore County

ORDERED that the Opinion and Order of the Board dated December

Case No. CR-94-143 /95-CV-00288 Prosser Company, Inc. /Remand 12
13, 1995 be and is hereby AMENDED as set forth in the foregoing
Opinion, as directed on Remand from the Circuit Court for Baltimore
County, in that the proposed reclassification, as limited in the
documented site plan, is warranted; and it is further

ORDERED that the Petition for Reclassification from R.O.-C.R.
and R.C. 5 to M.L. for some 5.2 combined acres on a documented site
plan be and is hereby GRANTED, pursuant to the foregoing Opinion
and this Board's Opinion and Order dated December 13, 1995.

**COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY**

Robert O. Schuetz
Robert O. Schuetz, Chairman

Harry E. Buchheister, Jr.
Harry E. Buchheister, Jr.

S. Diane Levero
S. Diane Levero



County Board of Appeals of Baltimore County

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

September 19, 1996

G. Scott Barhight, Esquire
WHITEFORD, TAYLOR & PRESTON
500 COURT TOWERS
210 W. PENNSYLVANIA AVENUE
TOWSON, MD 21204-4515

RE: On Remand from the Circuit Court -
Case No. CR-94-143 /The Prosser Co., Inc.
Civil Action No. 95-CV-0288

Dear Mr. Barhight:

Enclosed please find a copy of the Opinion and Order issued
this date by the County Board of Appeals in the subject matter /On
Remand from the Circuit Court, pursuant to the April 22, 1996
Mandate of the Court of Special Appeals of Maryland.

Very truly yours,

Charlotte E. Radcliffe
Kathleen C. Bianco
Legal Administrator

encl

cc: James J. Prosser /The Prosser Co., Inc.
Michael P. Tanczyn, Esquire
Glen Arm Community Assn., Inc.
T. Michael Reier
The Honorable J. William Hinkel, Judge
Circuit Court for Baltimore County
Copy /Circuit File No. 95-CV-00288
James Earl Kraft
People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt
W. Carl Richards, Jr. /PDM
Docket Clerk /PDM
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

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on Recycled Paper

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

IN THE MATTER OF

THE PROSSER COMPANY, INC.

CIVIL ACTION
No. 95-CV-00288

AFFIDAVIT

I, the undersigned, certify that the file concerning the above
referenced matter was received by the Baltimore County Board of
Appeals on MAY 22, 1996. The portion of this file
belonging to Circuit Court for Baltimore County will be returned
upon future appeal or closure of the case from the Board of
Appeals.

Charlotte E. Radcliffe
(signature)

Name: CHARLOTTE RADCLIFFE

Dept: CO. BOARD OF APPEALS

RECEIVED AND FILED

96 NOV 25 PM 3:31

Returned to Civil

IN THE MATTER OF * ON REMAND FROM THE
THE APPLICATION OF * CIRCUIT COURT
THE PROSSER COMPANY, INC. * FOR
SOUTHEAST SIDE LONG GREEN PIKE AND * BALTIMORE COUNTY
NORTHWEST SIDE GLEN ARM ROAD * CIVIL ACTION
(12107 AND 12109 LONG GREEN PIKE * No. 95-CV-00288
AND 5328 GLEN ARM ROAD) *
11TH ELECTION DISTRICT *
6TH COUNCILMANIC DISTRICT *
(Case No. CR-94-143)

NOTICE TO RESCIND AMENDED OPINION

On the 6th day of May, 1996, this Board issued an Amended
Opinion Pursuant to Remand Order. This Amended Opinion was
predicated on the Remand Order from Judge J. William Hinkel dated
December 11, 1995, and his Memorandum Opinion contained therein.

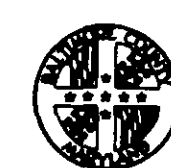
Upon receipt of, and pursuant to, Motions for Reconsideration
filed May 10, 1996, by Michael P. Tanczyn, Esquire, and Peter Max
Zimmerman, People's Counsel for Baltimore County, and response
thereto filed by G. Scott Barhight, Esquire, this Board will
rescind its May 6, 1996 Amended Opinion, for the purpose of
reconsideration and resolution of all appropriate issues in this
matter, including those as set forth in the Remand Order of the
Circuit Court for Baltimore County.

Under these circumstances, IT IS THEREFORE this 20th day of
May, 1996, by the County Board of Appeals

ORDERED that the Amended Opinion Pursuant to Remand Order
issued by this Board on May 6, 1996 is now null and void and is
hereby RESCINDED.

**COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY**

Robert O. Schuetz
Robert O. Schuetz, Chairman



County Board of Appeals of Baltimore County

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

May 20, 1996

Michael P. Tanczyn, Esquire
606 Baltimore Avenue
Suite 106
Towson, MD 21204

G. Scott Barhight, Esquire
WHITEFORD, TAYLOR & PRESTON
500 COURT TOWERS
210 W. PENNSYLVANIA AVENUE
TOWSON, MD 21204-4515

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

RE: REMAND /Case No. CR-94-143
The Prosser Company, Inc.
Civil Action No. 95-CV-0288

Dear Counsel:

Enclosed please find a copy of the Notice to Rescind Amended
Opinion issued this date by the County Board of Appeals in the
subject matter.

Also enclosed is a copy of the Notice of Assignment by which
this matter is scheduled for hearing on the appropriate issues on
Wednesday, June 5, 1996 at 1:00 p.m.

Very truly yours,

Kathleen C. Bianco
Kathleen C. Bianco
Administrative Assistant

encl

cc: James J. Prosser /The Prosser Co., Inc.
Glen Arm Community Assn., Inc.
T. Michael Reier
The Honorable J. William Hinkel, Judge
Circuit Court for Baltimore County
Copy /Circuit File No. 95-CV-00288
James Earl Kraft
Pat Keller
Lawrence E. Schmidt
W. Carl Richards, Jr. /PDM
Docket Clerk /PDM

Jeffrey Long /Planning
Arnold Jablon, Director /PDM
Virginia W. Barnhart, Co. Atty.

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on Recycled Paper



Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

Room 47, Old Courthouse
400 Washington Ave.
Towson, MD 21204

(410) 887-2188

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

May 9, 1996

Mr. Robert O. Schuetz, Chairman
Board of Appeals of Baltimore County
Room 49 Courthouse
400 Washington Avenue
Towson, MD 21204

Hand-delivered

Re: The Prosser Company, Inc.
REMAND/Case No. CR-94-143
Civil Action No. 95-CV-0288

Dear Mr. Schuetz:

We must respectfully request immediate reconsideration,
rescission, and withdrawal of the Order dated May 6, 1996,
granting the subject zoning reclassification.

The reasons are:

1. There has been no notice and opportunity to be heard on
the remand, as required by the Express Powers Act, Md. Ann. Code
Art. 25A, Sec. 5(U).
2. There has not been the required hearing, trial, and
decision on the record by a full three (3)-member panel of the
County Board of Appeals, as required by Art. 25A, Sec. 5(U),
Article VI of the County Charter, and Rule 1C of the County Board
of Appeals (adopted by the County Council).
3. There has not been the required public deliberation
under Md. Ann. Code State Government Art., Sec. 10-501, et seq.
4. There has not been a legally sufficient statement of
reasons, under Code Sec. 2-356 and People's Counsel v.
Beachwood, 107 Md.App. 627 (1996).

The May 6 Order is, therefore, mistaken and irregular as a
matter of law. For these and other substantive reasons, we ask
that an Order be entered rescinding the May 6 Order and zoning
approval.

Mr. Robert O. Schuetz, Chairman
Board of Appeals of Baltimore County
May 9, 1996
Page Two

Very truly yours,

Peter Max Zimmerman
Peter Max Zimmerman
People's Counsel for Baltimore County
Carole S. Demilio
Carole S. Demilio
Deputy People's Counsel

PMZ/CSW/caf

cc: G. Scott Barhight, Esquire
Michael P. Tanczyn, Esquire

Law Offices
MICHAEL P. TANCZYN, P.A.
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
(410) 296-8823 - (410) 296-8824
Fax: (410) 296-8827

May 8, 1996

Robert O. Schuetz, Chairman
County Board of Appeals for Baltimore County
400 Washington Avenue, Room 49
Towson, MD 21204

Re: The Prosser Company, Inc.
Remand / Case No. CR-94-143
Civil Action No. 95-CV-0288

Dear Mr. Schuetz:

I was surprised to receive the letter with the Amended Opinion in the above case signed only by you dated May 6, 1996.

The purpose of this letter is to ask you to reconsider the decision rendered because Rule 1 of the Rules of Practice and Procedure of the County Board of Appeals requires a minimum of 2 members to render a decision, only with agreement of counsel of record or parties of record, and normally 3 members to conduct the business of the Board. Rule 2 requires that "No hearing shall be conducted without at least 10 days' notice to all parties of record or their counsel of record unless otherwise agreed to by all such parties or their counsel of record." In this case no deliberations were scheduled or conducted on the remand nor was a properly constituted Board convened.

I therefore ask you to reconsider your decision and advise the parties so that they may know how to proceed.

Very truly yours,

Michael P. Tanczyn
Michael P. Tanczyn

MPT/ed
cc: G. Scott Barhight, Esq.
Peter Max Zimmerman, Esq.
Mr. T. Michael Reier

PETITION OF: * IN THE
Glen Arm Community * CIRCUIT COURT
Association, Inc. * FOR BALTIMORE COUNTY
11909 Long Green Pike *
Glen Arm, Maryland 21057 *
and *
T. Michael Reier *
11909 Long Green Pike *
Glen Arm, Maryland 21057 *
FOR JUDICIAL REVIEW OF DECISION OF: *
County Board of Appeals *
of Baltimore County *
Old Courthouse, Room 49 *
400 Washington Avenue *
Towson, Maryland 21204 *
(410) 887-3180 *
IN THE CASE OF: *
IN THE MATTER OF *
THE APPLICATION OF *
THE PROSSER COMPANY, INC. *
FOR A ZONING RECLASSIFICATION *
ON PROPERTY LOCATED ON THE *
SOUTHEAST SIDE LONG GREEN *
PIKE AND THE NORTHWEST SIDE *
GLEN ARM ROAD (12107 AND *
12109 LONG GREEN PIKE AND *
5328 GLEN ARM ROAD) *
11TH ELECTION DISTRICT *
6TH COUNCILMANIC DISTRICT *
CASE NO. CR-94-143 * CIVIL ACTION
CYCLE II, 1993 /94 * NO. 100/243/95CV-00288
* * * * *

NOTICE OF APPEAL

PLEASE note an appeal on behalf of the Petitioners and

1

IN THE MATTER OF * ON REMAND FROM THE
THE APPLICATION OF * CIRCUIT COURT
THE PROSSER COMPANY, INC. *
SOUTHEAST SIDE LONG GREEN PIKE AND *
NORTHWEST SIDE GLEN ARM ROAD *
(12107 AND 12109 LONG GREEN PIKE *
AND 5328 GLEN ARM ROAD) *
11TH ELECTION DISTRICT *
6TH COUNCILMANIC DISTRICT *
* CIVIL ACTION
* No. 95-CV-00288
* (Case No. CR-94-143)
* * * * *

AMENDED OPINION PURSUANT TO REMAND ORDER

This case comes before this Board on remand from the Circuit Court for Baltimore County by Order of J. William Hinkel, Judge, dated December 7, 1995. In that Memorandum Opinion and Order, the Court found that the Board was correct in finding error due to events that occurred subsequent to the Comprehensive Zoning Map Process in 1992. However, this matter was remanded by the Court in order for the Board to "articulate its findings with respect to the factors set forth in Baltimore County Code Section 2-356(j)(2)," which states:

"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. [Bill No. 46, 1979.]"

Included in the proceedings before this Board was the testimony of George Gavrelis, an expert in planning and zoning. Mr. Gavrelis testified at length as to the relationship of this

Appellants, Glen Arm Community Association, Inc. and T. Michael Reier, by their attorney, Michael P. Tanczyn, Esq., from the Decision of the Circuit Court for Baltimore County (Honorable Christian M. Kahl) of March 7, 1997 to the Court of Special Appeals of Maryland.

MICHAEL P. TANCZYN, ESQ.
606 Baltimore Avenue, Suite 106
Towson, Maryland 21204
Telephone: (410) 296-8823
Attorney for the Appellants

I HEREBY CERTIFY that, on this ___ day of March, 1997, a copy of the foregoing was mailed, postage prepaid, to G. Scott Barhight, Esquire, Nottingham Centre, Suite 700, 502 Washington Avenue, Towson, Maryland, 21204-4528, attorney for the Appellees; to Peter Max Zimmerman, Esquire, Baltimore County People's Counsel, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland, 21204; and to County Board of Appeals for Baltimore County, Old Courthouse, Room 49, 400 Washington Avenue, Towson, Maryland, 21204.

MICHAEL P. TANCZYN, ESQ.

2

Case No. CR-94-143 /95-CV-00288 Prosser Company, Inc. /Remand 2
proposal to the Master Plan and the 1992 Proposed Land Use Map; to population trends; no additional transportation burden; adequacy of utilities; no effect on schools; and compatibility with surroundings; that the plan is in accordance with the recommendations of the Planning Office and Planning Board, as well as current and prospective classifications; and that there will be no impact to the capital program.

In response to the Remand Order of the Circuit Court, and with particular attention to the criteria as set out in Section 2-356(j)(2), the Board has reviewed the testimony and evidence submitted in this matter, including the testimony of Mr. Gavrelis and that of Jeffrey Long, a Planner with the Baltimore County Office of Planning, and finds that the requested reclassification is in fact warranted, and will so order.

ORDER

ACCORDINGLY, IT IS this ___ 6th ___ day of ___ May ___, 1996 by the County Board of Appeals of Baltimore County

ORDERED that the Opinion and Order of the Board dated December 13, 1994 be and is hereby AMENDED as set forth in the foregoing Opinion, as directed on Remand from the Circuit Court for Baltimore County; and it is further

ORDERED that the Petition for Reclassification from R.O.-C.R. and R.C. 5 to M.L. for some 5.2 combined acres on a documented site plan be and is hereby GRANTED.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Robert O. Schuetz
Robert O. Schuetz, Chairman

Law Offices
MICHAEL P. TANCZYN, P.A.

Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
(410) 296-8823 - (410) 296-8824
Fax: (410) 296-8827
Computer Fax: (410) 296-2848

March 21, 1997

Angel Julio, Appeal Clerk
Baltimore County Circuit Court
County Courts Building
401 Bosley Avenue
Towson, MD 21204

Re: Glen Arm Community Association v.
County Board of Appeals for Baltimore County
Case Number 100/243/95CV00288 - Non-Jury

Dear Ms. Julio:

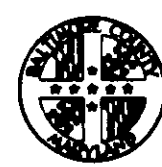
Enclosed herewith please find Notice of Appeal of Appellants Glen Arm Community Association, Inc. and T. Michael Reier for filing in the above matter. We understand People's Counsel filed an Appeal on March 20, 1997 and this would be a second Appeal.

Very truly yours,

MPT
Michael P. Tanczyn

MPT/ed
Enclosures

cc: County Board of Appeals
G. Scott Barhight, Esq.
Peter Max Zimmerman, Esq.
Mr. T. Michael Reier



County Board of Appeals of Baltimore County
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

May 6, 1996

G. Scott Barhight, Esquire
WHITEFORD, TAYLOR & PRESTON
500 Court Towers
210 W. Pennsylvania Avenue
Towson, MD 21204-4515

RE: REMAND /Case No. CR-94-143
The Prosser Company, Inc.
Civil Action No. 95-CV-0288

Dear Mr. Barhight:

Enclosed please find a copy of the Board's Amended Opinion Pursuant to Remand Order issued this date, in response to the December 11, 1995 Remand Order of the Circuit Court for Baltimore County, and upon receipt of the April 22, 1996 Mandate of the Court of Special Appeals of Maryland.

Very truly yours,

Kathleen C. Blanco
Kathleen C. Blanco
Administrative Assistant

encl

cc: James J. Prosser /The Prosser Co., Inc.
Michael P. Tanczyn, Esquire
Glen Arm Community Assn., Inc.
T. Michael Reier
The Honorable J. William Hinkel, Judge
Circuit Court for Baltimore County
Copy /Circuit File No. 95-CV-00288
James Earl Kraft
People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt
W. Carl Richards, Jr. /PDM
Docket Clerk /PDM
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

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on Recycled Paper

IN THE CIRCUIT COURT FOR *
BALTIMORE COUNTY *
PETITIONS OF GLEN ARM COMMUNITY *
ASSOCIATION, INC., T. MICHAEL REIER, *
AND PEOPLE'S COUNSEL FOR *
BALTIMORE COUNTY *
FOR JUDICIAL REVIEW OF THE *
DECISIONS OF THE COUNTY BOARD OF *
APPEALS OF BALTIMORE COUNTY *
IN THE CASE OF: IN THE MATTER OF * CIVIL ACTION
THE PROSSER COMPANY, INC. * NO. 100/243/95-CV-0288
FOR A ZONING RECLASSIFICATION FROM *
R.O.-C.R. AND R.C.-5 TO M.L. ON *
PROPERTY LOCATED ON THE SE SIDE OF *
LONG GREEN PIKE AND THE NW SIDE GLEN *
ARM ROAD (12107 AND 12109 LONG GREEN *
PIKE AND 5328 GLEN ARM ROAD) *
11TH ELECTION DISTRICT *
6TH COUNCILMANIC DISTRICT *
IN THE BALTIMORE COUNTY BOARD *
OF APPEALS, CASE NO.: CR-94-143 *
* * * * *

NOTICE OF APPEAL

Dear Madam Clerk:

Please enter an appeal to the Court of Special Appeals of Maryland on behalf of the PEOPLE'S COUNSEL FOR BALTIMORE COUNTY from the Final Judgment dated January 2, 1996 (docketed January 3, 1996), denying People's Counsel's Motion to Alter or Amend Judgment (referring to the Circuit Court's December 7, 1995 Memorandum Opinion and Order).

Peter Max Zimmerman
PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio
CAROLE S. DEMILIO
Deputy People's Counsel
Room 47, Courthouse
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

RECEIVED AND FILED
56 JAN 29 AM 11:21

CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of January, 1996, a copy of the foregoing Notice of Appeal was mailed to G. Scott Barhight, Esquire, Whiteford, Taylor & Preston, 210 W. Pennsylvania Avenue, Suite 400, Towson, MD 21204, attorney for The Prosser Company, Inc., and to Michael P. Tanczyn, Esquire, attorney for Glen Arm Community Association, Inc. and T. Michael Reier.

Peter Max Zimmerman
PETER MAX ZIMMERMAN

CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL CATEGORY JUDICIAL REVIEW 100/243/95CV-00288

ATTORNEYS

PETITION OF: GLEN ARM COMMUNITY ASSOCIATION, INC.
AND
T. MICHAEL REIER

MICHAEL P. TANCZYN
606 Baltimore Ave. #106
Towson, 21204/296-8823

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

IN THE CASE OF: IN THE MATTER OF THE APPLICATION OF
THE PROSSER COMPANY, INC. FOR A ZONING RECLASSIFICATION
ON PROPERTY LOCATED ON THE SOUTHEAST SIDE LONG GREEN
PIKE AND THE NORTHWEST SIDE GLEN ARM ROAD (12107 AND
12109 LONG GREEN PIKE AND 5328 GLEN ARM ROAD)

G. SCOTT BARHIGHT
WHITEFORD, TAYLOR & PRESTON
500 CourtTowers
210 W. Pennsylvania Ave.
Towson, 21204
PETER MAX ZIMMERMAN
400 Washington Ave. RM. 47
Towson, 21204
P.C.B.A.
400 Washington Ave. RM. 49
Towson, 21204
12/13/95 DE 1000 re SC 1000 JMW

CASE NO. CR-94-143
CYCLE II, 1993/94

- (1) Jan. 10, 1995 Petitioner Glen Arm Community Assoc. Inc. and T. Michael Reier
Petition for Judicial Review, fd.
- (2) January 12, 1995, People's Counsel For Baltimore County
Petition For Judicial Review, fd. (rec'd 1/11/95)
- (3) Jan. 24, 1995 - Second Certificate of Notice fd.
- (4) Feb 09, 1995 Appellee's (Prosser Co., Inc.) response to
petition, fd.
- (5) March 1, 1995 Appellant's Motion and Order of Court EXTENDING time
to transmit the record as specified, etc., fd. (BKH)
- (6) May 17, 1995 - Transcript of Record fd.
- (7) May 17, 1995 - Notice of Filing of Record fd. Copies Sent.
- JUN 16 1995 SCHEDULING ORDER J. P.K.
- (9) July 5, 1995 People's Counsel's Memorandum, fd. (Rec'd 6/16/95)
- (10)* July 7, 1995, Memorandum Of Glen Arm Community Association
Inc. And T. Michael Reier, Petitioners/Appellants, fd.
(rec'd 6/19/95)

COSTS

100 Page 243 Case 95CV-00288

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December 28, 1995

VIA HAND DELIVERY

The Honorable J. William Hinkel
Circuit Court for Baltimore County
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204

Re: Appellee's Memorandum in Support of Opposition to
Appellants' Motion to Alter or Amend Order of Court
Civil Action No: 100/243/95CV-00288

Dear Judge Hinkel:

Enclosed for your review is a copy of the Appellee's Memorandum in Support of
Opposition to Appellants' Motion to Alter or Amend Order of Court which has been
filed with the Court on this date.

Sincerely,

G. Scott Barhight
G. Scott Barhight

GSB:mbb

Enclosures

cc: Michael P. Tanczyn, Esquire
Robert Schuetz, Chairman
Peter Max Zimmerman, Esquire

IN THE CASE OF:

* IN THE

IN THE MATTER OF THE
APPLICATION OF THE PROSSER
COMPANY, INC. FOR A ZONING
RECLASSIFICATION ON PROPERTY
LOCATED ON THE SOUTHEAST SIDE
LONG GREEN PIKE AND THE
NORTHWEST SIDE GLEN ARM ROAD
(12107 AND 12109 LONG GREEN PIKE
AND 5328 GLEN ARM ROAD)
11TH ELECTION DISTRICT
6TH COUNCILMAN DISTRICT

CIRCUIT COURT

FOR

* BALTIMORE COUNTY

* CIVIL ACTION: 100/243/95CV-00288

CASE NO: CR-94-143
CYCLE II, 1993/94

APPELLEE'S OPPOSITION TO APPELLANT'S MOTION TO ALTER OR AMEND
ORDER OF COURT

Appellee, The Prosser Company, Inc., by G. Scott Barhight and Whiteford, Taylor
& Preston L.L.P., its attorneys, hereby submits its Opposition to Appellants' Motion to
Alter and Amend Order of Court, and states:

1. That People's Counsel for Baltimore County v. Beachwood I Limited Partnership, No.
239, September Term, 1995 (filed December 1, 1995), the recently reported opinion of the
Court of Special of Appeals of Maryland, is inapposite to the instant case.
2. That the Circuit Court did not base its decision in the instant case on factual
errors or erroneous legal conclusions.

CASE NO. 100/243/95CV288 CG * (11) July 21, 1995 Appellee's memorandum
of law, fd. (rec'd 7/17/95)

(12) Aug 14, 1995 Supplemental memorandum of Appellee, fd.

(13) September 25, 1995, People's Counsel's Supplemental Memorandum, fd.
(rec'd 9/20/95)

(14) Sept. 27, 1995 - Appellee's, The Prosser Company, Response to Appellants'
Supplemental Memorandum fd. (Filed 9/22/95).

(15) Dec. 13, 1995 Memorandum Opinion and Order of Court Remanding the decision
of the County Board of Appeals, fd. (JMW)

(16) December 18, 1995, People's Counsel for Baltimore County Motion To
Alter Or Amend Judgment, fd. (request for hearing) (rec'd 12/15/95)

(17) Dec 20, 1995 Pltff's motion alter or amend order of court, fd.
Request for Hearing. (rec'd 12/14/95)

(18) Dec 29, 1995 Appelle The Prosser Co. Opposition to Glen Arm Comm. Motion to Alter
or Amend Order of Court, with exhibits, fd. (rec'd 12/28/95) NO BCK!!

(19) Jan 3, 1996 Ruling from Judge J.W. Hinkel Denying the Motions of Glen Arm Community
and Peoples Council to Alter or Amend Judgment, fd.

IN THE MATTER OF THE
APPLICATION OF THE
PROSSER COMPANY, INC.
FOR A ZONING
RECLASSIFICATION ON
PROPERTY LOCATED ON THE
SOUTHEAST SIDE LONG
GREEN PIKE AND THE
NORTHWEST SIDE GLEN ARM
ROAD (12107 AND 12109
LONG GREEN PIKE AND
5328 GLEN ARM ROAD)
11TH ELECTION DISTRICT
6TH COUNCILMAN DISTRICT

* IN THE CIRCUIT COURT
* FOR BALTIMORE COUNTY

* CASE No: 95 CV 00288

RULING

The Court has read and considered the motions of Glen Arm Community
Association Inc., et al and People's Council to Alter or Amend Judgment, and the
Prosser Company, Inc.'s opposition thereto.

No hearing is required. Motions are DENIED.

CSA
you CF.

J. William Hinkel
J. William Hinkel, Judge

DATE: 2 January, 1996

Copy to:

G. Scott Barhight, Esquire, c/o 210 West Pennsylvania Avenue, Towson,
Maryland 21204-4515
Michael P. Tanczyn, Esquire, c/o 606 Baltimore Avenue, Suite 106, Towson,
Maryland 21204
Robert Schuetz, Esquire, c/o County Board of Appeals, Old Courthouse, Room
49, 400 Washington Avenue, Towson, Maryland 21204
Peter Max Zimmerman, Esquire, c/o Baltimore County People's Counsel, Old
Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland 21204
Court File

3. That the Board of Appeals's decision to grant the Reclassification Petition is
supported by substantial evidence.

4. That Furnace Branch Land Co. v. Board of County Commissioners, 232 Md. 536, 294
A.2d 640 (1963) and France v. Shapiro, 248 Md. 335, 236 A.2d 726 (1968) do not hold that
septic system failure is an invalid basis upon which to grant a Reclassification Petition.

5. That § 602(e) of the Baltimore County Charter directly conflicts with §
1A00.3.A.1.a of the Baltimore County Zoning Regulations, thereby rendering §
1A00.3.A.1.a a nullity.

6. That Appellants present no valid basis upon which to grant their Motion to
Alter or Amend Order of Court, and that the Circuit Court should not revise, alter or
amend its Judgment and Opinion.

7. That there is no need for a hearing on the issues raised in Appellants' motion
to alter or amend.

WHEREFORE, Appellee, The Prosser Company, Inc., respectfully requests that,
upon consideration of Appellee's Opposition to Appellants' Motion to Alter or Amend

Order of Court and its Memorandum in support thereof, this Honorable Court DENY
Appellants' Motion to Alter or Amend Order of Court.

G. Scott Barhight
G. Scott Barhight, Esq.
Whiteford, Taylor & Preston L.L.P.
210 West Pennsylvania Avenue
Towson, Maryland 21204-4515
(410) 832-2000
Attorney for Appellee,
The Prosser Company, Inc.

6602

IN THE CASE OF:

IN THE MATTER OF THE
APPLICATION OF THE PROSSER
COMPANY, INC. FOR A ZONING
RECLASSIFICATION ON PROPERTY
LOCATED ON THE SOUTHEAST SIDE
LONG GREEN PIKE AND THE
NORTHWEST SIDE GLEN ARM ROAD
(12107 AND 12109 LONG GREEN PIKE
AND 5328 GLEN ARM ROAD)
11TH ELECTION DISTRICT
6TH COUNCILMAN DISTRICT

* IN THE

CIRCUIT COURT

FOR

* BALTIMORE COUNTY

* CIVIL ACTION: 100/243/95CV-00288

* CASE NO: CR-94-143

* CYCLE II, 1993/94

* * * * *

**APPELLEE'S MEMORANDUM IN SUPPORT OF OPPOSITION TO APPELLANTS'
MOTION TO
ALTER OR AMEND ORDER OF COURT**

Appellee, The Prosser Company, Inc., by G. Scott Barhight and Whiteford, Taylor
& Preston L.L.P., its attorneys, hereby submits this Memorandum in Support of its
Opposition to Appellants' Motion to Alter or Amend Order of Court, and states:

INTRODUCTION

The Board of Appeals of Baltimore County granted Appellee's Petition for
Reclassification from R.O.-R.C. and R.C. 5 to M.L. zoning as limited by the documented
site plan. People's Counsel and Glen Arm Community Association ("Appellants") filed a

petition for judicial review in the Circuit Court for Baltimore County challenging the
Board's decision to grant the Reclassification Petition. The Circuit Court, sitting as an
appellate court, issued a detailed opinion affirming the Board's grant of the
Reclassification Petition. Thereafter, Appellants, pursuant to Rule 2-534, filed this motion
to alter or amend the Circuit Court's order.

Appellants assert that the Circuit Court erred in affirming the Board's decision to
grant the Reclassification Petition because (1) the Circuit Court's decision may not have
taken into consideration the recently reported *People's Counsel for Baltimore County v.*
Beachwood I Limited Partnership, No. 239 (Md. Ct. Spec. App. December 1, 1995) and (2) the
Circuit Court based its decision on factual errors, and (3) the Circuit Court erroneously
determined that § 602(e) of the Baltimore County Charter rendered BCZR § 1A00.3.A.1.a a
nullity. None of Appellants' contentions have merit, and therefore, the Circuit Court
should deny the Appellants' motion to alter or amend.

DISCUSSION

1. *People's Counsel for Baltimore County v. Beachwood I Limited Partnership*, No. 239,
September Term, 1995, filed December 1, 1995.

Appellants cite *Beachwood* for the proposition that, in a reclassification case, the
burden is on the petitioner to show both the then-existing conditions that allegedly made
the comprehensive zoning incorrect, as well as, the literal failure of the County Council to
have considered those conditions. In *Beachwood*, the Court recognized the presumption
that, at the time of the adoption of the zoning maps, the County Council has before it and

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does, in fact, consider all of the relevant facts and then existing circumstances.

Accordingly, in order for the Petitioner "to establish error based upon a failure to take
existing facts or events reasonably foreseeable of fruition into account[,]" the Petitioner
must show the facts that existed at the time of the comprehensive zoning and which, if
any, of those facts were not actually considered by the Council. *Boyce v. Sembly*, 25 Md.
App. 43, 51-52 (1975). This evidentiary burden may be satisfied by showing that specific
physical facts were not readily visible or discernible at the time of the comprehensive
zoning. Relying upon the conclusion which it reached in *Boyce*, the Court in *Beachwood*
reiterated that "[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." *Beachwood*, No. 239, slip op. at 16.

According to Appellants, the Court should reconsider its decision affirming the
granting of Appellee's Reclassification Petition because the *Beachwood* case "may not have
been considered by the Circuit Court for Baltimore County in rendering the Opinion and
Order of December 7, 1995." The Appellants, however, notified the Circuit Court by
letter dated December 5, 1995, of the *Beachwood* opinion - two days before the Circuit
Court entered its judgment. Further, the portion of the *Beachwood* opinion upon which
Appellants rely merely cites and explains *Boyce v. Sembly*, 25 Md. App. 43, 49-50 (1975),
the exact case upon which the Circuit Court relied when it reviewed the Board of

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Appeals's decision in the instant case. Quoting *Boyce*, the Circuit Court, in the instant
case, stated:

[I]n order to grant a reclassification, the Board needs "strong and substantial
probative evidence that there was a 'Mistake' or 'error' . . ." There are two
ways to show error.

Error can be established by showing that at the time of the
comprehensive zoning the Council ailed to take into account then
existing facts, or projects or trends which were reasonably
foreseeable of fruition in the future, so that the Council's action was
premised initially on a misapprehension. Error or mistake may also
be established by showing that events occurring subsequent to the
comprehensive zoning have proven that the Council's initial
premises were incorrect.

(Citations omitted). Applying the *Boyce* standard, restated and applied in *Beachwood*, the
Circuit Court found that the evidence in the instant case demonstrates that, with regard to
the subject property, "events occurring subsequent to the comprehensive zoning have
proven the Council's initial premise incorrect."

The conclusions of the Board and the Circuit Court comport with the standard of
review set forth in *Beachwood*. Further, the Appellants fail to explain in their motion how
the Circuit Court's consideration of the Court's reference to *Boyce* in *Beachwood* would, in
any way, affect the Circuit Court's decision to affirm the Board of Appeals's decision.
Accordingly, the *Beachwood* case does not provide a compelling basis upon which to
grant Appellant's motion to alter or amend judgment.

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II. Facts in Error

Reviewing the Board of Appeals's decision, the Circuit Court agreed with the
Board's findings and concluded that:

Each lot currently has a non-functioning septic system. Only one small area on one
of the lots can be developed for septic use. Thus, the three lots must be
consolidated for development purposes. The Council could not have known about
these circumstances in 1992 at the time of the comprehensive zoning because they
arose after January 1992 - the last date on which an issue could have been raised
pertaining to the 1992 Comprehensive Zoning Map Process. The failure of the
septic systems requires that the three lots be developed in a consolidated fashion.
The Council, however, treated the lots as three individual lots during the 1992
Comprehensive Zoning Map Process. Thus, as the Board of Appeals determined,
the zoning afforded the lots was in error.

Memorandum Opinion and Order, at 7-8. Appellants, however, argue that the Circuit
Court based its decision on several factual errors "which [were] not borne out by the
exhibits and testimony in the transcript prepared for the proceedings before the County
Board of Appeals."

Appellants contend that the Circuit Court erred when it stated that the lots were
presented to the Council as three individual lots. Appellants maintain that "People's
Counsel Exhibit 1, Day 2, T151" demonstrates that the three properties were consolidated
and considered as Issue 6-033 in the 1992 Comprehensive Zoning Process. Appellants,
however, misrepresent the evidence. George Gavrelis testified that, during the
comprehensive zoning, the County Council "looked at [Issue 6-033] as lots in different
zones." Additionally, Issue 6-033 identifies only the two frontal parcels, the County
Council did not consider the back parcel during the comprehensive zoning process.

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Transcript July 19, 1995 at page 42. The fact that two parcels were presented to the
Council in a single petition is not inconsistent with the Circuit Court's statement that the
lots were presented to the Council as three individual lots. Although two of the three
parcels were considered together in Issue 6-033, the three lots were not consolidated for
development purposes until July 15, 1992. July 19, 1995 Transcript at 25-27.

Appellants also assert that the Joint Exhibit 1, which consists of the deeds for the
three parcels from a common grantor to the Prosser Company, demonstrates that the
three lots were transferred from the real estate arm of Grumman Aerospace Corporation
by Deed dated July 15, 1992 to Prosser prior to the County Council's actions in enacting
the 1992 maps in October of 1992. Accordingly, Appellants' argue that, prior to the
comprehensive zoning in October 1992, the County Council knew that the lots would be
developed as a single lot. As the Circuit Court correctly stated, however, the
consolidation of the three lots could not have been considered at the time of the
comprehensive zoning because that circumstance arose after January 1992, the last date
on which an issue could have been raised pertaining to the 1992 Comprehensive Zoning
Map Process. July 19, 1995 Transcript at 26-27.

Additionally, Appellants challenge the finding that, at the time of the
comprehensive zoning, each lot had a non-functioning septic system. To support their
position that that finding was in error, Appellants cite the testimony of Rob Powell.
Powell's testimony, however, was not uncontroverted. Jeffrey Long testified that the
septic systems on the three individual lots were failing:

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Q. When did Baltimore County become aware that the septic systems on
this property were failing, do you know?

A. As part of the -- as part of this process, that's when the staff first learned
that the septic systems were failing.

Q. Was the staff aware the septic systems were failing when it made its
recommendation in staff issue 6-33?

A. I reviewed the file, and there's nothing in the file to indicate that the
septic systems were failing at that time.

Q. Was the County Council aware or could it possibly have been aware
since the information wasn't discovered until recently?

A. . . . I don't know the answer to that question.

Q. Was the information available to anyone when it was discovered
recently by the staff?

A. I'm -- not to my knowledge.

"April 6, 1994 Transcript" at 258-60. In addition to Mr. Long's testimony, Patrick Ford
testified that he investigated the proposed site and discovered that the septic systems on
all three lots were failing. June 16, 1995 Transcript, at 31-32. Also, Mr. Ford testified that
the Environmental Impact Statement, which was admitted into evidence, indicated that
"all three septic fields are currently failing. During a site visit conducted on July 30, 1993,
physical evidence of these failing septic systems was observed." June 16 Transcript at 58.

Appellants' assertion, therefore, that there was no evidence to show a failure of the
septic systems is erroneous. The testimony of Mr. Long and Mr. Ford coupled with the

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Environmental Impact Statement made the issue of the failing septic systems fairly
debatable. Because a reasonable trier of fact could have reasonably found that there was
a failure in the septic system which the County Council could not have taken into account
during the 1992 comprehensive zoning, neither the Board's decision nor the Circuit
Court's decision were based on factual errors.

Finally, Appellants incorrectly assert that, even if there were a septic system
failure, such failure would not be, by itself, "under existing Maryland law a valid basis
on which to grant a rezoning." As support, Appellants cite *Furnace Branch Land Co. v.*
Board of County Commissioners, 232 Md. 536, 294 A.2d 640 (1963) and *France v. Shapiro*, 248
Md. 335, 236 A.2d 726 (1968). Neither *Furnace Branch Land Co.* nor *France*, however, hold
that septic system failure is an invalid basis on which to grant a reclassification petition.

In *Furnace Branch Road Co.*, the facts before the Board regarding the lack of sewage
disposal facilities for the contemplated concentration of people made the issue of whether
to grant or withhold the application for rezoning fairly debatable and therefore the
Board's decision to withhold the application was not arbitrary, capricious or illegal.
Contrary to Appellants' assertion, the Court in *Furnace Branch Road Co.* did not hold that
septic system failure is an invalid basis upon which to grant a reclassification petition.
The Court concluded, rather, that, if inadequate sewage disposal facilities were shown to
be "a long continued, dangerous and increasing problem . . . or [if it were shown] that the
sought reclassification, if granted, would compound the difficulties and the dangers[,]"
then the Board could refuse to grant the reclassification petition. *Id.* at 541.

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356(n). Pursuant to § 2-356(n), Prosser has “three (3) years after the date of the final order granting the petition” to use the property under petition in accordance with an approved documented site plan. Moreover, “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.” See § 2-356(n).

In the instant matter, as of yet, there is no final order granting the Prosser’s Petition for Reclassification because the Petitioners and People’s Counsel filed Petitions for Judicial Review of the Board’s decision. Accordingly, the three year time period has not begun to run.

With respect to the Comprehensive Zoning Map Process, the 1992 Comprehensive Zoning Map designates the subject property as 3,300 acres of RC 5 and 1,900 acres of RO-CR. The 1996 Comprehensive Zoning Map, adopted on October 8, 1996, indicates that the subject property’s zoning classifications and configurations have remained unchanged by the Comprehensive Zoning Map Process.

The suggestions of Petitioners and People’s Counsel that the adoption of the 1996 Comprehensive Zoning Map makes moot the Board’s approval of Prosser’s Petition for Reclassification defy logic. If Petitioners’ and People’s Counsel’s assertions were legally correct, then Protestants in zoning reclassification cases could easily use the appeal process, as was done in this case, to delay final approval of a Petition for Reclassification until the adoption of the next Comprehensive Zoning Map. This would

render the effect of the law and policy embodied in § 2-356 for interim zoning reclassification a nullity.

Clearly, the County Council contemplated such possibilities when it indicated in § 2-356(n) that development of property which has been reclassified pursuant to a Petition for Reclassification and a documented site plan must be completed, or substantially underway, within three years after final approval and that subsequent enactment of a zoning map does not effect the reclassified property unless the zone classification is further changed by that map.

For example, assume there are 50 acres which are designated as RO on the 1992 Comprehensive Zoning Map. In 1994, “Petitioner X” files a petition with a documented site plan to reclassify all 50 acres to ML, and, in 1995, the Board of Appeals grants the Petition as conditioned and limited by the documented site plan. In 1996, the County Council adopts the Comprehensive Zoning Map which changes the previous 1992 RO designation of the 50 acres to BL. Such a change in zoning is the type of change contemplated in the last sentence of § 2-356(n).

Under this hypothetical, the adoption of the 1996 Comprehensive Zoning Map changes the zoning on the 1992 Comprehensive Zoning Map. The basis for the approval of “Petitioner X’s” Petition for Reclassification no longer exists; the County Council has determined that the 50 acres should be zoned BL rather than RO. The previously proven error for the RO zoning no longer exists.

when the County Council has not made any changes to the existing zoning on the subject property. To adopt People’s Counsel’s and Petitioners’ arguments would result in the inconsistent treatment of Petitions for Reclassification which are delayed by lengthy appeals and Petitions for Reclassification which are not appealed. The Baltimore County Council, in its wisdom, adopted § 2-356(n) to permit developers to proceed in accordance with an approved documented site plan, provided that the developer proceeds within three years and any subsequent zoning map does not change the previous zoning map which was the basis for error.

The Board initially agreed that there had been a mistake in the zoning classification of the subject property in December of 1994. The Circuit Court agreed that a mistake in the zoning had been made, but remanded the case, deciding that the Board needed to articulate findings on whether the mistake warranted reclassification. An intervening appeal to the Court of Special Appeals of Maryland, which was dismissed by the Petitioners, further delayed the proceedings. On September 13, 1996, nearly two years after its initial ruling and less than a month before the adoption of the 1996 Comprehensive Zoning Map, the Board issued its remand order, finding that the mistake in the property’s current zoning warranted a reclassification.

In light of the difficult administrative path Prosser has traveled over the past two years, it would be patently unfair, not to mention legally incorrect, to dismiss, at this point, its Petition for Reclassification which the Board of Appeals has reviewed and

granted twice. It would be a serious injustice to ignore the clear intent of the statute, upon which Prosser has relied, and declare this case moot.

II. The Issues Raised Regarding the Subject Property’s Compliance With The Master Water And Sewer Plan Are Not Properly Before This Court On Remand

Petitioners and People’s Counsel raise, in their Petitions for Judicial Review from the Board’s decision on remand, the issue of the subject site’s alleged failure to satisfy Master Water and Sewer Plan Requirements. Judge Hinkel decided the issue concerning Master Water and Sewer Plan Requirements in his Order dated December 13, 1995. Judge Hinkel determined that the Board had jurisdiction to consider the reclassification of the subject site, and that § 1A00.3.A.1.a of the BCZR did not apply. Judge Hinkel also affirmed the Board’s finding that, regarding the subject site, a zoning error existed on the 1992 Comprehensive Zoning Maps. Judge Hinkel, however, remanded the case for the limited purpose of allowing the Board to articulate its findings regarding whether the zoning error warranted the reclassification pursuant to § 2-356(j)(2) of the BCC.

On remand, the Circuit Court explicitly instructed the Board to consider the “warranted” issue. As the Board recognized at the remand hearing, the case on remand was in its intermediate stages and “[i]ts current status is in the jurisdiction of the Circuit Court. The Court has affirmed the Board on the issue of error by the County Council in the 1992 comprehensive zoning map process, but has remanded the case to the Board to, quote, articulate its findings with respect to the factors set forth in Baltimore County Code Section 2-356(j)(2), end quote.” Transcript at 3. The Board correctly stated that

On the other hand, assume that there are 50 acres which are designated as RO on the 1992 Comprehensive Zoning Map. In 1994, “Petitioner Y” files a petition with a documented site plan to reclassify all 50 acres to ML, and, on September 1, 1995, the Board of Appeals grants the Petition, as conditioned and limited by the documented site plan. An appeal is filed from that decision and continues through the appellate process. In 1996, the County Council adopts the Comprehensive Zoning Map which retains the 1992 RO designation of the 50 acres. Pursuant to § 2-356(n), “Petitioner Y” has three years from any final decision to proceed with development in accordance with the approved documented site plan. Accordingly, “Petitioner Y” may proceed with its ML development, as shown on the documented site plan, even though, during the 1996 Comprehensive Zoning Map Process, the County Council elected to retain the RO zoning on the 50 acres.

Regarding this issue, neither People’s Counsel nor Petitioners provide any legal analysis to support their positions. Although People’s Counsel and Petitioners each supply a string cite of four cases, none of those cases supports their arguments that Prosser’s Petition for Reclassification is moot in light of the adoption of the 1996 Comprehensive Zoning Maps.

Petitioners and People’s Counsel cite, without explanation or analysis, *Yorkdale v. Powell*, 237 Md. 123 (1964), *O’Donnell v. Bassler*, 289 Md. 501 (1981), *Prince George’s Country v. Sunrise Dev. L.P.*, 330 Md. 297 (1993), and *Sycamore Realty v. People’s Counsel*, No. 130, September Term 1995 (Ct. Sp. App. November 21, 1996). In *Yorkdale*, the Court

the case on remand was not before it as an original proceeding, but as “an intermediate decision made after some time had elapsed following the hearing before the Board. . . .” Transcript at 4.

In *Prince George’s County v. Zayre Corp.*, 70 Md. App. 392 (1987), the Court of Special Appeals of Maryland stated that the circuit court, while a case is on remand to an administrative agency, retains continuing jurisdiction over the appeal. After the agency has completed its action, the circuit court may then proceed with the appeal. *Zayre*, 70 Md. App. at 403 (quoting *Breedon v. Maryland State Dep’t of Education*, 45 Md. App 73, 86-87 (1980)). Similarly, the Circuit Court in the instant matter has retained continuing jurisdiction over the instant matter. Now that the Board has articulated its findings regarding whether the zoning mistake warranted the proposed reclassification, the Circuit Court may evaluate the Board’s findings regarding the “warranted” issue.

The Circuit Court has already determined that the Board had jurisdiction to consider Prosser’s Petition for Reclassification, and that the Board properly found that a zoning error existed in the 1992 Comprehensive Zoning Maps. Accordingly, those determinations are the law of this case and may not be disturbed. At this juncture in the case, all that remains to be decided by the Circuit Court is whether the Board properly found that the zoning error warranted reclassification of the subject site. Any attempt by People’s Counsel and Petitioners to raise this issue in the instant Petitions for Judicial Review is inappropriate.

of Appeals recognized that “*a change in the law* after a decision below and before a final decision by the appellate Court will be applied by that Court unless vested or accrued substantive rights would be disturbed or unless the legislature shows a contrary intent.” *Yorkdale*, 237 Md. at 124 (emphasis added). In the instant matter, there was no change in the law or the zoning classification on the subject site to affect the Board’s decision. Accordingly, *Yorkdale*, does not support People’s Counsel’s argument.

In *O’Donnell v. Bassler*, 289 Md. 501 (1981), the Court was asked to determine “whether the law in effect at the time that a special exception use permit was granted or the law in effect at the time of the appeal is applicable.” *Id.* at 507. As in *Yorkdale*, the Court in *O’Donnell* reviewed the effect of a change in the law on an appeal. As stated *supra*, the instant matter does not involve a change in the law. The zoning classification of the subject site on the 1996 Comprehensive Zoning Maps is identical to its zoning classification on the 1992 Comprehensive Zoning Maps.

The *Sunrise* case and the *Sycamore* case cited by Petitioners and People’s Counsel involve properties which were **downzoned** as a result of the Comprehensive Zoning Map Process. At the risk of sounding redundant, Prosser emphasizes that, in the instant matter, the subject property was not downzoned. The County Council did not alter or amend in any way the zoning designation on the subject site when it adopted the 1996 Comprehensive Zoning Maps.

Those opposed to the reclassification should not be permitted to use the appellate process to make the issue of reclassification with a documented site plan moot

III. The Beachwood Case Does Not Impact Prosser’s Petition for Reclassification.

People’s Counsel has already failed in its attempt to convince the Circuit Court that the *Beachwood* case has any impact on the decision in the instant case. In December 1995, People’s Counsel and the Petitioners filed a motion to alter or amend the Circuit Court’s decision on appeal. People’s Counsel asserted that the *Beachwood* case was new law which would materially impact the Circuit Court’s decision. The Circuit Court denied that motion. The *Beachwood* case was decided on December 1, 1995, prior to Judge Hinkel’s ruling on December 7, 1995. It is unclear why it would be appropriate for this Board, on remand, to allow argument on the impact of *Beachwood* on all issues in the case when the Circuit Court has already determined that to be unnecessary.

In any event, *Beachwood*, merely sets forth the standard used by Courts to evaluate approvals of Petitions for Reclassification. In *Beachwood*, the Court of Special Appeals stated that an “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.” *Beachwood*, 107 Md. App. at 645 (quoting *Boyce v. Sembly*, 25 Md. App. 43, 50-51 (1975)). Judge Hinkel’s findings in the instant case are completely consistent with *Beachwood*.

In the instant matter, the Circuit Court found that probative evidence showed that the County Council, at the time that the 1992 Comprehensive Zoning Maps were adopted relied upon incorrect assumptions and premises. As Mr. Long and Mr. Gavrelis testified, the County Council could not have known about the failing septic

individual lots. The evidence shows that sometime after the 1992 Comprehensive Zoning Map Process, it became apparent that each lot had a failing septic system. The only area available for septic disposal is on the lot fronting Glen Arm Road. Thus, the three sites cannot be developed individually but must be consolidated for development purposes.

Standard of Review

Judicial review of administrative appeals is governed by Section 10-222(h) of the State Government Article of the Maryland Annotated Code. Section 10-222(h) provides:

- In a proceeding under this section, the court may:
- (1) remand the case for further proceedings;
 - (2) affirm the final decision; or
 - (3) reverse or modify the decision if any substantial right of the petitioner may have been prejudiced because a finding, conclusion, or decision:
 - (i) is unconstitutional;
 - (ii) exceeds the statutory authority or jurisdiction of the final decision maker;
 - (iii) results from an unlawful procedure;
 - (iv) is affected by any other error of law;
 - (v) is unsupported by competent, material, and substantial evidence in light of the entire record as submitted; or
 - (vi) is arbitrary and capricious.

Md. Code Ann., State Gov't § 10-222(h) (Supp. 1994)

If the Agency's decision is supported by substantial evidence, then the reviewing court must affirm that decision. *Anne Arundel County v. A-Pac, Ltd.*, 67 Md. App. 122, 126 (Md. Ct. Spec. App. 1986). An agency's decision must be reviewed in the light most favorable to the agency and is *prima facie* correct. *Coscan v. Maryland-Nat'l Capital*, 87 Md. App. 602, 626 (Md. Ct. Spec. App. 1991). A court will affirm the agency's decision if "a reasoning mind reasonably could have reached the factual conclusion the agency reached." *Id.* Additionally, it is up to the agency to "resolve conflicting evidence and where inconsistent inferences may be drawn from the

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same evidence, it is for the agency to draw the inferences." *Id.*

Furthermore, in a zoning case alleging error in a comprehensive rezoning, the reviewing court must determine whether the action of the Board in granting a reclassification is arbitrary and capricious. *Boyce v. Sembly*, 25 Md. App. 43, 49-50 (Md. Ct. Spec. App. 1975). There is a strong presumption of correctness in the comprehensive rezoning by the County Council. *Anne Arundel County v. A-Pac, Ltd.*, 67 Md. App. 122 (Md. Ct. Spec. App. 1986); *Boyce v. Sembly*, 25 Md. App. 43, 49 (Md. Ct. Spec. App. 1975). Therefore, "...strong evidence of error is required to make the issue of mistake in comprehensive zoning fairly debatable and unless such strong evidence is presented by the applicant, the action of the Board in granting a reclassification is arbitrary and capricious." *Boyce*, 25 Md. App. at 50.

Discussion

People's Counsel and Glen Arm Community Association ("Appellants") have raised the issue of jurisdiction. Appellants argue that the Board did not have jurisdiction to consider the reclassification of the property because the Baltimore County Zoning Regulations, section 1A00.3.A.1.a, requires a showing that the property under petition be serviced by public sewerage and watersupply systems within two years after the date the petition is submitted. That section states:

A. Filing of rezoning petitions.

1. No petition to reclassify an R.C. zone or portion thereof as other than an R.C. zone may be accepted for filing by the Zoning Commissioner unless -

- (a) The Capital Program, duly adopted Baltimore County master or comprehensive plans, and the "county plan" required under Subtitle 5 of Title 9 in the Environment Article of the Annotated Code of Maryland 1987, as amended, show that the property under petition is to be serviced by public sewerage and watersupply systems

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within TWO years after the date the petition is submitted.

Baltimore County Zoning Regulations § 1A00.3.A.1.a.

In the case at bar, no evidence was presented to the Board showing that the property would be serviced by public sewerage and watersupply systems within two years. Thus, according to Appellants, the Board had no jurisdiction to consider the reclassification of this property. This Court finds otherwise.

The Baltimore County Charter provides that the Board "shall have original and exclusive jurisdiction over all petitions for reclassification." Baltimore County Charter § 602(e). Section 1A00.3.A.1.a of the Baltimore County Zoning Regulations, on the other hand, prohibits the Board from considering reclassification of an R.C. zone unless it can be shown that the property under petition will be serviced by public sewerage and watersupply systems within two years after the date the petition is submitted. Baltimore County Zoning Regulations § 1A00.3.A.1.a. Thus, there is a conflict between the County Charter and the local ordinance. The Zoning Regulations attempt to limit the Board's power to hear reclassification cases despite language in the Charter granting original and exclusive jurisdiction to the Board over all petitions for reclassification.

The Court of Appeals of Maryland has held that where a local ordinance conflicts with the County Charter, the ordinance must yield to the Charter provision. *See Hope v. Baltimore County*, 288 Md. 656, 658-59, 666-67 (1980). In *Hope v. Baltimore County*, the Court held that a section of the Baltimore County Code was in direct conflict with the Baltimore County Charter *Id.* at 666-67. The Code section allowed any person aggrieved by the action of the planning board on final plats of subdivisions the right of appeal to the circuit court. *Id.* at 658. The County Charter, on the other hand, provided for an exclusive right of appeal to the Board of

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Appeals on such matters. *Id.* at 662-64. Thus, the Court held that the Code section was invalid. *Id.* at 666-67 (in arriving at its conclusion, the Court analyzes applicable sections of the Maryland Constitution).

Likewise, here the Baltimore County Zoning Regulation must yield to the Charter provision. Therefore, the Board did have jurisdiction to hear the subject reclassification pursuant to section 602(e) of the Baltimore County Charter.

The second issue before this Court is whether the action of the Board in granting the reclassification was arbitrary and capricious. In order to grant a reclassification, the Board must find (1) that there has been a substantial change in the neighborhood or that the last classification was established in error and (2) that the prospective reclassification of the property is warranted by that change or error. Baltimore County Code § 2-356(j)(1)-(2). In granting the present reclassification the Board found that the last classification of the property, during the 1992 Comprehensive Zoning Map Process, was established in error. The Board found two errors: (1) the Council erred when it applied, without individual site review, the C.R. designation to all properties zoned R.O., and (2) the zoning was in error because of the development of the failing septic systems after the 1992 Comprehensive Zoning Map Process.

The first finding of error by the Board, that the C.R. designation was applied in error because there was no individual site review, is not determinative to this Court's decision. There may in fact have been a reasonable basis for applying this overlay without individual site review. On the other hand, this Court finds that the Board's conclusion as to the subsequent occurring events regarding the failing septic systems is sufficient to establish error.

There is a presumption of validity accorded to a comprehensive zoning. *Boyce v. Sembly*,

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25 Md. App. 43, 50 (Md. Ct. Spec. App. 1975). Thus, in order to grant a reclassification, the Board needs "strong and substantial probative evidence that there was a 'mistake' or 'error'..." *Id.* There are two ways to show error. *Id.* at 50-51.

Error can be established by showing that at the time of the comprehensive zoning the Council failed to take into account then existing facts, or projects or trends which were reasonably foreseeable of fruition in the future, so that the Council's action was premised initially on a misapprehension. Error or mistake may also be established by showing that events occurring subsequent to the comprehensive zoning have proven that the Council's initial premises were incorrect.

Id. at 51. Under the first way to show error, the applicant must show that facts existed at the time of the comprehensive zoning that the Council did not consider. *Id.* at 52. In the case at bar, there is no evidence that the Council failed to consider facts that existed at the time of the comprehensive zoning. There is evidence, however, that events occurring subsequent to the comprehensive zoning have proven the Council's initial premises incorrect.

At the time of the comprehensive zoning, there is evidence that the lots were presented to the Council as three individual lots. The fact that the lots were owned by a single owner⁴ does not affect this finding.⁵ Each lot currently has a non-functioning septic system. Only one small area on one of the lots can be developed for septic use. Thus, the three lots must be consolidated for development purposes. The Council could not have known about these circumstances in 1992 at the time of the comprehensive zoning because they arose after January 1992 -- the last date on which an issue could have been raised pertaining to the 1992 Comprehensive Zoning Map

⁴Each lot was owned by the Grumman Aerospace Corporation at the time of the 1992 Comprehensive Zoning Map Process.

⁵The evidence shows that the lots were not consolidated until after Appellee purchased the property in July 1992.

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Process. The failure of the septic systems requires that the three lots be developed in a consolidated fashion. The Council, however, treated the lots as three individual lots during the 1992 Comprehensive Zoning Map Process. Thus, as the Board of Appeals determined, the zoning afforded the lots was in error.

Once it is determined that the zoning was established in error, it is necessary to determine whether the reclassification of the property is warranted by that error. Baltimore County Code §2-356(j)(1)-(2). Subsection (j)(2) of §2-356 sets forth a list of factors that must be considered. Subsection (j)(2) requires a finding:

[t]hat 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.

Baltimore County Code §2-356(j)(2).

The Board found that under the existing zoning there is little or no practical use for the three properties because the septic systems cannot comply with the Baltimore County regulations. On the other hand, with regard to the proposed use, the Board determined that such use complies with the Master Plan, the 1992 Proposed Land Use Map, and will remove the health hazard produced with the three failing septic systems. In its opinion, the Board also referred to the testimony of several witnesses who testified that the proposed use is consistent with the character

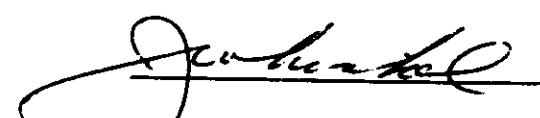
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of the surrounding area, will provide additional jobs, increase the tax base, and increase the business efficiencies. Additionally, Jeffrey Long, a planner with the Baltimore County of Planning and Zoning, testified in favor of the requested reclassification.

This Court finds that the Board was correct in finding error due to events that occurred subsequent to the Comprehensive Zoning Map Process in 1992. However, the Board has failed to articulate its findings with respect to the factors set forth in Baltimore County Code Section 2-356(j)(2). This failure requires the remand of this matter to the Board for consideration of these factors and a statement of findings thereon. *See People's Counsel for Baltimore County v. Mockard*, 73 Md. App. 340, 349-51 (Md. Ct. Spec. App. 1987).

Accordingly, it is this 7th of December, 1995, by the Circuit Court for Baltimore County,

ORDERED that the decision of the County Board of Appeals is hereby REMANDED


J. William Hinkel, Judge

Copies Sent To:

Michael P. Tanczyn, Esquire
Peter Max Zimmerman, Esquire
G. Scott Barhight, Esquire and David K. Gildea, Esquire

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PETITION OF:	* IN THE
Glen Arm Community Association, Inc.	* CIRCUIT COURT
11909 Long Green Pike	* FOR BALTIMORE COUNTY
Glen Arm, Maryland 21057	*
and	*
T. Michael Reier	*
11909 Long Green Pike	*
Glen Arm, Maryland 21057	*
FOR JUDICIAL REVIEW OF DECISION OF:	*
County Board of Appeals of Baltimore County	*
Old Courthouse, Room 49	*
400 Washington Avenue	*
Towson, Maryland 21204	*
(410) 897 3180	*
IN THE CASE OF:	*
IN THE MATTER OF	*
THE APPLICATION OF	*
THE PROSSER COMPANY, INC.	*
FOR A ZONING RECLASSIFICATION	*
ON PROPERTY LOCATED ON THE	*
SOUTHEAST SIDE LONG GREEN	*
PIKE AND THE NORTHWEST SIDE	*
GLEN ARM ROAD (12107 AND	*
12109 LONG GREEN PIKE AND	*
5328 GLEN ARM ROAD)	*
11TH ELECTION DISTRICT	*
6TH COUNCILMANIC DISTRICT	*
CASE NO. CR-94-143	* CIVIL ACTION
CYCLE II, 1993 /94	* NO. 100/243/95CV-00288
* * * * *	* * * * *

SUPPLEMENTAL MEMORANDUM OF GLEN ARM COMMUNITY ASSOCIATION INC. AND T. MICHAEL REIER, PETITIONERS/APPELLANTS

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Petitioners/Appellants, Glen Arm Community Association, Inc. and T. Michael Reier, by their attorney, Michael P. Tanczyn, Esq., supplements the Memorandum previously issued to deal with an issue raised below, not decided by the County Board of Appeals in its Order, on the following issue.

SUPPLEMENTAL ISSUE

Is the property owner, Petitioner below, barred from filing a Petition to Reclassify property zoned RC or any portion thereof by Baltimore County Zoning Regulations, Section 1.A.00.3.A.1.a where, as here, a property under Petition will not be serviced by public sewerage and water supply systems within two years after the date the Petition is submitted on the evidence before the County Board of Appeals?

FACTS

Initially, when the case was called for hearing by the County Board of Appeals, a Motion to Dismiss the Petition was made by the attorney for the Protestants, Glen Arm Community Association, Inc. and Michael T. Reier, on the ground that Baltimore County Zoning Regulations, Section 1.A.00.3.A.1.a, which became law upon the passage of Bill No. 98-1975, prohibits the filing of a Petition to Reclassify an RC Zone or portion thereof to other than an RC zone where the capital program of Baltimore County shows that the property under petition will not be serviced by public sewerage and water supply systems within two years after the

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date the petition is submitted.

In this case the Petitioner, The Prosser Company, Inc., sought in its Petition for Reclassification to ML property zoned RO-CR as well as RC5. Testimony adduced in the record from Baltimore County Office of Planning and Zoning, Jeff Long, clearly established that the area which was the subject of the petition was not presently serviced by public water and sewerage and was not scheduled to be serviced by public sewerage and water supply within two years of the time that the petition was submitted by The Prosser Company, the legal owners of the property (T220).

The County Board of Appeals, after hearing argument, both in favor of and in opposition to the Motion, reserved on the issue and decided to take testimony on the Reclassification petition before the Board. (T7 et seq)

ARGUMENT

Baltimore County Zoning Regulations are part of the Baltimore County Code as enacted by the Baltimore County Council and signed into law by the County Executive. The Maryland Court of Appeals Decision, United Parcel Service v. People's Counsel for Baltimore County, 336 Md. 569 at 581-591, 650 A.2d 226 (1994), determined that the hearing authority of the County Board of Appeals is governed by the relevant Charter and statutory provisions. The rational governmental purpose in limiting reclassification petitions for land zoned RC until the property is

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expected to be serviced by public water or sewerage in systems within two years of the date the petition is filed is to insure that adequate public facilities and services are in place. Resource Conservation (RC) zones include generally rural, farming and watershed property in areas deemed in need of protection from the stresses of uncontrolled development.

The Court of Appeal in UPS v. People's Counsel (supra) at 650 A.2d 226 at 237 said:

"... Under the Express Powers Act, a board of appeals is primarily an appellate tribunal, having only such original jurisdiction as a county's charter and ordinances expressly grant to the board. In deciding that it had authority to entertain the appeal in this case, the Baltimore County Board of Appeals erred as a matter of law. It should have dismissed the appeal."

The holding in United Parcel Service (supra) as just stated was that the Charter and ordinances are, wherever possible, to be read together and construed in such a manner as to give effect to both whenever possible.

A similar issue was recently decided in the Court of Appeals in the case of Halle Companies, et al v. Crofton Civic Association, et al, No. 129, September Term, 1994, ___ Md. ___, ___ A.2d ___ (July 17, 1995), in which the Court of Appeals granted certiorari to determine whether the Board of Appeals exceeded its de novo authority in requiring road access as a condition to the grant of special exceptions and variances. The Court of Appeals noted under the Express Powers Act, Article 25A, Section 5U, each

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county is authorized to create a board of appeals. In that case Anne Arundel County, as has Baltimore County, by Charter created a board of appeals as an independent unit of county government, vesting the board with the power to hear de novo all appeals authorized by the Express Powers Act. The court held that:

"The board is clearly a statutory creature and may exercise only those powers expressly granted to it by law or those which can be fairly implied. Baylis v. Mayor & City Council of Baltimore, 219 Md. 164, 168, 148 A.2d 249, 432 (1959)"

In the Prosser reclassification petition the County Board of Appeals chose to give no effect and in fact ignore the express provisions of the Baltimore County Zoning Regulations which foreclose the filing, let alone hearing, of a Petition for Reclassification of land zoned as the Prosser property is where public water and sewerage are not available presently and will not be available to the site within two years of the filing of the petition.

The decision of the board, therefore, to ignore that law and its salutary provisions to provide for orderly and reasonably controlled growth so that uncontrolled development does not outstrip the ability of the local government unit to provide adequate facilities to support the development as it occurs and thereby to protect the environment in a better way is unjustified and unauthorized on the facts in this case.

The Board should have granted the Motion to Dismiss and

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committed reversible error when it failed to do so.

Appellants therefore advance this as another example of the Board's error in its decision and request this honorable Court, after argument, to reverse the decision of the County Board of Appeals for the reasons stated and authorities cited.

Respectfully Submitted,

Michael P. Tanczyn, Esq.
MICHAEL P. TANCZYN, ESQ.
606 Baltimore Avenue, Suite 106
Towson, Maryland 21204
Telephone: (410) 296-8823
Attorney for the Appellants

I HEREBY CERTIFY that, on this 11th day of August, 1995, a copy of the foregoing was mailed, postage prepaid, to G. Scott Barhight, Esquire, 500 Court Towers, 210 West Pennsylvania Avenue, Towson, Maryland, 21204, attorney for the Appellees; to Peter Max Zimmerman, Esquire, Baltimore County People's Counsel, 400 Washington Avenue, Towson, Maryland, 21204; and to County Board of Appeals for Baltimore County, Old Courthouse, Room 49, 400 Washington Avenue, Towson, Maryland, 21204.

Michael P. Tanczyn, Esq.
MICHAEL P. TANCZYN, ESQ.

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August 11, 1995

Civil Clerk
Baltimore County Circuit Court
County Courts Building
401 Bosley Avenue
Towson, MD 21204

Re: Glen Arm Community Association v.
County Board of Appeals for Baltimore County
Case Number 100/243/95CV288 - Non-Jury

Dear Madam Clerk:

Enclosed herewith please find Supplemental Memorandum of Glen Arm Community Association, Inc. and T. Michael Reier, Petitioner/Appellants in the above matter for filing.

Thank you very much for your cooperation in this regard.

Very truly yours,

Michael P. Tanczyn

MPT/ed
Enclosure

cc: G. Scott Barhight, Esq.
Peter Max Zimmerman, Esq.
County Board of Appeals for Baltimore County
Glen Arm Community Association, Inc.
Mr. T. Michael Reier

PETITION OF: * IN THE
*
Glen Arm Community Association, Inc. * CIRCUIT COURT
11909 Long Green Pike *
Glen Arm, Maryland 21057 * FOR BALTIMORE COUNTY
*
and *
*
T. Michael Reier *
11909 Long Green Pike *
Glen Arm, Maryland 21057 *

FOR JUDICIAL REVIEW OF DECISION OF: *
*
County Board of Appeals *
of Baltimore County *
Old Courthouse, Room 49 *
400 Washington Avenue *
Towson, Maryland 21204 *
(410) 887-3180 *

IN THE CASE OF: *

IN THE MATTER OF *
THE APPLICATION OF *
THE PROSSER COMPANY, INC. *
FOR A ZONING RECLASSIFICATION *
ON PROPERTY LOCATED ON THE *
SOUTHEAST SIDE LONG GREEN *
PIKE AND THE NORTHWEST SIDE *
GLEN ARM ROAD (12107 AND *
12109 LONG GREEN PIKE AND *
5328 GLEN ARM ROAD) *
11TH ELECTION DISTRICT *
6TH COUNCILMANIC DISTRICT *

CASE NO. CR-94-143 * CIVIL ACTION
CYCLE II, 1993 /94 * NO. 100/243/95CV-00288

MEMORANDUM OF GLEN ARM COMMUNITY ASSOCIATION
INC. AND T. MICHAEL REIER, PETITIONERS/APPELLANTS

Petitioners/Appellants, Glen Arm Community Association,

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Inc. and T. Michael Reier, by their attorney, Michael P. Tanczyn, Esq., pursuant to Maryland Rule 7-207, submit the within Memorandum to assist the Court in deciding this Appeal.

STATEMENT OF THE CASE

The Prosser Company, Inc., Petitioner, which purchased 12107/1209 Long Green Pike and 5328 Glen Arm Road by Deeds July 15, 1992 from Grumman Aerospace Corporation, has petitioned for reclassification from RO-CR (Residence Office/Commercial Rural) suffix; and RC5 (Resource Conservation Zones) to ML (Manufacturing Light) its combined holdings totalling 5.2 acres, purchased under those Deeds. This petition, submitted between the quadrennial map cycles is known as Item 3, Cycle 2, 1993-94.

After receiving Planning Board approval the matter came on for hearing before the County Board of Appeals of Baltimore County on April 6, June 16, July 19, and concluded on September 20, 1994.

The County Board of Appeals, by its Decision of December 13, 1994, approved the Petition for Reclassification by a 2 to 1 vote with a dissenting opinion filed.

Timely Petition to secure judicial review of this Decision was filed by these Appellants on January 10, 1995.

The questions presented were:

Did the County Board of Appeals err as a matter of law in its application of the change/

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mistake rule and apply the change/mistake rule incorrectly in approving the reclassification petition of the Petitioner?

FACTS

Petitioner's witnesses included Joseph Prosser, Jr., an officer of the Petitioner; Peter Swanson of the Baltimore County Economic Development Bureau; a number of residents in the greater Glen Arm/Baldwin area; the commercial neighbor to the existing Prosser Company facilities off this site, Joseph Bittner; Jeff Long of the Office of Planning and Zoning; Patrick Ford, an engineer with Whitney, Bailey, Cox & Magnani; and George Gavrelis, a land planning consultant with Daft, McCune & Walker.

Mr. Joseph Prosser, Jr. identified himself as President of The Prosser Company, Inc. (Day 1, T36). He testified they settled on the property which was the subject of the Petition in the middle of July 1992 and had signed a contract in the middle of April of 1992 (T48); that there were three houses on the property leased to tenants (T48-49). He testified that those houses were okay to live in (T61); that his company had offered the houses free to anybody who would like to move them someplace else (T62).

He was unaware that the property had been partially rezoned on the 1992 Comprehensive Zoning Map Process as Issue 6-33 (T73). He admitted on cross that he had been speaking with

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Grumman about this property from December of 1991 to April of 1992 (T77); he knew the zoning was RO on part of the property at the time that he purchased it (T78), and RC-5 for the remainder (T78); that he knew that it was not ML (T78).

His proposed Building B which had been identified by the Department of the Environment as being subject to septic system problems he said was not necessarily a problem (T90), was within 50 feet of property owned by the Nelan's (T90); that if no one accepted his offer to take the three buildings for free, he hoped they would come down (T94).

When he bought the property the three dwellings were rented at that time (T96), and he was receiving slightly less than \$2,000 per month in rental income for all three properties (T97), which had not gone up since he had purchased the property in 1992. As owner he had not been cited by Baltimore County nor given an order to replace any of the septic systems to that time (T98); that his primary purpose in purchasing the properties was that he would have a place for his two subsidiary companies to go (T100); and that neither he nor his brother had examined whether they could put their subsidiary companies on the property with the existing zoning at the time they purchased the property, although they knew it was not zoned ML, as was the case for their nearby industrial plant (T100); that both he and his brother suspected the zoning was not right and they would probably have

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to change it to do the use that he wanted to do (T101); that he had not consulted with anyone, such as his counsel, before he entered into the contract to see if he could operate his business under the current zoning (T102); that he understood that RO was residence/office and the idea for that zoning was to convert houses to offices in houses (T103); and that at the time of hearing he did not understand what the CR suffix added in 1992 meant (T103).

He stated that he had chosen to rent the properties for residential use rather than any of the other permitted uses in an RO zone with a CR suffix (T104), which he had not explored (T105).

He acknowledged his signature on a storm water easement agreement recorded in the Land Records of Baltimore County which he signed July 15, 1992 when he purchased the property (T119), admitted as Protestants' Exhibit 1 (T120). He had not priced holding tanks or new technology to replace the existing septic systems (T124).

Jeffrey Long, called by the Petitioner as a witness, beginning at Day 1, T205, worked in the Office of Planning and Zoning as a planner to and expressed familiarity with the reclassification petition process. He testified that the planning staff recommended the requested zoning as appropriate for the property and consistent with the Baltimore County Master

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Plan (T209), which conclusion was adopted by the Planning Board (T209) prior to the required hearing before the County Board of Appeals.

He testified that he was on the planning staff as well in 1992 and involved in the preparation for the 1992 maps (T212), and that at that time similar discussions concerning properties up for consideration on petition or identified as staff issues would have been considered in a similar way that he had previously testified to as done by the staff on this petition (T213); and that this property had been raised as an issue on the 1992 maps by staff, Issue 6-033 (T213); and that the staff recommended the zoning for this site RO for part, RC-5 for part, and their recommendation was to affix the CR district designation (T213). He had not been directly responsible for this area at the time (T214); that the applicable Master Plan had been adopted in 1990, two years before the Council considered the RO-CR in the 1992 maps for this site (T216); and that the staff recommendation of RO-CR as described in his testimony would have been the staff recommendation two years after the Master Plan had been adopted (T217-218), consistent with the requirements, and that the RO-CR designation was consistently used to encourage reuse of historic buildings as antique stores or whatever (T219); he had been to the site, which had private utilities and had seen the historic buildings (T220); and that there was no provision for public

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water of sewer to come to this area within two years, which he felt was a very safe assumption (T220); he did not recall that on the 1980 maps an ML request was turned down by the County Council for this exact site (T221); that the Master Plan was advisory (T221).

He agreed that the Master Plan is a broad-brush big picture which looks at big areas, more so than the Comprehensive Map, which focuses in on individual properties (T222).

He agreed that zoning regulations in RC zones talk about steep slopes to be protected (T225), and he agreed that RC-5 zoned land in rural area does serve as a buffer between incompatible land uses in rural areas (227); and that south of Grumman property on this site that the zoning to the south is either RC-2 or RC-5 (T228), as well as to the east and that the only industrially zoned land on the east side of Long Green Pike is the Grumman facility that had been zoned for that purpose in the early 1970s.

He confirmed that this property was identified as Issue 6-33 on the 1992 maps (T237), which had been recommended by the Planning Board on June 11, 1992 (T238) and the County Council had followed the recommendation on October 15, 1992 when it approved the maps (T239).

On Day 2, George Gavrelis, called by the Petitioners, stated that, although mostly retired, he did consulting work for

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Daft, McCune & Walker (T16). Significantly, the documents he reviewed in preparation for his testimony are listed on T22, which included a documented site plan, staff comments, planning staff recommendations, and the planning board, and comments of other agencies, the adopted Master Plan and amendments.

He did not go back in time with respect to zoning history because the issue in his mind had to do with how the zoning standards was last classified, which was the 1992 Comprehensive Zoning Map (T23).

He testified that the title received by the property owner for the subject site came from Grumman Corporation, or some entity thereof, for each of the parcels to the Prosser Company (T27), and he was unaware by any proposals by the Grumman Corporation to consolidate those three parcels and develop them in any fashion (T27).

The reasons given by Mr. Gavrelis, he claimed as error on the part of the County Council in classifying this property RO-CR and RC-5 on the 1992 Comprehensive Maps begins at T41 was that it was limited by a documented site plan, dealt with the property as a consolidated whole which only became a whole in July of 1992 after the issues deadline (T41); that he had not looked at the zoning history of the property earlier than 1992 (T45) and was unaware of any prior requests presented to the Council to consider this property in a consolidated fashion

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(T46).

The second reason he ascribed was that the County Master Plan had been updated by resolution of the County Council on January 21, 1992, six days after the date on which an issue had to be raised that would consider this property as a consolidated whole.

His third reason was that the County Council could not consider the documented site plan which was first presented to the County Board of Appeals and that was somehow error on the part of the County Council when they did not zone the property as part of the industrial employment area (T47).

Mr. Gavrelis testified on cross that he had been hired on June 1, 1994 by the Petitioner (T67); he had not looked at the property, nor did he review the County Council file for the maps for 1992 for this property (T69); that he would be testifying with less facility if there was not a documented site plan in this case (T70); and that he was uncertain whether he could testify that the comprehensive zoning on the subject site is in error if the proposal before the Board were not premised on a documented site plan (T72). It was his opinion that the documented site plan rezoning process was better than the comprehensive zoning process because comprehensive zoning does not allow for a site plan to be considered (T72). He admitted that in citing the absence of a documented site plan in the

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comprehensive zoning process as an error on the part of the County Council, that it would be illegal contract zoning for the County Council to have considered such a plan (T74), so that because they did not consider something which would have been illegal, they made a mistake; that he was unaware of any Court of Appeals that backed up that sort of approach (T76); that he believed the County Council was very much aware of the Master Plan process as amended January 15, 1992 (T83), and that the County Council was not ignorant of its own Master Plan; that he agreed that the Master Plan was advisory (T84).

He did not look at the zoning history for this site prior to the 1992 Comprehensive Zoning Maps because that's the point of departure in his mind (T90), and he was aware generally that Grumman was reducing its industrial operations at the site next door (T90).

He testified at T98 that he had not reviewed the deeds conveying the property to the Prosser Company (T98). He admitted that his opinion does not rely on nor claim a change in circumstances in the community since the adoption of the 1992 maps as justification for the Board to grant the rezoning application (T107-108). He also agreed that, from his experience, a staff generated issue, such as on the 1992 Maps, required notice to the property owner that the staff was considering making a zoning change or recommendation of a zoning

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be consolidated for development purposes. The Council could not have known about these circumstances in 1992 at the time of the comprehensive zoning because they arose after January 1992 -- the last date on which an issue could have been raised pertaining to the 1992 Comprehensive Zoning Map Process. The failure of the septic systems requires that the three lots be developed in a consolidated fashion. The Council, however, treated the lots as three individual lots during the 1992 Comprehensive Zoning Map Process. Thus as the Board of Appeals determined the zoning afforded the lots was in error.

E. 254-55. Accordingly, Judge Hinkel affirmed the Board's finding that a mistake existed in the zoning classifications on the 5.2 acre-parcel. Judge Hinkel agreed that, when the County Council adopted the 1992 Map, it could not have known that the three lots would have to be combined into the existing 5.2 acre-parcel for development purposes and did not know of the failing septic systems. E. 255. Although he affirmed the finding in the First Board Order regarding the issue of "mistake," Judge Hinkel held that the Board failed to articulate its findings on the issue of whether reclassification of the parcel to M.L. was warranted. E. 256. Judge Hinkel, therefore, remanded the matter to the Board for the limited purpose of having the Board articulate its findings, pursuant to § 2-356(j)(2), on the issue of whether the parcel should be reclassified. E. 256. Judge Hinkel also held that BCZR § 1A00.3.A.1.a did not prevent the Board from reclassifying the parcel. Specifically, Judge Hinkel held that because BCZR § 1A00.3.A.1.a conflicted with § 602(e) of the Charter, the parcel's lack of planned public water and sewer service did not preclude the Board from reclassifying the parcel. E. 251-53.

On January 29, and February 1, 1996, Appellants filed CSA Appeal I. In their Civil Appeal Prehearing Information Reports, Appellants indicated that they would (1) challenge the Board's finding that a mistake existed in the zoning classifications on the 5.2-acre parcel; (2) challenge the Board's findings regarding the enumerated statutory factors under BCC § 2-356(j); and (3) question whether "the lack of public water and sewer [was] a reason vel non for denial of piecemeal reclassification of property zoned for Resource Conservation." See APX. 1-6. After the record for CSA Appeal I was filed, Appellants voluntarily dismissed CSA Appeal I, thereby acquiescing in the decision in the First Board Order that a mistake existed in the zoning on the 5.2 acre-parcel and the parcel could be reclassified regardless of its lack of planned public water and sewer service.

After CSA Appeal I was dismissed and the Court of Special Appeals issued its Mandate, the matter was remanded to the Board so that the Board could openly deliberate the very narrow issue of whether the proposed zoning classification was warranted in accordance with BCC § 2-356(j)(2). E. 318, 443. On remand, the only issue considered by the Board was whether the reclassification from R.C. 5 and R-O/C.R. to M.L. was warranted. The Board determined that the reclassification was warranted and based its conclusion primarily on the testimony of Mr. Long, Mr. Gavrelis, Mr. Swanson, and Mr. Ford. E. 318-329. The Board found persuasive Mr. Long's testimony that the OPZ Staff agreed that the requested reclassification was appropriate and consistent with the Master Plan, and that the subject site "is noted as an industrial

development area as part of the Master Plan." E. 326. The Board also recognized as persuasive Mr. Ford's testimony that the Glen Arm area was developed predominantly with business and industrial uses. E. 328.

Appellants filed Petitions for Judicial Review of the Second Board Order. As stated *supra*, Judge Kahl heard oral argument on the petitions for judicial review and upheld the decision in the Second Board Order that reclassification of the parcel to M.L., as limited and conditioned by the documented site plan, was warranted. E. 443. Although Appellants had filed appeals from Judge Hinkel's remand of the First Board Order, and had voluntarily dismissed those appeals prior to the issuance of the Second Board Order, Appellants nevertheless raised, in their Petitions for Judicial Review before Judge Kahl, issues of "mistake" and "the parcel's lack of planned public water and sewer service." E. 448-49. Appellants also moved to dismiss the matter as moot, asserting that the adoption of the 1996 Map negated the Board's approval of Prosser's Petition or Reclassification. Judge Kahl denied Appellants' motion to dismiss and refused to address the issues regarding "mistake" and "the parcel's lack of planned water and sewer." E. 447-49.

E. ARGUMENT

I. The Adoption of the 1996 Comprehensive Zoning Maps Does Not Render Prosser's Petition for Reclassification Moot

The adoption of the 1996 Map by the County Council did not alter the zoning classifications applied to the 5.2 acre-parcel or change the configuration of the parcel's zoning lines; the parcel still consists of exactly the same 3.300 acres zoned R.C. 5 and

1.900 acres zoned R-O/C.R. Pursuant to BCC § 2-356(n), because the zoning classifications for the 5.2 acre parcel are identical on the 1992 and 1996 Maps, the County Council's adoption of the 1996 Map did not alter the Board's decision that the requested reclassification to M.L., as limited and conditioned by the documented site plan, was warranted.

Appellants incorrectly assert that the County Council "rezoned" the 5.2 acre-parcel when it adopted the 1996 Map. Appellants misunderstand that the Board's approval of Prosser's Petition for Reclassification as limited and conditioned by the documented site plan did not create a change in the 1992 Comprehensive Zoning Map for the purposes of § 2-356(n).

Section 2-356(n) of the BCC may be broken down into the following six components:

1. Property may be reclassified under this section only upon making the findings required under subsection (j) of this section.
2. Property may not be reclassified solely on the basis of documentation relating to the property's proposed use.
3. Any provision of section 26-122 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 documented site plan.
4. 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 documented site 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.

5. The requirement that such a property be utilized in accordance with a documented site plan will not be affected by the subsequent enactment of a zoning map, pursuant to the CZMP unless the zone classification of the property is further changed by that map.

6. The provision that the zoning classification of the property will revert within three years after the date of the final order granting the petition, will not be affected by the subsequent enactment of a zoning map, pursuant to CZMP, unless the zone classification of the property is further changed by that map.

Clearly §2-356(n) provides that, unless a subsequent CZMP change the zone classification on the Map, a Petition for Reclassification which the Board has granted pursuant to a documented site plan will not be affected.

Appellants cite, *inter alia*, *Yorkdale v. Powell*, 237 Md. 123 (1964), *O'Donnell v. Bassler*, 289 Md. 501 (1981), *Prince George's Country v. Sunrise Dev. L.P.*, 330 Md. 297 (1993), and *Sycamore Realty v. People's Counsel*, 344 Md. 57 (1996), to support their positions that the adoption of the 1996 Map negates the approval of Prosser's Petition for Reclassification. Appellants' reliance on these cases, however, is misplaced.

In *Yorkdale*, the Court of Appeals recognized that "*a change in the law after a decision below and before a final decision by the appellate Court will be applied by that Court unless vested or accrued substantive rights would be disturbed or unless the legislature shows a contrary intent.*" *Yorkdale*, 237 Md. at 124 (emphasis added). In the instant matter, there was no change in the law or the zoning classifications on the 5.2 acre-parcel to negate the Board's decision. Additionally, BCC § 2-356(n), shows a contrary intent. The statute clearly provides a three year period within which the

property may be developed in accordance with the documented site plan. In addition, the statute clearly provides that the three year period will not be affected by a subsequent CZMP, unless the zoning classification is further changed by that CZMP. Accordingly, *Yorkdale*, does not support Appellants' argument.

In *O'Donnell v. Bassler*, 289 Md. 501 (1981), the Court was asked to determine "whether the law in effect at the time that a special exception use permit was granted or the law in effect at the time of the appeal is applicable." *Id.* at 507. As in *Yorkdale*, the Court in *O'Donnell* reviewed the effect of a change in the law on a pending appeal. As stated *supra*, the instant matter does not involve a change in the law. The zoning classifications for the 5.2 acre-parcel on the 1996 Map are identical to the parcel's zoning classifications on the 1992 Map.

The *Sunrise* case and the *Sycamore* case cited by Appellants involve properties which were **downzoned** as a result of a subsequent CZMP. At the risk of sounding redundant, Prosser emphasizes that, in the instant matter, the subject property was not downzoned. The County Council did not alter or amend in any way the zoning designations on the subject site when it adopted the 1996 Maps. The Map Issues filed gave the County Council the opportunity to change the parcel's zoning classifications. The County Council, properly charged with the knowledge of its own laws, chose not to change the parcel's zoning as shown on the 1992 Map.

According to BCC § 2-356(n), any change in the zoning by a subsequent CZMP negates the effect of an order approving reclassification pursuant to a documented site

plan. A "downzone," *i.e.*, to R.C. 2, or an "upzone," *i.e.*, to M.L., nullifies the documented site plan approval. Because the County Council, in the instant case, "chose again" the R-O/C.R. and R.C. 5 zoning classifications for the 5.2 acre-parcel, the parcel's zoning classifications were not further changed by the 1996 CZMP. Therefore, the 1996 CZMP did not negate the First Board Order or the Second Board Order.

During the 1996 CZMP, the County Council had three options regarding the zoning classifications of the 5.2 acre parcel: (1) the County Council could have retained the R.C. 5 and R-O/C.R. designation on the parcel; (2) the County Council could have changed the zoning classification to R.C. 2 as requested by Issue 6-017; or (3) the County Council could have changed the zoning classification to M.L. as requested by Issue 6-001.

If the County Council had voted to change the zoning classification on the 5.2 acre-parcel to R.C. 2, then Prosser's approved Petition for Reclassification would have been negated by that "further change" and Prosser would be unable to develop the parcel in accordance with the documented site plan. Prosser would only enjoy the rights afforded by the R.C. 2 zone.

If the County Council had voted to change the parcel's zoning classification to M.L., then Prosser's approved Petition for Reclassification also would have been negated by that "further change." As a result, Prosser would enjoy the rights afforded by the M.L. zone. Prosser could then proceed to develop the property in accordance

with the M.L. zoning designation, without being bound by the limitations, conditions, and restrictions placed upon the property by the approved documented site plan.

In the instant case, however, the County Council voted not to change the parcel's zoning classification. By maintaining the parcel's R-O/C.R. and R.C. 5 zoning, the County Council indicated that the property should be zoned R-O/C.R. and R.C. 5, subject to the pending reclassification case. If the Board's decision is upheld, then the parcel may be developed for the limited purpose set forth in the documented site plan; if the Board's decision is overturned, then the zoning classifications on the parcel remain R-O/C.R. and R.C. 5. By electing not to change the parcel's zoning classifications in 1996, the County Council is able to preserve the parcel's zoning classifications shown on the 1992 Map in the event that Prosser does not develop the parcel in accordance with the documented site plan.

Appellants' accusation that Judge Kahl's decision is biased toward developers and undemocratic, and constitutes a usurpation of the legislative function is unwarranted, unfounded, and inappropriate. Judge Kahl's decision that the 1996 CZMP did not render the Board's approval of Prosser's Petition for Reclassification moot was based on a correct interpretation and application of § 2-356(n).

Further, Appellants' suggestion that the adoption of the 1996 Map negates the Board's approval of Prosser's Petition for Reclassification defies logic. If Appellants' assertions were legally correct, then Protestants in zoning reclassification cases could easily use the appeal process, as was done in this case, to delay final approval of a

change to the Planning Board and the County Council (T110); and that Grumman had been given such notice (T111). His recollection was that the grantor in each of the three deeds to Prosser Company was Grumman or some entity (T111-112). He also agreed that, when the County Council is considering open issues prior to adoption of the quadrennial map and prior to the adoption of the new zoning maps in October of 1992, they get on a bus, ride around and look at all these parcels, which has been the practice for many years and did occur in October of 1992 (T113). This was the same council which would have enacted their amendment to the Land Use Plan in January of 1992, which had become part of the Master Plan (T114).

He agreed that providing buffers in transition areas is indeed a valuable planning concept and his testimony indicated that that is exactly what happened here, he believed, on the documented site plan (T120).

Wallace S. Lippencott testified on Day 2, beginning at T149, who was at the time of testimony Branch Administrator for the Agricultural Preservation Program, Department of the Environmental Protection, and had worked in the Planning Department of Baltimore County for three years, primarily on environmental and rural issues (T150).

He identified Planning Office documentation concerning Issue 6-033 in the 1992 Comprehensive Zoning Process, which he

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had initiated (T151), which included the areas outlined, notice to the property owners, file notes, and meetings that took place between himself and officials of Grumman (T152). This would have occurred in late 1991, early 1992 (T152).

He explained the basis on which this property in Glen Arm was identified as being a candidate for the CR district, beginning at T156. He found that this was a very small site in an area that had been designated as a rural village (T157), and that the Master Plan adopted in 1990 described Glen Arm as being a rural village (T158); and that in his view the RO-CR was consistent with the Master Plan applied to this site (T159).

He had met with the officials of Grumman about the RC-5 zoning on the property on December 9, 1991 (T162) and that Grumman did not indicate any desire to have the property rezoned to ML (T162).

Dennis Wertz was subsequently called as a witness, beginning at T170 on Day 2. He testified that he was employed by the Baltimore County Office of Planning and Zoning for twelve years as a Senior Planner for the Fifth and Sixth Councilmanic Districts, which included the subject site (T171). He had brought the 1980 Comprehensive Map file excerpt involving Issue 5-6, marked as Exhibit 7A and 7B (T173) for which the Staff recommendation was RO/DR-16 zoning (T174); and the Planning Board recommended RO, which was approved by the Council (T174) with Map

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Issues 5-128 and 5-129 and that they as well as Issue 5-20 were denied (T176) for an ML request to which the Staff recommended RC-2 and the RC-2 zoning remained (T177).

On September 20, 1994 the three deeds for the conveyance to The Prosser Company, Inc. of the three parcels in question from Grumman Aerospace were admitted as Joint Exhibit 1, and Robert Powell of Baltimore County Department of the Environment testified as Supervisor of the Soil Evaluation Section, which he had supervised for approximately a dozen years (T5).

He testified as to the functioning of the septic system on The Prosser Company properties (T6); that there was no obvious failure in one house on Long Green Pike; and that he had not issued any citations concerning the septic systems as a result of the inspections (T8). He testified as to the procedures to be followed to correct the problems with the septic systems he had described (T8-10). He also testified that there are other possible solutions that have not been fully explored as of the date of hearing because the property owner had not chosen to try and explore other options (T16).

The Petitioner below, the applicant for rezoning, failed to produce adequate evidence under either change in the neighborhood or mistake in the zoning to support reclassification of its land to ML as requested on the evidence presented and

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considered by the County Board of Appeals.

The County Board of Appeals, in its deliberative minutes as well as in its Final Opinion and Order issued December 13, 1994 for the majority ignored the salient evidence which militated a denial of the reclassification petition for the absence of informative evidence of error sufficient to justify the rezoning.

The dissenting Opinion harpooned and deflated the balloons of error alleged by the Petitioner, The Prosser Company, wherein Joint Exhibit 1, the deeds conveying the property to The Prosser Company, indicate that all three of them had been previously owned by Grumman Aircraft, through its real estate subsidiary, which had owned it since 1981. A single legal entity owned the property or was contract purchaser of the property at the time of the denial of ML when all three parcels were considered by the County Council in the 1980 maps, and the same entity, Grumman, subsequently owned all three properties until July 15, 1992, in the year of the last Comprehensive Zoning Map.

It is clear from the testimony of the Planning Staff that Grumman was aware of the requests to impose the CR suffix on a portion of the property, and that it was an issue on the 1992 Maps, and that they made no objections nor requests as owners for ML zoning on the property in 1992.

The second ground alleged for error is that the County

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Council, on January 15, 1992, passed an amendment to the Master Plan calling for this area to be an industrial empowerment zone. The dissent clearly comprehends the allegation of error but discounts the claim that the County Council acted contrary to the Master Plan in imposing the CR suffix on the RO portion of the property. The dissenter correctly attempts to reconcile the County Council's decision of January 15, 1992 in approving an amendment to the Master Plan with its subsequent actions on a specific property which it reviewed on the request and recommendation of the staff and the Planning Board when it imposed the CR suffix to the RO zoning, correctly notes that the County Council certainly did not overlook, because it looked at these parcels of land, as well as other parcels of ground in the same area.

He finally correctly notes that in the issue of an alleged failing septic system on residential property as a basis to find map error, the Petitioner failed to meet its burden of proof to show that at the time the County Council rezoned the property in 1992 those systems were failing and that the Council either knew of that or failed to take that into account.

The dissenter was further persuaded by the testimony of the DEPRM representative, Robert Powell, that reasonable alternatives may exist to the use of septic fields on that site and that those alternatives were neither considered nor proved to

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be unusable under the testimony before the Board.

ARGUMENT

It is clear from reading the Opinion of the majority on the County Board of Appeals that the reasons stated to justify to justify the grant of the reclassification petition bear no relationship to the legal standard of mistake or error on the part of the County Council in 1992.

Zoning must be in accordance with a comprehensive plan. Hewitt v. County Commissioners of Baltimore County, 220 Md 48, 151 A.2d 144 (1959).

Zoning or rezoning in accordance with a comprehensive plan is a legislative function and should apply to a substantial area, be the product of long study and controlled land use consistent with the public interest. In other words, an important characteristic of a comprehensive plan is that it be well thought out and give consideration to common needs of a particular area. Nottingham Village, Inc. v. Baltimore County, 266 Md 339, 292 A.2d 680 (1972).

The County's zoning authority originally derived from Article 66B of the Annotated Code of Maryland. Following the adoption of the Charter form of government primary authority was derived from the Express Powers Act, Article 25A of the Code, which contained a broad grant of power to enact local laws for the protection, promotion of public safety, health, morals,

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welfare relating to zoning and planning.

The Section 22-22 of the Baltimore County Code, 1968 Version as amended by Bill No. 72-69, and Bill No. 42-70, was further amended following adoption of the final report of the Baltimore County Planning Board on October 20, 1977 to flesh out the requirements required to be proven in a Petition between quadrennial maps to approve a zoning reclassification. That Planning Board study and those Bills as enacted required that before a reclassification petition could be granted the factfinder in a quasi-judicial forum must find:

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

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In this case the zoning history for the property, which is the subject of the Petition, has been consistently, uniformly and for the relevant time period been that of a buffer between the industrial uses to the north, singly represented by Grumman Aerospace with operations on both sides of Long Green Pike north of this site, have dwindled if they have not yet ceased.

The expert witnesses called by the Petitioner, especially Mr. Gavrellis, curiously did not study or make note of the zoning history of the site and, in particular, the recent zoning history, going back from 1980 to the present.

From the adoption of the Resource Conservation Zones in 1976 to protect from overdevelopment or haphazard development rural properties in Baltimore County, a portion of this property has been continuously zoned and remains presently RC5. One of the avowed purposes in so zoning property is to provide a buffer between more intense industrial uses and less intense residential uses in a particular neighborhood.

Ever since RO zoning was permitted in Baltimore County in 1980 the remainder of the Petitioner's site has been zoned RO in which the adaptive reuse of historically significant structures, such as those found on the Petitioner's property, may continue. The Planning Staff in 1992, after the adoption of the Master Plan for this area in January of 1992, made the further Staff Issue the appending of a CR suffix for commercial rural to

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the RO zoned land to allow an expanded number of uses to allow the property owner more options to encourage adaptive reuse of the subject parcels.

It is undisputed that that was not only made known to Grumman Aerospace but that they did not object to that when contacted prior to adoption of the 1992 Maps.

It is also undisputed that the property owner, the Petitioner herein, The Prosser Company, Inc., through its President, was aware of and had studied the zoning for the property at least by the time period December 1991 and before April 1992 and knew that the lands were not zoned MU but were zoned RO and RC5 at the time he offered to buy them from Grumman.

The property owner herein is not deprived of any reasonable use of the land. Mayor and Council of Rockville v. Henley, 268 Md 469, 302 A.2d 45 (1973).

There is a presumption of correctness of the decisions of the Council in adopting Comprehensive Rezoning Maps. Trainer v. Lipchin, 269 Md 667, 309 A.2d 471 (1973).

It does not appear from the testimony and exhibits introduced by the Petitioner that they are urging this reclassification on the basis of change in the neighborhood. All of their hopes, therefore, rest on the presentation of their evidence on the matter of error on the part of the County Council.

Petitioner's arguments are unavailing for the following reasons:

They cannot legitimately contend that the County Council overlooked the property because in fact it was a Map Issue on the 1992 Maps when the Staff's recommendation to append a CR suffix was not opposed and acceptable to the existing property owner and was accomplished in October of 1992.

Earlier, after the original Grumman site had been rezoned ML on application on Grumman in 1980 on a prior map issue to rezone these very lands ML, the County Council studied that issue and declined at that time to grant the request to ML preserving the existing zoning on both parcels.

Significantly the property owners, Grumman Aerospace, at that time had entered into Restrictive Covenants which were recorded in the Land Records of Baltimore County encumbering and restricting the use to which the land could be placed in the future on a voluntary basis, regardless of whether the County Council approved their request in 1980.

It has also been held that whether or not a property owner could turn a greater profit is an insufficient basis on which to grant rezoning reclassifications. MacDonald v. Board of County Commissioners for Prince George's County, 238 Md 549, 210 A.2d 325 (1965).

The inadequacy of existing sewage facilities claimed by

the Petitioner in this case has been found to be a ground for denying more intensive use (Furnace Branch Land Company v. Board of County Commissioners of Anne Arundel County, 232 Md 536, 194 A.2d 640 [1963]) although the improvement of water and sewer facilities standing alone is not a sufficient basis to change rezoning (France v. Shapiro, 248 Md 335, 236 A.2d 726 [1968]).

In many cases the reclassification of nearby property may afford ground for further rezoning, however this is not always the case, particularly where the nearby area was intended as a buffer zone. Brown v. Wimpress, 250 Md 200, 242 A.2d 157 (1968).

When an application has been once rejected a new application may not be granted absent a showing of change since the earlier denial (Randolph Hills, Inc. v. Whitley, 249 Md 78, 238 A.2d 257 (1968)) or the existence of probative evidence that no reasonable use could be made of residential property.

The Board of Appeals was within its power to decline to rezone property for commercial use and the grant of rezoning by the Circuit Court reversing the Board was error. Wright v. McCubbin, 260 Md 11, 271 A.2d 367 (1970).

In a situation where neighboring properties had been reclassified to more intense uses, the rejection of a reclassification to a more intense use due to lack of water and sewer facilities was deemed neither arbitrary nor capricious when

it was believed that such facilities would not be available for 10 years, rejecting a reclassification petition. Montgomery County Council v. Pleasants, 266 Md 462, 295 A.2d 216 (1972).

The fact that a staff report recommends reclassification and that the Planning Commission adopts the report and recommends the change does not in and of itself warrant a finding that there had been a change justifying reclassification. Habliston v. City of Salisbury, 258 Md 350, 265 A.2d 885 (1970).

In order to sustain a comprehensive zoning judgment, it is enough that it be a reasonable and fairly debatable land use judgment. There must be "strong" evidence to overcome the presumption of correctness. This goes to the fundamental concept of our republican democracy: the separation of powers doctrine. The leading cases include: Coppolino v. County Board of Appeals, 23 Md.App. 358 (1974), Boyce v. Sembly, 25 Md.App. 43 (1975), and Howard County v. Dorsey, 292 Md. 351 (1982).

It is Petitioner's burden to adduce facts and evidence sufficient to persuade the Board of Appeals that it has met its burden in showing map error or change mistake. In this case the property owner has all three properties rented out for substantial rent, was aware of the existing zoning prior to the time that he offered to buy the properties and, therefore, assumed the risk that, if his reclassification petition were not

approved, he would be left with the uses permitted under the existing zone.

The prior zoning history for the property indicates that as part of a comprehensive plan this property has been repeatedly studied and consistently studied and appropriately zoned with adoption of the Resource Conservation Zone in 1976; denial of the ML petition by Grumman in 1980 on the 1980 Maps; and the simultaneous adoption of RO on a portion of the parcel when that became available as a zone in 1980; and the subsequent consideration and adoption of a CR suffix on the 1992 Maps.

Therefore, the County Council has carefully studied this area, has not overlooked the Petitioner's property and there is inadequate evidence of map error to prove those facts necessary to support a grant of the rezoning requested.

CONCLUSION

The Petitioners/Appellants, for the authorities cited, and following careful review of the evidence, request that the Circuit Court for Baltimore County reverse the Decision of the County Board of Appeals of Baltimore County.

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Towson, Maryland 21204
Telephone: (410) 296-8823
Attorney for the Appellants

I HEREBY CERTIFY that, on this 19th day of June, 1995, a copy of the foregoing was mailed, postage prepaid, to G. Scott Barhight, Esquire, 500 Courtland Avenue, Baltimore, Maryland 21202, and to the following Baltimore County, Maryland, attorneys for the Appellees; to Peter M. Zimm, Esquire, Baltimore County People's County, 400 Washington Avenue, Towson, Maryland, 21204; and to County Board of Appeals for Baltimore County, Old Courthouse, Room 49, 400 Washington Avenue, Towson, Maryland, 21204.

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June 16, 1995

Civil Clerk
Baltimore County Circuit Court
County Courts Building
401 Bosley Avenue
Towson, MD 21204

Re: **Glen Arm Community Association v.
County Board of Appeals for Baltimore County
Case Number 100/243/95CV288 - Non-Jury**

Dear Madam Clerk:

Enclosed herewith please find Memorandum of Glen Arm Community Association, Inc. and T. Michael Reier, Petitioner/Appellants in the above matter for filing.

Very truly yours,

Michael P. Tanczyn

MPT/ed
Enclosure

cc: G. Scott Barhight, Esq.
Peter Max Zimmerman, Esq.
County Board of Appeals for Baltimore County
Glen Arm Community Association, Inc.
Mr. T. Michael Reier

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY *

PETITION OF GLEN ARM COMMUNITY ASSN., *

INC. 11909 Long Green Pike *

Glen Arm, MD 21057 *

and *

T. MICHAEL REIER *

11909 Long Green Pike *

Glen Arm, MD 21057 *

and *

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY *

Room 47, Old Courthouse, 400 Washing- *

ton Avenue, Towson, MD 21204 *

FOR JUDICIAL REVIEW OF THE DECISION OF * CIVIL

THE COUNTY BOARD OF APPEALS * ACTION

OF BALTIMORE COUNTY * No. 95-CV-00288

Room 49, Old Courthouse, 400 Washing- * 100/243

ton Avenue, Towson, MD 21204 *

IN THE CASE OF: IN THE MATTER OF *

THE APPLICATION OF THE PROSSER COMPANY, *

INC. FOR ZONING RECLASSIFICATION ON *

PROPERTY LOCATED ON THE SOUTHEAST SIDE *

LONG GREEN PIKE AND THE NORTHWEST SIDE *

GLEN ARM ROAD (12107 AND 12109 LONG *

GREEN PIKE AND 5328 GLEN ARM ROAD) *

11TH ELECTION DISTRICT *

6TH COUNCILMANIC DISTRICT *

CASE NO. CR-94-143

(ITEM 3, CYCLE II, 1993/94)

RECEIVED AND FILED
JUN 17 1994

★ ★ ★ ★ ★ ★ ★ ★ ★ ★

**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 Robert O. Schuetz, 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 COUNTY BOARD OF APPEALS AND OFFICE OF ZONING ADMINISTRATION AND DEVELOPMENT MANAGEMENT

No. CR-94-143

August 31, 1993 Petition for Reclassification for property to be reclassified from R.O. & R.C. 5 to M.L., filed by G. Scott Barhight, Esquire, on behalf of The Prosser Company, Inc.

March 10, 1994 Publication in newspapers.

March 17 Entry of Appearance filed by Michael P. Tanczyn, Esquire, on behalf of Glen Arm Community Association.

April 5 Comments from the Baltimore County Zoning Plans Advisory Committee.

Certificate of Posting of property.

April 6 Hearing before the Board of Appeals.

June 16 Hearing day #2 before the Board of Appeals.

July 19 Hearing day #3 before the Board of Appeals.

September 20 Hearing day #4 (held only for purpose of allowing testimony of Rob Powell) concluded before the Board.

October 6 People's Counsel Memorandum filed.

October 7 Petitioner's Memorandum in Support of Request for Reclassification filed by G. Scott Barhight, Esquire.

October 7 Memorandum of Glen Arm Community Association, Inc. filed by Michael P. Tanczyn, Esquire

October 19 Open deliberation for final determination.

December 13 Majority Opinion and Order of the Board GRANTING the Petition for Reclassification

(Hackett and Schuetz); Dissenting Opinion issued by Clark.

January 10, 1995 Petition for Judicial Review filed in the Circuit Court for Baltimore County by Michael P. Tanczyn, Esquire, on behalf of the Glen Arm Community Association, Inc. and T. Michael Reier.

January 11 Petition for Judicial Review filed in the Circuit Court for Baltimore County by People's Counsel for Baltimore.

January 19 Copy of Tanczyn's Petition for Judicial Review received by the Board of Appeals from the Circuit Court for Baltimore County.

January 20 Certificate of Notice sent to interested parties.

January 24 Copy of People's Counsel's Petition for Judicial Review received by the Board of Appeals from the Circuit Court for Baltimore County.

January 24 Second Certificate of Notice sent to interested parties.

February 10 Response to Petition filed by G. Scott Barhight on behalf of The Prosser Company, Inc.

March 1 Motion to extend time for Transmission of Record filed by Michael P. Tanczyn, Esquire on behalf of Glen Arm (Affidavit of Carol Peatt attached). (Extend to May 17, 1995)

March 1 Order granting Motion to extend time to Transmit Record signed by Judge Howe.

May 17 Transcript of testimony filed.

Petitioner's Exhibits No. 1-The Prosser Co. brochure
2-El-Tex brochure
3-Petition for Reclassification by The Prosser Company
4-Justification Statement - Petition for Reclass.
5-WBC & M Description, Parcels 263, 264 and 296 (2 pages)
6-Site Plan to Accompany Zoning

Reclass 8/31/93 rev. 10/14/93
7-Baltimore Co. Zoning Map
8-Comprehensive Zoning Map 10/15/92
9-(marked for) Environmental Impact
10-Letter 3/15/94 Fields, OP2 to Joseph Prosser
11-Petition In Support of the Prosser Co. - 2 pages
12-Existing Land Use drawing (I.D. only) by WBC&M 9/1/94 (admitted as evidence Day 2) (IN CBA CLOSET)
13-Curric. Vitae Patrick B. Ford
14-Cycle II, 1994 Report by B. Co. Planning Board (partial document -CR-94-143 only)
15-4/6/94 letter signed by Howard Norman (nos. 16 thru 26 IN CBA CLOSET)
16-Colored Drawing "Existing Zoning" 9/1/93 by WBC&M (200 scale)
17-50 scale drawing "Existing Zoning" 9/1/93 WBC&M
18-50 scale drawing "Zoning and Maximum Bulk" 9/1/93
19-50 scale drawing "Soils Study" 9/1/93
20-50 scale drawing "Depth to Bedrock" 9/1/93
21-50 scale drawing "Depth to Water Table" 9/1/93
22-50 scale drawing "Hydrology" 9/1/93
23-50 scale drawing "Slope Analysis" 9/1/93
24-50 scale drawing "Elevation Study" 9/1/93
25-50 scale drawing "Visual Impact" 9/1/93
26-50 scale drawing "Existing Vegetation" 9/1/93
27-A-G Photos of Glen Arm Road
28-A-C Photos of Prosser Site
29-B Photos of Grumman Site
30-A, B Photos of NW quadrant
31-A,B,C Photos of along Long Green Pike N of Glen Arm
32-A-E Photos of Site from

various points around site
33-Resume, George E. Gavrellis
34-Colored site plan to accompany Zoning Reclass Petition
35-10/15/93 letter J.R. Powell to J. Siemek

People's Counsel's Exhibits No. 1-(6 pages) Request for Zoning Change issued 6-033
2-(6pages) Excerpts of 1992 Comp. Zoning Process Sixth Councilmanic District
3-Meeting Minutes 1/13/94 Landmarks Preserv. Comm.
4A-(FOR I.D. ONLY) -Tank Removal/Abandonment Report 4 pages 5/23/90
4B-(FOR I.D. ONLY) -Environmental Report; 5/1991; by EA Engineering, Science & Technology
5-1992 Comp Zoning Map Request for Change Issue 6-033
6A-Report of Planning Board 9/30/90
6B-Bill 56-61 of Co. Council
7A-Final Report of Planning Board 8/11/96
7B-Bill 85-67 of Co. Council
8-Final Report of Planning Board 10/20/77

Protestants' Exhibits No. 1-Stormwater Easement Agreement
2-Restrictive Covenant Agreement Liber 6170 Folio 469 (FOR I.D. ONLY)
3-April 6, 1994 List of attendees opposed to the reclass.
4-Graphic Changes in Zoning, 1980, 1984, 1988, 1992
5-"Plate 2" (2 pages) and "Plate 2A" (2 pages)
6-Glen Arm Comm. Assoc. Rule 8 resolutions (4 pages)
7A-1000 scale portion of Map 4D
7B-1000 Proposed Comp Zoning Map
7C-Bill 85-67 of Co. Council
7D-Request for Change; 1980 Comprehensive Zoning Map
8-Long Green Valley Association Rule 8 resolutions

9 -6/21/94 Letter Tanczyn to Powell, Affidavit, Subpoena
Joint Exhibit No. - 1- 3 Deeds Grumman to Prosser L9289P101, L9289P103 & L9289P105

May 17, 1995 Record of Proceedings filed in the Circuit Court for Baltimore County.

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

Respectfully submitted,

Charlotte E. Radcliffe
Charlotte E. Radcliffe
Legal Secretary
County Board of Appeals of Baltimore County, Room 49, Basement - Old Courthouse
400 Washington Avenue
Towson, MD 21204 (410) 887-3180

cc: G. Scott Barhight, Esquire
James J. Prosser /The Prosser Co., Inc.
Michael P. Tanczyn, Esquire
The Glen Arm Community Association, Inc.
T. Michael Reier
People's Counsel for Baltimore County

Glen Arm Community Association, Inc.
11909 Long Green Pike
Glen Arm, Maryland 21057
and
T. Michael Reier
11909 Long Green Pike
Glen Arm, Maryland 21057

FOR JUDICIAL REVIEW OF DECISION OF:
County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204
(410) 887-3180

IN THE CASE OF:

IN THE MATTER OF
THE APPLICATION OF
THE PROSSER COMPANY, INC.
FOR A ZONING RECLASSIFICATION
ON PROPERTY LOCATED ON THE
SOUTHEAST SIDE LONG GREEN
PIKE AND THE NORTHWEST SIDE
GLEN ARM ROAD (12107 AND
12109 LONG GREEN PIKE AND
5328 GLEN ARM ROAD)
11TH ELECTION DISTRICT
6TH COUNCILMANIC DISTRICT
CASE NO. CR-94-143
CYCLE II, 1993 /94

CIVIL ACTION
NO. 100/243/95CV-00288

MOTION TO EXTEND TIME FOR TRANSMISSION OF RECORD

NOW COMES, Glen Arm Community Association, Inc. and T.

Michael Reier, Appellants, by Michael P. Tanczyn, Esq., their attorney, and moves, pursuant to Maryland Rule 7-206(d) that the time for transmission of the Record in this action to this Court be extended up to and including May 17, 1995. The grounds for the motion are as follows:

1. The sixty day period prescribed by Maryland Rule 7-206(c) for filing the record in this action in this Court expires after March 17, 1995.

2. Although movant ordered a transcript of the testimony promptly upon filing its appeal on January 12, 1995, counsel has been advised by Carol Peatt, the reporter, whose affidavit is attached hereto, that the transcript of testimony will not be delivered to said secretary for transmission of the Record until an extended period of time for the reasons stated in her affidavit.

3. Movant, through no fault of their own or of their counsel's, is unable therefore to have the record transmitted to this Court until approximately May 17, 1995, being a reasonable date after the record is presently due.

4. The Appellants aver that no party will be prejudiced by the requested extension of time to file the record.

5. The undersigned counsel telephoned G. Scott Barhight, who represents the property owner, and Peter Max Zimmerman, Baltimore County People's Counsel, concerning the

request for an extension of time and their response was that they did not oppose the extension requested hereby.

7. Appellants intend to pursue their appeal in a timely manner.

WHEREFORE, Appellants respectfully request this

Honorable Court:

A. Issue an Order, pursuant to Maryland Rule 7-206(d) extending the time for transmission of the record in this case until May 17, 1995; and

B. For such other and further relief as the nature of this cause may require.

MICHAEL P. TANCZYN, ESQ.
606 Baltimore Avenue, Suite 106
Towson, Maryland 21204
Telephone: (410) 296-8823
Attorney for the Appellants

I HEREBY CERTIFY that, on this 1 day of March, 1995, a copy of the foregoing was mailed, postage prepaid, to G. Scott Barhight, Esquire, Whiteford, Taylor & Preston, 500 Court Towers, 210 West Pennsylvania Avenue, Towson, Maryland, 21204-4515, attorney for The Prosser Company, Inc.; to Peter Max Zimmerman, Esquire, Baltimore County People's Counsel, Old Courthouse, Room 49, 400 Washington Avenue, Towson, Maryland, 21204; and to County Board of Appeals of Baltimore County, Old Courthouse, 400 Washington Avenue, Room 49, Towson, Maryland, 21204.

MICHAEL P. TANCZYN, ESQ.

PETITION OF: * IN THE
Glen Arm Community * CIRCUIT COURT
Association, Inc. * FOR BALTIMORE COUNTY
11909 Long Green Pike
Glen Arm, Maryland 21057
and
T. Michael Reier
11909 Long Green Pike
Glen Arm, Maryland 21057
FOR JUDICIAL REVIEW OF DECISION OF:
County Board of Appeals
of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204
(410) 887-3180
IN THE CASE OF:
IN THE MATTER OF
THE APPLICATION OF
THE PROSSER COMPANY, INC.
FOR A ZONING RECLASSIFICATION
ON PROPERTY LOCATED ON THE
SOUTHEAST SIDE LONG GREEN
PIKE AND THE NORTHWEST SIDE
GLEN ARM ROAD (12107 AND
12109 LONG GREEN PIKE AND
5328 GLEN ARM ROAD)
11TH ELECTION DISTRICT
6TH COUNCILMANIC DISTRICT
CASE NO. CR-94-143 CIVIL ACTION
CYCLE II, 1993 /94 NO. 100/243/95CV-00288

ORDER EXTENDING TIME TO TRANSMIT RECORD

UPON CONSIDERATION of the Motion to Extend Time for
Transmission of the Record in the above captioned matter filed by

Glen Arm Community Association, Inc. and T. Michael Reier,
Appellants, upon this Court's finding that the delay in
transmitting the record was not caused by the moving party.
Appellant, it is by the Circuit Court for Baltimore County, this
11 day of March, 1995,
ORDERED, that the time for transmission of the record
in the above captioned case to the Clerk of this Court is hereby
extended until May 17, 1995.

JUDGE

COPIES MAILED TO:

William T. Hackett, Chairman
County Board of Appeals
Old Courthouse, Room 49
400 Washington Avenue
Towson, MD 21204
Peter Max Zimmerman, Esq.
Baltimore County People's Counsel
Old Courthouse, Room 47
400 Washington Avenue
Towson, MD 21204
T. Scott Barhight, Esq.
Whiteford, Taylor & Preston
210 West Pennsylvania Avenue
Suite 400
Towson, MD 21204
Michael P. Tanczyn, Esq.
606 Baltimore Avenue, Suite 106
Towson, MD 21204

SUBSTITUTED CLERK
Per *Carole Peatt*
Assistant Clerk

PETITION OF: * IN THE
Glen Arm Community * CIRCUIT COURT
Association, Inc. * FOR BALTIMORE COUNTY
11909 Long Green Pike
Glen Arm, Maryland 21057
and
T. Michael Reier
11909 Long Green Pike
Glen Arm, Maryland 21057
FOR JUDICIAL REVIEW OF DECISION OF:
County Board of Appeals
of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204
(410) 887-3180
IN THE CASE OF:
IN THE MATTER OF
THE APPLICATION OF
THE PROSSER COMPANY, INC.
FOR A ZONING RECLASSIFICATION
ON PROPERTY LOCATED ON THE
SOUTHEAST SIDE LONG GREEN
PIKE AND THE NORTHWEST SIDE
GLEN ARM ROAD (12107 AND
12109 LONG GREEN PIKE AND
5328 GLEN ARM ROAD)
11TH ELECTION DISTRICT
6TH COUNCILMANIC DISTRICT
CASE NO. CR-94-143 CIVIL ACTION
CYCLE II, 1993 /94 NO. 100/243/95CV-00288

AFFIDAVIT OF CAROL PEATT

STATE OF MARYLAND, COUNTY OF BALTIMORE; to wit:

I HEREBY CERTIFY that, on this 11 day of March,

1995, before me the subscriber, a Notary Public in and for the
State and County aforesaid, personally appeared CAROL PEATT,
satisfactorily identified to me, who made oath in due form of law
as follows:

1. That she is over the age of eighteen (18) years
and competent to testify to the facts contained herein on
personal knowledge.

2. She was one of the Court Reporters who took
testimony in the instant case which took several days to complete
the extensive hearings.

3. She has a backlog of recent appeals and she will
not be able to have her portion of the transcript completed for
submission to the secretary of the County Board of Appeals by
March 17, 1995, which is the date the County Board of Appeals
said that the record should be transmitted to the Circuit Court
for Baltimore County.

4. Additionally, another Court Reporter, Marsha Tome,
look one day of the transcript. Ms. Tome, who recently married,
moved to the State of Florida, and she will have to transcribe
her day of testimony, which has been requested of her, and that
may take additional time to complete.

5. An extension of time to May 17, 1995 would provide
adequate time to account for the backlog and allow all the
reporters adequate time to complete their portions of this
lengthy transcript.

6. All of the above facts are true.

CAROL PEATT, Affiant

NOTARY PUBLIC
My Commission Expires

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

PETITION OF: *
GLEN ARM COMMUNITY *
ASSOCIATION, INC. *
T. MICHAEL REIER *
and *
PEOPLE'S COUNSEL FOR * CIVIL ACTION NO.
BALTIMORE COUNTY * 100/243/95-CV-288
FOR JUDICIAL REVIEW OF THE *
DECISION OF THE COUNTY BOARD *
OF APPEALS OF BALTIMORE *
COUNTY *
IN THE MATTER OF: *
PETITION OF THE PROSSER *
COMPANY, FOR A ZONING *
RECLASSIFICATION OF PROPERTY *
LOCATED ON THE EAST SIDE OF *
LONG GREEN PIKE, 80 FEET NORTH *
OF THE CENTER LINE OF GLEN ARM *
ROAD (12107 & 12109 LONG GREEN *
PIKE AND 5328 GLEN ARM ROAD) *
11TH ELECTION DISTRICT *
6TH COUNCILMANIC DISTRICT *
CASE NO. CR-94-143 *
CYCLE II, 1993/94 *

RESPONSE TO PETITION

The Prosser Company, Inc., Appellee, by G. Scott Barhight and Whiteford, Taylor
& Preston, hereby responds to the Petition filed by the Glen Arm Community
Association, Inc. and T. Michael Reier and the Petition for Judicial Review filed by
People's Counsel for Baltimore County, Appellants, and states as follows:

1. The Prosser Company, Inc. intends to participate in the judicial
review by the Circuit Court of Baltimore County pursuant to Chapter 200
of Title 7 of the Maryland Rules.
 2. The Opinion and Order rendered by the County Board of Appeals
of Baltimore County on December 13, 1994, is proper and there are no
grounds for the Petitions for Judicial Review.
- WHEREFORE, The Prosser Company, Inc., Appellee, responds to the Petitions
for Judicial Review and requests that this Honorable Court dismiss the Petitions.

G. Scott Barhight
Whiteford, Taylor & Preston
400 Court Towers
210 West Pennsylvania Avenue
Towson, Maryland 21204
Telephone: (410) 832-2050

Attorney for Appellee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of February, 1995, a copy of the
foregoing RESPONSE TO PETITION was mailed, postage prepaid, to Peter Max
Zimmerman, Esquire, Baltimore County People's Counsel, Old Courthouse, Room 47,
400 Washington Avenue, Towson, Maryland 21204; to Michael P. Tanczyn, Esquire, 606
Baltimore Avenue, Suite 106, Towson, Maryland 21204, attorney for Appellants, Glen
Arm Community Association, Inc. and T. Michael Reier; and to the County Board of
Appeals of Baltimore County, Old Courthouse, 400 Washington Avenue, Room 49,
Towson, Maryland 21204.

G. Scott Barhight

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
PETITION OF GLEN ARM COMMUNITY ASSN.,
INC. 11909 Long Green Pike
Glen Arm, MD 21057

and
T. MICHAEL REIER
11909 Long Green Pike
Glen Arm, MD 21057

and
PETITION OF PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY
Room 47, Old Courthouse, 400 Washing-
ton Avenue, Towson, MD 21204

FOR JUDICIAL REVIEW OF THE DECISION OF * CIVIL
THE COUNTY BOARD OF APPEALS * ACTION
OF BALTIMORE COUNTY * NO. 95-CV-00288
Room 49, Old Courthouse, 400 Washing- *
ton Avenue, Towson, MD 21204 * /100/243

IN THE CASE OF: IN THE MATTER OF
THE APPLICATION OF THE PROSSER COMPANY,
INC. FOR ZONING RECLASSIFICATION ON
PROPERTY LOCATED ON THE SOUTHEAST SIDE
LONG GREEN PIKE AND THE NORTHWEST SIDE
GLEN ARM ROAD (12107 AND 12109 LONG
GREEN PIKE AND 5328 GLEN ARM ROAD)
11TH ELECTION DISTRICT
6TH COUNCILMANIC DISTRICT

CASE NO. CR-94-143
(ITEM 3, CYCLE II, 1993/94)

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 Robert O. Schuetz,
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

CR-94-143, The Prosser Company, Inc.
File No. 100/243/95-CV-00288

proceeding before it; namely, Peter Max Zimmerman, People's Counsel for Baltimore County, Petitioner; the Glen Arm Community Association, Inc., 11909 Long Green Pike, Glen Arm, MD 21057, and T. Michael Reier, 11909 Long Green Pike, Glen Arm, MD 21057, Petitioners; Michael P. Tanczyn, Esquire, 606 Baltimore Avenue, Suite 106, Towson, MD 21204, Counsel for Petitioners; James J. Prosser, Secretary /Treasurer, The Prosser Company, Inc., P.O. Box 5036, Glen Arm, MD 21057; and G. Scott Barhight, Esquire, WHITEFORD, TAYLOR & PRESTON, 500 Court Towers, 210 W. Pennsylvania Avenue, Towson, MD 21204, Counsel for The Prosser Company, Inc., a copy of which Notice is attached hereto and prayed that it may be made a part hereof.

Charlotte E. Radcliffe
Charlotte E. Radcliffe, Legal Secretary
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, Petitioner; the Glen Arm Community Association, Inc., 11909 Long Green Pike, Glen Arm, MD 21057, and T. Michael Reier, 11909 Long Green Pike, Glen Arm, MD 21057, Petitioners; Michael P. Tanczyn, Esquire, 606 Baltimore Avenue, Suite 106, Towson, MD 21204, Counsel for Petitioners; James J. Prosser, Secretary /Treasurer, The Prosser Company, Inc., P.O. Box 5036, Glen Arm, MD 21057; and G. Scott Barhight, Esquire, WHITEFORD, TAYLOR & PRESTON, 500 Court Towers, 210 W. Pennsylvania Avenue, Towson, MD 21204, Counsel for The Prosser Company, Inc., on this 23rd day of January, 1995.

Charlotte E. Radcliffe
Charlotte E. Radcliffe, Legal Secretary
County Board of Appeals, Room 49, Basement
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410) 887-3180

CR-94-143, The Prosser Company, Inc.
File No. 100/243/95-CV-00288

Towson, MD 21204, Counsel for Petitioners; James J. Prosser, Secretary /Treasurer, The Prosser Company, Inc., P.O. Box 5036, Glen Arm, MD 21057; G. Scott Barhight, Esquire, WHITEFORD, TAYLOR & PRESTON, 500 Court Towers, 210 W. Pennsylvania Avenue, Towson, MD 21204, Counsel for The Prosser Company, Inc.; 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 the Glen Arm Community Association, Inc., 11909 Long Green Pike, Glen Arm, MD 21057, and T. Michael Reier, 11909 Long Green Pike, Glen Arm, MD 21057, Petitioners; Michael P. Tanczyn, Esquire, 606 Baltimore Avenue, Suite 106, Towson, MD 21204, Counsel for Petitioners; James J. Prosser, Secretary /Treasurer, The Prosser Company, Inc., P.O. Box 5036, Glen Arm, MD 21057; G. Scott Barhight, Esquire, WHITEFORD, TAYLOR & PRESTON, 500 Court Towers, 210 W. Pennsylvania Avenue, Towson, MD 21204, Counsel for The Prosser Company, Inc.; and Peter Max Zimmerman, People's Counsel for Baltimore County, Room 47, Old Courthouse, 400 Washington Avenue, Towson, MD 21204, on this 20th day of January, 1995.

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

January 23, 1995

Michael P. Tanczyn, Esquire
606 Baltimore Avenue
Suite 106
Towson, MD 21204

RE: Civil Action No. 95-CV-00288
THE PROSSER COMPANY, INC.

Dear Mr. Tanczyn:

Notice is hereby given, in accordance with the Maryland Rules of Procedure, that a Petition for Judicial Review was filed on January 11, 1995 in the Circuit Court for Baltimore County from the 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. 100/243/95-CV-00288.

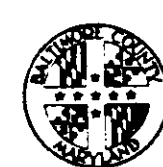
Enclosed is a copy of the Second Certificate of Notice, which has been filed in the Circuit Court.

Very truly yours,

Charlotte E. Radcliffe
Charlotte E. Radcliffe
Legal Secretary

Enclosure

cc: The Glen Arm Community Assn., Inc.
T. Michael Reier
G. Scott Barhight, Esquire
James J. Prosser, Secretary /Treasurer
The Prosser Company, Inc.
Ms. Barbara Scheper Lynch
People's Counsel for Baltimore County
James Earl Kraft
Pat Keller
Jeffrey Long
Lawrence E. Schmidt
W. Carl Richards
Docket Clerk /ZADM
Arnold Jablon /ZADM



County Board of Appeals of Baltimore County

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

January 20, 1995

Michael P. Tanczyn, Esquire
606 Baltimore Avenue
Suite 106
Towson, MD 21204

RE: Civil Action No. 95-CV-00288
THE PROSSER COMPANY, INC.

Dear Mr. Tanczyn:

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

cc: The Glen Arm Community Association, Inc.
T. Michael Reier



County Board of Appeals of Baltimore County

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

January 23, 1995

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

RE: Civil Action No. 95-CV-00288
THE PROSSER COMPANY, INC.

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.

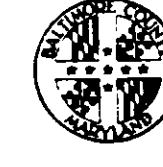
The cost of the transcript, plus any other documents, must be paid in time to transmit the same to the Circuit Court within sixty days, in accordance with Rule 7-206(c).

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

Very truly yours,

Charlotte E. Radcliffe
Charlotte E. Radcliffe
Legal Secretary

Enclosure



County Board of Appeals of Baltimore County

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

January 20, 1995

G. Scott Barhight, Esquire
WHITEFORD, TAYLOR & PRESTON
500 Court Towers
210 W. Pennsylvania Avenue
Towson, MD 21204-4515

RE: Civil Action No. 95-CV-00288
THE PROSSER COMPANY, INC.

Dear Mr. Barhight:

Notice is hereby given, in accordance with the Maryland Rules of Procedure, that a Petition for Judicial Review was filed on January 10, 1995 in the Circuit Court for Baltimore County from the 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. 100/243/95-CV-00288.

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: James J. Prosser, Secretary /Treasurer
The Prosser Company, Inc.
Ms. Barbara Scheper Lynch
People's Counsel for Baltimore County
James Earl Kraft
P. David Fields
Jeffrey Long
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards
Docket Clerk /ZADM
Arnold Jablon /ZADM

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF GLEN ARM COMMUNITY ASSN.,
INC. 11909 Long Green Pike
Glen Arm, MD 21057

and

T. MICHAEL REIER
11909 Long Green Pike
Glen Arm, MD 21057

FOR JUDICIAL REVIEW OF THE DECISION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
Room 49, Old Courthouse, 400 Washing-
ton Avenue, Towson, MD 21204

IN THE CASE OF: IN THE MATTER OF
THE APPLICATION OF THE PROSSER COMPANY,
INC. FOR ZONING RECLASSIFICATION ON
PROPERTY LOCATED ON THE SOUTHEAST SIDE
LONG GREEN PIKE AND THE NORTHWEST SIDE
GLEN ARM ROAD (12107 AND 12109 LONG
GREEN PIKE AND 5328 GLEN ARM ROAD)
11TH ELECTION DISTRICT
6TH COUNCILMANIC DISTRICT

CASE NO. CR-94-143
(ITEM 3, CYCLE II, 1993/94)

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the provisions of Rule 7-202(e) of the Maryland Rules of Procedure, William T. Hackett and Robert O. Schuetz, 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, the Glen Arm Community Association, Inc., 11909 Long Green Pike, Glen Arm, MD 21057, and T. Michael Reier, 11909 Long Green Pike, Glen Arm, MD 21057, Petitioners; Michael P. Tanczyn, Esquire, 606 Baltimore Avenue, Suite 106,

PETITION OF 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 THE
APPLICATION OF THE PROSSER COMPANY,
INC. FOR A ZONING RECLASSIFICATION
OF PROPERTY LOCATED ON THE EAST SIDE
OF LONG GREEN PIKE, 80 FT. NORTH OF
THE CENTER LINE OF GLEN ARM ROAD
(12107 & 12109 GLEN ARM ROAD)
FROM R-O-C.R. and R.C.5 TO M.L.
11th ELECTION DISTRICT
6th COUNCILMANIC DISTRICT

IN THE BALTIMORE COUNTY BOARD OF
APPEALS, CASE NO.: CR-94-143

PETITION FOR JUDICIAL REVIEW

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY hereby requests judicial review of the decision of the County Board of Appeals dated December 13, 1994 in the above case, CBA Case No. 94-420-A. PEOPLE'S COUNSEL was a party to the proceeding before the County Board of Appeals of Baltimore County in this matter.

This Petition is filed pursuant to Rule 7-202 of the Maryland Rules of Procedure.

Peter Max Zimmerman
PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio
CAROLE S. DEMILIO
Deputy People's Counsel
Room 47, Courthouse
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11 day of January, 1995, a copy of the foregoing Petition for Judicial Review was mailed to G. Scott Barhight, Esquire, Whiteford, Taylor & Preston, 210 W. Pennsylvania Avenue, Suite 400, Towson, MD 21204, and to Michael P. Tanczyn, Esquire, 606 Baltimore Avenue, Suite 106, Towson, MD 21204.

Peter Max Zimmerman
PETER MAX ZIMMERMAN

PETITION OF: Glen Arm Community Association, Inc.
11909 Long Green Pike
Glen Arm, Maryland 21057
and
T. Michael Reier
11909 Long Green Pike
Glen Arm, Maryland 21057

FOR JUDICIAL REVIEW OF THE DECISION OF:

County Board of Appeals
of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204
(410) 867-3180

IN THE CASE OF:
IN THE MATTER OF
THE APPLICATION OF
THE PROSSER COMPANY, INC.
FOR A ZONING RECLASSIFICATION
ON PROPERTY LOCATED ON THE
SOUTHEAST SIDE LONG GREEN
PIKE AND THE NORTHWEST SIDE
GLEN ARM ROAD (12107 AND
12109 LONG GREEN PIKE AND
5328 GLEN ARM ROAD)
11TH ELECTION DISTRICT
6TH COUNCILMANIC DISTRICT

CASE NO. CR-94-143
CYCLE II, 1993 /94

PETITION

GLEN ARM COMMUNITY ASSOCIATION, INC. and T. MICHAEL REIER, Appellants and parties in the above-referenced case, by Michael P. Tanczyn, Esq., their legal counsel, in accordance with

Maryland Rule 7-202, hereby request judicial review of the December 13, 1994 Decision of the County Board of Appeals of Baltimore County in the above-captioned matter granting the reclassification of The Prosser Company, Inc. for zoning reclassification.

Michael P. Tanczyn
MICHAEL P. TANCZYN, ESQ.
606 Baltimore Avenue, Suite 106
Towson, Maryland 21204
Telephone: (410) 296-8823
Attorney for the Appellants

I HEREBY CERTIFY that, on this 10th day of January, 1995, a copy of the foregoing was mailed, postage prepaid, to G. Scott Barhight, Esquire, Whiteford, Taylor & Preston, 500 Court Towers, 210 West Pennsylvania Avenue, Towson, Maryland, 21204-4915, attorney for The Prosser Company, Inc.; to Peter Max Zimmerman, Esquire, Baltimore County People's Counsel, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland, 21204; and to County Board of Appeals of Baltimore County, Old Courthouse, 400 Washington Avenue, Room 49, Towson, Maryland, 21204.

Michael P. Tanczyn
MICHAEL P. TANCZYN, ESQ.

Law Offices
MICHAEL P. TANCZYN, P.A.
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
(410) 296-8823 - (410) 296-8824
Fax: (410) 296-8827
Computer Fax: (410) 296-2848
January 10, 1995

Civil Clerk
Baltimore County Circuit Court
County Courts Building
401 Bosley Avenue
Towson, MD 21204

Re: The Prosser Company, Inc.
County Board of Appeals
Case Number CR-94-143

Dear Madam Clerk:

Enclosed please find Petition for judicial review in the above case.

Please notify the County Board of Appeals of Baltimore County that the Petition has been filed as well as all parties of the Civil Action Number assigned.

Thank you very much for your assistance in this regard.

Very truly yours,

Michael P. Tanczyn
MICHAEL P. TANCZYN

MPT/ed
Enclosure

cc: County Board of Appeals
G. Scott Barhight, Esq.
Peter Max Zimmerman, Esq.
Glen Arm Community Association, Inc.
Mr. T. Michael Reier

IN THE MATTER OF
THE APPLICATION OF
THE PROSSER COMPANY, INC.
FOR A ZONING RECLASSIFICATION ON
PROPERTY LOCATED ON THE SOUTHEAST
SIDE LONG GREEN PIKE AND THE NORTH-
WEST SIDE GLEN ARM ROAD (12107 AND
12109 LONG GREEN PIKE AND 5328 GLEN
ARM ROAD)
11TH ELECTION DISTRICT
6TH COUNCILMANIC DISTRICT

OPINION

This matter comes before this Board on Petition for Reclassification from R.O. and R.C. 5 to M.L. for some 5.2 combined acres on a documented site plan. Hearings before the Board of Appeals were conducted on April 6, June 16, July 19, and September 20, 1994. A brief history as regarding this site is in order.

This 5.2-acre parcel is the result of the combining of three smaller parcels, two parcels being zoned R.O.-C.R. and one being zoned R.C. 5. Each of these three parcels has an old residence present, and all three of these residences have failing septic systems. These residences, however, are rented for residential use, even though these septic systems are failing. There has been no proposed use for the two R.O.-zoned parcels whatsoever, and, in fact, the owner has attempted to give away all three of these buildings to anyone who would move them, but has had no success. If the M.L. zone as requested is granted for the 5.2-acre parcel, the Prosser Company intends to relocate El-Tex and Amereihn companies to this site. Both of these companies are subsidiaries of the Prosser Company, Inc. The three parcels were purchased and combined into one unit on July 15, 1992. This precluded any

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consideration by the County Council in the Comprehensive Map Process. The testimony and evidence produced in this case consumed some four days of hearings and produced many exhibits. All of this is well-documented in the hearing record and in the three lengthy and well-written memorandums presented this Board, and the record so produced will speak for itself.

Testifying for the Petitioner was Joseph L. Prosser, Jr., the President of the Prosser Company, Inc. He presented the Petitioner's plan for the subject site. He testified as to the reasons for the purchase of the property, the main reason for which was to allow the relocation of the two subsidiaries. Mr. Prosser described in great detail the business conducted in these two subsidiaries, the number of employees, the documented site plan, and the landscaping and buffering proposed for the site. Mr. Prosser testified that he could obtain no R.O. use for the property, and that the continued residential use of the site was not economically feasible. He also testified to the Prosser Company's efforts to relocate the three old structures and thereby preserve their historical significance, if any exists. At present, the three residences are not on any historic list, and merely by application for a razing permit, they could be destroyed.

Peter Swanson, who represented the Baltimore County Economic Development Office, testified as to the County's strong support for this reclassification as limited by the documented site plan. Mr. Swanson stated that the project would provide additional jobs, increase the tax base, increase the business efficiencies, and that

Case No. CR-94-143 The Prosser Company, Inc.

its proposed use was consistent with the Master Plan.

Joseph Bittner next testified in favor of the rezoning. He indicated that it was his opinion that the proposed relocation of Amereihn and El-Tex would fit well into the employment area of Glen Arm. Mr. Bittner indicated that the Prosser Company has been an excellent neighbor to the community, and that there is no objection to their current operation.

Barbara Amrein, a nearby neighbor, testified in favor of the requested rezoning as limited by the documented site plan, citing the good neighbor practices and policies of Petitioner.

Parker Watson, a long-time resident, testified that since the 1880's Glen Arm has been used more and more for manufacturing, industrial and commercial uses. Mr. Watson cited the Master Plan which identifies this area for industrial uses.

Patrick Ford, the Director of Planning and Development Services for Whitney, Bailey, Cox & Magnani, was accepted as an expert witness and testified as the project director for the subject property. He oversaw the required environmental impact statement, and testified at length as to the industrial, manufacturing and employment character of Glen Arm. He analyzed the existing land use, the soils, hydrology, slopes, and existing vegetation of the site. After lengthy analysis by him, he developed a site plan which was submitted to the representatives of the Office of Planning & Zoning. From this was developed the site plan currently before the Board. He testified at length as to the character of the area and the character of the surrounding uses.

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He further testified that all three of the septic systems in present use are failing, and that they were unable to meet County and State standards. He further testified that there will be no significant environmental adverse effects.

Jeffrey Long, a member of the Planning staff who drafted the Planning staff's report and recommendations, testified as a Petitioner's witness. Petitioner's Exhibit 14, the recommendation of the Planning Board, was entered into evidence. Mr. Long testified that the staff supported this recommendation since the Master Plan identifies this property for industrial and employment uses. In addition, he testified that thoroughfare conditions are adequate to handle the development, the proposed rezoning to M.L. is a reasonable extension of the M.L. zone which already abuts the site on three sides, and the documented site plan appears to provide adequate protection for adjacent properties. Mr. Long confirmed that other consultants worked closely with the Planning staff to create this site plan.

Mr. Long also testified to the issue of the CR-district overlay applied to the site under Council Issue 6-033 in 1992. During the Comprehensive Zoning Map (CZM) process, the CR overlay designation was applied "as a matter of course" [on all RO properties part of the issue] and that the review by OPZ staff on the issue was not thorough for each property affected. Under cross-examination he indicated that the Council made its decision on the best information available at the time. This point is most important. Mr. Long further indicated that the OPZ staff

systems on the three lots at the time the 1992 Comprehensive Zoning Maps were adopted, and the Planning Staff applied the CR overlay to the subject site as a matter of course without a thorough review of the property. As stated *supra*, the only issue to be determined on remand was whether the zoning error warranted reclassification. Accordingly, now that the case is back before the Circuit Court, the only substantive issue to be determined on judicial review is whether the Board, pursuant to BCC § 2-356(j)(2), properly concluded that the zoning error warranted reclassification.

IV. The Board Did Not Have To Hold An Evidentiary Hearing On Remand.

When the Circuit Court remanded the instant matter instructing the Board to articulate its findings on whether the zoning error warranted the proposed reclassification, two of the three original triers of fact had resigned from the Board. The Board, therefore, assigned a three-member panel, comprised of Chairman Robert O. Schuetz, the remaining original panel member, and two other members, to conduct public deliberations on the remand issue concerning the factors set forth in § 2-356(j)(2). The Board notified the parties that the panel would hear no new testimony and would take no new evidence, but rather, would base its factual findings regarding § 2-356(j)(2) on the existing record testimony. People's Counsel and Petitioners, however, argued that, on remand, a new three-member panel must hear the entire case *de novo*.

Pursuant to Rule 7-209, the circuit court, sitting as an appellate court, "may dismiss the action for judicial review or may affirm, reverse, or modify the agency's

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The Board correctly determined that, on remand, the only issue before it was whether the zoning mistake warranted the reclassification in the instant case. To determine the "warranted" issue, the Board had to consider the factors set forth in BCC § 2-356(j)(2). A resolution of the issue of whether the reclassification is warranted does not depend upon the witnesses' demeanor and manner of testifying. No prejudice to either party resulted by having the three-member panel base its decision concerning the factors set forth in § 2-356(j)(2) on the testimony and evidence already in the record. Accordingly, the Board properly denied the Protestants' request for a hearing *de novo* in the instant case.

V. The Board Articulated Its Findings As Required by BCC § 2-356(j)(2)

Petitioners baldly assert that the Board failed to "include all the items required at a minimum pursuant to § 2-356(j)(2)." Petitioners' Memorandum at 8. The Board's September 19, 1996 Opinion and Order, however, demonstrates that the Board articulated its findings as required by BCC § 2-356(j)(2).

As stated *supra*, Section 2-356(j)(2) of the Baltimore County Code provides that:

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. [Bill No. 46, 1979.]

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order or action, remand the action to the agency for further proceedings, or an appropriate combination of the above." The purpose of remanding a case is set forth in Rule 8-604(d)(1):

(1) *Generally.*— If the Court concludes that the substantial merits of a case will not be determined by affirming, reversing or modifying the judgment, or that justice will be served by permitting further proceedings, the Court may remand the case to a lower court. In the order remanding a case, the appellate courts shall state the purpose for the remand. **The order of remand and the opinion upon which the order is based are conclusive as to the points decided. Upon remand, the lower court shall conduct any further proceedings necessary to determine the action in accordance with the opinion and order of the appellate court.** (Emphasis added).

In the Memorandum Opinion and Order issued by the Circuit Court in the instant case, the Circuit Court found that the Board was correct in finding error due to events that occurred subsequent to the Comprehensive Zoning Map Process. Accordingly, the Circuit Court's opinion and order of remand are conclusive as to the issue of mistake. The Circuit Court, however, recognized that the Board failed to "articulate" its findings with respect to the factors set forth in § 2-356(j)(2). According to the Circuit Court, because of that failure, on remand, the Board must consider those factors and make a "statement of findings thereon." The Circuit Court did not order a *de novo* hearing or require that the Board take any additional testimony.

In reaching its decision to deny People's Counsel's and Petitioners' requests for a *de novo* hearing, the Board relied upon the Court of Special Appeals' analysis of the *Van Teslaar* standard in *Citizens for Revustico Creek v. Commissioners of Hebron*, 67 Md. App. 485 (1986); see also *Van Teslaar v. Bender*, 365 F. Supp. 1006 (D.Md. 1973). The Circuit

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BCC § 2-356(j)(2).

The Board specifically stated that, based upon Mr. Gavrelis' testimony, it was persuaded that the proposed reclassification of the subject property would not impact existing transportation facilities, utilities, and schools; would not impact solid waste disposal facilities; would not impact the capital program; is in "strict accordance with existing and prospective classification with the Master Plan, the County plan for sewerage and water supply facilities;" is compatible with "the surrounding, historically manufacturing area;" and is within the spirit and intent of the BCZR. See Exhibit D at 10.

Regarding the proposed reclassifications impact on population trends, the Board found that approval of the Petition for Reclassification would allow Prosser to establish its affiliated companies on the subject property, which in turn, would create additional employment in Baltimore County and increase the tax base. Additionally, the proposed reclassification does not impact recreational facilities, schools, and population trends, because, as the Board found, the area in which the subject property is located is "predominantly business and industrial in use." See Exhibit E at 10.

Regarding impacts to water supply facilities and the environment, the Board found that, in light of the documented site plan, the proposed reclassification would mitigate existing septic problems, mitigate impacts to water supply facilities, improve sewerage in the area, and enhance the general welfare of the community. See Exhibit E at 10.

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Court did not order, on remand, a *de novo* hearing or require that the Board take any additional testimony.

In *Citizens for Revustico Creek*, the Court recognized the *Van Teslaar* test as the test to be used in determining whether a *de novo* proceeding is necessary in circumstances where the original examiner is unavailable:

[T]he [Maryland Administrative Procedure Act] allows substitution of examiners without a *de novo* proceeding only where the original examiner is unavailable and either (1) the case is not one in which the resolution of conflicting testimony requires a determination of the credibility of the witnesses or (2) if it is a case in which credibility is involved, the parties agree to proceed without a *de novo* administrative proceeding.

Van Teslaar v. Bender, 365 F. Supp. 1007, 1012 (D.Md. 1973). In the instant case, as the Board recognized, there was "no adverse expert testimony on the issue on remand [(the "warranted" issue)]; that issue being of a technical nature which is routine to the respective experts' professions." See Transcript at 9-10.

People's Counsel and Petitioners cite *People's County v. Zayre*, 70 Md. App. 392 (1987) to support their arguments that the Board should have granted their requests for a hearing *de novo*. The factual circumstances in *Zayre*, however, differ from the factual circumstances in the instant matter. In *Zayre*, the Prince George's Human Relations Commission reviewed a complaint alleging racial and sexual discrimination. The commission's decision was appealed to the Circuit Court. The Circuit Court expressly remanded the case to the Commission for a *de novo* hearing. "The court resorted to that measure because it concluded that the employment panel as the finder of fact must assess the credibility of the witnesses." *Id.* at 399. No one from the original panel was

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The Board followed this Court's instructions on remand and set forth its factual findings regarding the "warranted" issue. As the Board's Opinion and Order issued September 19, 1996 demonstrates, the Board, contrary to Petitioners' assertion, properly articulated its findings pursuant to BCC § 2-356(j)(2).

VI. The Board's May 6, 1996 Order Was Rescinded And Is Not Properly Before This Court On Judicial Review

Petitioners raise issues concerning the Board's Opinion and Order issued May 6, 1996. Pursuant to requests made by Petitioners and People's Counsel, the Board rescinded its May 6, 1996 Opinion and Order. Accordingly, any issues arising from the May 6, 1996 Opinion and Order are moot. The Board's Opinion and Order issued on September 19, 1996 is the decision from which People's Counsel and Petitioners have filed their Petitions for Judicial Review. Because the Board granted Petitioners' and People's Counsel's request that it rescind its May 6, 1996 Opinion Order, Petitioners' assertion that the Board issued its May 6, 1996 Opinion and Order in violation of the rules of procedure is irrelevant to those issues properly before this Court on appeal.

VII. Chairman Robert O. Schuetz Did Not Need To Recuse Himself

Petitioners assert that Chairman Schuetz was required to recuse himself because he issued, in violation of the rules of procedure, the May 6, 1996 "one-person Opinion and Order." Petitioners argued that Chairman Schuetz issued the May 6, 1996 Opinion and Order without the proper notice to all parties and without due consideration by a three-member panel. Chairman Schuetz, however, rescinded his May 6, 1996 Opinion and Order, and appointed two new Board Members to fill the vacancies left by the two

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available, and the current panel had not had the opportunity to hear testimony that was introduced originally. The Circuit Court determined that a *de novo* hearing was necessary to adjudicate the facts in a fair and just manner.

Unlike the instant case, a resolution in the *Zayre* case turned on the assessment of the lay witnesses' demeanor and credibility; *i.e.*, the complainant stated that she was fired based on her race and gender, the employer stated that she was fired for other reasons. As the Board correctly noted with regard to the instant matter, "the evaluation of lay witness credibility and demeanor are not a material factor in the evaluation of the technical merits of the proposed zoning classification, the Board need only review the testimony of those witnesses who testified to [the issue of "warranted.]"

The Board also rejected Petitioners' and People's Counsel's reliance on *Clark v. County Board of Appeals*, 235 Md. 320 (1964), stating that "Clark differs from this case so substantially as to the issue of the modus operandi of this proceeding that it is of no value in examining the issues." Transcript at 8. In *Clark*, only two members of the five-member Board were present at the initial hearing. A third member concurred in the resolution after reading the transcript and looking at the exhibits. *Id.* at 324. The other two members did not attend the hearing and never participated in the decision. In the instant case, a three-member panel, pursuant to Rule 1c, took testimony and heard argument on the reclassification issues. Accordingly, the parties involved were afforded their rights to a live adjudicatory hearing before the finder of fact. See *Citizens for Revustico*, 67 Md. App. at 477.

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former Board Members on the three-member panel which originally heard the matter. Additionally, the Board notified all parties regarding the public deliberations on the "warranted" issue. The September 19, 1996 Opinion and Order was issued by the three-member panel which publicly deliberated the "warranted" issue. Chairman Schuetz, therefore, corrected the procedural violations complained of by the Petitioners and the Board issued its September 19, 1996 Opinion and Order in accordance with applicable BCC procedural rules and regulations.

Other than Chairman Schuetz's opinion that the mistake in the CR zoning on the subject site warranted its reclassification, Petitioners cite no personal or procedural reason requiring Chairman Schuetz to recuse himself from the three-member panel deliberating the matter on remand. As one of the original triers of fact in the instant case, Mr. Schuetz's continued participation in the remand decision was logical and proper.

CONCLUSION

The Board initially heard the instant matter on April 6, 1994, June 6, 1994, July 19, 1994, and September 20, 1994. At those hearings, the Board found that the 1992 Comprehensive Zoning Maps erroneously designated the subject site as RO-CR and R.C. 5. and that the proposed documented site plan was warranted. Nearly three years later, the Board has again determined that the zoning error warrants reclassification of the subject site.

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recommendation of elimination of Building "B" would be lifted if the DEPRM concerns about proposed septic areas and percolation were adequately addressed.

George Gavrelis, an expert in planning and zoning, was Petitioner's final witness. Mr. Gavrelis testified at length regarding the issue of error in the zoning on this property. He specifically noted that the documented site plan, proposed uses, and combination of three lots could not have been reviewed by the County Council during the Comprehensive Map Process. In addition, the Planning staff, the Planning Board and the County Council could not have been aware of the failing septic systems on the property, and the fact that the three lots must be consolidated for development since there is only one area available for appropriate septic disposal. Mr. Gavrelis testified as to the relationship of this proposal to the Master Plan, and, in addition to complying with the Master Plan, it also complies with the 1992 Proposed Land Use Map. This proposed land use map designated this site for industrial uses. Mr. Gavrelis testified that the site plan meets all Baltimore County requirements and setback restrictions. He testified at length as to the merits of the documented site plan. He also testified at length as to factors that, in his opinion, create error on the part of the County Council in the zoning afforded these parcels.

Testifying for the protestants was Ruth Mascari, Chairman of the Baltimore County Landmarks Preservation Commission. Ms. Mascari confirmed that the three structures on the subject property

were not on the Baltimore County Landmarks Preservation List, and that no one had ever requested or suggested that they be so placed. She further testified that the current status of the structures does not provide the Landmarks Preservation Commission with the power to review plans for exterior renovation. She also testified, under cross-examination, that the three structures could be razed at any time by the Petitioner, by merely applying for a permit to do so.

C. Michael Reier, President of the Glen Arm Community Association, testified for the protestants. Mr. Reier and the Glen Arm Association oppose the requested reclassification and believe that the character of the community does not warrant any new development. In short, the association would preserve everything in its present state.

Wallace Lippincott, representative of the Department of Environmental Protection & Resource Management (DEPRM), testified as a protestant's witness. Mr. Lippincott testified that he had no knowledge of any recent site analysis, that he was aware of its conformity with the Master Plan, but was not aware of the designation for the property on the 1992 Proposed Land Use Map. Mr. Lippincott testified that he was not involved in the recommendation for the current reclassification request.

Dennis Wertz, a Senior Planner with the Office of Planning & Zoning, testified regarding the zoning of the property prior to 1992. He did not take issue with any testimony produced by Mr. Long.

Ed Nelan, a neighbor on the south side of Glen Arm Road directly across from the property in question, has purchased a parcel abutting the subject site to protect his site against additional development. Mr. Nelan's primary objection was to the proposed use of the property and his desire to see things remain in their present condition.

Carol Trella, Secretary of the Long Green Valley Association, evidenced their opposition to the proposed reclassification.

Lastly, Mr. Robert Powell, DEPRM representative, testified consistent with his opinions reflected in the interoffice correspondence. Mr. Powell confirmed that the DEPRM recommendation was a concern over the availability of a septic reserve area. Mr. Powell agreed that, if building permits were to be issued, DEPRM would have full authority and opportunity to insure proper septic services.

After due consideration of all of this lengthy testimony and evidence, several basic facts present themselves to this Board. Mr. Prosser has purchased three small parcels and combined them into one 5-acre parcel for which he has produced a documented site plan that, in the opinion of this Board, is in keeping with the adjacent uses. Under their present zoning designations, there is little or no practical use for the three properties whatsoever, since no matter what the use proposed or undertaken, the septic systems cannot comply with Baltimore County regulations.

The testimony of Mr. Long is most compelling in this case. By virtue of the fact that the OPZ staff comments related to the

applicable CR designation issue were applied in error "as a matter of course" without due consideration for each property affected by the issue, the OPZ staff unknowingly misled the Council in its advice to apply the CR designation on the instant site. The notion that a visit to each site by Council Members mitigates unintentional misinformation and therefore erroneous conclusions by the Council is not persuasive. The Council relies upon information from several sources when considering issues such as the instant case. If the Council is uninformed or misinformed about conditions which would lead them to a conclusion, then the Council has erred if it does not consider all the salient facts which actually exist. Mr. Long and the OPZ staff are to be commended for coming forth in the difficult position of exposing the error.

The Board will find as a fact that the zoning afforded these three parcels is in fact in error, and that the only way the parcels can be used is if the three septic systems are destroyed, and the one area that appears to be usable is incorporated into the requested zoning to permit the industrial use. It is virtually impossible for the County Council to have known of or to have foreseen these obvious developments, and to have the zoning afforded the three parcels is in fact in error. Based upon the fact that the proposed use under the documented site plan complies with the Master Plan and complies with the 1992 Proposed Land Use Map, and that the proposed use will remove the health hazard produced with the three failing septic systems, we find that the requested zoning is the proper zoning for this site as evidenced by

the documented site plan.

ORDER

IT IS THEREFORE this 13th day of December, 1994 by the County Board of Appeals of Baltimore County

ORDERED that the Petition for Reclassification from R.O.-C.R. and R.C. 5 to M.L. for some 5.2 combined acres on a documented site plan 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

Robert O. Schuetz
Robert O. Schuetz

IN THE MATTER OF
THE APPLICATION OF
THE PROSSER COMPANY, INC.
FOR A ZONING RECLASSIFICATION
FROM R.O. AND R.C. 5 TO M.L. ON
PROPERTY LOCATED ON SOUTHEAST SIDE
LONG GREEN PIKE AND NORTHWEST SIDE
GLEN ARM RD (12107 AND 12109 LONG
GREEN PIKE AND 5328 GLEN ARM ROAD) *
11th ELECTION DISTRICT *
6TH COUNCILMANIC DISTRICT *

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. CR-94-143
* Cycle II, 1994

DISSENTING OPINION

This matter comes before the Board on a Petition for Zoning Reclassification filed by the Petitioner, The Prosser Company, Inc., requesting a change from existing R.O. and R.C. 5 zoning classification to M.L. G. Scott Barhight, Esquire, appeared on behalf of Petitioner. Glen Arm Community Association, Inc., was represented by Michael P. Tanczyn, Esquire. People's Counsel for Baltimore County participated in the proceedings, and evidence and testimony was taken before this Board on four days, namely, April 6, June 16, July 19, and September 20, 1994.

I'll begin by saying that this case was well-tryed by all parties on all sides, and well considered when the petition was filed. There was ample testimony to support a finding that the proposed reclassification is warranted. Any number of uses to which any particular piece of property might be put are acceptable and reasonable uses of property. The process of zoning is one of drawing lines; however, that is not the critical issue in this case. The issue on which the case turns requires a finding of mistake or error; of meeting the legal definition of mistake or error. It is presumed as part of the presumption of validity accorded to comprehensive zoning that the Council had before it all relevant facts and circumstances. In order to establish mistake or

error, it's necessary not only to show facts that existed at the time of the comprehensive zoning, but which if any of those facts were not considered by the Council. In this case, Petitioner presented no evidence as to what the Council did not consider. In this case, Petitioner presents evidence claiming that an error or mistake has occurred (1) because these three parcels of ground became a whole only in July 1992. The contract of sale to Petitioner arose in April 1992; and the deeds conveyed the land in July 1992; because of that, among other things, Petitioner contends the County Council could not have considered this entire parcel. Factually, this is not the case. You'll see in Joint Exhibit No. 1, in the deeds, the words "being the same property"; in the first parcel, the same property was conveyed November 30, 1979 by Beal to Grumman; the second parcel was conveyed on February 28, 1980, by Byrnes to Grumman; and the third conveyed August 31, 1981 from Botzler to Grumman. Since 1981, Grumman, the same corporation, was legal title holder to all three parcels of ground. When one applies the presumption of validity that the County Council had before it all relevant facts, one cannot ignore the fact that the same legal party owned all three parcels from 1981 and, therefore, did so in 1992, the year of the last comprehensive zoning map. (2) Petitioner offers as proof of mistake or error that on January 15, 1992, the last day passed by which the County Council could raise an issue on the comprehensive zoning map, that six days after that the County Council enacted the Master Plan which calls for this area to be industrial employment zone and to be developed in that fashion. The argument proposed is that, since this occurred six days later, the County Council could not have taken into account

this foreseeable trend or that it failed to make provision to recognize this need. Factually, this is not the case. From Petitioner's zoning expert witness, in cross examination, it is clear that the 1992 Master Plan went through the Office of Planning & Zoning, to the Planning Board, which had public hearings, and was submitted to the County Council which had public hearings. There was no evidence that the Master Plan as it relates to this particular aspect underwent any change, and no evidence that the Council's public hearing occurred after January 15, 1992. The County Council knew and was aware of this projected trend into the future and, despite having that knowledge, made a decision in 1992 to leave the property zoned as it was with the exception of adding the CR designation to the R.O. zoning. That raises another point. In 1992 this site was a map issue (Issue 6-033). Although the issue was raised by Planning & Zoning, certainly the County Council did look at these parcels of land and looked at a number of parcels of ground in the same area. I do not think that the County Council made any mistake or error in zoning as it did in the 1992 Comprehensive Map Process.

Regarding the Master Plan, confusion exists relative to terms planning and zoning, which are not synonymous. Zoning is concerned with the use of property, but planning is broader in concept. Planning includes the production of a master plan based on need, and to provide orderly growth including establishment of neighborhoods. It also suggests method for implementation and achievement of goals. The end product of the comprehensive zoning function is a map that provides a method by which land may presently be utilized and developed. It is limited to

receipt
Baltimore County Government
Office of Zoning Administration
and Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204
Date 3/2/94
Account R-01-6150
Number CR-94-143
Cycle II, Item 3 (VCR)
\$100.00
The Prosser Company
12107 & 12109 Long Green Pike
5328 Glen Arm Road
District: 11c3
Attorney: G. Scott Barhight

receipt
Baltimore County Government
Office of Zoning Administration
and Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204
Date 10/15/93
Account R-01-6150
Number CR-94-143
Cycle II, Item #3
\$100.00
The Prosser Company, Inc.
12107 & 12109 Long Green Pike
and 5328 Glen Arm Road
District: 11c3
Attorney: G. Scott Barhight
Revised Plan Submitted 10/15/93 + 10/22/93
Please Make Checks Payable To: Baltimore County
Cashier Validation

Baltimore County Government
Office of Zoning Administration
and Development Management
111 West Chesapeake Avenue
Towson, MD 21204 (410) 887-3353
DATE: FEBRUARY 22, 1994
INVOICE
94-328-A
The Prosser Company
P.O. Box 5036
Glen Arm, MD 21057
CASE NUMBER/PROJECT NAME: CR-94-143
(1) Zoning Notice Sign and Post Set(s) @ \$60.00/set = \$60.00 Due*
(In lieu of payment, we ask that you make use of the following waiver)
INVOICE WAIVER
CASE NUMBER/PROJECT NAME: CR-94-143
Returned _____ Zoning Notice Sign and Post Set(s).
DATE _____ for ZADM
*Amount Due waived upon return of the COMPLETE sign and post set(s).
When you return same, bring this form with you.
cc: G. Scott Barhight, Esq.

Printed with Soybean Ink
on Recycled Paper

PETITION OF: GLEN ARM COMMUNITY ASSN., INC. ET AL
CIVIL ACTION # 95-CV-00288/100/2
IN THE MATTER OF THE PROSSER COMPANY INC.
RECEIVED FROM THE COUNTY BOARD OF APPEALS EXHIBITS, BOARD'S RECORD EXTRACT & TRANSCRIPT FILED IN THE ABOVE-ENTITLED CASE, AND ZONING COMMISSIONER'S FILE AND EXHIBITS
M. W. Wink
Clerk's Office
Date: _____

PETITION OF: GLEN ARM COMMUNITY ASSN., INC. ET AL
CIVIL ACTION # 95-CV-00288/100/2
IN THE MATTER OF THE PROSSER COMPANY INC.
RECEIVED FROM THE COUNTY BOARD OF APPEALS EXHIBITS, BOARD'S RECORD EXTRACT & TRANSCRIPT FILED IN THE ABOVE-ENTITLED CASE, AND ZONING COMMISSIONER'S FILE AND EXHIBITS
Suzanne M. M...
Clerk's Office
Date: 5/17/95 - P. W...

MANDATE
Court of Special Appeals
No. 169, September Term, 1996
People's Counsel for Baltimore County et al.
vs.
The Prosser Company, Inc.
JUDGMENT: April 15, 1996: Line of Dismissal as to appeals of Glen Arm Community Association, Inc. and T. Michael Reier filed by counsel for appellants.
April 22, 1996: Line to Dismiss Appeal as to People's Counsel for Baltimore County, filed by counsel for appellant. Appeal dismissed.
April 22, 1996: Mandate issued.
STATEMENT OF COSTS:
In Circuit Court: for BALTIMORE COUNTY 95CV0288
Record..... 60.00
Stenographer Costs..... 253.00
* Total * 313.00 *
In Court of Special Appeals:
Filing Record on Appeal..... 100.00
* Total * 100.00 *

STATE OF MARYLAND, Sec
WHITEFORD, TAYLOR & PRESTON
I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Court of Special Appeals, and that I have personally set my hand as Clerk and affixed the seal of the Court of Special Appeals, this 17th day of April, A.D. 1996.
Jodi D. Hulet
Clerk of the Court of Special Appeals
COSTS SHOWN ON THIS MANDATE ARE TO BE SETTLED BETWEEN COUNSEL AND NOT THROUGH THIS OFFICE.

Baltimore County Government
Office of Zoning Administration
and Development Management
111 West Chesapeake Avenue
Towson, MD 21204 (410) 887-3353
FEBRUARY 9, 1994
The Prosser Company
P. O. Box 5036
Glen Arm, Maryland 21057
RE: PAYMENT OF POSTING AND ADVERTISING FEES - RECLASSIFICATION PETITION CR-94-143
Dear Petitioners:
Cycle Reclassification Petitions are required to be heavily advertised. The initial ads, one-half page in size and running in four separate newspapers, contained a listing of all the reclass petitions in the cycle. The newspapers have billed the County \$3,018.85. This is cost is charged back to the petitioners, equally divided among them.
Posting cost at \$35.00 and your share of the advertising charges of \$603.77, for a total of \$638.77, is now due. Your check in this amount should be made payable to "Baltimore County, Maryland" and immediately mailed to this office. The zoning sign and post must be returned to Zoning Administration on the day of the hearing.
An individual ad for your petition will run approximately one month before the scheduled hearing date. Billing for the individual ad, due upon receipt, will come from and should be remitted directly to the newspaper.
Please be further advised that 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.
AJ:ggg
cc: G. Scott Barhight, Esq.

RECEIVED
Clerk's Office
4-5-94
ARNOLD JABLON
DIRECTOR

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on Recycled Paper

Baltimore County Government
Office of Zoning Administration
and Development Management
111 West Chesapeake Avenue
Towson, MD 21204 (410) 887-3353
FEBRUARY 22, 1994
The Prosser Company
P. O. Box 5036
Glen Arm, Maryland 21057
RE: PAYMENT OF POSTING AND ADVERTISING FEES - RECLASSIFICATION PETITION CR-94-143
Dear Petitioners:
Cycle Reclassification Petitions are required to be heavily advertised. The initial ads, one-half page in size and running in four separate newspapers, contained a listing of all the reclass petitions in the cycle. The newspapers have billed the County \$3,018.85. This is cost is charged back to the petitioners, equally divided among them.
Posting cost at \$35.00 and your share of the advertising charges of \$603.77, for a total of \$638.77, is now due. Your check in this amount should be made payable to "Baltimore County, Maryland" and immediately mailed to this office. The zoning sign and post must be returned to Zoning Administration on the day of the hearing.
An individual ad for your petition will run approximately one month before the scheduled hearing date. Billing for the individual ad, due upon receipt, will come from and should be remitted directly to the newspaper.
Please be further advised that 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.
AJ:ggg
cc: G. Scott Barhight, Esq.

94-328-A

ARNOLD JABLON
DIRECTOR

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on Recycled Paper

County Board of Appeals of Baltimore County
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180
OCTOBER 21, 1993
NOTICE OF HEARING
CASE NUMBER: CR-94-143
12107 and 12109 Long Green Pike and 5328 Glen Arm Road
SE/S Long Green Pike and NW/S Glen Arm Road
11th Election District - 6th Councilmanic
Petitioner(s): The Prosser Company, Inc.
Petition to reclassify the property's zoning from R.O. & R.C.5 to M.L..
HEARING: WEDNESDAY, APRIL 6, 1994 at 10:00 a.m.
LOCATION: COUNTY COURTHOUSE, ROOM 48
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
HEARING: WEDNESDAY, APRIL 6, 1994 at 10:00 a.m.
LOCATION: COUNTY COURTHOUSE, ROOM 48
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
William T. Hackett
WILLIAM T. HACKETT, CHAIRMAN
COUNTY BOARD OF APPEALS
cc: The Prosser Company, Inc.
G. Scott Barhight, Esq.

1994 APR 13 11:13 AM
RECEIVED
COUNTY BOARD OF APPEALS



County Board of Appeals of Baltimore County

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

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue
April 6, 1994

HCR

NOTICE OF ASSIGNMENT /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 #CR-94-143 THE PROSSER COMPANY, INC.
SE/s Long Green Pike and NW/s Glen Arm
Item #3, Cycle II Road (12107 and 12109 Long Green Pike
1993 /94 and 5328 Glen Arm Road)
11th Election District
6th Councilmanic District

Day #2 from
4/06/94 Reclassification: From R.O. and R.C. 5 to
M.L. /5.2 +/- acres
8/31/93 -Petition for Reclassification
filed.

ASSIGNED FOR: THURSDAY, JUNE 16, 1994 at 11:00 a.m. **

cc: G. Scott Barhight, Esquire Counsel for Petitioner
The Prosser Company, Inc. Petitioner
c/o James J. Prosser
Whitney, Bailey, Cox & Magnani Engineer
Michael P. Tanczyn, Esquire Counsel for Glen Arm
Community Association

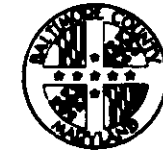
Barbara Scheper Lynch

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

Kathleen C. Weidenhammer
Administrative Assistant

** PLEASE NOTE 11:00 A.M. STARTING TIME.

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on Recycled Paper



County Board of Appeals of Baltimore County

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

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue
August 10, 1994

HCR

NOTICE OF ASSIGNMENT /Rescheduled Day #4

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 #CR-94-143 THE PROSSER COMPANY, INC.
SE/s Long Green Pike and NW/s Glen Arm
Item #3, Cycle II Road (12107 and 12109 Long Green Pike
1993 /94 and 5328 Glen Arm Road)
11th Election District
6th Councilmanic District

Day #4 from
7/19/94 Reclassification: From R.O. and R.C. 5 to
(PP'd on rcd 8/10/94) M.L. /5.2 +/- acres
8/31/93 -Petition for Reclassification
filed.

ASSIGNED FOR: TUESDAY, AUGUST 23, 1994 at 8:30 a.m.
(FOR TESTIMONY OF ROB POWELL)

cc: G. Scott Barhight, Esquire Counsel for Petitioner
The Prosser Company, Inc. Petitioner
c/o James J. Prosser
Whitney, Bailey, Cox & Magnani Engineer
Michael P. Tanczyn, Esquire Counsel for Glen Arm
Community Association

Barbara Scheper Lynch

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

Kathleen C. Weidenhammer
Administrative Assistant

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on Recycled Paper



County Board of Appeals of Baltimore County

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

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue
August 23, 1994

HCR

NOTICE OF REASSIGNMENT /Rescheduled Day #4

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 #CR-94-143 THE PROSSER COMPANY, INC.
SE/s Long Green Pike and NW/s Glen Arm
Item #3, Cycle II Road (12107 and 12109 Long Green Pike
1993 /94 and 5328 Glen Arm Road)
11th Election District
6th Councilmanic District

Day #4 from
7/19/94 Reclassification: From R.O. and R.C. 5 to
(PP'd on rcd 8/23/94) M.L. /5.2 +/- acres
8/31/93 -Petition for Reclassification
filed.

ASSIGNED FOR: TUESDAY, SEPTEMBER 20, 1994 at 8:30 a.m.
(FOR TESTIMONY OF ROB POWELL)

cc: G. Scott Barhight, Esquire Counsel for Petitioner
The Prosser Company, Inc. Petitioner
c/o James J. Prosser
Whitney, Bailey, Cox & Magnani Engineer
Michael P. Tanczyn, Esquire Counsel for Glen Arm
Community Association

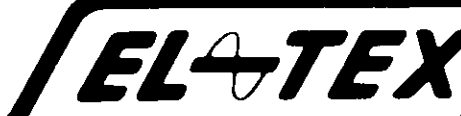
Barbara Scheper Lynch

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

Kathleen C. Weidenhammer
Administrative Assistant

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on Recycled Paper

EL-TEX INDUSTRIES, INC.



4206 SHANNON DRIVE, BLDG. G.
BALTIMORE, MD. 21213 * (410) 485-1660
FAX (410) 485-1663

Gentlemen,

I would like to take this opportunity to introduce you to EL-TEX Industries and our capabilities.

In order to provide you with some information about our company, I have included a copy of our brochure. Our experience in providing special electrical controls includes many types of industrial and general construction applications.

Our organization has been able to grow during the last 18 years by providing QUALITY products and QUALITY customer relations. The quality built into our products through expert design, assembly, wiring and testing gives the customer a product that performs reliably for many years of trouble free service. Our full service capability permits us to satisfy all requirements for supplying SPECIAL ELECTRICAL CONTROL EQUIPMENT, anywhere in the world.

Today's market requires all businesses to be cost conscious while maintaining the ability to produce quality products. Throughout our history, EL-TEX has earned a reputation for providing HIGH QUALITY, COST EFFECTIVE services according to the customer's requirements and schedules.

For some of our customers, who can build their own controls, we offer an alternative to building equipment themselves. We can provide a solution to their scheduling or cost problems. For those customers who are purchasing their equipment from other sources, we are able to offer them an alternate source of supply which provides them with cost savings and improved scheduling.

We would appreciate the opportunity to quote on your requirements. If there is anything we can do to assist you, please do not hesitate to call us.

Thank you for taking the time to allow us to introduce EL-TEX.

Sincerely,

EL-TEX INDUSTRIES, INC.

PUT OUR QUALITY IN YOUR CONTROL

Electro Technical Excellence

Petition for Reclassification until the adoption of the next Comprehensive Zoning Map. This would render the effect of the law and policy embodied in BCC § 2-356 for interim zoning reclassifications a nullity and would result in the inconsistent treatment of Petitions for Reclassification which are delayed by lengthy appeals and Petitions for Reclassification which are not appealed.

Clearly, the County Council contemplated the possibility of a lengthy appeal process when it indicated in § 2-356(n) that development of property which has been reclassified pursuant to a documented site plan will not be affected by the subsequent enactment of a zoning map unless the zone classification is further changed by that map. The County Council policy, as reflected in BCC § 2-356(n), is balanced by the requirement that, any provision of § 26-122 to the contrary, if a reclassification with a documented site plan is granted, the property may only be used in accordance with the documented site plan. Therefore, notwithstanding the rights which a property owner may enjoy pursuant to the zoning shown on a Comprehensive Zoning Map, the property owner is held to the use shown on the documented site plan. By example, if a parcel is reclassified from R.C. 5 to M.L., pursuant to a documented site plan for a publishing plant, the property owner may only develop his property with the publishing plant set forth in the documented site plan. The property owner may not develop the parcel with a bottling plant, a use permitted as a matter of right in an M.L. zone, because the M.L. reclassification which was granted was for the limited purpose

Appellants correctly assert that the question of whether Howard County had adopted a more stringent standard than set forth in *Schultz* was not addressed [by the Court in the first appeal.] This, however, resulted from the failure of the appellants in that case to raise the issue. The appropriate time for making this argument was on appeal from the circuit court's remand for reconsideration in light of *Schultz*. As it was not raised at that time, the law of the case doctrine prohibits us from addressing it here.

Fiol, 67 Md. App. at 600.

In the instant matter, Appellants, in CSA Appeal I, raised the issues of "the parcel's lack of planned public water and sewer," and "zoning mistake." CSA Appeal I was docketed, prehearing information reports were submitted to the Court, and the record was transferred and filed. Substantial delay in the remand hearing occurred pending CSA Appeal I, which Appellants later voluntarily dismissed. The appropriate time for Appellants to have argued the issues of "the parcel's lack of planned public water and sewer service" and "zoning mistake" was in CSA Appeal I. Because Appellants dismissed CSA Appeal I, Judge Hinkel's affirmation of the Board's decision regarding the lack of planned public water and sewer service and zoning error became the law of case. As stated in *Fiol*, the law of the case doctrine prohibits this Court from addressing those issues in CSA Appeal II. *Id.* at 600.

Appellants rely upon the holdings in *Robertson v. County Bd. of Appeals*, 210 Md. 190 (1956), *Loveday v. State*, 229 Md. 226, 229-34 (1983), and *Houghton v. County Comm'rs*, 305 Md. 407, 414 (1986) to support their argument that the law of the case doctrine does not apply in the instant matter. The instant matter, however, may be distinguished from those cases.

of developing a publishing plant, as shown in the documented site plan. BCZR § 253.1.A.

In the instant matter, the First Board Order indicated that a mistake had been made in the zoning classification on the 5.2 acre-parcel. Judge Hinkel agreed that a mistake in the zoning had been made, but remanded the case, so that the Board could articulate its findings on whether the reclassification was warranted. CSA Appeal I, which Appellants voluntarily dismissed, further delayed the proceedings. On September 13, 1996, nearly two years after its initial ruling and less than a month before the adoption of the 1996 Comprehensive Zoning Map, the Board issued its Second Board Order, finding that the reclassification was warranted.

In light of the difficult administrative path Prosser has traveled over the past two years, it would be patently unfair, not to mention legally incorrect, to dismiss, at this point, its Petition for Reclassification which the Board has reviewed and granted twice. To ignore the clear intent of BCC § 2-356(n), upon which Prosser has relied, and declare this case moot would signal those opposing similar petitions to file endless appeals, thereby clogging the court dockets and creating delay so that subsequent CZMP's can render moot the approved reclassification orders. Property owners would never seek reclassification through the interim process knowing that any series of appeals, regardless of merit, could render their efforts meaningless. Moreover, the County Council would not have created an interim reclassification process, knowing that the mere filing of a series of appeals could thwart its intent to establish a legitimate remedy,

In *Robertson*, the Court of Appeals dismissed the appellant's appeal from a remand order as premature, "reserving the right to raise in any subsequent appeal from a final decision of the Circuit Court in the same proceedings, any question sought to be raised in the first appeal." *Id.* at 192. In the instant matter, Appellants voluntarily dismissed CSA Appeal I, and this Court's mandate did not indicate a reservation of rights to raise the same issues in CSA Appeal II.

In *Loveday*, the Court of Appeals held that the law of the case doctrine did not apply and that the Court of Appeals has jurisdiction to review judgments of the Court of Special Appeals. In the first appeal in the *Loveday* case, the trial court sentenced the appellant to 10 years rather than the mandatory 25 years. The State appealed and the Court of Special Appeals vacated the 10-year sentence and remanded the case for further proceedings. On remand, the trial court sentenced the appellant to 25 years. The appellant filed an appeal from that order and the Court of Appeals determined that the Court of Special Appeals' prior holding that the 25-year sentence was mandatory was not the law of the case.

In the instant case, the Board's decisions in the First Board Order regarding "water and sewer service" and "zoning mistake" were not vacated on remand. The Second Board Order involved the limited determination of whether the requested reclassification was warranted. The Second Board Order did not decide issues of zoning mistake or water and sewer service. In *Loveday*, on the other hand, the second

an appropriate check and balance, to provide property owners an opportunity to petition for reclassifications in the event that the County Council makes a zoning error or a change in the neighborhood occurs. A determination by this Court that the instant matter is moot will sound the death knell for interim rezoning.

II. The Issues Raised Regarding the Subject Property's Compliance With The Master Water And Sewer Plan and Zoning Mistake Are Not Properly Before This Court On Appeal

As stated *supra*, Appellants filed appeals to the Court of Special Appeals (CSA Appeal I) from Judge Hinkel's decision affirming the Board's decisions that the zoning on the 5.2 acre-parcel was in error and that § 1A00.3.A.1.a of the BCZR did not prevent the Board from reclassifying the parcel. As indicated in their Prehearing Information Reports, Appellants raised, in CSA Appeal I, the issues of whether the Board could reclassify the parcel in light of § 1A00.3.A.1.a of the BCZR, and whether the Board correctly found an error in the zoning. APX. 1-6. Appellants, however, voluntarily dismissed CSA Appeal I and the Court of Special Appeals issued a mandate to that effect. By dismissing CSA Appeal I, Appellants waived their rights to raise issues concerning the Board's reclassification power under BCZR § 1A00.3.A.1.a and the Board's decision regarding error. In the Second Board Order, the Board did not make any findings or issue any decisions regarding BCZR § 1A00.3.A.1.a or zoning mistake. The Board only articulated its findings that the reclassification was warranted. Because Appellants filed their instant appeals (CSA Appeal II) from the Second Board Order,

hearing before the trial court involved the same issue as the first hearing; i.e., the appellant's sentencing.

Finally, in *Houghton*, the Court of Appeals reviewed whether the appellant failed to file his appeal within the prescribed 30-day time period. The trial court dismissed Counts I and III of the appellant's complaint and entered an order to that effect. Days later, the appellants voluntarily dismissed Count II. The trial court did not enter an order stating that its dismissal of Counts I and III constituted a final appealable judgment. The appellant filed an appeal to the Court of Special Appeals which dismissed the appeal on the grounds that the appeal was not filed from a final appealable judgment. In light of that Court's holding, the trial court entered another order on the docket stating that its order was a final judgment. Appellants filed an appeal from that order, asserting that, because the Court of Special Appeals considered the first order dismissing Counts I and III not to be a final judgment, the second appeal, filed from the second order, was timely. The Court of Appeals held that the law of the case doctrine does not apply to certain types of prior jurisdictional holdings. Specifically, the Court held that an erroneous prior dismissal of an appeal may not be used to confer jurisdiction upon an appellate court when no jurisdiction otherwise existed.

In the instant matter, Prosser is not trying to confer jurisdiction on an appellate court by arguing the law of the case doctrine. Rather, Prosser seeks to avoid having to relitigate issues that were settled conclusively in CSA Appeal I. Appellants' attempt to

any issues raised by Appellants in CSA Appeal II must be limited to the scope of that decision; i.e., whether the requested reclassification was warranted.

In *Fiol v. Howard County Board of Appeals*, 67 Md. App. 595 (1986), the Court of Special Appeals applied the doctrine of the law of the case in a matter similar to the instant case. In *Fiol*, the owners of eight contiguous lots petitioned for a special exception, which the Board denied. The owners filed a petition for judicial review to the circuit court, which remanded the case to the Board "for the purpose of reconsideration in light of the standard for the grant of a special exception permit enunciated in *Schultz v. Pritts*, 291 Md. 1 (1981)." *Id.* at 598. The circuit court remanded the case because the standard originally applied by the Board had been overruled in *Schultz*. *Id.* From the circuit court's remand order, the owners filed an appeal to the Court of Special Appeals, which affirmed the circuit court's decision. The Court of Appeals denied certiorari. Thereafter, the matter was remanded to the Board. The owners of one of the eight lots requested that their lot be deleted from the application. The Board ignored that request and, applying the *Schultz* standard, granted the special exception. The owners who had requested the deletion of their lot from the application filed an appeal of the Board's decision to the circuit court, which affirmed the Board's decision on remand. On appeal to the Court of Special Appeals, the owners contended, *inter alia*, that the Board erred when it applied the *Schultz* standard in granting the special exception permit on remand. The Court of Special Appeals, citing *Loveday v. State*, 296 Md. 226, 230 (1983), declined to address the merits of that issue and held that:

raise issues concerning the findings of the Board in the First Board Order is simply an attempt to avoid the consequences of their voluntary dismissal of CSA Appeal I.

Assuming *arguendo*, that the law of the case has not been established and that Appellants may create unnecessary delay by filing appeals to this Court, the Board properly found that a mistake existed in the zoning on the parcel and that § 1A00.3.A.1.a does not prevent the Board from reclassifying the parcel.

As Judge Hinkel correctly held, "there [was] evidence . . . that events occurring subsequent to the comprehensive zoning [proved] the Council's initial premises incorrect." E. 254. Judge Hinkel recognized that the failing septic systems on the three lots required Prosser to consolidate the lots into a single lot for development purposes. Judge Hinkel held that substantial evidence demonstrated that the County Council could not have known during the 1992 CZMP that the three parcels would need to be consolidated and developed as one lot because those "circumstances arose after January 1992 -- the last date on which an issue could have been raised pertaining to the 1992 Map." E. 254.

In addition, BCZR § 1A00.3.A.1.a is not controlling. BCZR § 1A00.3.A.1.a states that a property which will not have public water and sewer service within 2 years may not be reclassified pursuant to § 2-356(n). Judge Hinkel correctly determined that BCZR § 1A00.3.A.1.a conflicts with § 602(e) of the Baltimore County Charter, which gives the Board exclusive power to hear Petitions for Reclassification. E. 252. Because of that conflict, Judge Hinkel ruled that § 1A00.3.A.1.a must yield to § 602(e) of the County



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- ☐ Lighting Control and Switching Systems
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Name _____
Title _____
Company _____
Address _____
City/State/Zip _____



RAYMOND P. STEINBERG

EL-TEX INDUSTRIES, INC.
4206 SHANNON DR. BLDG. G BALTIMORE, MD 21213
(301) 485-1860 FAX (301) 485-1863



WILL TURNA
PRESIDENT / GENERAL MGR

EL-TEX INDUSTRIES, INC.
4206 SHANNON DR. BLDG. G BALTIMORE, MD 21213
(301) 485-1860 FAX (301) 485-1863

Baltimore County Government
Office of Zoning Administration
and Development Management



111 West Chesapeake Avenue
Towson, MD 21204

April 5, 1994

(410) 887-3353

94 APR 5 PM 1:32

G. Scott Barhight, Esquire
Fifth Floor
210 West Pennsylvania
Towson, Maryland 21204

RE: Case No. CR-94-143, Item No. 155
Petitioner: The Prosser Company, Inc.
Petition for Reclassification

Dear Mr. Barhight:

The Zoning Plans Advisory Committee (ZAC) has reviewed the plans submitted with the above referenced petition. The attached comments of each reviewing agency are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties, i.e., zoning commissioner, attorney and/or the petitioner, are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case.

Enclosed are all comments submitted thus far from the members of ZAC that offer or request information on your petition. If additional comments are received from other members of ZAC, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing and a hearing was scheduled accordingly.

The following comments are related only to the filing of future zoning petitions and are aimed at expediting the petition filing process with this office.

1. The director of Zoning Administration and Development Management has instituted a system whereby seasoned zoning attorneys who feel that they are capable of filing petitions that comply with all aspects of the zoning regulations and petitions filing requirements can file their petitions with this office without the necessity of a preliminary review by zoning personnel.



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THE PROSSER COMPANY, INC.
5234 GLEN ARM ROAD
GLEN ARM, MARYLAND 21057
U.S.A.

TELEFAX
410 592 5700

TELEPHONE
410 592 6871

Typical past projects for which Prosser was responsible for both design and construction:

FCC CATALYST PRODUCTION FACILITIES

USA

Europe

BLEACHING CLAY MANUFACTURE

USA

SUPER-ABSORBENT POLYMER

USA

Europe

CATALYST REGENERATION FACILITIES

USA

Europe

Asia

Canada

NPK CHEMICAL FERTILIZER PLANTS

USA

Central America

South America

Africa

Europe

WASTE RECYCLING FACILITY

USA

TITANIUM DIOXIDE SIZING

USA

ALTERNATIVE REFRIGERANTS

USA

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT
INTER-OFFICE CORRESPONDENCE

November 12, 1993

TO: Mr. Arnold Jablon, Director
Zoning Administration and
Development Management
FROM: J. Lawrence Pilson, JRP
Development Coordinator, DEPRM

SUBJECT: Zoning Item #CR-94-143 - The Prosser Co., Inc.
12107 - 12109 Long Green Pike
Reclassification & Redistricting Petition for October 1993 -
April - 1994 Cycle II

The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item.

Environmental Impact Review

Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains.

The proposed development may require variances from the Regulations for the Protection of Streams, Wetlands and Floodplains for DEPRM. Denial may significantly impact the proposed development.

Ground Water Management

The subject site is outside of the metropolitan district and in a no planned service area for both water and sewerage utilities. Any development on this site would require water supply development with wells and sewage disposal through a septic system.

Soils evaluations were conducted on the subject site September 20, 1993 relevant to the proposed development as indicated in the Zoning Reclassification Petition. Sufficient sewage disposal area could only be found for the initial development proposal of ornamental metal fabricating facilities with up to 20 employees. The site cannot accommodate the additional wastewater flow for the projected future development of an electrical panel fabricating facility with an additional 15 to 25 employees.

JLP:DL:TE:sp

PROSSER/DEPRM/TXTSBB



O. James Lighthizer
Secretary
Hal Kassoff
Administrator



O. James Lighthizer
Secretary
Hal Kassoff
Administrator

Ms. Charlotte Minton
Zoning Administration and
Development Management
County Office Building
Room 109
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Baltimore County
Item No.: *#3, CYCLE II*
CR-94-143

Dear Ms. Minton:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not effected by any State Highway Administration project.

Please contact Bob Small at 410-333-1350 if you have any questions.

Thank you for the opportunity to review this item.

Very truly yours,
Bob Small
for *DAVID N. KATZ, ACTING CHIEF*
John Constable, Chief
Engineering Access Permits
Division

BS/

My telephone number is _____
Maryland Relay Service for Impaired Hearing or Speech
1-800-735-2258 Statewide Toll Free
Mailing Address: P.O. Box 717 • Baltimore, MD 21203-0717
Street Address: 707 North Calvert Street • Baltimore, Maryland 21202

Baltimore County Government
Office of Planning and Zoning



401 Bosley Avenue
Towson, MD 21204

December 8, 1993

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

TO: Landmarks Preservation Commission

FROM: Tim Dugan
Chief, Planning Services

SUBJECT: Cycle zoning petition, The Prosser Co., Glen Arm
(Cycle II, 1993-4, Item 3)

The semi-annual "cycle" zoning procedure provides limited opportunities for approving changes to the zoning maps which otherwise could not be done until the next quadrennial "Comprehensive" zoning process. Petitions filed in the cycle process are ultimately decided by the County Board of Appeals (not the County Council) but the overall process is similar in that there is first a staff report by the Office of Planning and Zoning to the Planning Board, followed by the Board's recommendations (to the Board of Appeals).

OPZ's report on the current round of petitions (Cycle II, 1993-4) will be published later this month and submitted to the Planning Board for action in January. Consistent with our recently-initiated practice, we are also notifying the commission because of potential effects on previously-identified historic resources.

Item 3 in this Cycle is a Petition to reclassify (to manufacturing zoning) 5 acres of land adjoining the Grumman factory and opposite the Post Office in Glen Arm. Included in this property are three dwellings listed in the Maryland Historical Trust inventory. The attached pages from OPZ's report give the full information which will be submitted to the Planning Board.

If the Commission wishes to make comments to be included as part of the Planning Board's recommendations to the Board of Appeals, there are two alternatives. Comments decided in your meeting on December 9th could be reported in the Board's Committee meeting on January 6th. If you prefer to wait until your meeting on January 13th, your comments could still be reported to the Board before its vote in the meeting on January 20th. I will be unable to attend the Commission's December 9th meeting, but expect to be present on January 13th.

Tim Dugan

RECEIVED

DEC 30 1993

ZADM

TD/mjm
LDMSPRE.TD/PZONE/TXTMJM

Enclosure

cc: John McGrain



Ms. Charlotte Minton
Zoning Administration and
Development Management
County Office Building
Room 109
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Baltimore County
Item No.: *CR-94-143*

Dear Ms. Minton:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not effected by any State Highway Administration project.

Please contact Bob Small at 410-333-1350 if you have any questions.

Thank you for the opportunity to review this item.

Very truly yours,
Bob Small
for *DAVID N. KATZ, ACTING CHIEF*
John Constable, Chief
Engineering Access Permits
Division

BS/

My telephone number is _____
Maryland Relay Service for Impaired Hearing or Speech
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Mailing Address: P.O. Box 717 • Baltimore, MD 21203-0717
Street Address: 707 North Calvert Street • Baltimore, Maryland 21202

Baltimore County, Maryland
OFFICE OF PEOPLE'S COUNSEL

Room 47, Old Courthouse
400 Washington Ave.
Towson, MD 21204

(410) 887-2188

PETER MAX ZIMMERMAN
People's Counsel

March 21, 1994

CAROLE S. DEMILO
Deputy People's Counsel

Mr. William T. Hackett, Chairman
Appeals Board of Baltimore County
400 Washington Avenue
Towson, Maryland 21204

Re: The Prosser Company
Site Plan to Accompany Zoning Reclassification Petition
Case No: CR-94-143, Cycle II, Item 3

Dear Mr. Hackett:

It has come to our attention that the petitioner has submitted modifications to the site plan accompanying the zoning reclassification petition in this case.

The petition was filed originally as part of Cycle II within the 1993 filing period. According to the attached correspondence from petitioner's counsel to John Lewis of the Department of Zoning Administration and Development Management, petitioner delivered the modified site plan on February 24, 1994.

Pursuant to Section 2-356(m) of the Baltimore County Code, any amendment to the petition for zoning reclassification, including any relevant documentation, "...may be amended only during a required public hearing proceeding on the petition." This subsection also established the procedure for review of the amendment, which the County Board of Appeals has followed in many cases.

There is presently a hearing scheduled on the Prosser petition for April 6, 1994. In view of the modifications to the site plan, this case does not appear to be ripe for consideration on the merits. If the petitioner desires to utilize the April 6 hearing date for submittal of the amendments, we would have no objection.

Very Truly yours,

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

PMZ/CK

Enclosure

cc: G. Scott Barhight, Esquire
Mr. John Lewis

BALTIMORE COUNTY, MARYLAND INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director DATE: October 25, 1993
Zoning Administration and Development Management

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

RE: Zoning Advisory Committee Meeting
for Zoning Reclassification Cycle II
October 1993 - April 1994

The Development Plan Review Section has reviewed the subject zoning items and we have no comments for Item 4.

Item 1 is subject to Baltimore County Development Regulations and State Highway Administration approval.

Item 2 is subject to the Baltimore County Development Regulations.

Item 3 must comply with Division 2 of the Baltimore County Development Regulations.

For Item 5, please see our comments on the Beachwood Estates subdivision. In addition, major intersection improvements at Horse Lane and Route 151 will be required.

RWB:s

RECLASSIFICATION & REDISTRICTING PETITIONS ACCEPTED FOR FILING BY BALTIMORE COUNTY BOARD OF APPEALS FOR THE OCTOBER 1993 - APRIL 1994 ZONING RECLASSIFICATION CYCLE II

*Agenda Only
*Agenda and Petition
*Agenda, Petition and Plat

Distribution:

- *Zoning Commissioner's Office (Lawrence Schmidt); Mail Stop 2112
- *ZADM, Development Control R.O. Hearing File (Gwendolyn Stephens)
- *ZADM, Development Control Work File (Charlotte Minton)
- *ZADM, Development Management (David Flowers)
- *ZADM, Development Management (Kurt Kugelberg)
- *ZADM, Development Management (John Alexander)
- *Public Works, Development Plan Review (Dennis A. Kennedy)
- *Planning Office (Jeffrey Long)
- *Recreation and Parks (Ronald Schaeffer); Mail Stop 52
- *DEPRM (Larry Pilsen)
- *DEPRM, Air Quality Management (Dave Filbert); Mail Stop 3404
- *State Highway Administration, Access Permits Division (David N. Ramsey)
- *Fire Prevention, Plans Review (Captain Pfeiffer); Mail Stop 1102F
- *Dept. of Permits & Licenses, Building Plans Review (Dick Seim)
- *Economic Development Commission, Business Development (Susan Brennan); M.S. 2M07
- *Highways (Richard Cox); Mail Stop 1003
- *Community Development (Amy Johanson); Mail Stop 1102M
- *People's Counsel (Phyllis Friedman); Mail Stop 2010
- *IF CRITICAL AREA, Maryland Office of Planning (Mike Nortrup)
- *IF ELDERLY HOUSING, Community Development (Frank Welsh); Mail Stop 1102M

The attached information is being forwarded to you for comment. Your comments should reflect any conflicts with your office's or department's code, standards or regulations. Development representatives that attend the meeting should be prepared to submit their agency's response as either "no comment", "written comment" or "more review time required" within one week at the next meeting. If no written response is received by the committee within two weeks, it is assumed that your agency has "no comment". All written comments must reference the case number. All comments received will be compiled and included in the zoning/reclassification file for review and consideration by the Board of Appeals during the course of the upcoming reclassification hearing (as referenced on the agenda).

If your agency is not represented at the meeting, you should return your written comments to Zoning Administration and Development Management, Room 109, County Office Building, 111 West Chesapeake Avenue, Towson, MD 21204 (Mail Stop #1108). Attention: Charlotte Minton. If you have any questions regarding these zoning reclassifications, please contact Sophia or Carl at 887-3391 (FAX - 887-5708).

ZAC/AGEN (TITSOPH)
REVISED 10/15/93

Baltimore County Government
Department of Permits and Licenses



111 West Chesapeake Avenue
Towson, MD 21204

OCTOBER 25, 1993

(410) 887-3610

Arnold Jablon
Director
Zoning Administration and
Development Management
Baltimore County Office Building
Towson, MD 21204

ZONING AGENDA: OCTOBER, 1993 - APRIL, 1994

Owner: J.F.O. Holding Corporation & Josephine Owings Grinnings
Location: #1838-1850 Reisterstown Road
Item No.: #1, Cycle II

Owner: Harford Joint Venture
Location: Monkton Centre
Item No.: Item #2, Cycle II

Owner: The Prosser Company, Inc.
Location: 12107 & 12109 Long Green Pike and 5328 Glen Arm Road
Item No.: Item #3, Cycle II

Owner: State Highway Administration
Location: 8204 Belair Road
Item No.: Item #4, Cycle II

Owner: Beachwood II Limited Partnership & Signal Dev. Corp.
Location: Beachwood
Item No.: Item #5, Cycle II

Gentlemen:

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

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

Approved *Robert W. Bowling*
Fire Prevention Bureau

Work Copy
Final - 10/15/93

RECLASSIFICATION AND REDISTRICTING PETITIONS ACCEPTED FOR FILING BY BALTIMORE COUNTY BOARD OF APPEALS FOR THE OCTOBER, 1993 - APRIL, 1994 ZONING RECLASSIFICATION CYCLE II

WESTERN SECTOR

R-94-141 (Item #1, Cycle II)

- Property Owner: J.F.O. Holding Corporation & Josephine Owings Grinnings
Case No./Hearing Date: R-94-141; 3/9/94
Contract Purchaser: J. Patrick Gill
Location: SW/4 Reisterstown Road, 540' SE of centerline Mt. Wilson Lane, opposite Castleton Avenue (#1838-1850 Reisterstown Road)
Existing Zoning: R.O.
Election District: 3rd
Councilmanic District: 3rd
Acres: 5.81 +/- OR 5.25 +/-
Proposed Zoning: B.L.

G. Scott Barhight, Esq.
210 W. Pennsylvania Ave
Towson, MD 21204
832-2050
Planner: JCM
Open Plan

*Need revised plan - doesn't meet Section 2-356(b) BCI; brief; seals; road name; & acreage?

NORTHERN SECTOR

R-94-142 (Item #2, Cycle II)

- Property Owner: Harford Joint Venture
Case No./Hearing Date: R-94-142; 3/23/94
Contract Purchaser: N/A
Location: N/S Everett Road, W/S York Road (Monkton Centre)
Existing Zoning: R.C.-5
Election District: 7th
Councilmanic District: 3rd
Acres: .90 +/-
Proposed Zoning: B.M.-C.R.

Ed Covahey, Esq.
614 Bosley Avenue
Towson, MD 21204
828-9441
Planner: RT
Open Plan

CR-94-143 (Item #3, Cycle II)

3. Property Owner: The Prosser Company, Inc.
Case No./Hearing Date: CR-94-143; 4/6/94
Contract Purchaser: N/A
Location: SE/S Long Green Pike and
NW/S Glen Arm Road
(12107 & 12109 Long Green Pike
and 5328 Glen Arm Road)
Existing Zoning: R.O. & R.C.-5
Election District: 11th
Councilmanic District: 6th
Acres: 5.2 +/-
Proposed Zoning: M.L.

G. Scott Barhight, Esq.
210 W. Pennsylvania Ave
Towson, MD 21204
832-2050
Planner: JCM
Documented Plan
*Need 2nd revised
plan - notes & parking
& 100' restriction
line on plan

CENTRAL SECTOR

No Petitions in the Central Sector

EASTERN SECTOR

R-94-144 (Item #4, Cycle II)

4. Property Owner: State Highway Administration
Case No./Hearing Date: R-94-144; 4/20/94
Contract Purchaser: White Marsh Dinner Theatre, Inc.
Location: NW/S Belair Road, corner NW/S White
Marsh Boulevard (8204 Belair Road)
Existing Zoning: D.R.-5.5
Election District: 14th
Councilmanic District: 6th
Acres: .6 +/-
Proposed Zoning: B.M.

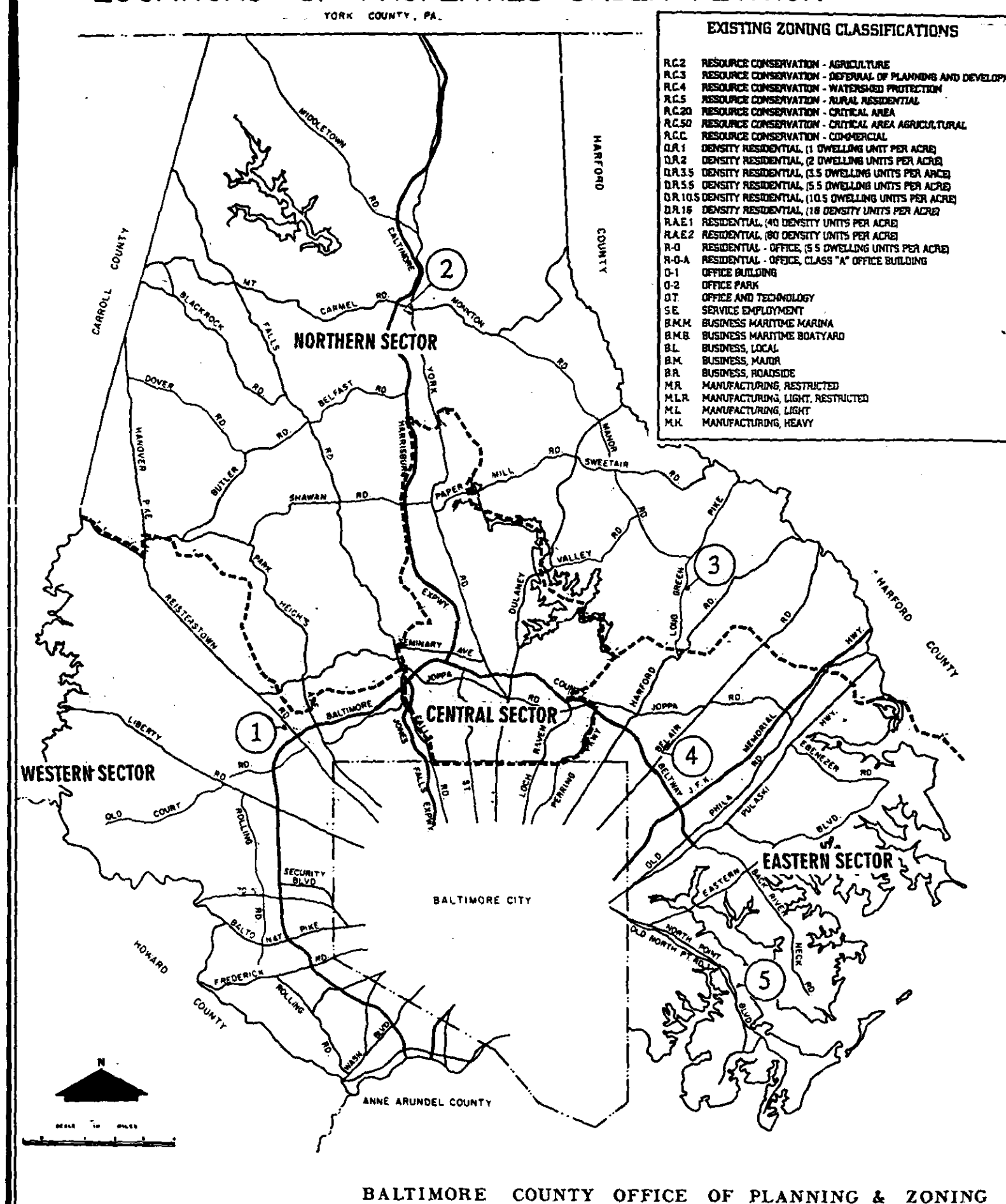
Drake Zaharris, Esq.
Suite 1200
401 Washington Avenue
Towson, MD 21204
821-6350
Planner: JLL
Open Plan

R-94-145 (Item #5, Cycle II)

5. Property Owner: Beachwood II Limited Partnership &
Signal Development Corporation
Case No./Hearing Date: R-94-145; 5/4/94
Contract Purchaser: N/A
Location: E/S Morse Lane between Lynhurst and
Shore Roads (Beachwood)
Existing Zoning: D.R.-1
Election District: 15th
Councilmanic District: 7th
Acres: 27.309
Proposed Zoning: D.R.-3.5 or D.R.-5.5 or D.R.-10.5

John B. Contrum, Esq.
814 Eastern Blvd.
Baltimore, MD 21221
686-8274
Planner: JLL
Open Plan
Critical Area

LOCATIONS OF PROPERTIES UNDER PETITION



BALTIMORE COUNTY OFFICE OF PLANNING & ZONING

Baltimore County Government
Office of Planning and Zoning

401 Bosley Avenue
Towson, MD 21204

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

March 15, 1994

Joseph L. Prosser, Jr.
The Prosser Company, Inc.
5234 Glen Arm Road
Glen Arm, Maryland 21057

Dear Mr. Prosser:

In response to your March 3rd letter regarding the three MHT-inventoried residences on the Prosser Company's property in Glen Arm, we will provide copies of your letter to the members of the Planning Board and will attempt to publicize the offer to other persons who might be interested in relocating the structures. We understand from Mr. Barhight that the offer is made in good faith and is not contingent on the outcome of the pending reclassification petition.

I'm confident that the Planning Board members will appreciate the Prosser Company's generous response to the Board's recommendations for preserving these historic resources.

Sincerely,

David Fields
P. David Fields
Director

PDF/TD/mjm
PROSSER/PZONE/ITXIMJH

cc: Planning Board members
Ruth Mascari, Chairman, Landmarks Preservation Commission

County Board of Appeals of Baltimore County

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

July 1, 1994

Michael P. Tanczyn, Esquire
600 Baltimore Avenue
Suite 106
Towson, MD 21204

G. Scott Barhight, Esquire
WHITEFORD, TAYLOR & PRESTON
500 Court Towers
210 W. Pennsylvania Avenue
Towson, MD 21204-4515

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

RE: Case No. CR-94-143
The Prosser Company, Inc.

Dear Counsel:

The Board has received Mr. Tanczyn's request for an additional hearing day. Mr. Barhight has filed opposition to the request, outlining reasons why this request should not be granted.

After giving due consideration to the request, to the opposition to the request, and to the fact that this case has been of a protracted nature, it is the opinion of this Board that there has been no showing or indication, other than the reason that a witness is not available, which would justify the continuance of this case to an additional hearing day.

The Board will therefore deny this request.

Very truly yours,

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

cc: Glen Arm Community Association, Inc.
Mr. Joseph Prosser

Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL
Room 47, Old Courthouse
400 Washington Ave.
Towson, MD 21204

(410) 887-2188

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILLO
Deputy People's Counsel

June 4, 1996

Mr. Robert O. Schuetz, Chairman
Board of Appeals of Baltimore County
Room 49 Courthouse
400 Washington Avenue
Towson, MD 21204

Hand-delivered

Re: Petition for Reclassification
THE PROSSER COMPANY, INC.
Civil No. 100/243/95-CV-288
CBA Case No. CR-94-143

Dear Chairman Schuetz:

The Maryland Court of Appeals has addressed a comparable situation involving panel member deficiency on a charter county zoning board. In *Clark v. County Board of Appeals*, 235 Md. 320, 201 A.2d 499 (1964), one of the three (3) panel members read the transcript and participated in the decision, but without having attended the required public hearing. Judge Henderson concluded, for a unanimous court:

"We think the cases holding that at least enough members to constitute a quorum for decision, be present at the public hearing, are more consistent with our construction of the ordinance in the instant case, and with our prior decisions. Accordingly, we hold that the Board's decision was improperly reached and the order must be reversed." 201 A.2d at 502.

The quorum for the Baltimore County Board of Appeals under Rule 1c is three (3), except upon a member's death or disability, in which event the parties may stipulate to go ahead with two (2). In the present *Prosser* case, two (2) members have left, by resignation or upon completion of term of office. The quorum, therefore, remains at three (3).

All three (3) must hear the entire case, including the evidence. It is not permissible under these circumstances for two (2) substitute members of a three (3)-member panel to read a

Mr. Robert O. Schuetz, Chairman
Board of Appeals of Baltimore County
June 4, 1996
Page Two

transcript and thereupon participate in the decision. The Court of Appeals found this very thing to be illegal in *Clark*, with just one member missing from the evidentiary hearing.

The existence of a remand does not affect this conclusion. In *Prince George's County v. Zayre Corp.*, 70 Md.App. 392, 401-02 (1987), the Court of Special Appeals interpreted a similar agency rule of procedure to require *de novo* hearing by a new panel.

County Board of Appeals Rule 1c is strongly worded. There do exist administrative rules in federal and other forums which are more flexible. These may allow for substituted hearing examiners to read a transcript where the demeanor of the witnesses is immaterial. See *Zayre*; *Citizens for Restawick Creek v. Commissioners of Hebron*, 67 Md.App. 466 (1986); *Van Tassel v. Bender*, 365 F.Supp. 1006 (D.Md. 1973); *Gamble-Skogmo, Inc. v. Federal Trade Commission*, 211 F.2d 106 (8th Cir. 1954); *Stevens Chevrolet, Inc. v. Commission on Human Rights*, 498 A.2d 546 (D.C. 1985).

But, even were a more flexible rule applicable here, the result would be the same. The question of appropriate zoning classification depends on the credibility and demeanor of lay witnesses, as well as experts. See *Eger v. Stone*, 253 Md. 533 (1969). The memoranda filed with the CBA reflect disputed fact testimony concerning the neighborhood and the impact of industrial use. In other words, this is not a technical judgment to be drawn simply from a cold transcript.

In any event, since the original CBA decision, there are new matters which call for reconsideration and additional testimony:

1. It is appropriate for the Board to hear evidence that the adjoining Grumman industrial site is closed, and the County has begun to consider purchasing it for recreational use.

2. It is appropriate to explore the relevant Issues 6-001 and 6-017 in the 1996 Comprehensive Zoning Map process. This includes the attached May 22, 1996 recommendation of the Planning Board Committee on Comprehensive Zoning to retain the RO-CR and R.C.5 zoning.

3. It is furthermore appropriate to allow argument as to the impact of *People's Counsel v. Beachwood I Limited Partnership*, 107 Md.App. 627 (1996) on all issues in the case.

Mr. Robert O. Schuetz, Chairman
Board of Appeals of Baltimore County
June 4, 1996
Page Three

For all these reasons, the substituted CBA panel (2 out of 3 being new) should, under its own rule, under any version of administrative law, and in fairness, hold a *de novo* hearing.

Very truly yours,

Peter Max Zimmerman
Peter Max Zimmerman
People's Counsel for Baltimore County
Carole S. Demillo
Carole S. Demillo
Deputy People's Counsel

PMZ/csf
Enclosures

cc: G. Scott Barhight, Esq. (Via facsimile and first class mail)

Michael P. Tanczyn, Esq. (Via facsimile and first class mail)

County Board of Appeals of Baltimore County

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

May 28, 1996

Michael P. Tanczyn, Esquire
606 Baltimore Avenue
Suite 106
Towson, MD 21204

RE: Case No. CR-94-143
The Prosser Company, Inc.
Civil Action No. 95-CV-0288

Dear Mr. Tanczyn:

I am in receipt of your letter of May 24, 1996 regarding the subject matter scheduled before the Board on June 5, 1996.

At this time, I can provide very little additional clarification to the Notice of Assignment. I conferred with the Board Chairman prior to issuance of the Notice, and was advised to include the notation relative to "no additional evidence or testimony" at his request. It is my understanding that the Board will convene on June 5th at 1:00 p.m., and at that time, endeavor to resolve this matter as it deems appropriate.

For the moment, there is no additional information available, with the exception of the direction as given on the Notice. However, I'm sure any relative concerns will be addressed as necessary on June 5th.

Very truly yours,

Kathleen C. Bianco
Kathleen C. Bianco
Administrative Assistant

encl

cc: G. Scott Barhight, Esquire
T. Michael Reier
Peter Max Zimmerman
People's Counsel for Baltimore County

Law Offices
MICHAEL P. TANCZYN, P.A.
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
(410) 296-8823 - (410) 296-8824
Fax: (410) 296-8827

May 24, 1996

Kathleen C. Bianco, Administrative Assistant
County Board of Appeals for Baltimore County
400 Washington Avenue, Room 49
Towson, MD 21204

Re: The Prosser Company, Inc.
Remand / Case No. CR-94-143
Civil Action No. 95-CV-0288

Dear Kathy:

I acknowledge receipt of the Board's notice rescinding its Opinion issued May 6, 1996 in the above matter without hearing or consultation.

The purpose of this letter is to ask for clarification concerning what is to occur on June 5, 1996 at 1:00 p.m., a date set without consulting this office, and possibly other offices of counsel for the parties. In the notice of hearing the Board states that no additional evidence or testimony will be presented at the hearing; however, your cover letter to counsel dated May 20, 1996 concludes by saying that there will be "hearing on the appropriate issues" on the same day and time.

If the Board's intent is to hear the matter over from the beginning before an entirely new Board, that was not stated in the notice. If, however, it is the intention of the Board to act with the sole remaining member from the original Board, that would appear to be a waste of time because any Decision issued would be a nullity under the law.

If it is the Board's intent to substitute additional new members who never heard the original case without rehearing all of the testimony and reviewing the exhibits live, that would also appear to be in contradiction of the law and the Board's rules and would represent a waste of time and effort on the part of all concerned.

May we kindly know at the Board's earliest convenience clarification of its notice in light of the expedited scheduling afforded the Petitioner in this matter.

Kathleen C. Bianco, Administrative Assistant
Re: The Prosser Company, Inc.

May 24, 1996
Page 2

Thank you in advance for your anticipated prompt response.

Very truly yours,

Michael P. Tanczyn
Michael P. Tanczyn

MPT/ed

cc: G. Scott Barhight, Esq.
Peter Max Zimmerman, Esq.
Mr. T. Michael Reier

Minutes of Deliberation /The Prosser Co., Inc. CR-94-143

of George Gavrellis.

WTH: Agreed that that matter was addressed; ascertained that there was nothing further before beginning deliberation. Having had no prior communication with the other Board members, will now accept their findings.

CWC: Began by saying that this case was well-tried by all parties on all sides, and well considered when the petition was filed. There was ample testimony to support finding that proposed reclassification is warranted; any number of uses to which any particular piece of property might be put acceptable and reasonable uses of property; process of zoning is one of drawing lines; however, not critical issue in this case. Issue on which case turns is Petition for Reclassification in which the testimony would require finding of mistake or error; of meeting the legal definition of mistake or error. Reviewed comprehensive process of County Council; factors necessary to prove error or mistake; reviewed Joint Exhibit No. 1 (deed); transfer of each parcel to Grumman; same corporation /legal title holder to all three parcels of ground. County Council in fact considered all circumstances; cannot ignore the fact that same legal party owned all three parcels; discussed facts of sale, Master Plan, County Council's consideration of future trends; still left zoning as is, with exception of CR designation to R0 zone. Also discussed meaning of terms "planning" and "zoning"; and Petitioner's argument that this Board is able, through the documented site plan, to consider proposal for this property not available to County Council. But through cross examination it was demonstrated that if the County Council had considered this documented site plan, it would be illegal contract zoning. That this process in and of itself shows that the County Council made a mistake is not the case.

Summary: For all of the above reasons, believes that factually facts do not exist that would support opinion rendered by expert witness that mistake or error had occurred when property was zoned in 1992.

Accordingly, there is no mistake or error; would deny Petition.

ROS: Began by saying that he disagrees with colleague in ultimate finding; reasons are similar to reasons for granting case does rest purely on error; no change or need to prove change. Testimony of George Gavrellis basically worthless in this case; hired late in procedure; did not look into history of property; also disagrees philosophically with Gavrellis' testimony that documented site plan can be used as basis for

Minutes of Deliberation /The Prosser Co., Inc. CR-94-143

proving mistake; that is contract zoning. Does not believe Council had ample opportunity to examine each site during comprehensive zoning map process; made mistake by lumping all properties together by definition. Property part of overlay; information available was insufficient to have made decision; because County erred, must side with Petitioner in granting Petition.

For above reasons, would grant Petition for Reclassification.

WTH: Indicated regret that he was unable to discuss testimony and evidence with other Board members prior to today; has searched through lengthy memorandums and has also compared notes taken so that allegations in memos are supported by what was heard at hearing. All three memos are admirably written and information to Board; in spite of Mr. Clark's feelings, could not find any reason or any facts that would lead him to believe that Petition should be denied. Proposed use for site is good one and should be permitted; reviewed history of three properties (purchased and combined in 1992); County Council erred; no way they could have considered these as a block; as far as they were concerned, three separate parcels /2 R.O. and 1 residential; no takers to renovate old houses; not on landmarks list; failing septic systems; support of both Planning staff and Planning Board; proposed land use map adopted after Master Plan also recommends industrial use; this map adopted by County Council recommending industrial use for area. Keeping residential zoning was in fact an error; would grant petition.

Petition for Reclassification should be granted.

Closing statement by Chairman Hackett; majority opinion of Board that Petition for Reclassification 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.

NOTE: Appellate period runs from date of written Order and not from date of deliberation.

Respectfully submitted,

Kathleen C. Bianco
Kathleen C. Bianco
Administrative Assistant

BALTIMORE COUNTY, MARYLAND
Inter-Office Correspondence

TO: W. Hackett /R. Schuetz /B. Clark DATE: October 13, 1994

FROM: kathi

SUBJECT: Case No. CR-94-143 /The Prosser Company, Inc. -Letter from G. Scott Barhight /Objection to Attachment to People's Counsel's Memorandum

Attached for your information is a copy of a letter received this afternoon from Scott Barhight in which he objects to an attachment (Exhibit B) included with People's Counsel's Memorandum. As you know, this matter is scheduled for deliberation on Wednesday, October 19, 1994 at 9:00 a.m., and copies of all memorandums have been provided to the Board.

Should you have any questions regarding the above, please call me.

Attachment

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF: The Prosser Company, Inc.
Case No. CR-94-143
DATE: October 19, 1994 @ 9:10 a.m.
BOARD /PANEL: William T. Hackett, Chairman (WTH)
C. William Clark (CWC)
Robert O. Schuetz (ROS)
SECRETARY: Kathleen C. Weidenhammer
Administrative Assistant

Those present included G. Scott Barhight, Esquire, on behalf of Petitioner; Michael P. Tanczyn, Esquire, on behalf of the Glen Arm Community Association, Inc., Protestants; Peter M. Zimmerman, People's County for Baltimore County; and Carole S. Demilio, Deputy People's Counsel.

PURPOSE --to deliberate matter of Petition for Reclassification; testimony and evidence taken on April 6, June 16, July 19, and September 20, 1994. 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; deliberation as required by law of Case No. CR-94-143, The Prosser Company, Inc. Prior to public deliberation, inquired if there was anything else for the record.

Peter Max Zimmerman, People's Counsel for Baltimore County, commented as follows:

"As previously stated in the presence of the attorney for petitioner informally prior to convening of this meeting, there has been objection raised to a newspaper article which this office submitted with the post-hearing memorandum. That newspaper article refers to the closing of the Grumman plant. Mr. Barhight objected to it. In view of that, while we think the Board could take note of such an article under general principle, we are willing to withdraw the article in order to avoid any argument on that and to keep the record more streamlined. We will withdraw the article."

Upon acknowledgement of this by Mr. Barhight, the following dialogue ensued between Board members:

CWC: Commented on Motion to Dismiss; wanted to be sure that Board had it on the record; notes indicated that it was reserved; but understands that it was collectively agreed that Motion to Dismiss was ruled on and denied.

ROS: According to his notes, this occurred after cross-examination



County Board of Appeals of Baltimore County

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

July 12, 1996

NOTICE OF DELIBERATION

Having concluded this matter in open hearing and on the record on July 3, 1996, the Board of Appeals has scheduled the following date and time for deliberation in the matter of:

The Prosser Co., Inc.
Case No. CR-94-143 /On Remand

DATE AND TIME: Thursday, August 8, 1996 at 2:00 p.m.

LOCATION: Room 48, Basement, Old Courthouse

cc: G. Scott Barhight, Esquire Counsel for Petitioner
The Prosser Company, Inc. Petitioner
c/o James J. Prosser
Whitney, Bailey, Cox & Magnani
Michael P. Tanczyn, Esquire Counsel for Protestants
Glen Arm Community Assn., Inc. Protestants
and T. Michael Reier
Barbara Scheper Lynch
James Earl Kraft
People's Counsel for Baltimore County
Pat Keller
Jeffrey Long
Lawrence E. Schmidt
Arnold Jablon, Director /PDM
Virginia W. Barnhart, Co. Attorney

Kathleen C. Bianco
Legal Administrator

copied /R.B.M.

Law Offices

MICHAEL P. TANCZYN, P.A.

Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
(410) 296-8823 - (410) 296-8824
Fax: (410) 296-8827

September 24, 1996

Kathleen C. Bianco, Legal Administrator
County Board of Appeals for Baltimore County
400 Washington Avenue, Room 49
Towson, MD 21204

Re: The Prosser Company, Inc.
Remand / Case No. CR-94-143
Civil Action No. 95-CV-0288

Dear Kathy:

Please provide us with a copy of the County Board of Appeals August 8, 1996 minutes of The Prosser Company Deliberations as you transcribed them.

We will be happy to pay any costs associated with those minutes.

Very truly yours,

Michael P. Tanczyn
Michael P. Tanczyn

MPT/ed

cc: Mr. T. Michael Reier



County Board of Appeals of Baltimore County
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

September 25, 1996

Michael P. Tanczyn, Esquire
606 Baltimore Avenue
Suite 106
Towson, MD 21204

Re: Case No. CR-94-143
The Prosser Co., Inc.

Dear Michael:

As you requested in your September 24th letter, enclosed is a copy of the minutes taken at the Board's public deliberation of the subject case on August 8, 1996.

Very truly yours,

Kathleen C. Bianco
Kathleen C. Bianco

Enclosure

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF: The Prosser Company, Inc.
Case No. CR-94-143

DATE : August 8, 1996 @ 2:05 p.m.

BOARD / PANEL : Robert O. Schuetz, Chairman (ROS)
S. Diane Levero (SDL)
Harry E. Buchheister, Jr. (HEB)

SECRETARY : Kathleen C. Bianco
Legal Administrator

Those present included G. Scott Barhight, Esquire, on behalf of Petitioner; Peter Max Zimmerman, People's County for Baltimore County; and Carol S. Demilio, Deputy People's Counsel.

PURPOSE --to deliberate matter of The Prosser Company, Inc., Case No. CR-94-143, on remand from the Circuit Court for Baltimore County.

ROS: Good afternoon, everybody. We are here this afternoon to deliberate the issue of whether the proposed reclassification in Case No. CR-94-143, The Prosser Company, that the proposed reclassification is indeed warranted pursuant to a remand order. I will remind everyone that the purpose of the hearing is to deliberate the matter before the Board, and I will also remind everyone that what is going to be discussed this afternoon is not part of the official record which has been closed. You are witnessing a back-room discussion as to the thought process of the Board members.

Having said that, I will go on to say that the official record will be supplemented with a written Opinion and Order, and any petition for review should be taken from that Order.

HEB: The reason, I'm sure everyone knows, for my participation in this remanded session, those reasons are well-understood. As a substitute fill-in, along with Ms. Levero, for two previous Board members who heard this Petition for Reclassification, I have read the transcript from the four days of hearing, as well as the transcript of the proceedings before Judge Hinkel, and his Memorandum Opinion and Order. I have to say at the offset that I was often amused by the bantering back and forth between Counsel for Protestants and Petitioner as well as the familiar comments made by the Chairman. I really felt that while reading the 700 pages of testimony that I was actually there, having seen the three attorneys, as well as several of the witnesses, many times before.

Minutes of Deliberation /Prosser Co. CR-94-143

Mr. Zimmerman remarked that in a reclassification case there are two issues:
Is there error or mistake made by the County Council in the existing zoning?
Well, Judge Hinkel has determined there was error.

The second issue of reclassification is whether or not the request is warranted.
This second prong of warranted for the subject property required review of the testimony which I carefully covered.

Mr. Clark was noted by the Appellants as an experienced member and lawyer on the Board who, as a dissenting member, found no error with the County Council's zoning designation, but stated that there was ample testimony to support a finding that the proposed reclassification is warranted. The Prosser Fiberglass Co. has been in Glen Arm for 28 years, and Petitioner considered his tiny company between Gruman Aerospace and United Container as an industrial location. Testimony and recommendations by Mr. Long and the Planning staff supported the reasoning to M.L., since the 1992 Master Plan identified the property as an industrial employment zone. The Planning Board stated that the requested zoning was appropriate. The Baltimore County Department of Economic Development supports expansion of the Prosser Company to the subject 5.2-acre parcel, and Mr. Swanson cited:

- 1) Additional jobs
- 2) Increased tax base
- 3) Relocation of Prosser subsidiary, El-Tex, from city to County; additional tax base and nets new employment
- 4) Consistent with Master Plan for the area
- 5) Efficiency of moving two operations in different locations to a place next to or near the corporate headquarters

The Department of Economic Development met with the Planning Office and the Prosser Co., and all supported projected move. John Watson -long term resident - reviewed the extent of number of manufacturing locations in Glen Arm; referred to it as manufacturing community.

Patrick Ford, land planner -- made analysis of zoning in Glen Arm area and found increase in the amount of land zoned for industrial use, particularly in area north of Glen Arm Road containing the subject site; predominantly business-industrial use.

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Minutes of Deliberation /Prosser Co. CR-94-143

The existence of three residential dwellings on the subject parcel raised the issue -- all three of houses had separate deeds of ownership by Gruman; were occupied by families but found to have failing septic systems in the spring of 1992. The 5.2-acre site resulted from the combining of the three parcels, two zoned R.O.-CR, facing Long Green Pike, and the other R.C. 5 on Glen Arm Road. Petitioner requested that the total combined area be rezoned M.L. -- same as land bordering the parcel. There was testimony that the combined parcels would provide area for septic system capable of servicing Prosser expansion on the 5-acre property.

Petitioner testified that he offered the three houses built around the turn of the century to Long Green Valley Association and Baltimore County Landmarks Preservation Commission; there were no takers as it would be too costly to relocate the houses. The continued residential use of the three properties was not feasible according to Petitioner, especially since all had failing septic systems unable to meet health standards. The three structures had historic significance; contributing factor to Landmarks Commission consideration of Glen Arm area. However, it was conceded they are common-place houses found throughout the County and not high priority for preservation.

Testimony also confirmed that three structures were not considered for Landmarks Preservation Commission List, and could be razed by the Petitioner. Issue of whether designation for the two structures appeared erroneous for any office use as to community demand, and potential cost of correcting the septic system.

Requiring a relocation for two of their companies and subsequently purchasing Gruman parcel but lacking proper zoning, they sought reclassification to M.L. through a documented site plan which is under the jurisdiction of the Board of Appeals to hear and determine. The limitations of a documented site plan per George Gavrelis on the requested M.L. zone sets forth a specific proposal for developing the subject property. He remarked about precise and limited uses, and not all uses normally permitted in M.L. zone. The documented plan extensively reviewed and applied to concerns of the protestants in the case by Mr. Gavrelis and Petitioner's counsel, imposes restrictions and constraints so that it can be done in a manner characteristic with the surrounding area. The testimony that the Prosser Company has been proclaimed by residents as good neighbor for many years and restrictions specified in the documented site plan gives compelling reason to believe that the reclassification would be beneficial to the village center and the total community.

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Minutes of Deliberation /Prosser Co. CR-94-143

In accordance with the decision of the County Council to designate location on Master Plan as industrial employment zone, and the merits the documented proposal will bring warrants M.L. classification for the subject site.

SDL: I was also not on the original Board who write the Opinion. I reviewed the transcript of the testimony in order to come to a conclusion on warranted. I read the Majority Opinion and the Dissenting Opinion. Like Mr. Buchheister, I noticed that Mr. Clark stated ample testimony to support warranted. In reviewing the transcript, I also found that to be the case.

The testimony of a number of witnesses concerned Section 2.356(j)(2), thus bearing on warranted. Any pertinent recommendations of the Planning Board or Office of Planning and Zoning and consistency of current or prospective classifications with the Master Plan.

Jeff Long testified it was consistent for industrial use on the 1992 land use map; and that the Planning Board adopted the staff report that it was consistent with the Master Plan.

Further, Mr. Gavrelis testified on factors of population, transportation facilities, water and sewer facilities, schools, recreation and other facilities. Several witnesses testified favorably. Testimony that Glen Arm has been commercial; compatible; business industrial appropriate for subject site.

In my opinion, there was abundantly convincing evidence to show that the requested reclassification was warranted, and the only task remaining to this Board is to articulate that fully in a statement for the Circuit Court.

ROS: Well stated, both of you. I join my colleagues in finding that the proposed classification is warranted. And I remind everyone that something that Mr. Buchheister said --it's a two-part test -- first by an error on the part of the County Council, and I would say that things which are said in the deliberation process are often forgotten in the context in which they are brought.

And statements made about witnesses' testimony and what part of their testimony may have been discussed has brought us to a situation where the Board is placed in the position --it's solely for the purpose of articulating its findings back to the Circuit Court. I don't think there is anything I can add to what my colleagues have said as to the issue before us.

There is an overabundance of information that was available

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Minutes of Deliberation /Prosser Co. CR-94-143

for this Board's review and consideration, and made its finding that the classification as proposed is warranted.

Therefore, that concludes these proceedings. There will be a written Opinion and Order which will be issued subsequent to these proceedings. Any Petition for Judicial Review should be from the date of that Order and not today's date.

Respectfully submitted,

Kathleen C. Bianco
Kathleen C. Bianco
Legal Administrator

CR-94-143 /The Prosser Company
Hearing Date: April 6, 1994

3/17/94 -Letter from Michael P. Tanczyn, Esquire: entering appearance on behalf of Glen Arm Community Association; also requesting that matter be referred back to Planning Board since revised plan was submitted 2/24/94 to John Lewis /ZADM; revised plan showing "minor clarifications" suggested by ZADM was submitted to ZADM; included in file.

3/21/94 -Letter from P. Zimmerman -concerning modified site plan and that case does not appear "ripe" for consideration on merits.

4/06/94 -Day #1 of hearing; continued for second hearing day to 6/16/94 beginning at 11:00 a.m. (to allow for C schedule conflict that date). Notice of Assignment sent to following parties reflecting Day #2 as Thursday, June 16, 1994 at 11:00 a.m. (Holding 7/12/94 if needed for hearing and/or deliberation.)

G. Scott Barhight, Esquire
The Prosser Company, Inc.
c/o James J. Prosser
Whitney, Bailey, Cox & Magnani
Michael P. Tanczyn, Esquire
Barbara Schepher Lynch
James Earl Kraft
People's Counsel for Baltimore County
P. David Fields
Jeffrey Long
Lawrence E. Schmidt
Timothy H. Kotroco
W. Carl Richards, Jr.
Docket Clerk /ZADM
Arnold Jablon, Director /ZADM

6/16/94 -Notice of Assignment sent to above parties for Day #3, scheduled for Tuesday, July 19, 1994 at 10:00 a.m.

6/23/94 -Letter from M. Tanczyn re: unavailability of witness on scheduled Day #3; requesting that her testimony be taken after 8/24/94.

6/29/94 -Letter from S. Barhight in response to above letter; objects to further delay and request as made by Mr. Tanczyn.
- Copies of both above letters provided to P. Zimmerman this date for information /comment.

7/01/94 -Letter from CBA to all Counsel; request for additional hearing day is denied.

7/19/94 -Hearing Day #3 concluded before Board; matter held open and rescheduled for Wednesday, August 10, 1994 at 8:30 a.m. for purpose of allowing testimony of Rob Powell (one hour set aside for this testimony). Upon conclusion of that testimony, written closing argument will be submitted; date to be determined.
- Notice of Assignment sent to parties for Wednesday, August 10, 1994 at 8:30 a.m. (one hour only)

8/04/94 -Letter from M. Tanczyn, Esquire --R. Powell, witness scheduled to testify on 8/10/94, will be off work the entire week, including 8/10/94, and therefore unavailable to testify.

8/05/94 -Conversation with S. Barhight /no objection to rescheduling testimony of R. Powell within next week or two; would indicate same on the record on 8/10/94.

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Petitioners and People's Counsel provide little legal support or legal analysis for their assertions that the zoning error on the subject site does not warrant reclassification. Moreover, the adoption of the 1996 Comprehensive Zoning Maps does not affect the Board's approval of Prosser's Petition for Reclassification because the County Council did not change the zoning designations on the subject site. Additionally, the evidence demonstrates that the mistake in the RO-CR and R.C. 5 zoning designations on the site warrants the site's reclassification to ML, as conditioned and limited by the documented site plan.

WHEREFORE, The Prosser Company, Inc., respectfully requests that this Court affirm the Board's finding on remand that the zoning error on the subject property warrants reclassification of the property from RO-CR and R.C. 5 to ML, as conditioned and limited by the documented site plan.

Respectfully submitted,

G. Scott Barhight, Esquire
Julie D. Wright, Esquire
Whiteford, Taylor & Preston L.L.P.
210 West Pennsylvania Ave.
Suite 400
Towson, Maryland 21204
(410) 832-2000

Attorneys for Respondent, The Prosser Company, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 21st day of January, 1997, a copy of the foregoing Responding Memorandum of the Prosser Company, Inc., in Opposition to Supporting Memoranda of People's Counsel and Glen Arm Community Association, Inc., and T. Michael Reier, was mailed, first-class, postage prepaid, to:

Michael P. Tanczyn, Esquire
606 Baltimore Avenue, Suite 106
Towson, Maryland 21204

Peter Max Zimmerman, Esquire
Baltimore County People's Counsel
400 Washington Avenue
Towson, Maryland 21204

County Board of Appeals for Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

G. Scott Barhight

PETITION OF: * IN THE
Glen Arm Community Association, Inc. * CIRCUIT COURT
11909 Long Green Pike *
Glen Arm, Maryland 21057 * FOR BALTIMORE COUNTY
and *
T. Michael Reier *
11909 Long Green Pike *
Glen Arm, Maryland 21057 *
FOR JUDICIAL REVIEW OF DECISION OF: *
County Board of Appeals of Baltimore County *
Old Courthouse, Room 49 *
400 Washington Avenue *
Towson, Maryland 21204 *
(410) 887-3180 *
IN THE CASE OF: *
IN THE MATTER OF *
THE APPLICATION OF *
THE PROSSER COMPANY, INC. *
FOR A ZONING RECLASSIFICATION *
ON PROPERTY LOCATED ON THE *
SOUTHEAST SIDE LONG GREEN *
PIKE AND THE NORTHWEST SIDE *
GLEN ARM ROAD (12107 AND *
12109 LONG GREEN PIKE AND *
5328 GLEN ARM ROAD) *
11TH ELECTION DISTRICT *
6TH COUNCILMANIC DISTRICT *
CASE NO. CR-94-143 * CIVIL ACTION
CYCLE II, 1993 /94 NO. 100/243/95CV-00288
* * * * *

MEMORANDUM OF GLEN ARM COMMUNITY ASSOCIATION INC. AND T. MICHAEL REIER, PETITIONERS/APPELLANTS

Petitioners/Appellants, Glen Arm Community Association,

Inc. and T. Michael Reier, by their attorney, Michael P. Tanczyn, Esq., pursuant to Maryland Rule 7-207(a), submit the within Memorandum to assist the Court in deciding this Appeal.

STATEMENT OF THE CASE

This case began when Petitioner requested a zoning reclassification to M.L. (Manufacturing-Light), for its property in Glen Arm on the basis of claimed map error by the Baltimore County Council in adopting the 1992 maps.

The County Board of Appeals in a two to one decision on December 13, 1994 approved the requested industrial rezoning. Following appeal by People's Counsel and Protestants the Circuit Court, on December 3, 1995, remanded the case to the County Board of Appeals, directing the County Board of Appeals to make requisite findings on the merits of the requested industrial zoning.

There was then filed an appeal to the Court of Special Appeals, but this appeal was subsequently voluntarily dismissed prior to briefing or decision on the merits, and the remand proceeded.

By the time of Judge Hinkel's December 3, 1995 decision, and the remand proceedings, two of the three members on the County Board of Appeals panel were no longer members. Over objection, the County Board of Appeals declined to hold a new trial. Indeed, on May 6, 1996, the remaining County Board of Appeals member issued a unilateral decision approving the rezoning. Then, upon procedural

objections by People's Counsel, et al, the Board Chairman on May 20, 1996 rescinded his decision. The County Board of Appeals Chairman then addressed the issue of whether under County Board of Appeals Rule 1(c) the departure of two of the original County Board of Appeals panel members legally required a re-trial of the entire case. He decided that it would be sufficient for him to appoint two new members to come in as substitutes, who would review the transcript and render a decision. The County Board of Appeals then on September 19, 1996 issued its Opinion approving the rezoning.

From this decision, the Appellants filed timely Petitions for Judicial Review, thus bringing the case to the Circuit Court for a second time.

QUESTIONS PRESENTED

1. Does the County Council's enactment of Bill 133-96 with an effective date of December 2, 1996 rezoning the parcels as part of quadrennial map process which are the subject of the instant Petition back to their prior zoning classifications before this Petition supercede and moot the instant case?

2. Does the failure of the Petitioner's property to meet the requirements of the Baltimore County Master Plan water and sewer requirements preclude the filing or consideration of the instant Petition as a matter of law?

3. Did the County Board of Appeals err in ruling on remand as a Board comprised of one member; in disregarding the

clear provisions of Board Rule 1(c) requiring three members to sit for conducting the business of the Board; in disregarding Board Rule 2(b) by ruling without notice on remand; by disregarding Rule 11 and Section 603 of the Baltimore County Charter concerning amendments to the Board of Appeals Rules; and did the action of the County Board of Appeals in disregarding its own rules of procedure deny the parties both procedural and substantive due process?

4. Did the Board in an illegal or arbitrary or capricious manner fail to articulate its findings as required by law or, alternatively, did the Chairman, improperly fail to recuse himself for bias apparent in his conduct after the remand?

Argument - Question 1

Does the County Council's enactment of Bill 133-96 with an effective date of December 2, 1996 rezoning the parcels as part of quadrennial map process which are the subject of the instant Petition back to their prior zoning classifications before this Petition supercede and moot the instant case?

A Suggestion of Mootness was filed with exhibits on December 4, 1996 with Points and Authorities that is incorporated herein by reference.

The County Council, in enacting the quadrennial maps as required by §26-124 and §26-125 of the Baltimore County Code once the maps are adopted as occurred December 2, 1996, has established

for Baltimore County zoning classifications for the succeeding four years. Because the instant Petition claimed map error on the part of the Baltimore County Council in adopting the 1992 maps, the adoption of the 1996 maps with the reclassification of the Petitioner's lands to the zones they held prior to the filing of his Petition for reclassification supersedes the Petition and moots it once Bill 133-96 became effective on December 2, 1996.

That conclusion is supported and corroborated by Baltimore County Code §2-356(n) wherein the adoption of the quadrennial map will not effect the prior action "...unless the zone classification of the property is further changed by that map."

Yorkdale Corp. v. Powell, 237 Md. 121 (1964); O'Donnell v. Bassler, 289 Md. 501 (1981); Prince George's County v. Sunrise Dev. L.P., 330 Md. 297 (1993); Sycamore Realty v. People Counsel for Baltimore County, ___ Md. ___ (No. 130/95, November 21, 1996).

Argument - Question 2

Does the failure of the Petitioner's property to meet the requirements of the Baltimore County Master Plan water and sewer requirements preclude the filing or consideration of the instant Petition as a matter of law?

The Court, in its Opinion and Remand Order, remanded this matter to the County Board of Appeals for the failure of that Board to articulate its findings as required by §2-356. Among the

required mandatory findings as stated in Baltimore County Code §2-356(j) (2):

"...Any finding of such change or error and any finding that the prospective reclassification is warranted may be made only upon consideration of factors relating to the purpose of the zoning regulations and maps, including but not limited to all of the following: availability and adequacy of present and proposed transportation facilities, water supply facilities, sewerage 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."

It is undisputed that this zoning reclassification involves property zoned RC-5, rural residential, and that the Baltimore County Master Water and Sewer Plan did not provide then or now for public sewerage or water for two years. The filing of the Petition is prescribed where a property zoned RC is not presently served by public water or sewer and will not be within two years from being filed pursuant to Baltimore County Zoning Regulations, §1A00.3.A.1.a.

While the Circuit Court in its Remand Order decided this statutory requirement was in derogation of the County Board of Appeals' jurisdiction and ineffective, there is a split in decisions of the Circuit Court Judges since the Honorable Dana M. Levitz, in the Colvista case (civil) by its Opinion dated August 26, 1996 in Civil Case No. 03-C-95-9688, stated that the statutory requirement was valid and effective.

Clark v. County Board of Appeals, 235 Md. 320 (1964);

8/08/94 -Confirmed with all parties (Board members and Counsel) that matter will be postponed on the record 8/10/94 and reset to Tuesday, August 23, 1994 at 8:30 a.m. (Hackett only on 8/10/94 postponement) M. Tanczyn advised DEPM of date (Powell on vacation this week and therefore unavailable for confirmation).

8/10/94 -Postponed on the record to Tuesday, August 23, 1994 at 8:30 a.m. (Clark only); Notice of Assignment sent to parties indicating date and time as stated above. Only S. Barnight and M. Tanczyn in attendance for postponement on record.

8/15/94 -T/C from S. Barnight --R. Powell will be on vacation week of 8/22/94 and therefore unavailable for hearing scheduled for 8/23/94. Contacted M. Tanczyn's office (Tanczyn on vacation this week; left message on answering machine). Also alerted board members.

8/17/94 -T/C W.M. Tanczyn; advised of weeks which Powell will be available; M. Tanczyn would be here on 8/23/94 to put postponement request and reasons on record.

- Telephone conversation with S. Barnight /he also will be here on 8/23/94 for postponement on record. Discussed dates as indicated by M. Tanczyn.

8/18/94 -Prosser Company to be postponed on the record at 8:30 a.m. on 8/23/94 (Clark officiating); will be reset to Tuesday, 9/20/94 at 8:30 a.m. Confirmed date and time with Board members (H.C.R.) and counsel for petitioner and protestants, as well as R. Powell. PC also advised of status of case and date to be reassigned after postponement on 8/23/94.

8/23/94 -Postponement granted to Mr. Tanczyn on the record; no objection by Mr. Barnight (C); rescheduled to Tuesday, September 20, 1994 at 8:30 a.m., with agreement of counsel and confirmation of Mr. Powell's availability on that date and at that time.

Notice of Reassignment /Rescheduled Day #4 sent to all parties.

9/20/94 -Case concluded before the Board. Memos due from counsel 10/07/94 (Friday); Deliberation scheduled for Wednesday, October 19, 1994 at 9:00 a.m. Notice of Deliberation to be sent to parties.

9/20/94 -Notice of Deliberation sent to parties; copy to Board members.

10/07/94 -Memo received People's Counsel 10-C-64
Scott Barnight 10-07-94
Michael Tanczyn 10-C-94

Copies handed to R. Schuetz and W. Hackett; copies mailed to B. Clark 10/13/94.

THE PROSSER COMPANY, INC.
824-94-143
824 Long Green Pike and
P.O. Box 1000
11100 Long Green Pike and
5128 Glen Arm Road

824-94-143
Case #2, Cycle II, 1993/94
11th Election District
6th Councilmanic District

RE: R.O. & R.C. 5 to M.L.
5.2 +/- acres
(Documented Plan)

8/24/93 Petition for Reclaim. for property to be reclassified from R.O. & R.C. 5 to M.L., filed by G. Scott Barnight, Esquire, on behalf of The Prosser Company, Inc.

March 17 94 Entry of Appearance filed by Michael P. Tanczyn, Esquire, on behalf of Glen Arm Community Association.

April 6 Hearing before the Board of Appeals.

June 16 Hearing day #2 before the Board of Appeals.

July 19 Hearing day #3 before the Board of Appeals.

September 20 Hearing day #4 (held only for purpose of allowing testimony of Bob Powell) concluded before the Board.

October 6 People's Counsel Memorandum filed.

October 7 Petitioner's Memorandum filed by Barnight.

October 7 Memorandum of Glen Arm filed by Tanczyn.

October 19 Open deliberation for final determination.

December 13 Majority Opinion and Order of the Board GRANTING the Petition (R & C) Dissenting Opinion issued by Clark.

Jan. 10, 1993 Petition for Judicial Review filed in the CCR for Balto. Co. by Michael P. Tanczyn, Esquire, on behalf of the Glen Arm Community Association, Inc. and T. Michael Reiser.

January 11 Petition for Judicial Review filed in the CCR for Balto. Co. by People's Counsel for Baltimore.

January 19 Copy of Tanczyn's Petition for Judicial Review received by the Board of Appeals from the CCR.

January 20 Certificate of Notice sent to interested parties.

January 24 Copy of People's Counsel's Petition for Judicial Review received by the Board of Appeals from the CCR.

January 24 Second Certificate of Notice sent to interested parties.

February 10 Response to Petition filed by G. Scott Barnight on behalf of The Prosser Company, Inc.

March 1 Motion to extend time (to 5/17/95) for Transmission of Record filed by Michael P. Tanczyn, Esquire (Affidavit of Carol Peatt attached). Order granted (Judge Rowe).

May 17 Transcript of testimony filed; Record of Proceedings filed in the Circuit Court.

December 11 Order of J. William Hinkel, Judge, in which Board was found to be correct as to its finding of error; however, REMOVED for Board to articulate its findings relative to Section 2-354(j)(2).

Jan. 29, 1995 Notice of Appeal filed in CBA by People's Counsel; from CCR's final Judgment of 1/03/95 denying People's Counsel's Motion to Alter or Amend Judgment.

April 15 Line of Dismissal as to appeals of Glen Arm Community Assn., Inc., and T. Michael Reiser filed by counsel for appellants in CBA.

April 22 Line to Dismiss Appeal as to People's Counsel for Baltimore County, filed by counsel for appellant in CBA. Appeal Dismissed.

April 22 Mandate issued by CBA.

May 6, 1996 Amended Opinion Pursuant to Remand Order issued by CBA.

May 10 Letter dated 5/06/96 from Michael P. Tanczyn, Esquire, requesting Reconsideration of the Board's May 6, 1996 Amended Opinion.

May 10 Letter dated 5/06/96 from Peter Max Zimmerman, People's Counsel for Baltimore County, requesting reconsideration, rescission and withdrawal of Order dated May 6, 1996.

10/13/94 -Letter from G. Scott Barnight /objecting to Exhibit B attached to People's Counsel's Memorandum for reasons as given in letter.

- Copies of above correspondence mailed by letter (via post office) to Board members H. R. C. FYI.

10/19/94 -Prior to deliberation but included within record for minutes, Mr. Zimmerman withdrew Exhibit B /newspaper article previously submitted with his post-hearing memorandum.

- Board deliberated issues; Petition for Reclassification GRANTED by majority (H & R); Clark to write dissent for denial of petition.

THE PROSSER COMPANY, INC.
824-94-143
824 Long Green Pike and
P.O. Box 1000
11100 Long Green Pike and
5128 Glen Arm Road

824-94-143
Case #2, Cycle II, 1993/94
11th Election District
6th Councilmanic District

RE: R.O. & R.C. 5 to M.L.
5.2 +/- acres
(Documented Plan)

December 3, 1995 Remand Order of the Circuit Court for Baltimore County remanded for findings as to County Code Section 2-354(j)(2). (Rev. J. William Hinkel) Record Extract in Civil Action 95-CV-00388 attached herewith. (Transcript and Record of Proceedings previously filed by the Board on 5/17/95 95-CV-00388 is returned herewith to the Circuit Court).

May 6, 1996 Amended Opinion Pursuant to Remand Order issued by Robert O. Schetz (remaining member of CBA panel which set for hearing on merits).

May 8 Letter from Michael P. Tanczyn, Esquire, requesting Reconsideration of the Board's May 6, 1996 Amended Opinion.

May 9 Letter from People's Counsel for Baltimore County requesting reconsideration, rescission and withdrawal of Order dated May 6, 1996.

May 17 Letter from G. Scott Barnight, Esquire, in response to requests from M. Tanczyn and P. Zimmerman.

May 20 Amended Opinion issued by the County Board of Appeals RESCINDED (matter to be scheduled for hearing as appropriate).

June 5, 1996 Hearing before the County Board of Appeals on Remand from the Circuit Court (Day #1).

July 3 Hearing before the County Board of Appeals on Remand from the Circuit Court (Day #2) (concluded).

August 8 Open deliberation for final determination. (Board unanimously found that reclassification is warranted).

September 19 Opinion and Order of the Board, AFFIRMING the decision dated December 13, 1994 as directed on Remand from the Circuit Court for Baltimore County, in that the proposed reclassification, as limited in the documented site plan, is warranted; Petition for Reclassification from R.O.-C.R. and R.C. 5 to M.L. for some 5.2 combined acres on a documented site plan is GRANTED, pursuant to this Opinion and Board's Opinion and Order dated December 13, 1994.

September 23 Petition for Judicial Review filed in the Circuit Court for Baltimore County by Michael P. Tanczyn, Esquire, on behalf of the Glen Arm Community Association, Inc. and T. Michael Reiser (copy received by Board of Appeals on 10/19/96).

September 30 Second Petition for Judicial Review filed in the Circuit Court for Baltimore County by People's Counsel for Baltimore County (copy received by Board of Appeals on 10/19/96).

October 4 Certificate of Notice sent to interested parties.

October 11 Second Certificate of Notice sent to interested parties.

November 25 Record of Proceedings and Transcript of Testimony filed.

March 7, 1997 Opinion issued by the CCR for Balto. Co.; dec. of the CBA dated 9/19/96 was AFFIRMED (Christian M. Hall, J)

March 20 1st Notice of Appeal filed in the CBA by People's Counsel.

March 21 2nd Notice of Appeal filed by Michael Tanczyn on behalf of Glen Arm Comm. Assoc., Inc. and T. Michael Reiser.

10/28/98 T/C from Julie Wright, Esq. (Whiteford, Taylor & Preston) inquiring about location of closed file since case was concluded in Upper County; Mr. Prosser made exhibits in applying for permits.

Feb. 24, 1999 Mandate issued by the CBA (no document rec'd by CBA).

May 19, 1999 writ of Certiorari denied by the Ct. of Appeals (no document rec'd by CBA).

5/10/96 -Letter from Michael P. Tanczyn, Esquire, requesting reconsideration of Board's 5/06/96 Amended Opinion Pursuant to Remand.

Motion for Reconsideration from P. Zimmerman requesting that the Board reconsider its 5/06/96 Amended Opinion.

5/17/96 -Response letter from S. Barnight, Esquire, in response to dms requests from M. Tanczyn and P. Zimmerman.

5/20/96 -Notice to Rescind Amended Opinion issued by CBA; Amended Opinion issued by CBA on May 6, 1996 is RESCINDED; to be scheduled for hearing as appropriate.

5/20/96 - Notice of Assignment /On Remand from Circuit Court sent to parties; matter scheduled for hearing on Wednesday, June 5, 1996 at 1:00 p.m., to re-open case for purpose of determining whether requested zoning classification is warranted pursuant to Order of CCR; CBA having been affirmed by CCR as to question of error; no additional testimony or evidence to be taken at hearing of 6/05/96.

G. Scott Barnight, Esquire
The Prosser Company, Inc.
c/o James J. Prosser
Whitney, Bailey, Cox & Magnani
Michael P. Tanczyn, Esquire
Glen Arm Community Assn., Inc.
and T. Michael Reiser
Barbara Scheper Lynch
James Earl Kraft
People's Counsel for Baltimore County
Pat Keller
Jeffrey Long
Lawrence E. Schmidt
W. Carl Richards /PDM
Docket Clerk /PDM
Arnold Jablon, Director /PDM
Virginia W. Barnhart, Co. Attorney

5/28/96 - Letter to KCB from M. Tanczyn requesting additional clarification of above notice and cover letter.

5/28/96 - Response from KCB to Mr. Tanczyn; no additional clarification available at this time; no testimony or evidence noted on Notice at request of Board after conference with ROS.

6/04/96 -Letter from Mr. Zimmerman regarding panel member deficiency and holdings of the Courts.

6/20/96 -Notice of Assignment of hearing scheduled for Wednesday, July 3, 1996 at 9:45 a.m. /for conclusion of matter per issues raised at hearing of 6/05/96. (RBM)

6/25/96 -Letter from M. Tanczyn requesting later start time for 7/03/96 (move to 10:30 a.m.) as a result of a previously scheduled 10:00 a.m. meeting that morning already on his calendar.

- In response to inquiry from P. Zimmerman and per ROS, matter scheduled at 9:45 will not take more than 15 or 20 minutes; therefore, no need to assign to later time as requested by Mr. Tanczyn.

6/26/96 -T/C to Eve /M. Tanczyn's office; Board's intention that matter scheduled for 7/03/96 will not take more than the allotted time (CBA has 10:00 a.m. hearing on unrelated matter scheduled for that morning). Therefore, his request to reschedule to later that date will be denied.

- T/C from S. Barnight's office (Julie Wright); Board will convene for brief period only on 7/03/96 at 9:45 a.m.; Chairman to rule on open motions from the bench that date; will not require more than allotted time; therefore, Mr. Tanczyn's request is denied and the Board will convene as scheduled at 9:45 a.m. on 7/03/96. No witnesses, no argument; only ruling by CBA.

7/03/96 -This matter was concluded by the Board in public hearing and on the record this date. It was the determination of the Chairman Schuetz, for reasons as stated on the record this date, that CBA would proceed as originally stated, with Mr. Buchheiser and Ms. Levero reading the transcript from the original hearing before the Board and then deliberating at a date to be determined as to the issue of warranted, pursuant to the Order of the Circuit Court.

7/12/96 -Notice of Deliberation sent to parties; matter scheduled for public deliberation on Thursday, August 8, 1996 at 2:00 p.m. Notice also sent to R.B.M.

8/08/96 -Deliberation completed; Board unanimously found that reclassification is warranted; written Opinion/Order to be issued. (R.B.M.)

93-141 JFO
Seals on Plats
Road Names on Plats
Property Clearly Outlined on Vicinity Map
Attorney Brief
Description + Plat Acreage Doesn't Match
\$100 Rev Fee mark known

94-142 HAFORD DIST
Attorney Brief
Ope Larson

94-143 PROSSER
Seals on Plats
Outline Portion of Property to be Released in Bold Line
Floor Plans Needed
Include Address on Bldg or Plan
Parking Cakes per 5409 Needed
Parking Material?
Typical + Dimension Parking Space + Parking
Disks
Complete Bldg Setbacks
Title Site + Landscape Plan
Variances for Setbacks
\$100 Rev Fee OR Var. Fee

94-144
LARGE MR USE, HT-SETBACK
RESTRICTION LINE
WITH PROPOSED INFO
ZONING CHART, CONFORMANCE
COMPLIANCE WITH CIVIL'S ON
MANUAL + LIGHT PROCESSING
UNDER R PR 5.24.1
and MR RESTRICTION PERMANENT
OF S. 253.3
BASED ON ENVIRONMENTAL STATEMENT
THIS MAY BE EXPECTED.

Carl need to see you
Saw Carl and see
10/28/98
10/28/98
10/28/98

August 31, 1993 Petition filed.

James J. Prosser, Sec /Treas
The Prosser Company, Inc. Petitioner
P.O. Box 5036
Glen Arm, MD 21057

James Earl Kraft
Baltimore County Board of Education
Mail Stop 1102-J

People's Counsel for
Baltimore County

P. David Fields *Jeffrey Long*
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards, Jr.
Docket Clerk /ZADM
Arnold Jablon, Director /ZADM

Michael P. Tanczyn, Esquire
Suite 106, 606 Baltimore Avenue
Towson, MD 21204
Counsel for Glen Arm Comm. Assn.
Entered appearance 3/17/94

Barbara Scheper Lynch
832 Providence Road
Towson, Maryland 21286
(COPY OF DECISION)

#CR-94-143
Item #3, Cycle II, 1993/94
11th Election District
6th Councilmanic District
5.2 +/- acres
(Documented Plan)

[illegible]

JFO
93-141
Scott
Backlight
OK
10/18

HARFORD JOINT VENTURE
94-142 Att
Ed Cowan

PROSSER
94-143

Scott
Barkright
OK 10/19

94-144

James
(also Scott)
Mark
OK
10/8

RECLASS Day 1

Seals on Plats ~
Road Names on Plats
Property Clearly Outlined on Vicinity Map
Attorney Brief
Description + Plat Acreage Doesn't Match
\$100 Rev Fee Mark Krome

Day 2

Attorney Brief
One Lesson

Day 3

Seals on Plats
Outline Portion of Property to be Reclassified in
Bold Line
Floor Plans Needed
Include Addresses on Bldg or Plan
Parking Calcs. per 5409 Needed
Paving Material?
Typical + Dimension Parking Space + Parking
Aisles
Complete Bldg Setbacks
Title Site + Landscape Plan
Variances for Setbacks
\$100 Rev. Fee or Var. Fee #100.00

Do Vicinity Map on Site Plan **OK**

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director DATE: October 28, 1998
Permits & Development Management

FROM: Charlotte E. Radcliffe
County Board of Appeals

SUBJECT: Closed File: CR-94-143
PROSSER COMPANY / Item 3, Cycle II, 1993/94

Since this case was completed in the upper courts in May of 1998, we are hereby closing the Board's file in this matter.

The original file and exhibits will be returned to your office by John Almond, Records Manager /CCT.

Attachment (CBA Case File No. CR-94-143
and large board exhibits)

RECEIVED
COUNTY CLERK OF BALTIMORE

Law Offices
Michael P. Tanczyn, P.A.
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
(410) 296-8823 • (410) 296-8824
Fax: (410) 296-8827

March 16, 1994

County Board of Appeals
Old Courthouse
400 Washington Avenue
Towson, MD 21204

Re: Cycle II - 1993, Item 3
The Prosser Company, Inc.
Case Number CR-94-143

Gentlemen:

Please enter our appearance on behalf of the Glen Arm Community Association, Inc. and Michael Reier in the above matter.

We ask that this matter be referred back to the Planning Board since a revised site plan was submitted to Baltimore County on or about February 24, 1994 to John Lewis of ZADM materially changing the Petitioner's site plan. (Baltimore County Code, §§26-211, 26-206 and 26-207) The Planning Board has previously approved sending this matter for hearing by split vote on January 27, 1994.

We would ask the Board to rule on this preliminarily.

Very truly yours,

Michael P. Tanczyn

MPT/ed

cc: Glen Arm Community Association, Inc.
Mr. Michael Reier

LAW OFFICES
WHITEFORD, TAYLOR & PRESTON

SUITE 1400
SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202
TELEPHONE 410-541-8100
FAX 410-752-7092

500 COURT TOWERS
210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4515
410-832-2000
FAX 410-832-2015

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488 17TH STREET, NW
WASHINGTON, D.C. 20006-3919
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1317 KING STREET
ALEXANDRIA, VIRGINIA 22314-3728
TELEPHONE 703-636-3742
FAX 703-636-2245

G. SCOTT BARNHIGHT
DIRECT NUMBER
410-812-1092

June 29, 1994

DELIVERY BY HAND

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

Re: The Prosser Company
Case No. CR-94-143
Delay of Proceedings

Dear Mr. Hackett:

Please be advised that I am in receipt of Mr. Tanczyn's June 21, 1994 correspondence to you wherein he requests a further delay in the scheduled hearings in the above-referenced matter. On behalf of the Petitioner, I strenuously object to any further delay in this hearing. The initial hearing date was April 6, 1994. Further, additional dates of June 16 and July 19 have been added. Therefore, since prior to April 6, 1994, Mr. Tanczyn has had ample opportunity to identify his expert witnesses and to schedule their testimony on three hearing dates that span more than four months.

Since further delay unnecessarily prejudices the Petitioner, I respectfully object to Mr. Tanczyn's request for another hearing date more than a month after the July 19, 1994 hearing. Mr. Tanczyn's letter fails to identify the nature of Dr. Euster's

William T. Hackett, Chairman
June 29, 1994
Page 2

testimony. As a result, it is impossible to gauge whether her testimony would be relevant or admissible.

Thank you for your kind attention to this matter.

Sincerely,

G. Scott Barnhight

GSB/slr
cc: Mr. Joseph Prosser
Mr. James J. Prosser
Mr. Samuel H. Lindsay
Michael P. Tanczyn, Esquire

LAW OFFICES
WHITEFORD, TAYLOR & PRESTON

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TELEPHONE 703-636-3742
FAX 703-636-2245

G. SCOTT BARNHIGHT
DIRECT NUMBER
410-812-1092

October 13, 1994

DELIVERY BY HAND

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

Re: In the Matter of The Prosser Company, Inc.
Case No. CR-94-143

Dear Mr. Hackett:

This office is in receipt of People's Counsel Memorandum filed in the above-referenced case. Attached to People's Counsel Memorandum is Exhibit B, a Baltimore Sun article dated September 2, 1994. The Petitioner, the Prosser Company, Inc., strenuously objects to this violation of the Rules of Procedure. The record has been closed in this matter and all counsel are well aware that we are limited to argument of the evidence presented to the Board at the hearing. It is totally inappropriate for People's Counsel to attempt to add evidence to the record through exhibits to their Memorandum. This article has not been properly authenticated and clearly is inadmissible as hearsay evidence. Counsel has obviously not been afforded the opportunity to cross examination Mr. Ted Shelsby, the writer of the article or the individuals quoted within the body of the article. Therefore, the Petitioner hereby moves that those portions of the People's Counsel Memorandum referencing the inappropriate evidence be stricken from the record.

In the event that the Board determines that this additional evidence is appropriate, I will take this opportunity to offer several comments. Notwithstanding People's Counsel's characterization of the article, several important assertions are revealed. First, Grumman has been acquired by Northrop Corporation. The

William T. Hackett, Chairman
October 13, 1994
Page 2

article does not indicate the intentions of the acquiring party, Northrop. Second, the intentions that are indicated all suggest the continuing use of the 380,000 square foot buildings for manufacturing and employment uses. Businesses come and go. Markets change. Any suggestion that the Grumman zoning should be removed out from under a 380,000 square foot building is ridiculous. If the situation is unstable, the plans of the Prosser Company can only help to stabilize the area.

Thank you for your kind attention to this matter.

Sincerely,

G. Scott Barnhight

GSB/slr
cc: Mr. Joseph Prosser
Mr. James J. Prosser
Michael P. Tanczyn, Esquire
Peter Max Zimmerman, Esquire

WHITEFORD, TAYLOR & PRESTON
L.L.P.

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TELEPHONE 703-636-3742
FAX 703-636-2245

G. SCOTT BARNHIGHT
DIRECT NUMBER
410-812-1092
2029122@comcast.com

May 16, 1996

Robert O. Schuetz, Chairman
County Board of Appeals for Baltimore County
400 Washington Avenue, Room 49
Towson, Maryland 21204

Re: The Prosser Company, Inc.
Remand/Case No. CR-94-143
Civil Action No. 95-CV-0288

Dear Mr. Schuetz:

This letter is in response to the letters submitted to you by Michael P. Tanczyn and the Office of People's Counsel regarding the above-referenced matter and your recent telephone request for a prompt written response.

Mr. Tanczyn and the Office of People's Counsel request reconsideration of the Board's Amended Order in the instant case and assert that the Amended Order violates, *inter alia*, Rules 1 and 2 of the Rules of Practice and Procedure of the County Board of Appeals. Specifically, Mr. Tanczyn and the Office of People's Counsel assert that Rule 1 "requires a minimum of 2 members to render a decision, only with agreement of counsel of record or parties of record, and normally 3 members to conduct the business of the Board." Accordingly, Mr. Tanczyn contends that the Amended Order was improper in that it was signed only by you. Additionally, Mr. Tanczyn asserts that, pursuant to Rule 2, the Board was required to conduct another public hearing on the reconsideration of the factors set forth in § 2-356(j)(2).

Robert O. Schuetz, Chairman
May 16, 1996
Page 2

The Office of People's Counsel similarly asserts that "[t]here has not been the required hearing, trial, and decision on the record by a full three (3)-member panel of the County Board of Appeals. . . .". Also, the Office of People's Counsel asserts that no public deliberation has occurred and that "[t]here has not been a legally sufficient statement of reasons under Code Sec. 2-356 and *People's Counsel v. Beechwood*, 107 Md. App. 627 (1996)."

Pursuant to Rule 7-209, the circuit court, sitting as an appellate court, "may dismiss the action for judicial review or may affirm, reverse, or modify the agency's order or action, remand the action to the agency for further proceedings, or an appropriate combination of the above." The purpose of remanding a case is set forth in Rule 8-604(d)(1):

(1) *Generally*.—If the Court concludes that the substantial merits of a case will not be determined by affirming, reversing or modifying the judgment, or that justice will be served by permitting further proceedings, the Court may remand the case to a lower court. In the order remanding a case, the appellate courts shall state the purpose for the remand. The order of remand and the opinion upon which the order is based are conclusive as to the points decided. Upon remand, the lower court shall conduct any further proceedings necessary to determine the action in accordance with the opinion and order of the appellate court.

(Emphasis added.)

The Memorandum Opinion and Order issued by the Circuit Court for Baltimore County in the instant case found that the Board was correct in finding error due to events that occurred subsequent to the Comprehensive Zoning Map Process. The Circuit Court also recognized that, with respect to the factors set forth in § 2-356(j)(2), the Board found that the proposed use for the subject property complied with the master plan and the 1992 Proposed Land Use Map, and would remove health hazards produced by the three failing septic systems. The Circuit Court noted that the Board referred to the testimony of several witnesses who asserted that the proposed use would be consistent with the character of the surrounding area, would provide additional jobs, would increase the tax base, and would increase business efficiencies.

The Circuit Court, however, also found that the Board failed to "articulate" its findings with respect to the factors set forth in § 2-356(j)(2). According to the Circuit

Robert O. Schuetz, Chairman
May 16, 1996
Page 3

Court, because of that failure, on remand, the Board must consider those factors and make a "statement of findings thereon."

Petitioner disagrees with all of the assertions of Mr. Tanczyn and Office of People's Counsel. However, assuming the assertions of Mr. Tanczyn and the Office of People's Counsel that the issue of warranted must be deliberated publicly by three Board Members is correct, the remand order does not require a trial and opportunity for the parties to be further hear.

The purpose of remanding a case is to permit the lower court, or in this case, the Board of Appeals, to conduct any further proceedings necessary to determine the action in accordance with the opinion and order of the appellate court. The Memorandum Opinion and Order of the Circuit Court does not direct the Board of Appeals to take additional evidence or conduct a new hearing regarding the issue of whether the reclassification is warranted. Rather, the Memorandum and Opinion of the Circuit Court states that the purpose of remanding the case to the Board is so that the Board may consider the factors set forth in § 2-356(j)(2) and make a statement of findings for the record.

In light of the Circuit Court's instructions in its Memorandum Opinion and Order, this Board should do no more than conduct public deliberations on the issue of whether the reclassification is warranted. This Board should not take additional evidence on that issue or conduct a new trial. This Board should do no more than consider the existing record in the case and base its additional findings on the testimony that was presented at the original hearing before the Board.

Thank you for your kind attention to this matter.

Sincerely,

G. Scott Barnhight

GSB:mbb

cc: Mr. James J. Prosser, M.C.E., P.E.
Mr. Joseph L. Prosser, Jr.
Mr. Chuck Pearson

77754

TRAFFIC ANALYSIS

A formal traffic impact analysis was prepared to assess the potential traffic impacts associated with development of the proposed Prosser Company project. Presented herein is a synopsis of the report findings. Data collected in the assessment included:

- * Turning Movement Counts
- * Historical Traffic Counts
- * Development Plans
- * Projected Trip Generation of Development

The proposed developed will be constructed in the northeast quadrant of the Glen Arm Road/Long Green Pike intersection; operations of the intersection were the focus of the studies. A 12-hour turning movement count was conducted at the intersection on Tuesday, June 8, 1993. The morning and evening peak hour volumes from the count were used along with the existing lane geometry to quantify existing traffic operations. Results of the critical lane capacity analyses indicate that the intersection currently operates at acceptable levels of service during the morning and evening peak hours, levels of service "C" and "A" respectively.

Current programming for the project includes an employment force of between 32 and 40 individuals. Eighty percent of the staff would arrive prior to 7:30 a.m., and depart prior to 4:00 p.m. The existing evening peak hour occurs from 4:45 to 5:45, well after the peak period of the generator. Assuming the maximum number of employees, the facility will add approximately 32 inbound and 7 outbound trips to the network during the morning peak, and only eight exiting and one entering in the evening. Based on observations of the existing facilities in Glen Arm, it was assumed 50% of the trips would be oriented to/from the north and east, indicating a major employment draw from the residential areas in Harford County.

Access to the site will be provided along Long Green Pike north of Glen Arm Road. Thus, of the new trips will pass through the Glen Arm Road/Long Green Pike intersection, minimizing impacts significantly. It is anticipated that intersection traffic volumes will increase by only one percent with maximum build-out of the facility. Given the trip distribution, only 19 additional trips would be added to the Glen Arm Road/Long Green Pike intersection during the morning peak hour and 4 during the evening.

Existing zoning of the property would yield a build-out of one dwelling unit with a trip attraction to/from the west. The resultant trip generation is approximately one peak hour trip per day.

30-Aug-93

FOREST CONSERVATION WORKSHEET
VERSION 1.0

NET TRACT AREA:

A. Total tract area.....	=	5.00
B. Area within 100 year floodplain	=	0.00
C. Area to remain in agricultural production.....	=	0.00
D. Net tract area.....	=	5.00

LAND USE CATEGORY: (from table 3.2.1, page 40, Manual)

Input the number "1" under the appropriate land use zoning, and limit to only one entry.

ARA	MDR	IDA	HDR	MPD	CIA
0	0	0	0	0	1

E. Afforestation Threshold.....

F. Conservation Threshold.....

15%	x D =	0.75
15%	x D =	0.75

EXISTING FOREST COVER:

G. Existing forest cover (excluding floodplain).....

H. Area of forest above afforestation threshold

I. Area of forest above conservation threshold

0.60
0.00
0.00

BREAK EVEN POINT:

J. Forest retention above threshold with no mitigation.....

K. Clearing permitted without mitigation.....

0.00
0.00

PROPOSED FOREST CLEARING:

L. Total area of forest to be cleared.....

M. Total area of forest to be retained.....

0.21
0.39

PLANTING REQUIREMENTS:

N. Reforestation for clearing above conservation threshold.....

P. Reforestation for clearing below conservation threshold.....

Q. Credit for retention above conservation threshold.....

R. Total reforestation required.....

S. Total afforestation required.....

T. Total reforestation and afforestation required.....

0.00
0.42
0.00
0.42
0.15
0.57

CR-94-143

The Prosser Company, Inc. Property

Glen Arm, Maryland

ENVIRONMENTAL IMPACT STATEMENT

Proposed Development

The proposed building program includes approximately 37,710 square feet of new building, broken down as follows:

11,000 SF Proposed Building:	Ornamental iron (steel) and miscellaneous steel fabrication for commercial and industrial sales.
8,560 SF Addition:	Ornamental iron (steel) and miscellaneous steel fabrication for commercial and industrial sales.
3,300 SF Addition:	Ornamental iron (steel) and miscellaneous steel fabrication for commercial and industrial sales.
14,850 SF Addition:	Ornamental iron (steel) and miscellaneous steel fabrication for commercial and industrial sales.
10,600 SF Proposed Building:	Assembly of electrical control and power distribution panels.

Forty-four parking spaces are proposed on site, plus approximately 0.90 acres of paving for vehicular circulation and loading/unloading areas.

Grading required for construction of the facility will be done so as to minimize disturbance to the land.

A new underground sewage disposal system is proposed for the property. The system shall be designed and constructed in accordance with all requirements of Baltimore County Department of Environmental Protection and the State of Maryland.

Domestic water will be supplied to the site from an existing well.

Stormwater runoff will be managed in accordance with Baltimore County requirements. Quantitative and qualitative management will be provided for the 2 and 10 year 24 hour storm events.

1

PROSSER COMPANY
ACCESS STUDY

August 1993

I. PURPOSE AND SCOPE

The provision of safe and convenience access is a vital component to be considered in any new development. Based on this philosophy, Whitney, Bailey, Cox & Magnani (WBCM) conducted a study of the traffic impacts to the adjacent street network associated with the proposed Prosser Company site in the Glen Arm community of Baltimore County, Maryland. The analyses focused on operations at the Glen Arm Road/Long Green Pike intersection and the proposed site access intersection. A study area map for the project is illustrated in Figure 1.

Data collected for the study includes the following:

- 12-hour turning movement count at the Glen Arm Road/Long Green Pike intersection;
- Peak period field observations of traffic operations;
- Quantification of proposed build-out, hours of operation and number of employees for the new facility; and
- Average annual traffic volume growth trends.

The report provides a description of current traffic operating conditions in the study area, determination of design year traffic volumes with and without the Prosser Company site, and an assessment of the impacts to the study area roadway network caused by the projected traffic volumes.

II. EXISTING CONDITIONS

Roadway Network/Site Conditions

The Glen Arm Road/Long Green Pike intersection is the primary intersection in the study area. A single lane approach is provided in all directions. Widths of the approach roads measure 24 ft. and are rural collector/arterials with rolling hills and a winding horizontal alignment. Posted speed limits are 30 mph. Glen

Charter. Judge Hinkel held that the BCZR § 1A00.3.A.1.a could not limit the Board's power to hear reclassification cases. E. 252-53.

Moreover, planned public water and sewer service is not necessary for Prosser's development. Private wells and septic will provide all the necessary services. An amendment of the Master Water and Sewer Plan is unnecessary for the Prosser's approved documented site plan. In fact, the law requires that Prosser develop the property in accordance with the documented site plan, which shows well and septic systems, similar to those used by the other industrial developments in the Glen Arm area.

III. The Beachwood Case Does Not Impact Prosser's Petition for Reclassification.

Appellants failed in their attempts to convince Judge Hinkel to alter or amend his opinion and order dated December 7, 1995 in light of this Court's decision in *People's Counsel v. Beachwood I, L.P.*, 107 Md. App. 627 (1995), *cert. denied*, 342 Md. 572 (1996).⁶ As stated *supra*, Appellants have waived their rights to raise issues concerning the *Beachwood* case or the Board's finding that a mistake existed in the zoning classification on the 5.2 acre-parcel. *See* Discussion of *Fiel v. Howard County Board of Appeals*, 67 Md. App. 595 (1986) set forth above. Notwithstanding Appellants' acquiescence in Judge Hinkel's affirmation of the Board's finding and decision regarding the zoning mistake on the 5.2 acre-parcel, this Court's decision in *Beachwood*, does not alter the Board's approval of Prosser's Petition for Reclassification.

⁶ Appellants requested reconsideration of Judge Hinkel's opinion and order dated December 7, 1995, in light of the *Beachwood* decision, even though *Beachwood* was decided and filed prior to December 7, 1995. Judge Hinkel denied Appellants' Motion to Alter or Amend Judgment. E. 257.

In *Beachwood*, this Court stated that an "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." *Beachwood*, 107 Md. App. at 645 (quoting *Boyce v. Sembly*, 25 Md. App. 43, 50-51 (1975)). In the instant matter, the Board based its approval of Prosser's Petition for Reclassification on probative evidence which established that the assumptions relied upon by the County Council at the time of the 1992 CZMP were invalid. Specifically, the Board found, and Judge Hinkel agreed, that, when it adopted the 1992 Map, the County Council could not have known that the three parcels would be combined to form the 5.2 acre-parcel for development purposes or that the septic systems were failing. The Board's findings of mistake in the instant matter are completely consistent with the findings in the *Beachwood* case.

IV. The Board Did Not Have To Hold An Evidentiary Hearing On Remand.

Judge Hinkel did not order a new hearing in the merits when he remanded the instant matter instructing the Board to articulate its findings on whether the reclassification was warranted. When the matter finally reached the Board on remand, two of the three original triers of fact had resigned from the Board. The Board, therefore, assigned a three-member panel, comprised of Chairman Robert O. Schuetz, the remaining original panel member, and two other members, to conduct public deliberations on the remand issue of whether the reclassification was warranted pursuant to the factors set forth in § 2-356(j)(2). After hearing oral argument from the

parties on whether the Board should hold a hearing *de novo*, the Board decided that it would hear no new testimony and would take no new evidence, but instead, would conduct public deliberations and base its § 2-356(j)(2) factual findings regarding the issue of warranted on the existing record testimony.

At the oral argument before Judge Kahl, Appellants argued that the Board should have conducted a *de novo* hearing on remand because two of the three board members who originally heard the case were unavailable. As Judge Kahl correctly held, the Board was not required to hear the entire case or any part of the case *de novo*. Pursuant to Rule 7-209, the circuit court, sitting as an appellate court, "may dismiss the action for judicial review or may affirm, reverse, or modify the agency's order or action, remand the action to the agency for further proceedings, or an appropriate combination of the above." Rule 8-604(d)(1) explains the responsibilities of the lower court, or in this case the Board, when a case is remanded for further proceedings:

(1) *Generally.*-- If the Court concludes that the substantial merits of a case will not be determined by affirming, reversing or modifying the judgment, or that justice will be served by permitting further proceedings, the Court may remand the case to a lower court. In the order remanding a case, the appellate courts shall state the purpose for the remand. The order of remand and the opinion upon which the order is based are conclusive as to the points decided. Upon remand, the lower court shall conduct any further proceedings necessary to determine the action in accordance with the opinion and order of the appellate court.

(Emphasis added).

In the instant matter, Judge Hinkel held that the Board was correct in finding error due to events that occurred subsequent to the 1992 CZMP; however, he held that

the Board failed to "articulate" its findings with respect to the issue of whether the reclassification was warranted pursuant to the factors set forth in § 2-356(j)(2). Because of that failure, Judge Hinkel remanded the matter to the Board, so it could "make a statement of findings" pursuant to factors set forth in § 2-356(j)(2). Judge Hinkel did not order a *de novo* hearing or require that the Board take any additional testimony.

The Board reached its decision not to hold a *de novo* hearing by applying the standard set forth in *Van Teslaar v. Bender*, 365 F. Supp. 1007, 1012 (D. Md. 1973). In *Van Teslaar*, the United States District Court for the District of Maryland held that in determining whether a *de novo* proceeding is necessary in circumstances where the original examiner is unavailable, the following test should be used:

[T]he [Maryland Administrative Procedure Act] allows substitution of examiners without a *de novo* proceeding only where the original examiner is unavailable and either (1) the case is not one in which the resolution of conflicting testimony requires a determination of the credibility of the witnesses or (2) if it is a case in which credibility is involved, the parties agree to proceed without a *de novo* administrative proceeding.

Id. at 1012.

As the Board in the instant case recognized, there was "no adverse expert testimony on the ["warranted"] issue on remand; that issue being of a technical nature which is routine to the respective experts' professions." E. 310. The material facts were uncontradicted and the case turned on the analysis and opinions of experts. As the Board correctly noted with regard to the instant matter, "the evaluation of lay witness credibility and demeanor are not a material factor in the evaluation of the technical merits of the proposed zoning classification, the Board need only review the testimony

of those witnesses who testified to [the issue of "warranted.]" E. 310. Appellants called no experts to testify on the issue of whether the reclassification was warranted, and therefore, a resolution of the "warranted" issue did depend upon the witnesses' demeanor and manner of testifying.

V. The Board Articulated Its Findings As Required by BCC § 2-356(j)(2)

The Second Board Order demonstrates that the Board articulated its findings as required by BCC § 2-356(j)(2). BCC § 2-356(j)(2) of the Baltimore County Code provides that:

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. [Bill No. 46, 1979.]

In light of the testimony adduced, the Board was persuaded that the proposed reclassification of the subject property would not impact existing transportation facilities, utilities, and schools; would not impact solid waste disposal facilities; would not impact the capital program; is in "strict accordance with existing and prospective classification with the Master Plan, the County plan for sewerage and water supply

facilities;" is compatible with "the surrounding, historically manufacturing area;" and is within the spirit and intent of the BCZR. E. 212.

Regarding any impact on population trends, the Board found that approval of the Petition for Reclassification would allow Prosser to establish its affiliated companies on the subject property, which in turn, would create additional employment in Baltimore County and increase the tax base. Additionally, the proposed reclassification does not impact recreational facilities, schools, and population trends, because, as the Board found, the area in which the subject property is located is "predominantly business and industrial in use." E. at 212.

Regarding impacts to water supply facilities and the environment, the Board found that, in light of the documented site plan, the proposed reclassification would mitigate existing septic problems, mitigate impacts to water supply facilities, improve sewerage in the area, and enhance the general welfare of the community. E at 210.

The Board followed Judge Hinkel's instructions and set forth its factual findings regarding the "warranted" issue. Contrary to Appellants' assertion, the Board properly articulated its findings pursuant to BCC § 2-356(j)(2), and based its findings on substantial evidence.

CONCLUSION

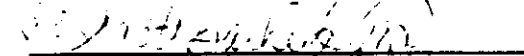
The Board initially heard the instant matter on April 6, 1994, June 6, 1994, July 19, 1994, and September 20, 1994. At those hearings, the Board found that the 1992 Comprehensive Zoning Map's designation of the subject site as R-O/CR and R.C. 5.

was in error, and that the proposed documented site plan was warranted. Nearly three years later, on September 16, 1997, the Board again determined that the reclassification of the subject site was warranted.

The adoption of the 1996 Map does not affect the Board's approval of Prosser's Petition for Reclassification because the County Council did not change the zoning designations on the subject site. Moreover, the evidence demonstrates that reclassification to M.L., as conditioned and limited by the documented site plan, is warranted.

WHEREFORE, The Prosser Company, Inc., respectfully requests that this Court affirm the findings in the Second Board Order that the requested reclassification is warranted.

Respectfully submitted,


G. Scott Barhight, Esquire
Julie D. Wright, Esquire
Whiteford, Taylor & Preston L.L.P.
210 West Pennsylvania Ave.
Towson, Maryland 21204

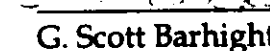
CERTIFICATE OF SERVICE

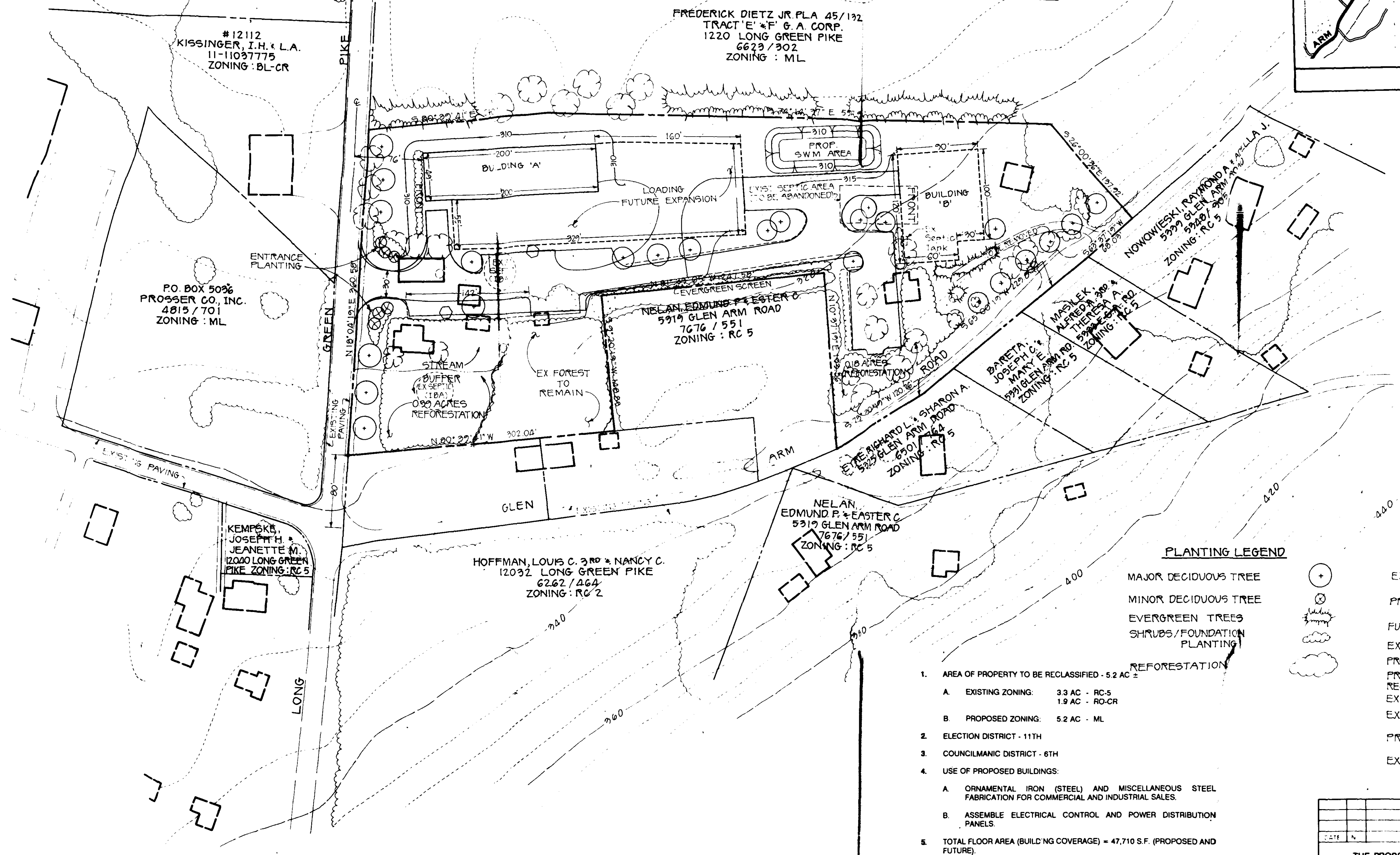
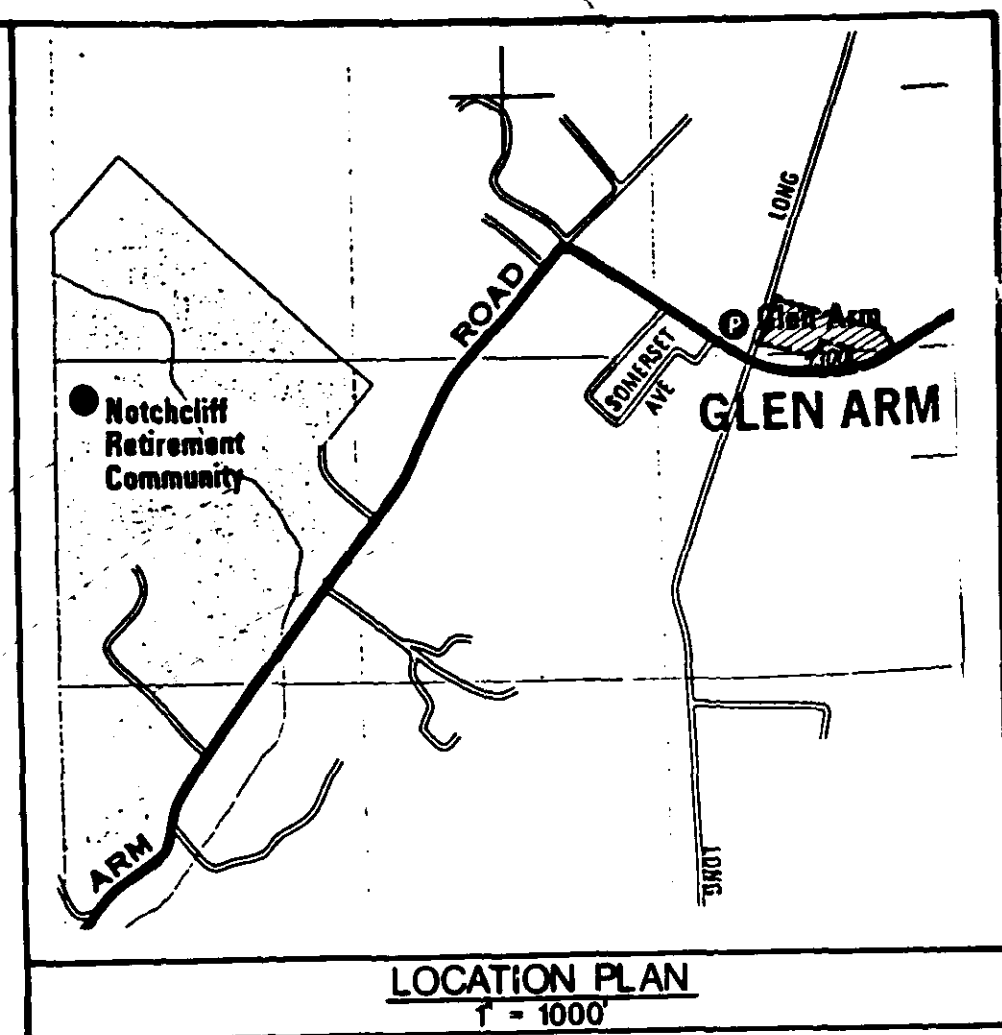
I HEREBY CERTIFY that, on this 15th day of September, 1997, a copy of the foregoing Brief and Appendix of Appellee, The Prosser Company, Inc., was mailed, first-class, postage prepaid, to:

Michael P. Tanczyn, Esquire
606 Baltimore Avenue, Suite 106
Towson, Maryland 21204

Peter Max Zimmerman, Esquire
Baltimore County People's Counsel
400 Washington Avenue
Towson, Maryland 21204

County Board of Appeals for Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

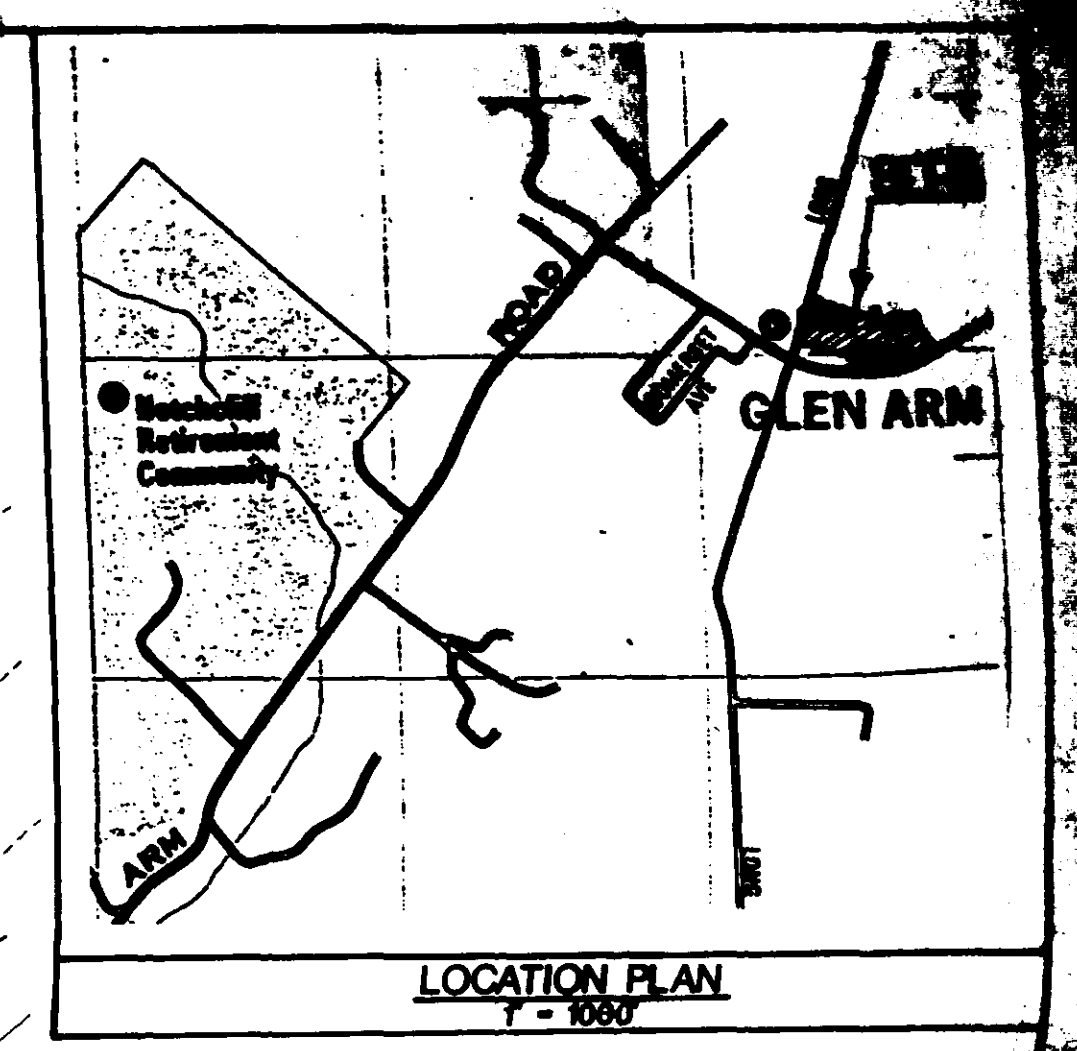
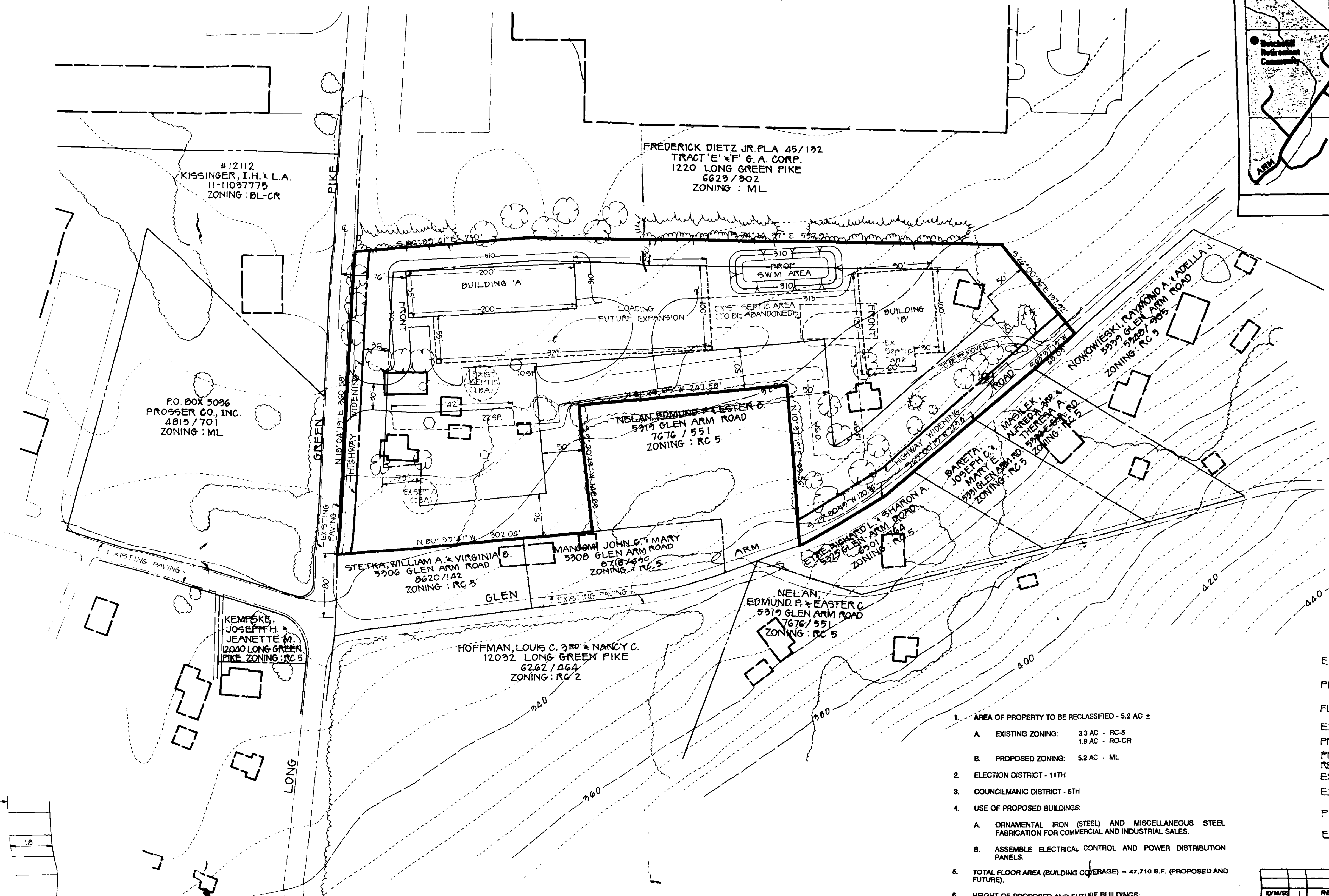
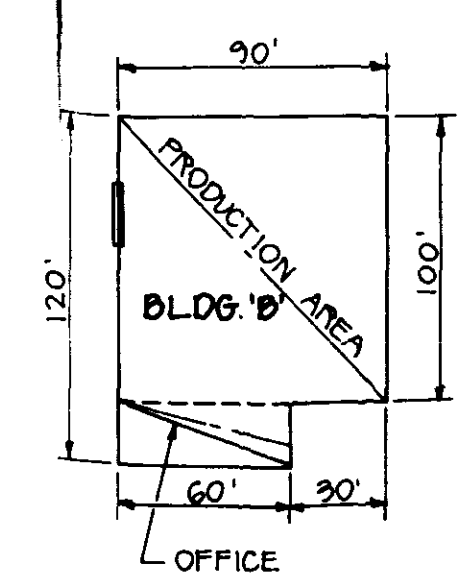
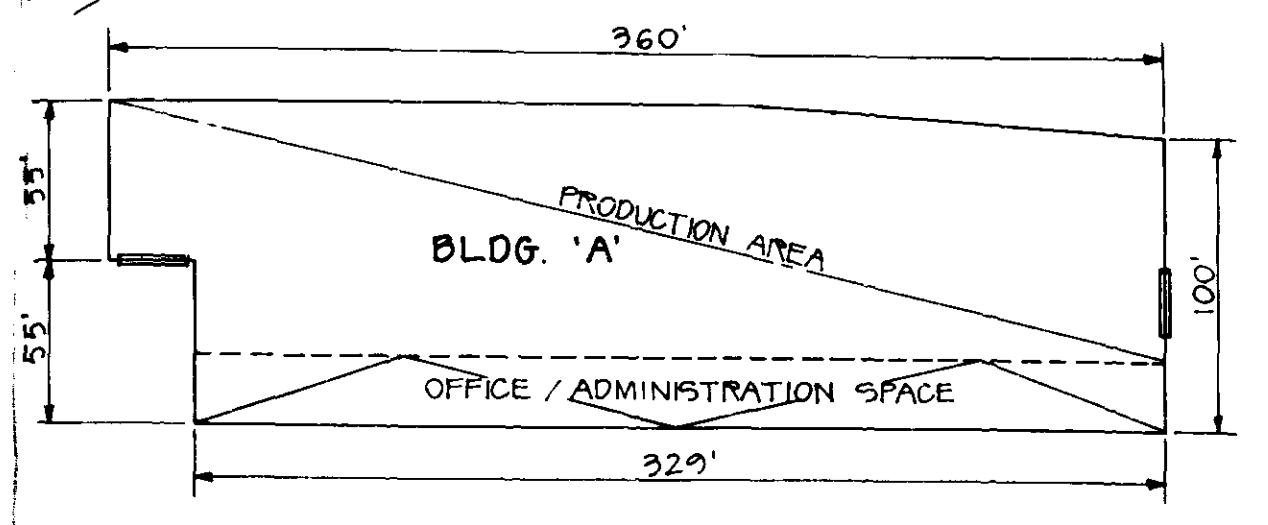
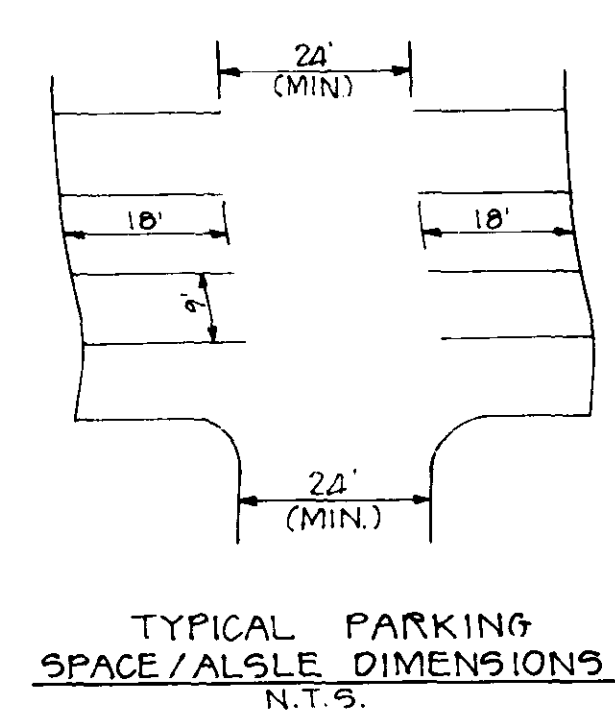
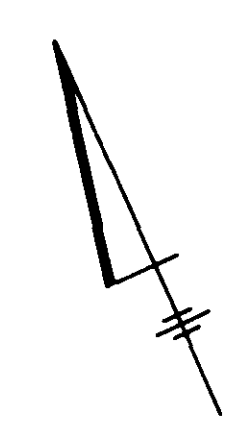

G. Scott Barhight



- PLANTING LEGEND**
- MAJOR DECIDUOUS TREE
 - MINOR DECIDUOUS TREE
 - EVERGREEN TREES
 - SHRUBS/FOUNDATION PLANTING
 - REFORESTATION
- LEGEND**
- EXIST. BLDG.
 - PROF. BLDG.
 - FUTURE BLDG.
 - EXIST. CONTOURS
 - PROF. GRADING
 - PROPERTY TO BE RECLASSIFIED
 - EXIST. PROP. LINES
 - EXIST. PAVING
 - PROF. PAVING
 - EXIST. VEG.

- AREA OF PROPERTY TO BE RECLASSIFIED - 5.2 AC ±
 - A. EXISTING ZONING: 3.3 AC - RC-5, 1.9 AC - RO-CR
 - B. PROPOSED ZONING: 5.2 AC - ML
- ELECTION DISTRICT - 11TH
- COUNCILMANIC DISTRICT - 6TH
- USE OF PROPOSED BUILDINGS:
 - A. ORNAMENTAL IRON (STEEL) AND MISCELLANEOUS STEEL FABRICATION FOR COMMERCIAL AND INDUSTRIAL SALES.
 - B. ASSEMBLE ELECTRICAL CONTROL AND POWER DISTRIBUTION PANELS.
- TOTAL FLOOR AREA (BUILDING COVERAGE) = 47,710 S.F. (PROPOSED AND FUTURE)
- HEIGHT OF PROPOSED AND FUTURE BUILDINGS:
 - BUILDING A - 31'
 - BUILDING B - 25'
- EXTERIOR MATERIALS OF PROPOSED BUILDINGS - METAL CLAD WITH PITCHED METAL ROOF.
- ALL EXISTING BUILDINGS, STRUCTURES, WELLS, SEPTIC TANKS, AND DRAIN FIELDS ARE TO BE REMOVED.
- MAXIMUM NUMBER OF EMPLOYEES: 40
- HOURS OF OPERATION: 80% OF EMPLOYEES WORK FROM 7:00 A.M. TO 4:00 P.M. 20% OF EMPLOYEES WORK FROM 8:30 A.M. TO 5:00 P.M.
- MAXIMUM LEVEL OF EMANATIONS: ALL SOUND-EMANATING DEVICES WILL BE CONTAINED IN BUILDING. SOUNDS IN BUILDING WILL BE FROM A FORGE, AND THESE SOUNDS ARE GENERALLY ASSOCIATED WITH METAL FABRICATION. THERE WILL BE NO VIBRATIONS, DUST, ODORS, OR GASES EMANATING FROM SITE.
- ALL DRIVEWAYS, PARKING AND LOADING AREAS TO BE PAVED.
- NO SIGNS ARE PROPOSED FOR THE SITE.

DATE		REVISION	
THE PROSSER COMPANY, INC. P.O. BOX 5036 GLEN ARM, MARYLAND 21057			
PLAN TO ACCOMPANY ZONING RECLASSIFICATION PETITION			
GLEN ARM		BAL. CO., MD.	
ENGINEER: WHITNEY, BAILEY, COX & MAGNANI CONSULTING ENGINEERS			
DRAWN: P.F.			
DATE: AUG. 31, 1993			
SCALE: 1" = 50'			
DRAWING NO.			
DATE		SHEET OF	



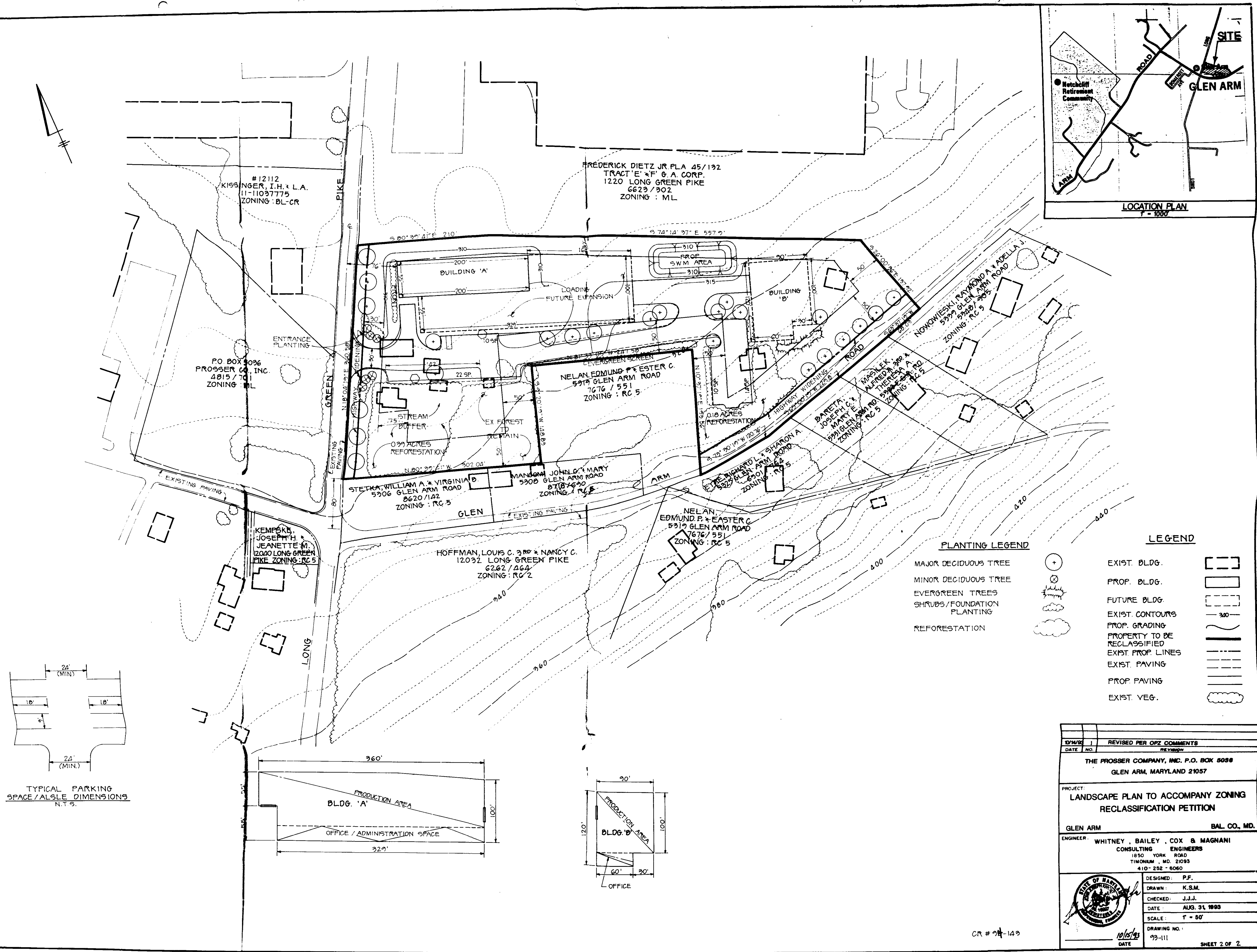
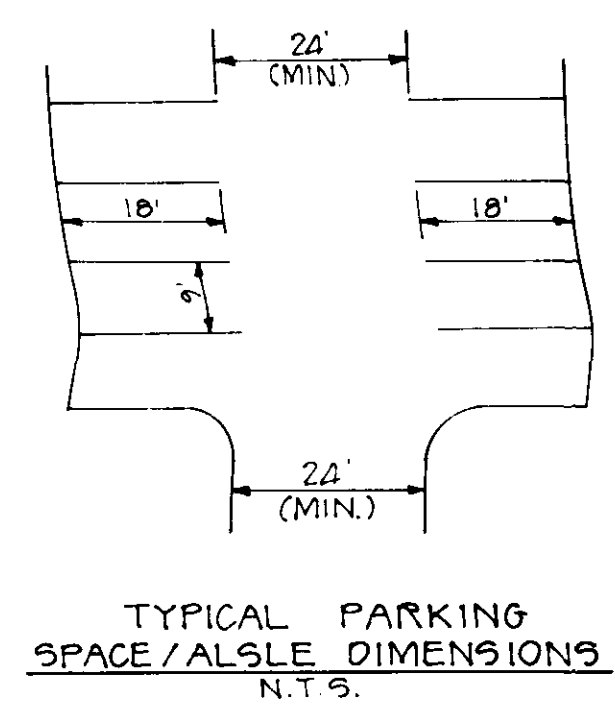
- AREA OF PROPERTY TO BE RECLASSIFIED - 5.2 AC ±
 - EXISTING ZONING: 3.3 AC - RC-5
1.9 AC - RC-CR
 - PROPOSED ZONING: 5.2 AC - ML
- ELECTION DISTRICT - 11TH
- COUNCILMANIC DISTRICT - 6TH
- USE OF PROPOSED BUILDINGS:
 - ORNAMENTAL IRON (STEEL) AND MISCELLANEOUS STEEL FABRICATION FOR COMMERCIAL AND INDUSTRIAL SALES.
 - ASSEMBLY ELECTRICAL CONTROL AND POWER DISTRIBUTION PANELS.
- TOTAL FLOOR AREA (BUILDING COVERAGE) - 47,710 S.F. (PROPOSED AND FUTURE)
- HEIGHT OF PROPOSED AND FUTURE BUILDINGS:
BUILDING A - 31' BUILDING B - 25'
- PARKING:
 - REQUIRED: 1 SPACE X 40 EMPLOYEES = 40 SPACES
 - PROPOSED: 56 SPACES
- EXTERIOR MATERIALS OF PROPOSED BUILDINGS - METAL CLAD WITH PITCHED METAL ROOF.
- ALL EXISTING BUILDINGS, STRUCTURES, WELLS, SEPTIC TANKS, AND DRAIN FIELDS ARE TO BE REMOVED.
- MAXIMUM NUMBER OF EMPLOYEES: 40
- HOURS OF OPERATION: 80% OF EMPLOYEES WORK FROM 7:00 A.M. TO 4:00 P.M. 20% OF EMPLOYEES WORK FROM 8:30 A.M. TO 5:00 P.M.
- MAXIMUM LEVEL OF EMISSIONS: ALL SOUND-EMANATING DEVICES WILL BE CONTAINED IN BUILDING. SOUNDS IN BUILDING WILL BE FROM A FORGE, AND THESE SOUNDS ARE GENERALLY ASSOCIATED WITH METAL FABRICATION. THERE WILL BE NO VIBRATIONS, DUST, ODORS, OR GASES EMANATING FROM SITE.
- ALL DRIVEWAYS, PARKING AND LOADING AREAS TO BE PAVED WITH BITUMINOUS OR CONCRETE.
- NO SIGNS ARE PROPOSED FOR THE SITE.

LEGEND

- EXIST. BLDG. [Symbol]
- PROP. BLDG. [Symbol]
- FUTURE BLDG. [Symbol]
- EXIST. CONTOURS [Symbol]
- PROP. GRADING [Symbol]
- PROPERTY TO BE RECLASSIFIED [Symbol]
- EXIST. PROP. LINES [Symbol]
- EXIST. PAVING [Symbol]
- PROP. PAVING [Symbol]
- EXIST. VEG. [Symbol]

DATE	NO.	REVISION
THE PROSSER COMPANY, INC. P.O. BOX 8000 GLEN ARM, MARYLAND 21087		
PROJECT: SITE PLAN TO ACCOMPANY ZONING RECLASSIFICATION PETITION		
GLEN ARM CR-94-143 BAL. CO. MD.		
ENGINEER: WHITNEY, BAILEY, COX & MAGNAN CONSULTING ENGINEERS 15183 18TH YORK ROAD TIMONUM, MD. 21088 410-252-6060		
DESIGNED: P.F. DRAWN: K.B.M. CHECKED: J.J.J. DATE: AUG. 31, 1993 SCALE: T = 50' DRAWING NO.: 93-111 SHEET 1 OF 2		

CR-94-143

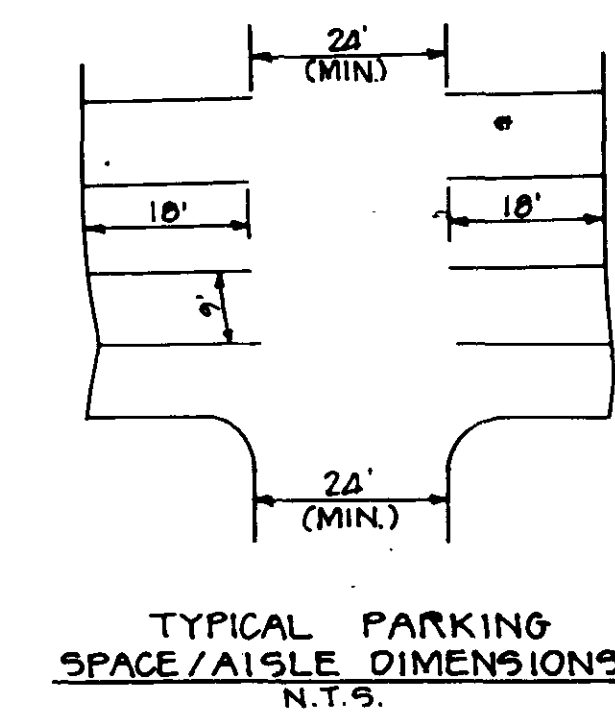
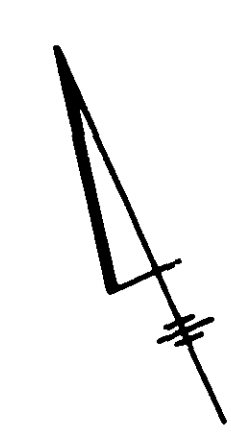


PLANTING LEGEND	
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MINOR DECIDUOUS TREE	(x)
EVERGREEN TREES	(*)
SHRUBS/FOUNDATION PLANTING	(cloud)
REFORESTATION	(cloud)

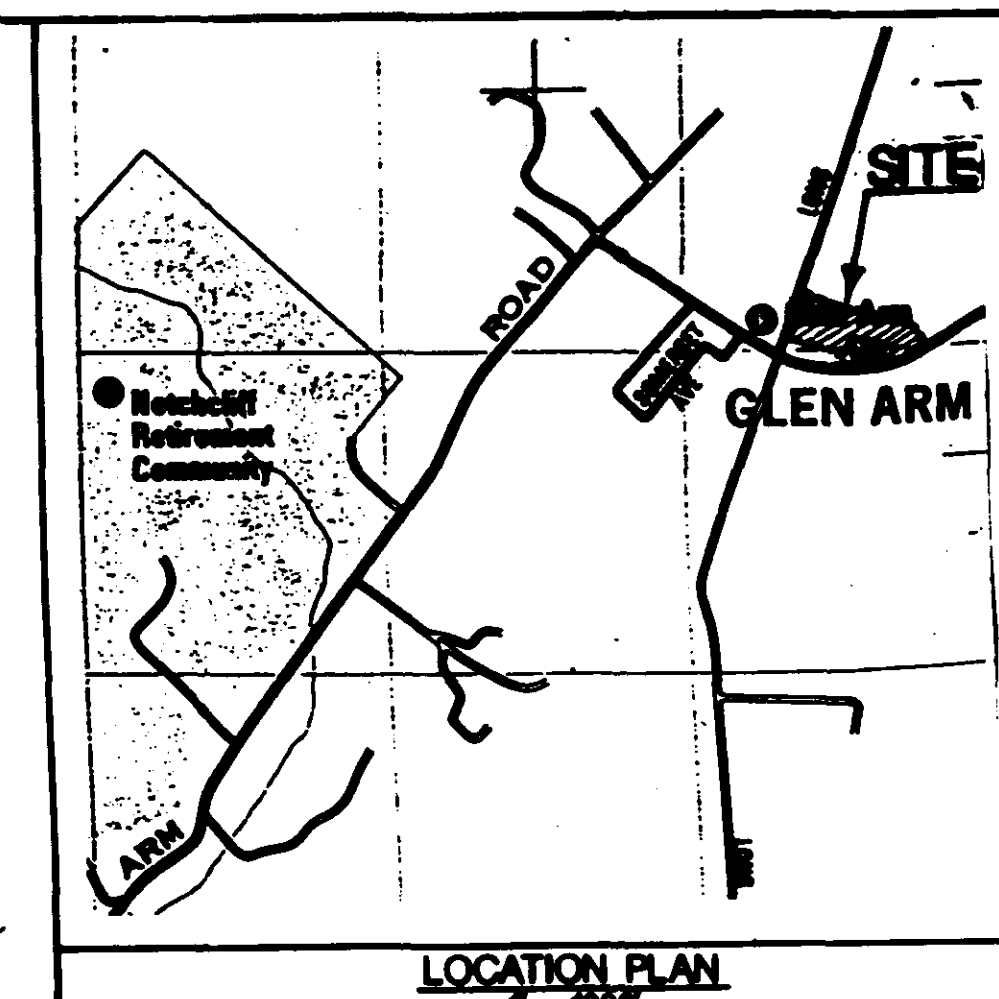
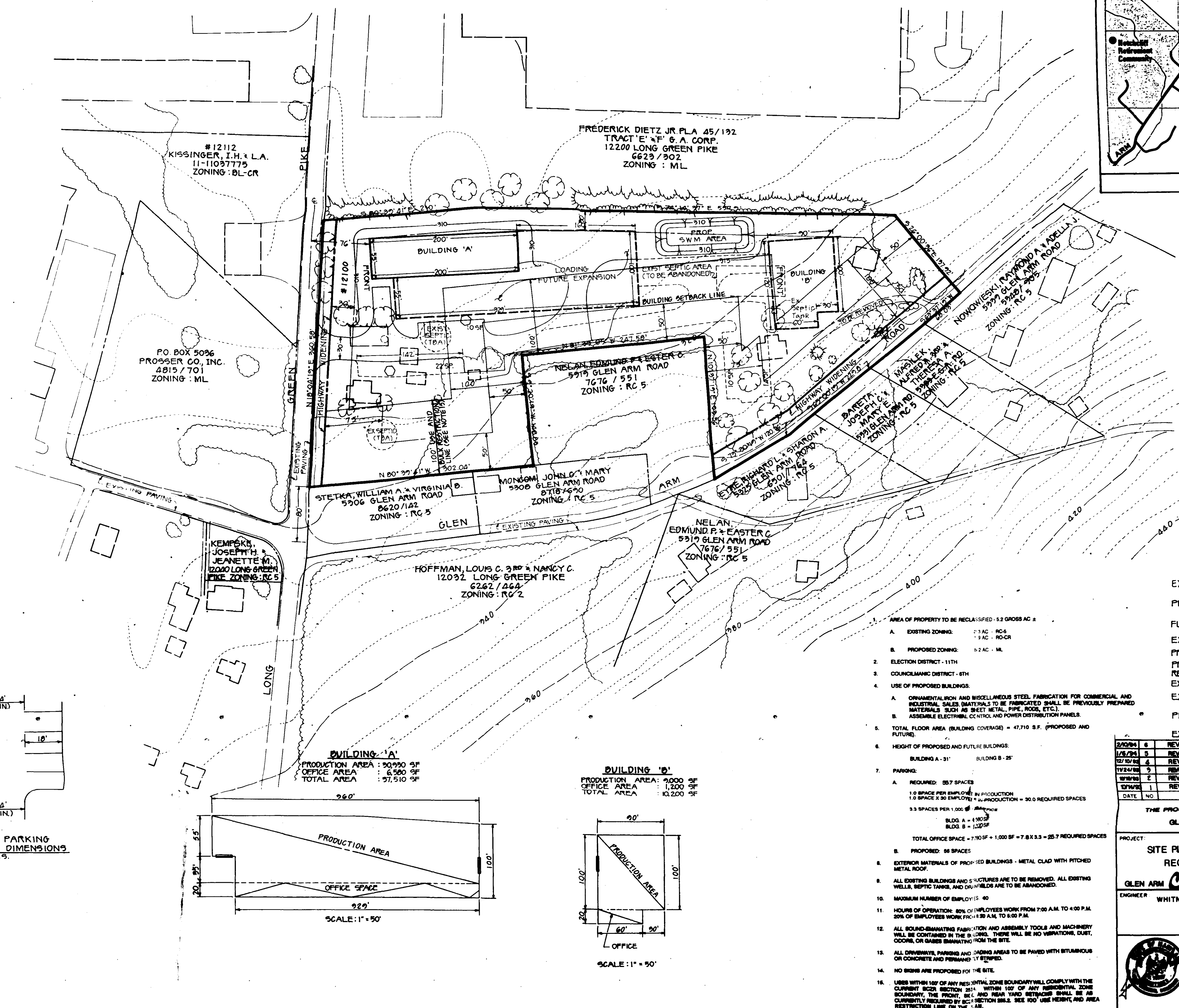
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PROP. GRADING	[dashed line]
PROPERTY TO BE RECLASSIFIED	[dotted line]
EXIST. PROP. LINES	[solid line]
EXIST. PAVING	[solid line]
PROP. PAVING	[dashed line]
EXIST. VEG.	[solid line]

SYMBOL	REVISED PER OPZ COMMENTS
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PROJECT: LANDSCAPE PLAN TO ACCOMPANY ZONING RECLASSIFICATION PETITION	
GLEN ARM BAL. CO., MD.	
ENGINEER: WHITNEY, BAILEY, COX & MAGNANI CONSULTING ENGINEERS 1850 YORK ROAD TIMONUM, MD. 21083 410-252-6060	
DESIGNED: P.F.	
DRAWN: K.S.M.	
CHECKED: J.J.J.	
DATE: AUG. 31, 1993	
SCALE: 1" = 80'	
DRAWING NO.: 93-111	
SHEET 2 OF 2	

CR # 24-143



TYPICAL PARKING SPACE/AISLE DIMENSIONS N.T.S.



LEGEND

- EXIST. BLDG.
- PROP. BLDG.
- FUTURE BLDG.
- EXIST. CONTOURS
- PROP. GRADING
- PROPERTY TO BE RECLASSIFIED
- EXIST. PROP. LINES
- EXIST. PAVING
- PROP. PAVING
- EXIST. VEG.

- AREA OF PROPERTY TO BE RECLASSIFIED: 5.2 GROSS AC ±
- EXISTING ZONING: 1.1 AC - RC-4
 - PROPOSED ZONING: 1.1 AC - ML
 - ELECTION DISTRICT - 11TH
 - COUNCILMANIC DISTRICT - 6TH
 - USE OF PROPOSED BUILDINGS:
 - ORNAMENTAL IRON AND MISCELLANEOUS STEEL FABRICATION FOR COMMERCIAL AND INDUSTRIAL SALES (MATERIALS TO BE FABRICATED SHALL BE PREVIOUSLY PREPARED MATERIALS SUCH AS SHEET METAL, PIPE, RODS, ETC.)
 - ASSEMBLY ELECTRICAL, CIVIL, AND POWER DISTRIBUTION PANELS
 - TOTAL FLOOR AREA (BUILDING COVERAGE) = 47,190 S.F. (PROPOSED AND FUTURE)
 - HEIGHT OF PROPOSED AND FUTURE BUILDINGS:
 - BUILDING A - 31'
 - BUILDING B - 25'
 - PARKING:
 - REQUIRED: 55.7 SPACES
 - 1.0 SPACE PER EMPLOYEE IN PRODUCTION
 - 1.0 SPACE PER 30 EMPLOYEES IN PRODUCTION = 30.0 REQUIRED SPACES
 - 5.3 SPACES PER 1,000 S.F. FLOOR AREA
 - BLDG. A = 1,900 S.F.
 - BLDG. B = 1,200 S.F.
 - TOTAL OFFICE SPACE = 7,700 S.F. = 1,000 SF ÷ 7.7 B.X. 3.3 = 25.7 REQUIRED SPACES
 - PROPOSED: 55 SPACES
 - EXTERIOR MATERIALS OF PROPOSED BUILDINGS - METAL CLAD WITH PITCHED METAL ROOF.
 - ALL EXISTING BUILDINGS AND STRUCTURES ARE TO BE REMOVED. ALL EXISTING WELLS, SEPTIC TANKS, AND DRINKING WATER ARE TO BE ABANDONED.
 - MAXIMUM NUMBER OF EMPLOYEES: 40
 - HOURS OF OPERATION: 80% OF EMPLOYEES WORK FROM 7:00 A.M. TO 4:00 P.M. 20% OF EMPLOYEES WORK FROM 4:00 A.M. TO 6:00 P.M.
 - ALL SOUND-ABSORBING FABRICATION AND ASSEMBLY TOOLS AND MACHINERY WILL BE CONTAINED IN THE BLDG. THERE WILL BE NO VIBRATIONS, DUST, COOLING, OR GASES EMANATING FROM THE SITE.
 - ALL DRIVEWAYS, PARKING, AND LOADING AREAS TO BE PAVED WITH BITUMINOUS OR CONCRETE AND PERMANENTLY STAMPED.
 - NO BURNS ARE PROPOSED FOR THE SITE.
 - USES WITHIN 100' OF ANY RESIDENTIAL ZONE BOUNDARY WILL COMPLY WITH THE CURRENT RC-4 SECTION 201.1. WITHIN 100' OF ANY RESIDENTIAL ZONE BOUNDARY, THE FRONT, SIDE, AND REAR YARD SETBACKS SHALL BE AS CURRENTLY REQUIRED BY RC-4 SECTION 201.2. SEE 100' USE HEIGHTS AND AREA RESTRICTIONS LINE ON THE PLAN.

DATE	NO.	REVISION
12/10/93	1	REVISED PER OPZ COMMENTS
1/16/94	2	REVISED PER OPZ COMMENTS
12/10/93	3	REVISED PER OPZ COMMENTS
1/16/94	4	REVISED PER OPZ COMMENTS
1/16/94	5	REVISED PER OPZ COMMENTS
1/16/94	6	REVISED PER OPZ COMMENTS
1/16/94	7	REVISED PER OPZ COMMENTS
1/16/94	8	REVISED PER OPZ COMMENTS
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1/16/94	26	REVISED PER OPZ COMMENTS
1/16/94	27	REVISED PER OPZ COMMENTS
1/16/94	28	REVISED PER OPZ COMMENTS
1/16/94	29	REVISED PER OPZ COMMENTS
1/16/94	30	REVISED PER OPZ COMMENTS

THE PROSSER COMPANY, INC. P.O. BOX 5038
12500 LONG GREEN PIKE
GLEN ARM, MARYLAND 21037

PROJECT:
SITE PLAN TO ACCOMPANY ZONING
RECLASSIFICATION PETITION
GLEN ARM CR-94-143 BAL. CO., MD.

ENGINEER: WHITNEY, BAILEY, COX & MAGNANI
CONSULTING ENGINEERS
1850 YORK ROAD
TIMONUM, MD. 21093
410-252-6060

DESIGNED: P.F.
DRAWN: K.S.M.
CHECKED: J.J.L.
DATE: AUG. 31, 1993
SCALE: 1" = 50'
DRAWING NO.: 99-111
DATE: 99-111
SHEET 1 OF 2

Prince George's County v. Zayre Corp., 70 Md.App. 392, 401-02 (1987); Van Teslaar v. Bendler, 365 F.Supp. 1006 (D.Md. 1973); Allen v. Zoning Commission, 449 F.2d 1100 (D.C.Cir. 1971); Feldman v. Board of Pharmacy, 160 A.2d 100 (D.C. 1960); Halle Companies et al v. Crofton Civic Association et al, 339 Md. 131, 661 A.2d 682 (1995).

Argument - Question 3

Did the County Board of Appeals err in ruling on remand as a Board comprised of one member; in disregarding the clear provisions of Board Rule 1(c) requiring three members to sit for conducting the business of the Board; in disregarding Board Rule 2(b) by ruling without notice on remand; by disregarding Rule 11 and Section 603 of the Baltimore County Charter concerning amendments to the Board of Appeals Rules; and did the action of the County Board of Appeals in disregarding its own rules of procedure deny the parties both procedural and substantive due process?

Following the Remand Order of the Court, two of the original members having not been reappointed (the former Chairman William T. Hackett and C. William Clark III, Esquire), the sole remaining member of the original Board issued a two page Opinion and Order signed by him alone dated May 6, 1996 without prior notice or hearing afforded any of the parties finding that the requirements of §2-356(j)(2) were met. It is interesting to note that neither the Opinion nor the final Order of the County Board of

Appeals after its rescission include all the items required at a minimum pursuant to §2-356(j)(2).

It is also significant for other issues to note that in the one member Opinion of May 6, 1996 the Chairman quotes with approval to support the findings testimony he attributes to Mr. Gavrelis, one of Petitioner's experts, and Jeffrey Long. After protest by both Appellants the Board Chairman reversed himself and rescinded the May 6, 1996 Order. On the first occasion on remand when the parties and counsel were before the Board on June 5, 1996 the Board Chairman, on request of one of the Appellants for his authority relied on to proceed without de novo hearing as a remaining Board of one that the Board's rules may be inadequate to allow him authority to do what he wanted to do (T9-10) and that he was relying on his interpretation of Board Rule 2 as empowering him to substitute two new Board members without de novo hearing to replace the former Board members, one of whom had voted to deny the reclassification and filed a dissenting opinion (T11) after it was brought to his attention to Baltimore County Code §2-354 specifies that the rules of the County Board of Appeals are only those approved by the County Council and incorporated in the Code by reference. A quick review of the pertinent Board Rules, 1(c), 2, 4, and 11, will demonstrate that the Chairman was free-wheeling and without legal authority to proceed in the manner he did like a bull in a china shop.

As to the constitution of the Board for a particular hearing, Rule 1(c) requires three persons shall sit for the purpose of conducting the business of the Board. The Chairman's unilateral actions in issuing the May 6, 1996 Opinion and Order as a Board of one is in violation of that Rule.

Similarly there is no provision in the Rule for the actions taken by the Chairman in deciding that a substitution of two members who never heard the case before to make findings pursuant to §2-356(j)(2) would be within the ambit of Rule 4. If the Chairman was relying on Rule 4(b), he is reading it out of context since on June 5, 1996 as a Board of one he chose to appoint two other more experienced Board members to join him to conduct the mandate of the remand. His actions in issuing the Opinion of May 6, 1996 in issuing his Opinion and Order without notice or opportunity to be heard violated Rule 2(a) and everything that he did mentioned above violated Rule 11 which states that the Board's rules may only be amended in accordance with the Baltimore County Charter, §603. That section requires concurrence and approval of the County Council for any proposed rule change. This is a flagrant violation of the Accardi Doctrine from Joseph Accardi v. U.S., 257 F.2d 168 (ED La 5th Cir) (1958) which stands for the proposition that an administrative board must scrupulously follow its own rules. People's Counsel v. Mockard, 73 Md.App. 340 at 349-351, 533 A.2d 1344 (1987); People's Counsel v. Beachwood I Limited

Partnership, 107 Md.App. 627 (1995), 670 A.2d 484; Vest v. Giant Food Stores, Inc., 329 Md. 461, 620 A.2d 340 (1993).

Argument - Question 4

Did the Board in an illegal or arbitrary or capricious manner fail to articulate its findings as required by law or, alternatively, did the Chairman, improperly fail to recuse himself for bias apparent in his conduct after the remand?

As was mentioned in the second issue herein, incorporated by reference, the County Board of Appeals, as a Board of one, in its May 6, 1996 Opinion as well as in the Opinion and Order of September 19, 1996 acknowledged the requirements of §2-356(j)(2) (Opinion Pages 8-9) but made no findings in either Opinion as to population trends, availability and adequacy of present and proposed sewerage, water supply facilities, or consistencies of the prospective classification with the County Plan for sewerage and water supply facilities and the capital program mandated by §2-356(j).

Based on the facts stated in Question 2 earlier, the Board could not so find in the face of undisputed testimony of all witnesses that the property was not in or within the planned services area for public water and sewer within two years.

The Board as reconstituted by the Chairman, who previously acted as a Board of one, essentially rubber-stamped the Chairman's Opinion of May 6, 1996, put a ribbon on it and sent it

off for a second Appeal to the Circuit Court. The Board thereby acted in an arbitrary, capricious and illegal manner because it acted in violation of its own rules, failed to make required findings, was further in contradiction to existing case law for reclassification.

Specifically the improvement of water and sewer facilities is not a sufficient basis to change zoning. France v. Shapiro, 248 Md. 335, 236 A.2d 726 (1968), although it has been held the inadequacy of existing sewerage facilities is a ground for denying more intensive use. Furnace Branch Land Co. v. Board of County Commissioners for Anne Arundel County, 232 Md. 536, 194 A.2d 640 (1963).

Further, the Whitley Doctrine holds that once an application has been rejected a new application may not be granted absent a showing of change since the earlier denial. Randolph Hills, Inc. v. Whitley, 249 Md. 78, 238 A.2d 257 (1968). This property had been denied more intensive zoning on the 1980 comprehensive maps.

Interestingly, on the issue of map error, both the original Board, the Circuit Court and now the most recent Board considered the alleged failing septic system on the Petitioner's property to constitute error on the part of the County Council, even if the failure occurred after the County approved the maps in October of 1992.

It is ironic that such a finding would be made and then repeated in light of the legal requirement that for a property in RC-5 zones the Petition for Reclassification should not even be filed or accepted for filing as a matter of law where it was not presently served by public water and sewer or would not be within two years.

Finally, the Chairman may have lost his perspective and definitely exhibited bias for the Petitioner and unprecedented public antipathy to the Appellants. In the hearing of June 5, 1996 when it was brought to the attention of the Chairman by one Appellant that in his May 6, 1996 one-person Opinion and Order he quoted with approval George Gavrelis as Petitioner's zoning expert on map error for the findings required by §2-356(j)(2) (T39-T41). In the minutes of the deliberation of the original County Board of Appeals of October 19, 1994 as reported by the Administrative Assistant to the Board (attached hereto) the present Chairman, then a member, stated that the testimony of George Gavrelis was basically worthless in this case (pages 2 and 3 attached). The Chairman also obviously attributed the testimony of Patrick Ford, another Petitioner's expert, to Mr. Gavrelis in his May 6, 1996 Opinion. When confronted with these apparent errors or contradictions on June 5, 1996, the Chairman on that occasion, and later at the time of further hearing on July 3, 1996, and in the Board's September 19, 1996 Opinion angrily reacted to being

confronted by his own words as follows: June 5, 1996 T79, T80, and T81; July 3, 1996 (transcript mislabeled as June 5, 1996) T13 and T14; and by its Order of September 19, 1996 page 8.

The Board Chairman lost his objectivity for the third time after having previously ruled as a Board of one to provide the findings required by §2-356(j)(2) quoting Petitioner's expert witness Gavrelis with approval whose testimony he deemed worthless in the original deliberations. His mortification at being confronted with that as well as slopily misattributing Mr. Ford's testimony to Mr. Gavrelis in his May 6, 1996 Opinion and Order preceded his decisions to ignore the plain requirements of the County Board of Appeals Rules and to ram this decision through to benefit the Petitioner. It is the essence of arbitrary and capricious behavior.

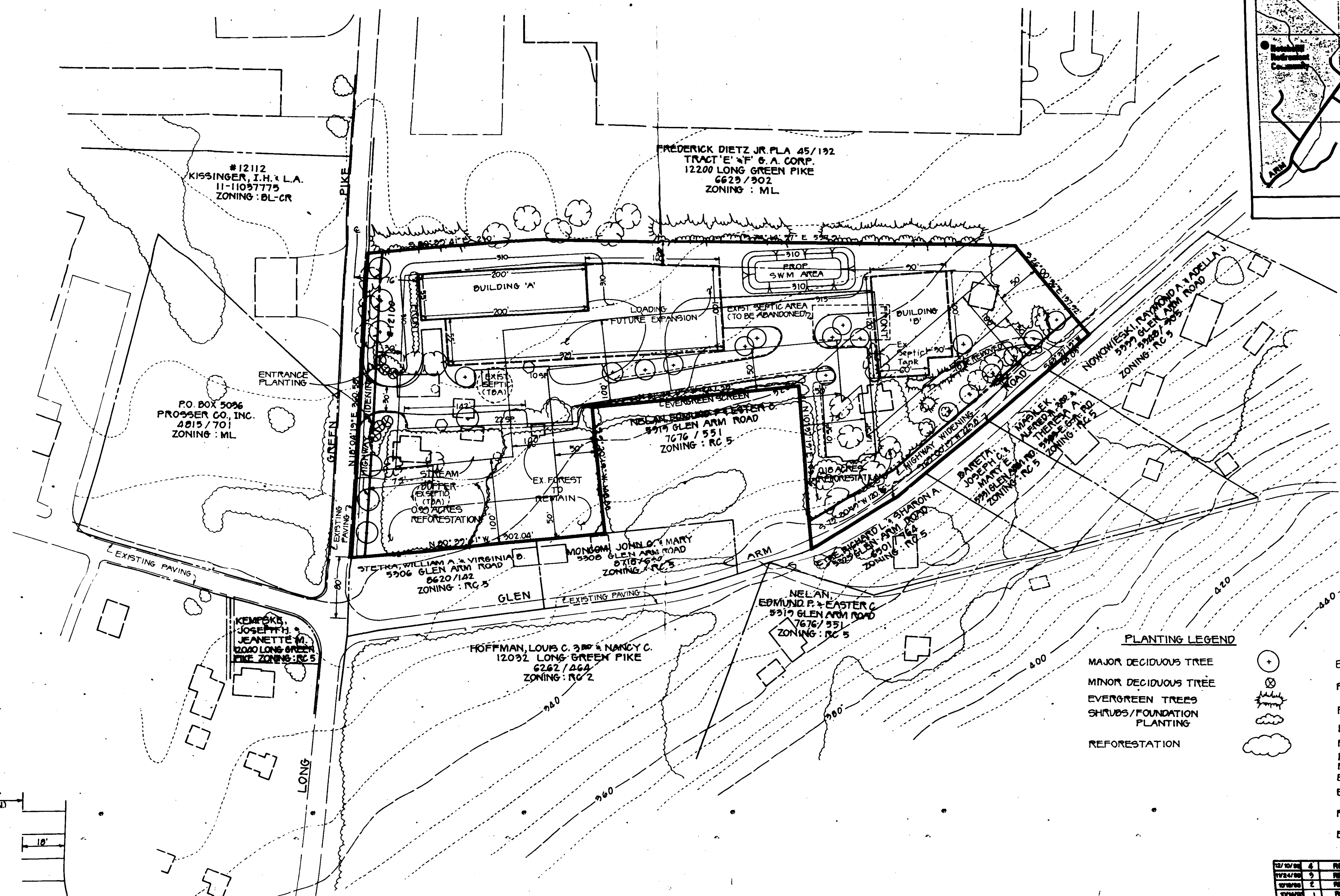
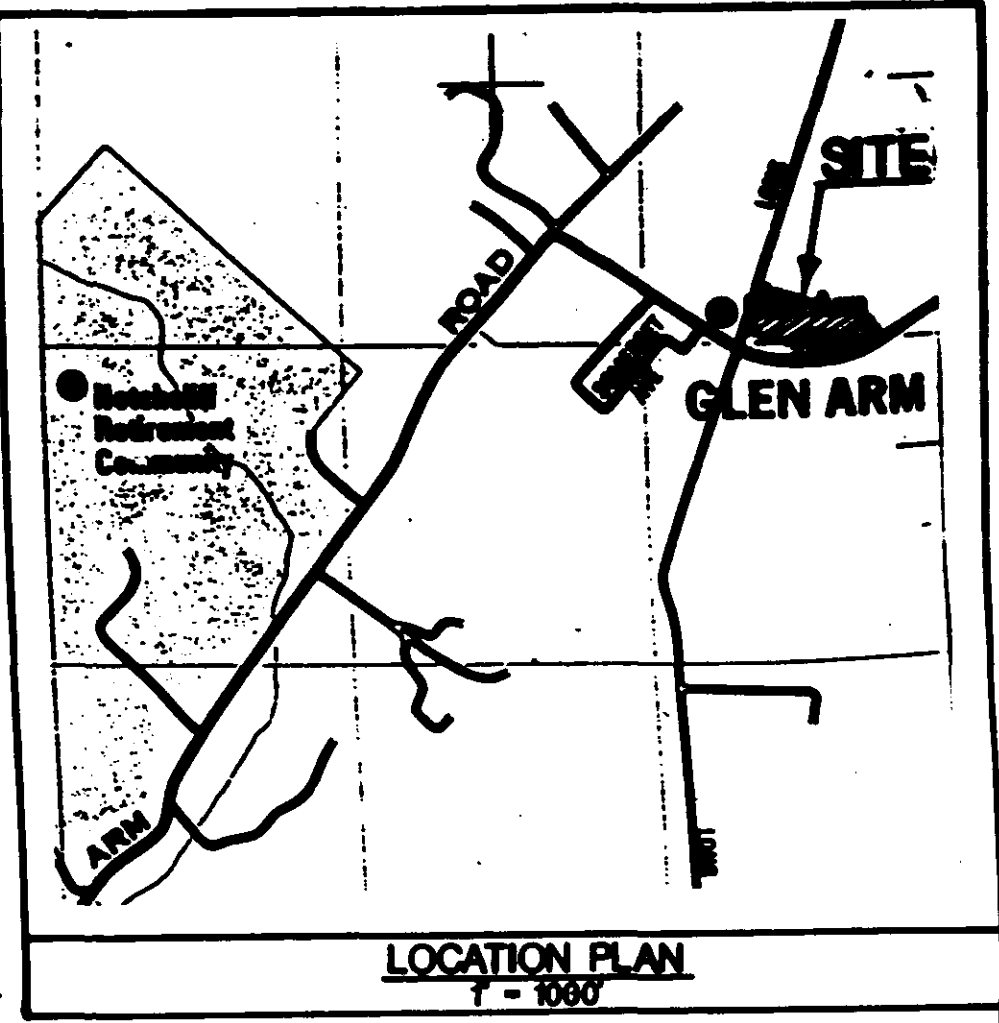
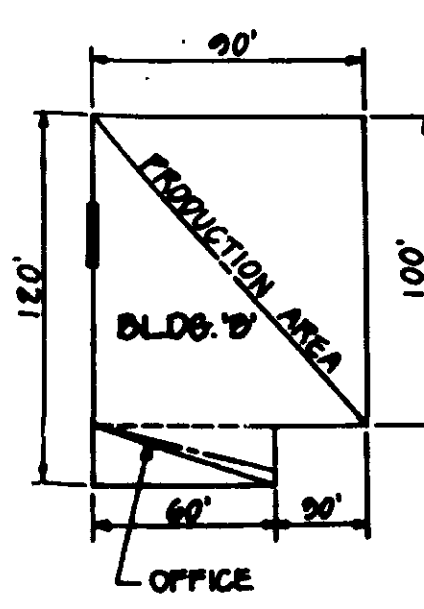
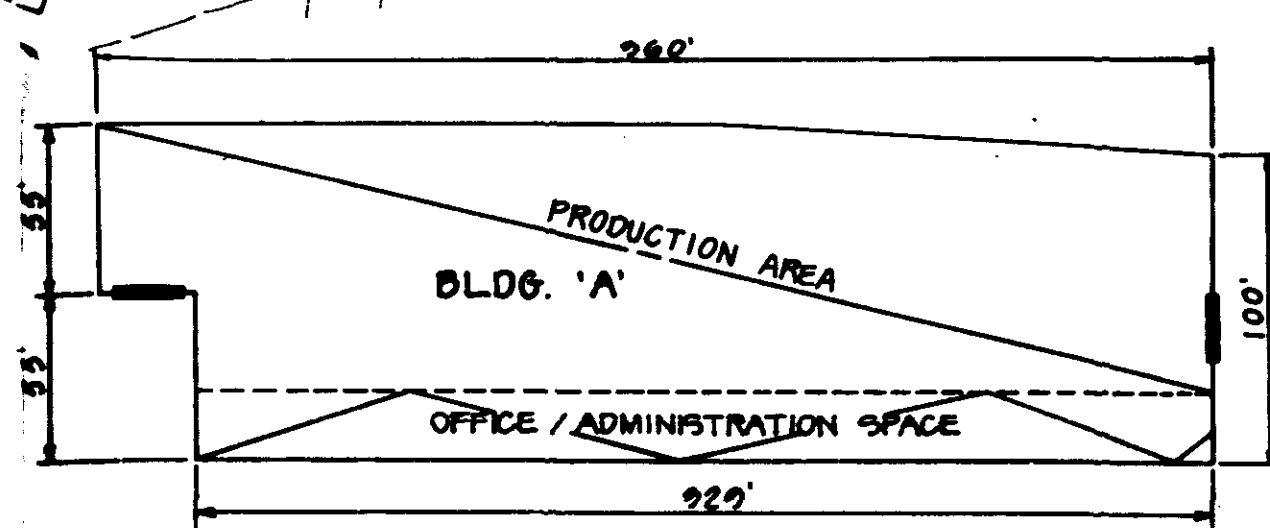
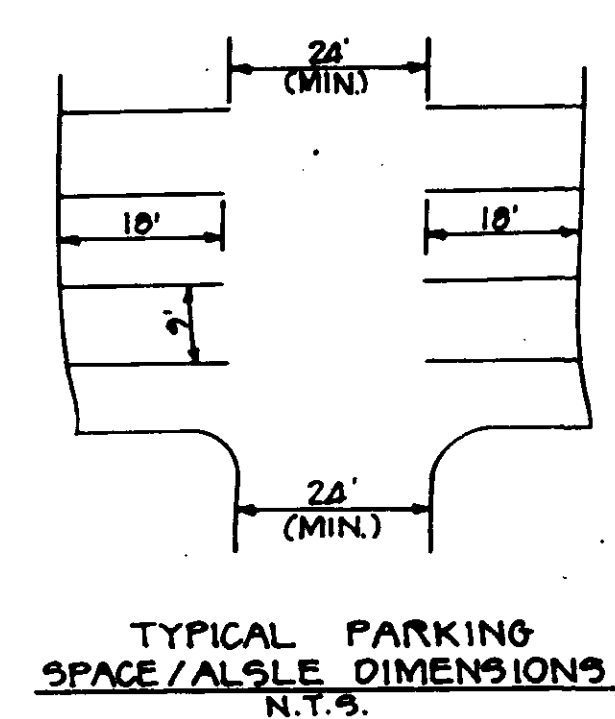
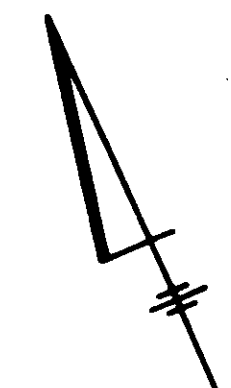
CONCLUSION

For all these reasons Appellants ask that the Petition be dismissed as moot, reversed and that the costs be assessed to the Petitioner.

Michael P. Tanczyn
MICHAEL P. TANCZYN, ESQ.
606 Baltimore Avenue, Suite 106
Towson, Maryland 21204
Telephone: (410) 296-8823
Attorney for the Appellants

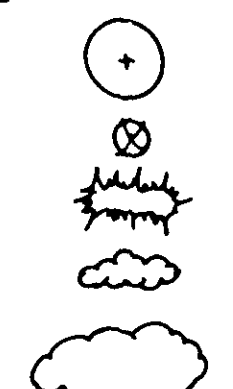
I HEREBY CERTIFY that, on this 3rd day of December, 1996, a copy of the foregoing was mailed, postage prepaid, to G. Scott Barhight, Esquire, 500 Court Towers, 210 West Pennsylvania Avenue, Towson, Maryland, 21204, attorney for the Appellees; to Peter Max Zimmerman, Esquire, Baltimore County People's Counsel, 400 Washington Avenue, Towson, Maryland, 21204; and to County Board of Appeals for Baltimore County, Old Courthouse, Room 49, 400 Washington Avenue, Towson, Maryland, 21204.

Michael P. Tanczyn
MICHAEL P. TANCZYN, ESQ.



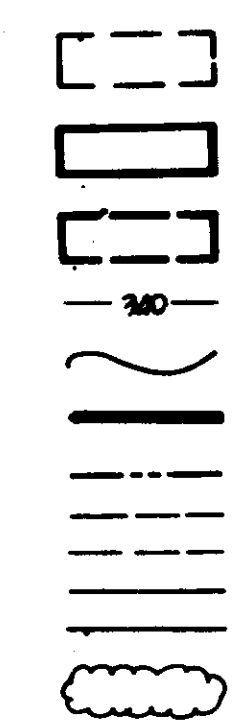
PLANTING LEGEND

- MAJOR DECIDUOUS TREE
- MINOR DECIDUOUS TREE
- EVERGREEN TREES
- SHRUBS/FOUNDATION PLANTING
- REFORESTATION

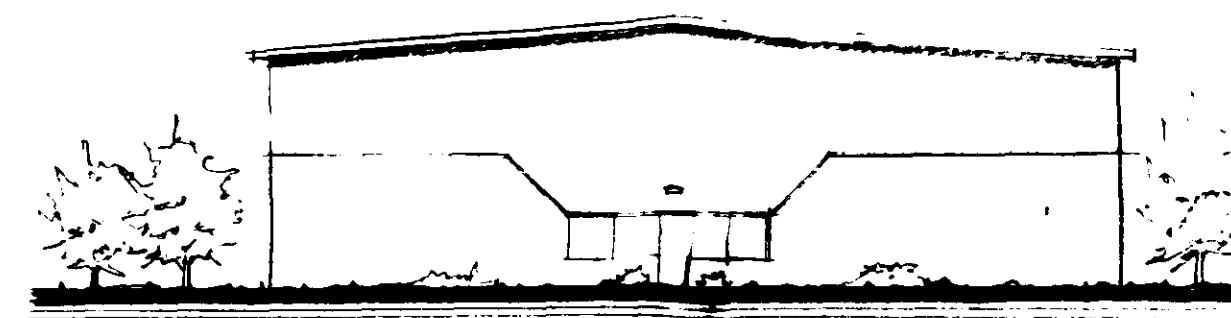


LEGEND

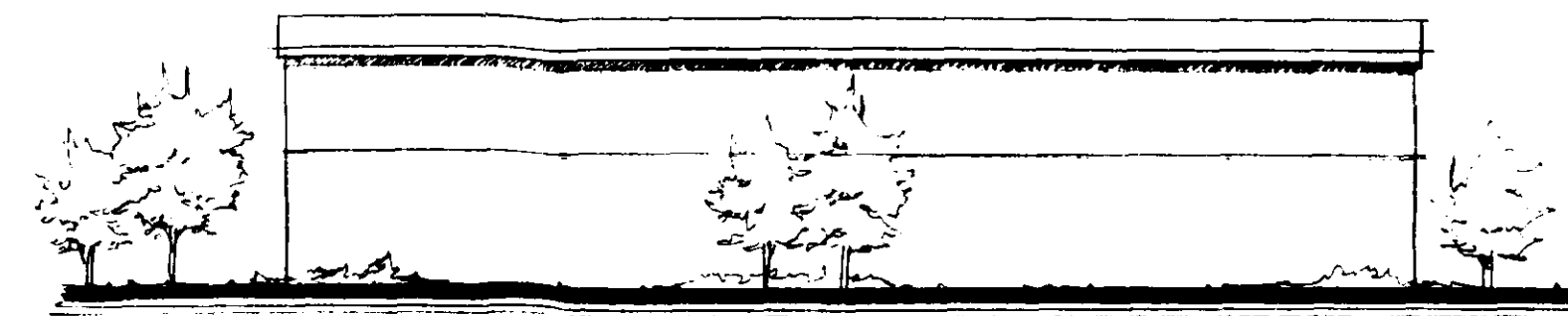
- EXIST. BLDG.
- PROF. BLDG.
- FUTURE BLDG.
- EXIST. CONTOURS
- PROF. GRADING
- PROPERTY TO BE RECLASSIFIED
- EXIST. PROP. LINES
- EXIST. PAVING
- PROF. PAVING
- EXIST. VEG.



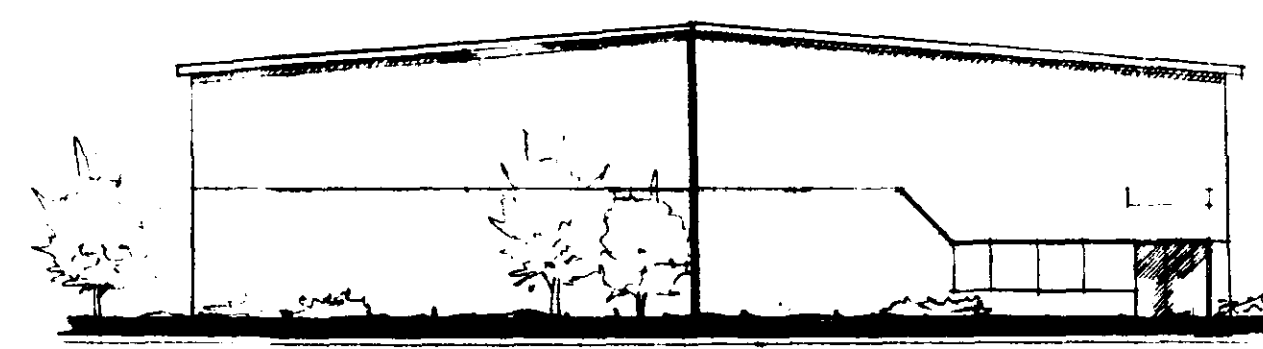
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12/14/84	3	REVISED PER OFF. COMMENTS
12/14/84	2	REVISED PER OFF. COMMENTS
12/14/84	1	REVISED PER OFF. COMMENTS
DATE	NO.	REVISION
THE PROSSER COMPANY, INC. P.O. BOX 5098 12100 LONG GREEN PIKE GLEN ARM, MARYLAND 21067		
PROJECT: LANDSCAPE PLAN TO ACCOMPANY ZONING RECLASSIFICATION PETITION		
GLEN ARM BAL. CO., MD.		
ENGINEER: WHITNEY, BAILEY, COX & MAGNANI CONSULTING ENGINEERS 1850 YORK ROAD THORNTON, MD. 21088 410-328-5000		
DESIGNED: P.F.		
DRAWN: K.B.M.		
CHECKED: J.L.L.		
DATE: AUG. 01, 1988		
SCALE: 1" = 80'		
DRAWING NO.: 72-111		



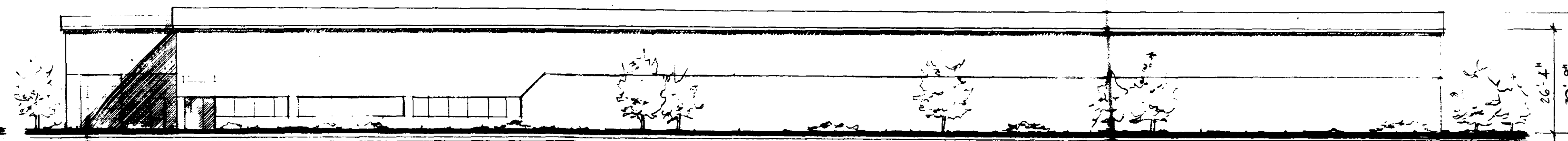
FRONT ELEVATION - BLDG. 3



RIGHT SIDE ELEVATION - BLDG. 3

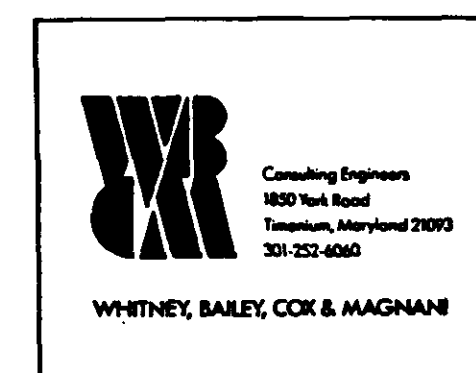


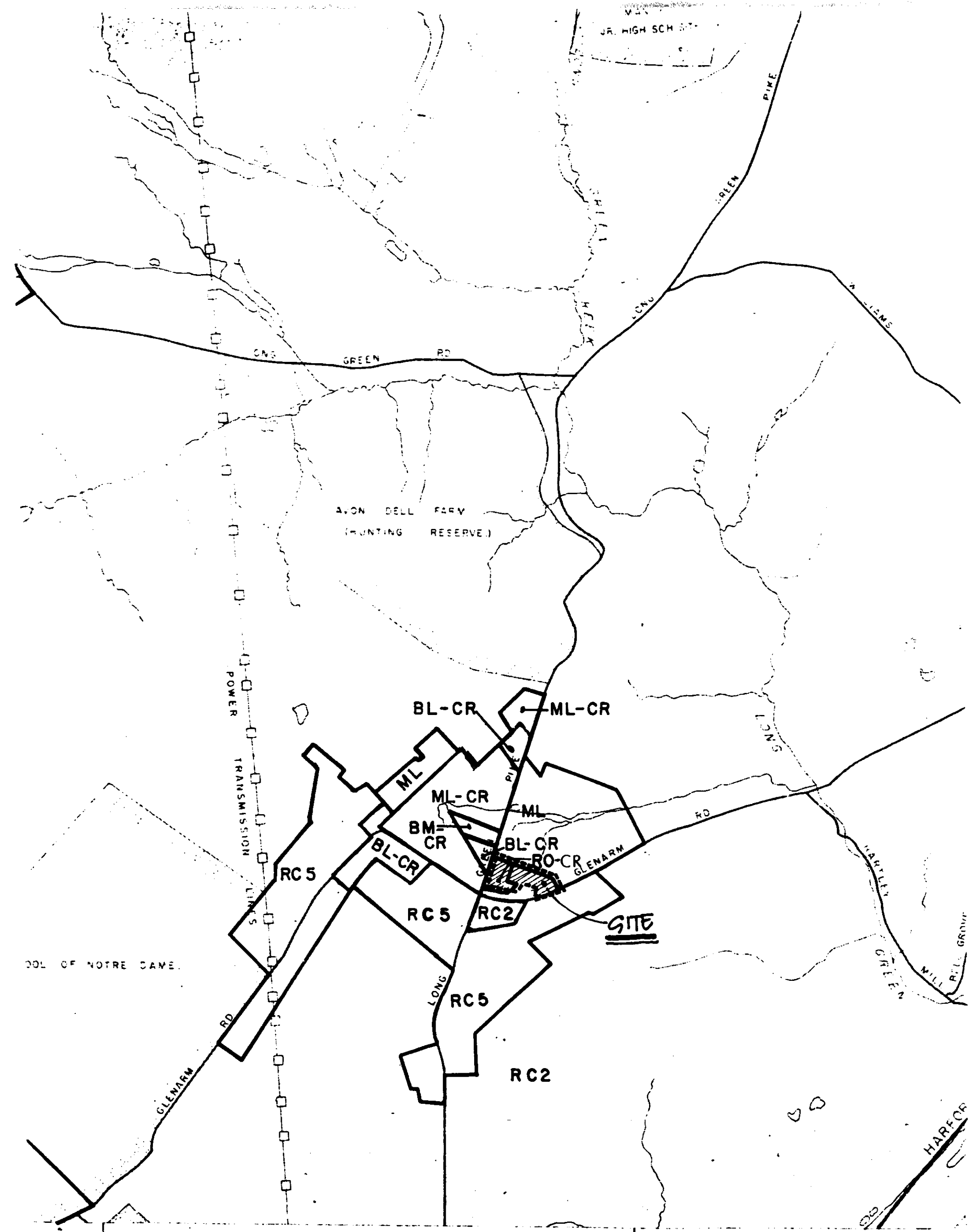
FRONT ELEVATION - BLDG. A



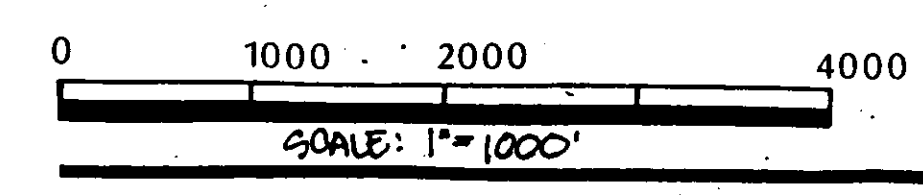
RIGHT SIDE ELEVATION - BLDG. A

SCALE: 1/8"=1'-0"

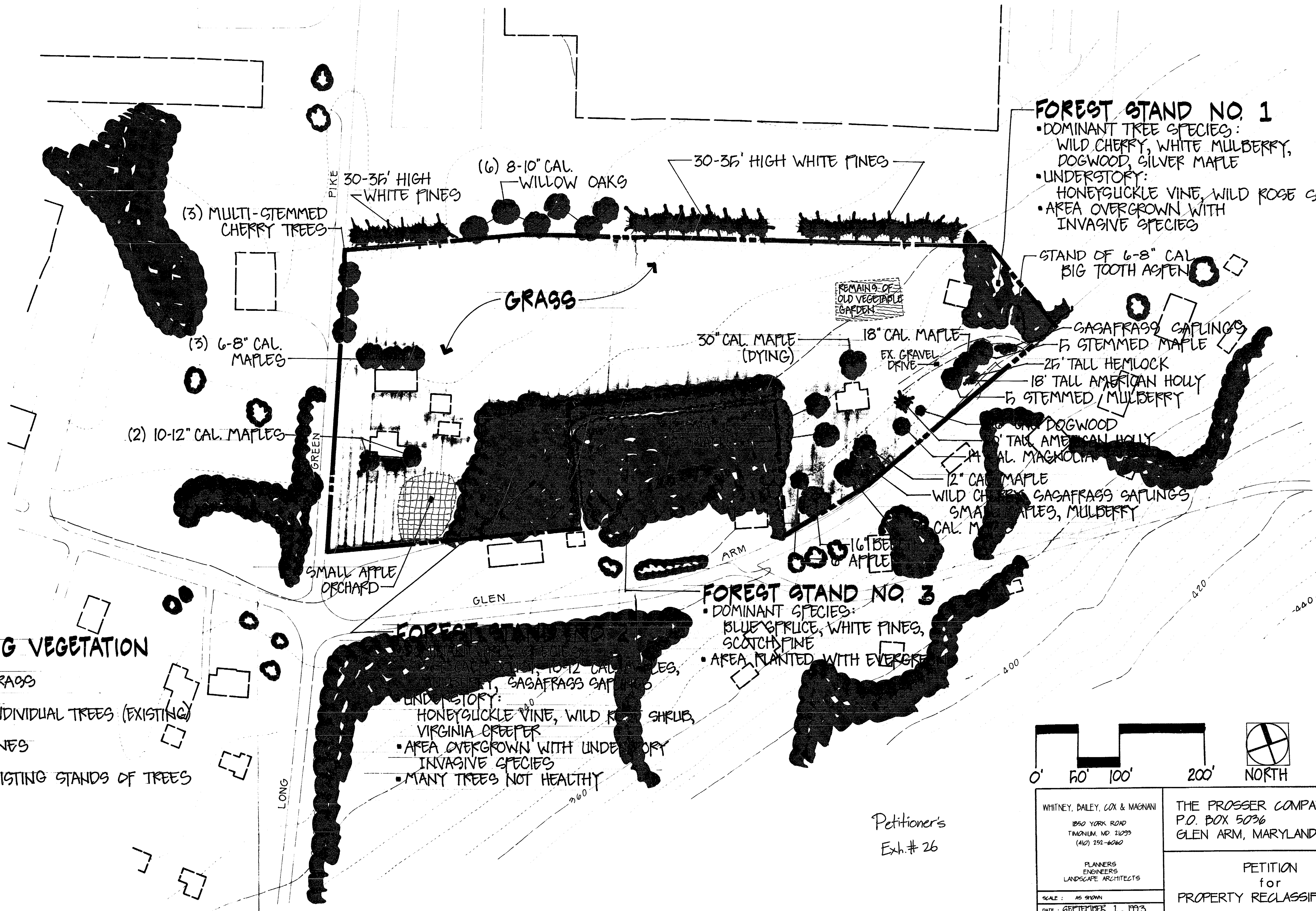




BALTIMORE COUNTY ZONING MAP



CR-94-143



EXISTING VEGETATION

- GRASS
- INDIVIDUAL TREES (EXISTING)
- PINES
- EXISTING STANDS OF TREES

FOREST STAND NO. 1

- DOMINANT TREE SPECIES:
WILD CHERRY, WHITE MULBERRY,
DOGWOOD, SILVER MAPLE
- UNDERSTORY:
HONEYGLUCKLE VINE, WILD ROSE SHRUB
- AREA OVERGROWN WITH
INVASIVE SPECIES

STAND OF 6-8" CAL
BIG TOOTH ASPEN

GASAFRASS SAPLINGS
5 STEMMED MAPLE
25' TALL HEMLOCK
18' TALL AMERICAN HOLLY
5 STEMMED MULBERRY

DOGWOOD
TALL AMERICAN HOLLY
14" CAL. MASCOCOA
12" CAL. MAPLE
WILD CHERRY, GASAFRASS SAPLINGS
SMALL MAPLES, MULBERRY

FOREST STAND NO. 3

- DOMINANT SPECIES:
BLUE SPRUCE, WHITE PINES,
SCOTCH PINE
- AREA PLANTED WITH EVERGREEN

UNDERSTORY:
HONEYGLUCKLE VINE, WILD ROSE SHRUB,
VIRGINIA CREEPER
• AREA OVERGROWN WITH UNDERSTORY
INVASIVE SPECIES
• MANY TREES NOT HEALTHY

0' 50' 100' 200'

NORTH

WBCM

WHITNEY, BAILEY, COX & MAGNANI
1850 YORK ROAD
TIMONUM, MD 21093
(410) 251-6000

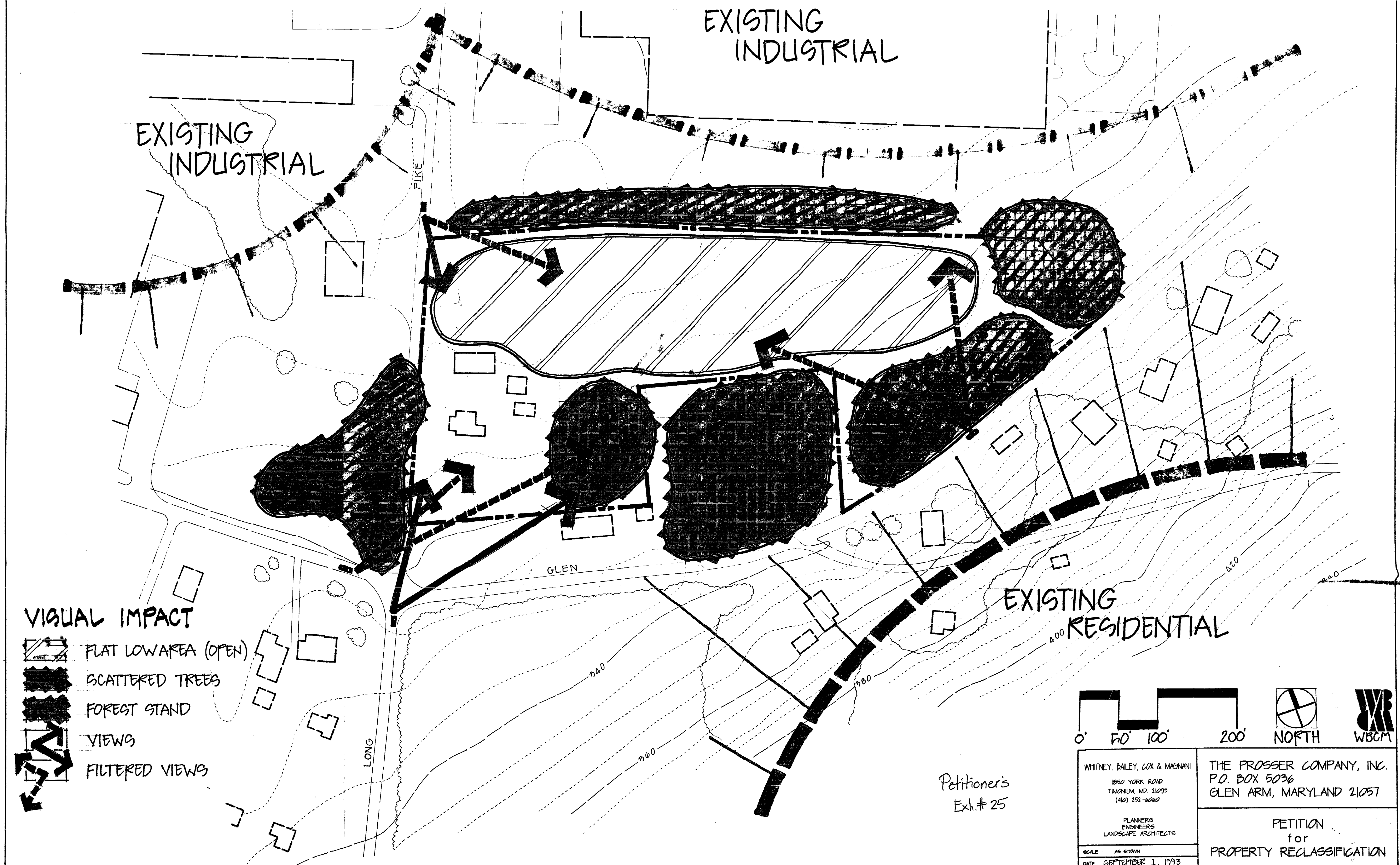
PLANNERS
ENGINEERS
LANDSCAPE ARCHITECTS

SCALE: AS SHOWN
DATE: SEPTEMBER 1, 1993

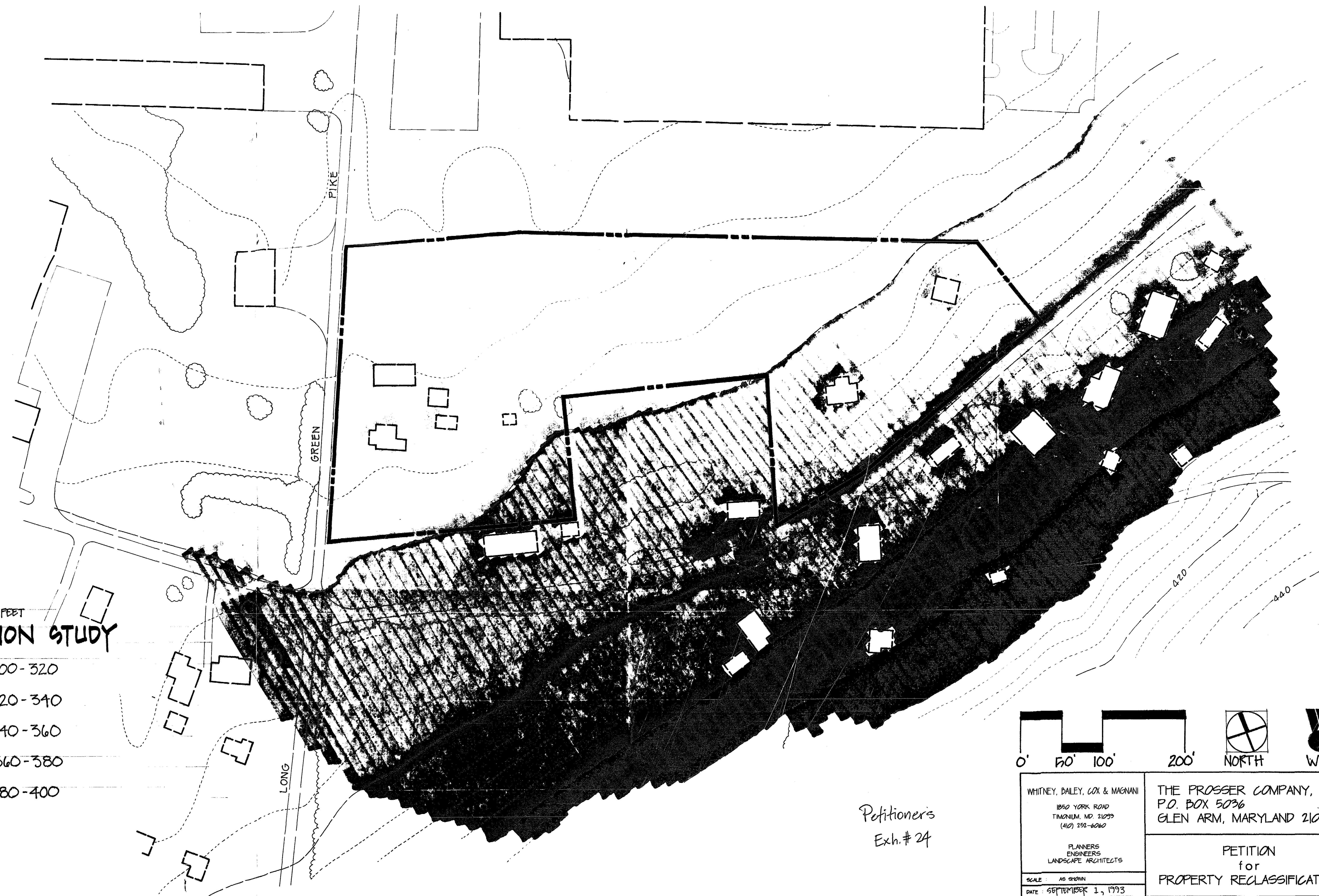
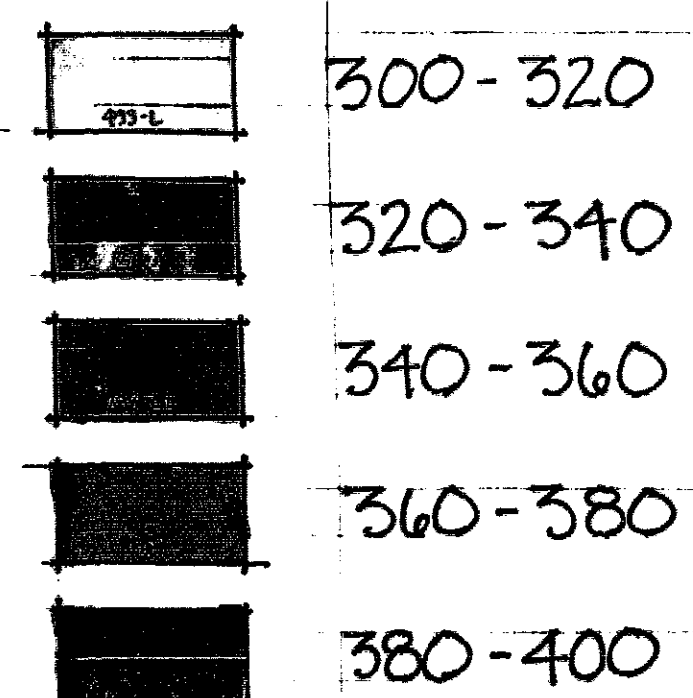
THE PROSSER COMPANY, INC.
P.O. BOX 5036
GLEN ARM, MARYLAND 21057

PETITION
for
PROPERTY RECLASSIFICATION

Petitioner's
Exh. # 26



ELEVATION IN FEET
ELEVATION STUDY



Petitioner's
Exh. # 24

WHITNEY, BAILEY, COX & MAGNANI 1850 YORK ROAD TIMONUM, MD. 21093 (410) 252-6060 PLANNERS ENGINEERS LANDSCAPE ARCHITECTS	THE PROSSER COMPANY, INC. P.O. BOX 5036 GLEN ARM, MARYLAND 21057
SCALE: AS SHOWN DATE: SEPTEMBER 1, 1993	
PETITION for PROPERTY RECLASSIFICATION	

APPENDIX
OF
APPELLEE

APX 1

NOTICE
Pursuant to Md. Rule 8-207
this form must be completed
and sent to Clerk, Court of
Special Appeals, Court of
Appeals, Annapolis, MD
21401.

COURT OF SPECIAL APPEALS
CIVIL APPEAL PREHEARING INFORMATION REPORT

1. Title of Case: People's Counsel for Baltimore County, Glen Arm Community Association, Inc. & T. Michael Reier v. The Prosser Company, Inc.

Which party is Appellant in Court of Special Appeals:
Appellant #1 - People's Counsel for Baltimore County
Name Appellant #2 - Glen Arm Community Association, Inc. & T. Michael Reier

2. Names, addresses, and telephone numbers of counsel:
For Appellant: #1 - Peter Max Zimmerman, Esq., Baltimore County People's Counsel,
400 Washington Avenue, Towson, Maryland, 21204-(410) 887-2188
#2 - Michael P. Tanczyn, Esq., 606 Baltimore Avenue, Suite 106,
Towson, Maryland, 21204-(410) 296-8923
For Appellee: G. Scott Barhight, Esq., Whiteford, Taylor & Preston, LLC,
210 West Pennsylvania Avenue, Towson, Maryland, 21204-(410) 832-2000

3. Trial Court: (Circuit) (Orphan) Court for Baltimore County
a. Docket No: 100/243/95CV-288 c. Trial Judge: J. William Hinkel
b. Jury/Non-Jury/Motion hearing

4. Type of case (e.g., automobile negligence, workers' compensation, breach of contract, domestic, employment dispute, product liability, property dispute, tax, UCC, zoning, etc.):
Zoning

5. Trial
a. Duration of trial or hearings (days/hours): 1/2 day
b. No. of exhibits in evidence: N/A - Administrative Appeal

6. Judgment
a. Date of judgment being appealed (if date is other than that shown on docket, please explain): January 2, 1996 - Court's denial of separate Motions filed by all Appellants to alter or amend previous Judgment.
b. Describe judgment or order being appealed. (Attach a copy of any written opinion of the trial court.) Order affirming County Board of Appeals dated December 7, 1995 with Opinion (attached) as well as Order denying Motion to Alter or Amend.
c. Did judgment finally dispose of all claims by and against all parties? Yes. If not, please explain why judgment is appealable. (See Md. Rule 2-602; Courts Art., Sections 12-301, 12-303.)

APX 2

1. Post Judgment Motions
Was post judgment motion under Md. Rule 2-532, 2-533, or 2-534 or request for in banc review under Md. Rule 2-551 filed? Yes If so, date filed 12/15/95/12-12/14/95 and date of disposition 1/2/96

2. Date appeal noted: 12-2/1/96 ATTACH COPY OF NOTICE OF APPEAL

3. Issues on Appeal
State each issue you intend to raise on appeal, and, as to each, state whether and how the issue was decided by the trial court, whether you anticipate a defense of non-preservation, waiver, or harmless error, and how you propose to respond to any such defense.
1. The Court erred in construing the Change/Mistake Rule in reviewing the Decision of the County Board of Appeals for Baltimore County.
2. The Court erred in finding that the legislative prohibition on filing reclassification petitions in RC zones where public utilities were not adequate or to be provided within 2 years was a nullity.
3. There was insufficient evidence of change or mistake to support approving the zoning section of the Prosser Company under the facts of this case.

4. Settlement or Scheduling Conference
a. Was settlement discussed before trial or hearing which resulted in judgment? N/A Describe briefly. Administrative Approval
b. Was this case submitted to any ADR process (arbitration, mediation, settlement conference, etc.)? No Describe briefly.
c. Has settlement been discussed since judgment? No Describe briefly.

5. Record Extract
Given the number of papers and exhibits and the likely size of any transcript, do you anticipate that the record extract will exceed 100 pages in length? Yes If so, state whether the deferred record extract procedure authorized in Md. Rule 8-501(1) would be appropriate and, if not, why. Yes

6. Custody, adoption, guardianship cases
Is this appeal from an order (1) granting or denying a petition for adoption, guardianship terminating parental rights, or guardianship of the person of a minor or disabled person, or (2) granting, denying, or establishing custody of or visitation with a minor child? No If so, state whether the expedited appeal provision of Md. Rule 8-207(b) is applicable and, if not, why.

APX 3

13. Motions cases
If this appeal is from the granting of a motion to dismiss or for summary judgment
a. Was the proceeding recorded? (See Md. Rule 1224) N/A
b. If the proceeding was recorded:
(1) How long did the hearing on the motion last?
(2) If a transcript of the proceeding is not necessary to the appeal, state why.

14. Settlement or Scheduling Conference
a. Would a prehearing conference be helpful in settling or limiting issues? Yes
b. Do you see a need for an administrative conference to resolve any special issues regarding the record, briefing, or scheduling? Yes If so, state (1) the issues and (2) whether you have discussed them with opposing counsel. County Council of Baltimore County will vote on the 1996 Quadrennial Zoning Maps in October of 1996. Their decision will supersede and render moot any decision in this case which may well not be scheduled for argument or be finally resolved by that time.

NOTICE
A prehearing conference is designed to encourage the parties to reach a voluntary settlement before incurring the expense of securing a transcript and preparing and printing briefs, or, if that is not possible, to consider limiting the issues, the option of an expedited appeal pursuant to Md. Rule 8-207, and any special scheduling or briefing problems. Please set forth succinctly any additional information and attach any documents that will assist the Court and the parties in these regards. Information concerning settlement negotiations will be kept confidential.

CERTIFICATE OF SERVICE
I hereby certify that a copy of the foregoing Report was mailed to:
Peter Max Zimmerman, Esq.
Baltimore County People's Counsel
400 Washington Avenue
Towson, MD 21204
G. Scott Barhight, Esq.
Whiteford, Taylor & Preston, LLC
210 West Pennsylvania Avenue
Towson, MD 21204

February 7, 1996
Date Signed MICHAEL P. TANCZYN, ESQ.

Form Revised January 1, 1996

APX 4

NOTICE
Pursuant to Md. Rule 8-207
this form must be completed
and sent to Clerk, Court of
Special Appeals, Court of
Appeals, Annapolis, MD
21401.

COURT OF SPECIAL APPEALS
CIVIL APPEAL PREHEARING INFORMATION REPORT

1. Title of Case: People's Counsel for Baltimore County v. The Prosser Company, Inc.

Which party is Appellant in Court of Special Appeals:
Name People's Counsel for Baltimore County

2. Names, addresses, and telephone numbers of counsel:
For Appellant: Peter Max Zimmerman, People's Counsel for Balto. County
Carole S. Demilio, Deputy People's Counsel
Old Courthouse, Room 47, 400 Washington Avenue
Towson, MD 21204
(410) 887-2188
For Appellee: G. Scott Barhight, Esq.
Whiteford, Taylor & Preston
210 W. Pennsylvania Avenue, Suite 400, Towson, MD
(410) 832-2015

3. Trial Court: (Circuit) (Orphan) Court for BALTIMORE COUNTY
a. Docket No: 100/243/95-CV-0288 c. Trial Judge: J. William Hinkel
b. Jury/Non-Jury/Motion hearing September 28, 1995 (1 day)

4. Type of case (e.g., automobile negligence, workers' compensation, breach of contract, domestic, employment dispute, product liability, property dispute, tax, UCC, zoning, etc.):
Zoning - administrative appeal

5. Trial - ORAL ARGUMENT ON APPEAL FROM BALTIMORE COUNTY COUNTY BOARD OF APPEALS
a. Duration of trial or hearings (days/hours):
County Board of Appeals hearing was 4 days.
b. No. of exhibits in evidence: The record shows that at the County Board of Appeals, Petitioner The Prosser Co., Inc. had 35 exhibits, People's Counsel had 8, and Protestants Glen Arm Comm. Assn. et al. had 9. There was also one joint exhibit.

6. Judgment
a. Date of judgment being appealed (if date is other than that shown on docket, please explain): Judge Hinkel's Final Judgment dated 12/2/96 (docketed 1/3/96), denying People's Counsel's Motion to Alter or Amend Judgment (referring to the Circuit Court's 12/7/95 Memorandum Opinion and Order (docketed 12/13/95)).
b. Describe judgment or order being appealed. (Attach a copy of any written opinion of the trial court.)
Judge Hinkel affirmed the decision of the County Board of Appeals granting reclassification of the subject site, and Judge Hinkel denied People's Counsel's Motion to Alter or Amend Judgment.
c. Did judgment finally dispose of all claims by and against all parties? Yes. If not, please explain why judgment is appealable. (See Md. Rule 2-602; Courts Art., Sections 12-301, 12-303.)

APX 5

7. Post Judgment Motions
Was post judgment motion under Md. Rule 2-532, 2-533, or 2-534 or request for in banc review under Md. Rule 2-551 filed? Yes If so, date filed 12/15/95 and date of disposition 1/2/96

8. Date appeal noted: 1/29/96 ATTACH COPY OF NOTICE OF APPEAL

9. Issues on Appeal
State each issue you intend to raise on appeal, and, as to each, state whether and how the issue was decided by the trial court, whether you anticipate a defense of non-preservation, waiver, or harmless error, and how you propose to respond to any such defense.
See attachment.

10. Settlement discussions:
a. Was settlement discussed before trial or hearing which resulted in judgment? N/A Describe briefly.
b. Was this case submitted to any ADR process (arbitration, mediation, settlement conference, etc.)? N/A Describe briefly.
c. Has settlement been discussed since judgment? N/A Describe briefly.

11. Record Extract
Given the number of papers and exhibits and the likely size of any transcript, do you anticipate that the record extract will exceed 100 pages in length? YES If so, state whether the deferred record extract procedure authorized in Md. Rule 8-501(1) would be appropriate and, if not, why. The deferred record extract procedure would NOT be appropriate because it would not expedite the proceedings, nor would it shorten the record extract.

12. Custody, adoption, guardianship cases N/A
Is this appeal from an order (1) granting or denying a petition for adoption, guardianship terminating parental rights, or guardianship of the person of a minor or disabled person, or (2) granting, denying, or establishing custody of or visitation with a minor child? No If so, state whether the expedited appeal provision of Md. Rule 8-207(b) is applicable and, if not, why.

APX 6

13. Motions cases
If this appeal is from the granting of a motion to dismiss or for summary judgment
a. Was the proceeding recorded? (See Md. Rule 1224)
b. If the proceeding was recorded:
(1) How long did the hearing on the motion last?
(2) If a transcript of the proceeding is not necessary to the appeal, state why.

14. Settlement or Scheduling Conference
a. Would a prehearing conference be helpful in settling or limiting issues? It may be beneficial to the Court's docket to stay this matter in light of the Baltimore County Comprehensive Zoning Map Process of 1996. This site is an issue in the Comprehensive Map Process.
b. Do you see a need for an administrative conference to resolve any special issues regarding the record, briefing, or scheduling? If so, state (1) the issues and (2) whether you have discussed them with opposing counsel. (1) The Circuit Court oral argument transcript may not be necessary to incorporate in the record. The arguments of counsel will be included in the briefs. (2) Not as of yet. We will be amenable to such discussions.

NOTICE
A prehearing conference is designed to encourage the parties to reach a voluntary settlement before incurring the expense of securing a transcript and preparing and printing briefs, or, if that is not possible, to consider limiting the issues, the option of an expedited appeal pursuant to Md. Rule 8-207, and any special scheduling or briefing problems. Please set forth succinctly any additional information and attach any documents that will assist the Court and the parties in these regards. Information concerning settlement negotiations will be kept confidential.

CERTIFICATE OF SERVICE
I hereby certify that a copy of the foregoing Report was mailed to:
G. SCOTT BARNHIGHT, ESQ., Whiteford, Taylor & Preston, 210 W. Pennsylvania Avenue, Suite 400, Towson, MD 21204, and to MICHAEL P. TANCZYN, ESQ., 606 Baltimore Avenue, Suite 106, Towson, MD 21204, attorney for Co-Appellant Glen Arm Community Association, Inc. and T. Michael Reier.

2/6/96
Date Signed Peter M. Zimmerman

Form Revised January 1, 1996

WHITEFORD, TAYLOR & PRESTON
LLP
210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4515
410 832-2000
FAX 410 832-2015
www.wtpaw.com

SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202-1626
TELEPHONE 410 547-8700
FAX 410 762-7092

10 CALLE MARIA GUERRA CENTER
16400 LITTLE PATENTMAN PARKWAY
CALLE MARIA, MARYLAND 21044
TELEPHONE 410 864-0719
FAX 410 864-0719

JULIE D. WRIGHT
DIRECT MANAGER
410 832-2000
jwright@wtpaw.com

1417 KING STREET
ALEXANDRIA, VIRGINIA 22314-2928
TELEPHONE 703 684-5742
FAX 703 684-0851

September 15, 1997

Clerk
Court of Special Appeals
Courts of Appeal Building
361 Rowe Boulevard
Annapolis, MD 21401

Re: People's Counsel for Baltimore County, et al.
v. The Prosser Company, Inc.
No. 603, September Term, 1997
Our File No. 1556/101

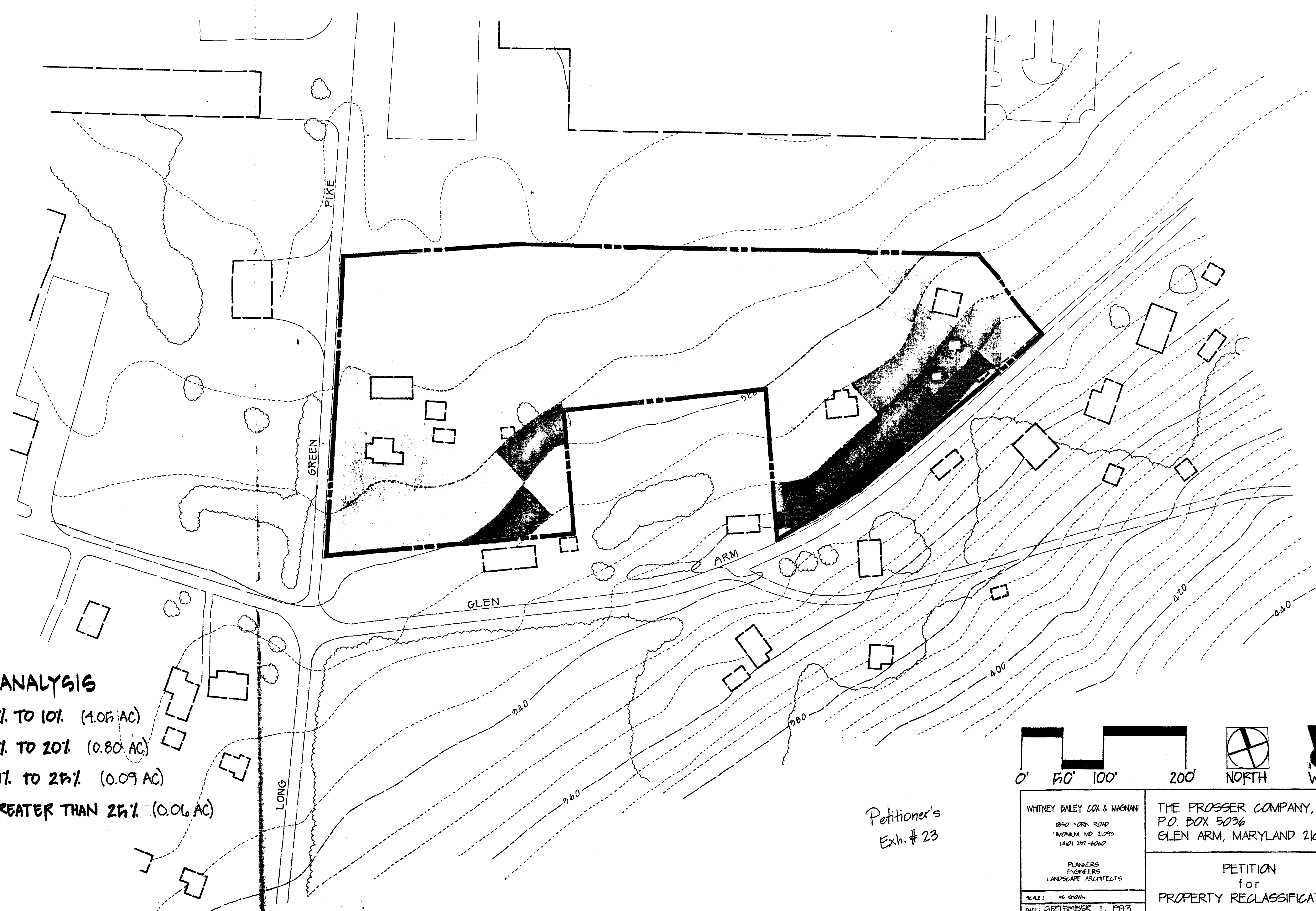
Dear Clerk:
Enclosed please find 15 copies of Prosser's Brief for filing in the above-referenced case.

Sincerely,
Julie D. Wright

JDW:lgs

ccs: Michael P. Tanczyn, Esquire
Peter Max Zimmerman, Esquire
County Board of Appeals for Baltimore County

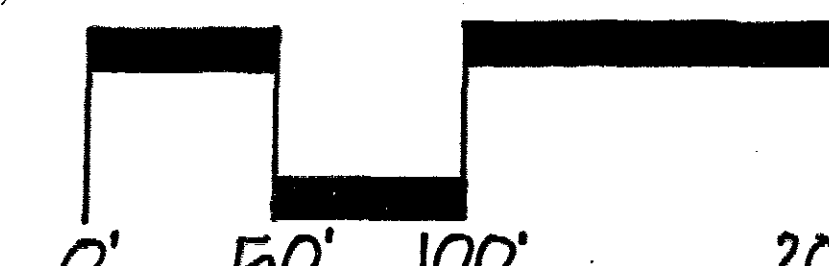
96-1 Md 18 18 d3518
RECEIVED
COUNTY BOARD OF APPEALS

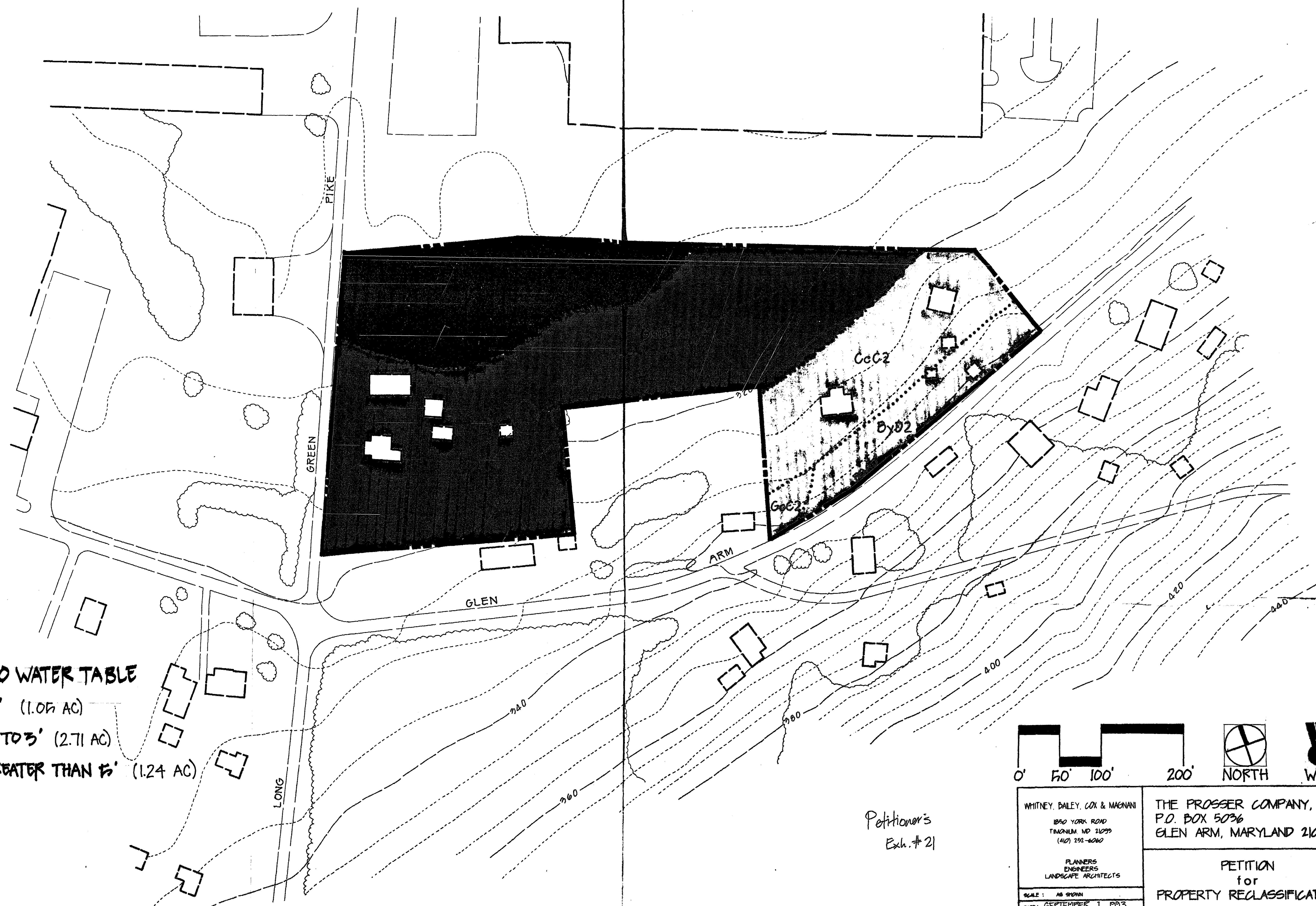


GLOPE ANALYSIS

- 0% TO 10% (4.06 AC)
- 11% TO 20% (0.80 AC)
- 21% TO 25% (0.09 AC)
- GREATER THAN 25% (0.06 AC)

Petitioner's
Exh. # 23

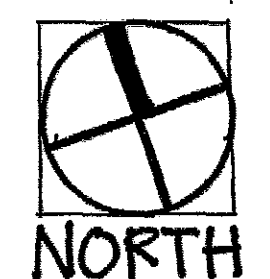
  	
WHITNEY BAILEY COX & MAGNANI 1850 YORK ROAD TIMONUM, MD 21093 (410) 251-6060 PLANNERS ENGINEERS LANDSCAPE ARCHITECTS	THE PROSSER COMPANY, INC. P.O. BOX 5036 GLEN ARM, MARYLAND 21057
PETITION for PROPERTY RECLASSIFICATION	
SCALE: AS SHOWN DATE: SEPTEMBER 1, 1993	



DEPTH TO WATER TABLE

-  0' (1.05 AC)
-  1' TO 3' (2.71 AC)
-  GREATER THAN 3' (1.24 AC)

Petitioner's
Exh. # 21

			
WHITNEY, BAILEY, COX & MAGNANI 1850 YORK ROAD TIMONUM, MD 21093 (410) 291-6060		THE PROSSER COMPANY, INC. P.O. BOX 5036 GLEN ARM, MARYLAND 21057	
PLANNERS ENGINEERS LANDSCAPE ARCHITECTS		PETITION for PROPERTY RECLASSIFICATION	
SCALE: AS SHOWN DATE: SEPTEMBER 1, 1993			

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF: The Prosser Company, Inc.
Case No. CR-94-143

DATE : October 19, 1994 @ 9:10 a.m.

BOARD /PANEL : William T. Hackett, Chairman (WTH)
C. William Clark (CWC)
Robert O. Schuetz (ROS)

SECRETARY : Kathleen C. Weidenhammer
Administrative Assistant

Those present included G. Scott Barhight, Esquire, on behalf of Petitioner; Michael P. Tanczyn, Esquire, on behalf of the Glen Arm Community Association, Inc., Protestants; Peter M. Zimmerman, People's County for Baltimore County; and Carole S. Demilio, Deputy People's Counsel.

PURPOSE --to deliberate matter of Petition for Reclassification; testimony and evidence taken on April 6, June 16, July 19, and September 20, 1994. 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; deliberation as required by law of Case No. CR-94-143, The Prosser Company, Inc. Prior to public deliberation, inquired if there was anything else for the record.

Peter Max Zimmerman, People's Counsel for Baltimore County, commented as follows:

"As previously stated in the presence of the attorney for petitioner informally prior to convening of this meeting, there has been objection raised to a newspaper article which this office submitted with the post-hearing memorandum. That newspaper article refers to the closing of the Grumman plant. Mr. Barhight objected to it. In view of that, while we think the Board could take note of such an article under general principle, we are willing to withdraw the article in order to avoid any argument on that and to keep the record more streamlined. We will withdraw the article."

Upon acknowledgement of this by Mr. Barhight, the following dialogue ensued between Board members:

CWC: Commented on Motion to Dismiss; wanted to be sure that Board had it on the record; notes indicated that it was reserved; but understands that it was collectively agreed that Motion to Dismiss was ruled on and denied.

ROS: According to his notes, this occurred after cross-examination

Minutes of Deliberation /The Prosser Co., Inc. CR-94-143

of George Gavrelis.

WTH: Agreed that that matter was addressed; ascertained that there was nothing further before beginning deliberation. Having had no prior communication with the other Board members, will now accept their findings.

CWC: Began by saying that this case was well-tryed by all parties on all sides, and well considered when the petition was filed. There was ample testimony to support finding that proposed reclassification is warranted; any number of uses to which any reasonable uses of property; process of zoning is one of on which case turns is Petition for Reclassification in which the testimony would require finding of mistake or error; of meeting the legal definition of mistake or error. Reviewed comprehensive process of County Council; factors necessary to prove error or mistake; reviewed Joint Exhibit No. 1 (deed); title holder of each parcel to Grumman; same corporation /legal fact considered all three parcels of ground. County Council in same legal party owned all three parcels; discussed facts of sale, Master Plan, County Council's consideration of future trends; still left zoning as is, with exception of CR "planning" and "zoning"; and Petitioner's argument that this proposal for this property not available to County Council. But through cross examination it was demonstrated that if the County Council had considered this documented site plan, it would be illegal contract zoning. That this process in and of itself shows that the County Council made a mistake is not the case.

Summary: For all of the above reasons, believes that factually facts do not exist that would support opinion rendered by expert witness that mistake or error had occurred when property was zoned in 1992.

Accordingly, there is no mistake or error; would deny Petition.

ROS: Began by saying that he disagrees with colleague in ultimate finding; reasons are similar to reasons for granting; case does rest purely on error; no change or need to prove change. Testimony of George Gavrelis basically worthless in this case; hired late in procedure; did not look into history of property; also disagrees philosophically with Gavrelis' testimony that documented site plan can be used as basis for

Minutes of Deliberation /The Prosser Co., Inc. CR-94-143

proving mistake; that is contract zoning. /Does not believe Council had ample opportunity to examine each site during comprehensive zoning map process; made mistake by lumping all properties together by definition. Property part of overlay; information available was insufficient to have made decision; because County erred, must side with Petitioner in granting Petition.

For above reasons, would grant Petition for Reclassification.

WTH: Indicated regret that he was unable to discuss testimony and evidence with other Board members prior to today; has searched through lengthy memorandums and has also compared notes taken so that allegations in memos are supported by what was heard at hearing. All three memos are admirably written and information to Board; in spite of Mr. Clark's feelings, could not find any reason or any facts that would lead him to believe that Petition should be denied. Proposed use for site is good one and should be permitted; reviewed history of three properties (purchased and combined in 1992); County Council erred; no way they could have considered these as a block; as far as they were concerned, three separate parcels 7/2 R.O. and 1 residential; no takers to renovate old houses; not on landmarks list; failing septic systems; support of both Planning staff and Planning Board; proposed land use map adopted after Master Plan also recommends industrial use; this map adopted by County Council recommending industrial use for area. Keeping residential zoning was in fact an error; would grant petition.

Petition for Reclassification should be granted.

Closing statement by Chairman Hackett; majority opinion of Board that Petition for Reclassification 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.

NOTE: Appellate period runs from date of written Order and not from date of deliberation.

Respectfully submitted,

Kathleen C. Weidenhammer
Kathleen C. Weidenhammer
Administrative Assistant

Law Offices
MICHAEL P. TANCZYN, P.A.

Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
(410) 296-8823 - (410) 296-8824
Fax: (410) 296-8827
Computer Fax: (410) 296-2848

December 14, 1996

Civil Clerk
Baltimore County Circuit Court
County Courts Building
401 Bosley Avenue
Towson, MD 21204

Re: Glen Arm Community Association v.
County Board of Appeals for Baltimore County
Case Number 100/243/95CV00288 - Non-Jury

Dear Madam Clerk:

Enclosed herewith please find the Memorandum of Appellants Glen Arm Community Association, Inc. and T. Michael Reier for filing in the above matter.

Very truly yours,

Michael P. Tanczyn
Michael P. Tanczyn

MPT/ed
Enclosure

cc: County Board of Appeals
G. Scott Barhight, Esq.
Peter Max Zimmerman, Esq.
Mr. T. Michael Reier

IN THE CASE OF: * IN THE

IN THE MATTER OF THE * CIRCUIT COURT

APPLICATION OF THE PROSSER * FOR

COMPANY, INC. FOR A ZONING * BALTIMORE COUNTY

RECLASSIFICATION ON PROPERTY * CASE NO.: 100/243/95CV-0028

LOCATED ON THE SOUTHEAST SIDE *

LONG GREEN PIKE AND GLEN ARM *

ROAD (1207 AND 12109 LONG GREEN *

PIKE AND 5328 GLEN ARM ROAD) *

11th ELECTION DISTRICT *

6th COUNCILMANIC DISTRICT *

CASE NO. CR-94-143 *

CYCLE II, 1993/94 *

* * * * *

RESPONSE TO SUGGESTION OF MOOTNESS

The Prosser Company, Inc., by and through its attorneys, G. Scott Barhight and Whiteford, Taylor & Preston L.L.P., files its Response to Petitioners' Suggestion of Mootness, and states:

1. Respondent, The Prosser Company, Inc. ("Prosser"), filed a Petition for Reclassification before the Board of Appeals, requesting that 3.300 acres of RC 5-zoned land and 1.900 acres of RO-CR-zoned land be rezoned ML as limited and conditioned by a documented site plan. Respondents asserted that a mistake had been made in the existing zoning on the 5.2 acres of property under petition, and that the mistake warranted reclassification of the property to ML, as limited and conditioned by the documented site plan.

2. The Board of Appeals for Baltimore County granted Prosser's Petition for Reclassification by Order dated December 13, 1994 (see Order, Exhibit A), and Petitioners, Glen Arm Community Association, Inc. and T. Michael Reier, filed a Petition for Judicial Review of the Board's decision to the Circuit Court for Baltimore County.

3. The Honorable J. William Hinkel of the Circuit Court for Baltimore County affirmed the Board's finding that a zoning error existed on the 1992 Comprehensive Map; however, Judge Hinkel, by Order dated December 7, 1995, remanded the matter to the Board, ordering the Board to articulate its findings with respect to whether the mistake warranted reclassification pursuant to the factors set forth in Baltimore County Code Section 2-356(j)(2). See Order, Exhibit B.

4. Petitioners filed an appeal from that decision to the Court of Special Appeals of Maryland (No. 169, September Term, 1996). The record in that appeal was received and docketed on April 1, 1996; however, shortly thereafter, Petitioners voluntarily dismissed that appeal.

5. In light of the dismissal of the Petitioners' appeal to the Court of Special Appeals, Robert Schuetz, Chairman of the County Board of Appeals, issued, on May 6, 1996, an amended opinion pursuant to the Circuit Court's remand order. That amended opinion articulated findings that the zoning error on the subject property warranted reclassification.

6. Petitioners requested, by letter dated May 8, 1996, that Chairman Schuetz reconsider his decision rendered on May 6, 1996 asserting that the decision required a

minimum of two board members and required at least ten days notice to all parties of record.

7. In accordance with Petitioners' request, the Board rescinded Chairman Schuetz's May 6, 1996 decision and, on June 5, 1996 and July 3, 1996 public deliberations were conducted on whether the zoning error warranted reclassification.

8. By Order dated September 19, 1996, the Board found on remand that, pursuant to § 2-356(j)(2), the error in the subject property's existing zoning warranted the zoning reclassification requested by Prosser. See Order, Exhibit C. Petitioners filed a Petition for Judicial Review of the Board's remand decision to the Circuit Court for Baltimore County.

9. The 5.2 acres at issue were also the subject of two 1996 Comprehensive Zoning Map Issues; Issues 6-001 and 6-017. Issue 6-001 requested that the existing zoning on the 5.2 acre site be changed from RC 5 and RO-CR to ML. Issue 6-017 requested that the existing zoning of RC 5 and RO-CR on the 5.2 acre site be changed to RC 2.

10. On October 8, 1996, the County Council adopted the 1996 Comprehensive Zoning Map. With respect to Issues 6-001 and 6-017, the County Council adopted the Baltimore County Planning Board's recommendation that the subject site retain its existing zoning of RC 5 and RO-CR.

11. Accordingly, when the County Council adopted the 1996 Comprehensive Zoning Map, no changes were made in the zoning on the subject site; the site remained 3.300 acres of RC 5 zoned land and 1.900 acres of RO-CR zoned land. The zoning shown

on the 1992 Comprehensive Zoning Map and the 1996 Comprehensive Zoning Map are identical.

12. Section 2-356(n) of the Baltimore County Code provides that:

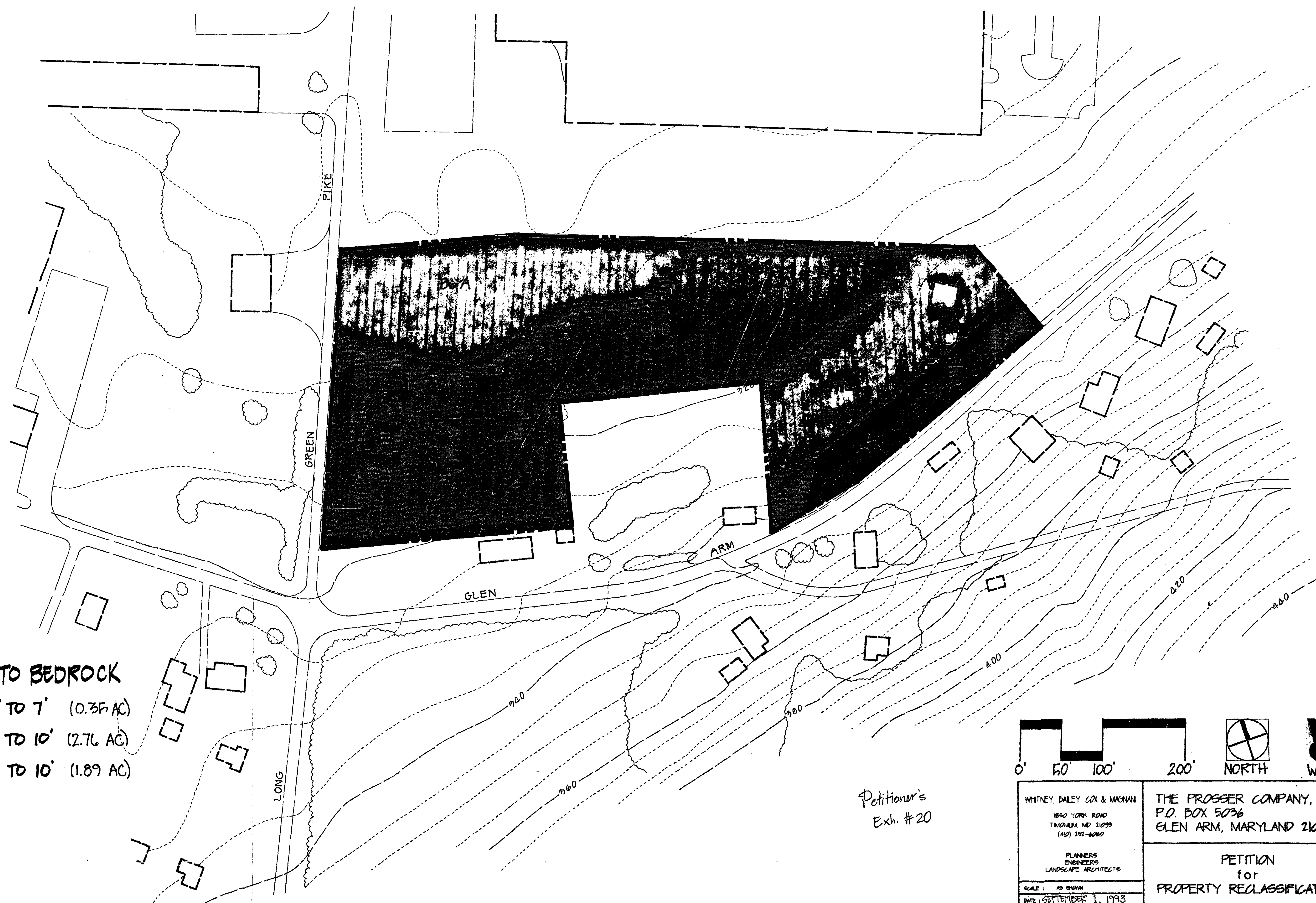
(n) *Use of property.* Property may be reclassified under this section only upon making the findings required under subsection (j) of this section. Property may not be reclassified solely on the basis of documentation relating to the property's proposed use. However, any provision of section 26-122 of 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 26-124 and 26-125 of this Code unless the zone classification of the property is further changed by that map."

(Emphasis added.)

13. In the instant matter, the subject site consisted of 3.300 acres zoned RC 5 and 1.900 acres zoned RO-CR prior to the enactment of the 1996 Comprehensive Zoning Map.

14. The adoption of the 1996 Comprehensive Zoning Map, did not alter the zoning of the subject site; the site still consists of 3.300 acres zoned RC 5 and 1.900 acres zoned RO-CR.

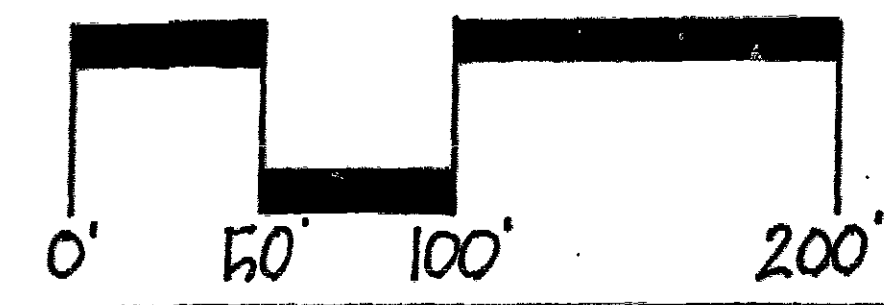
15. Accordingly, the subsequent enactment of the 1996 Comprehensive Zoning Map did not affect the Board's remand decision granting the Petition for Reclassification



DEPTH TO BEDROCK

	4' TO 7' (0.35 AC)
	4' TO 10' (2.76 AC)
	5' TO 10' (1.89 AC)

Petitioner's
Exh. # 20



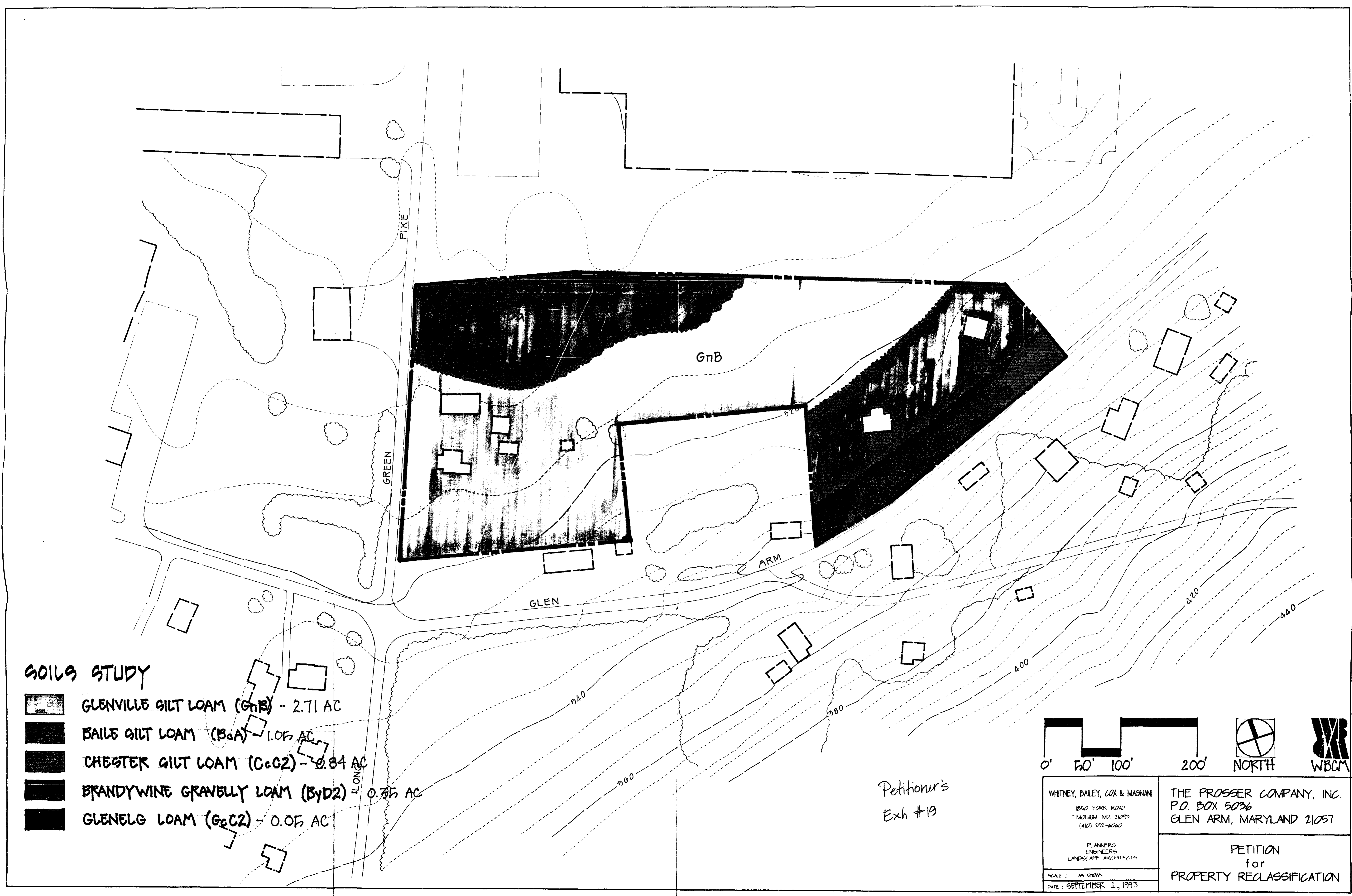
WHITNEY, DALEY, COX & MAGNANI
1850 YORK ROAD
TAVENHILL, MD 21093
(410) 292-6080

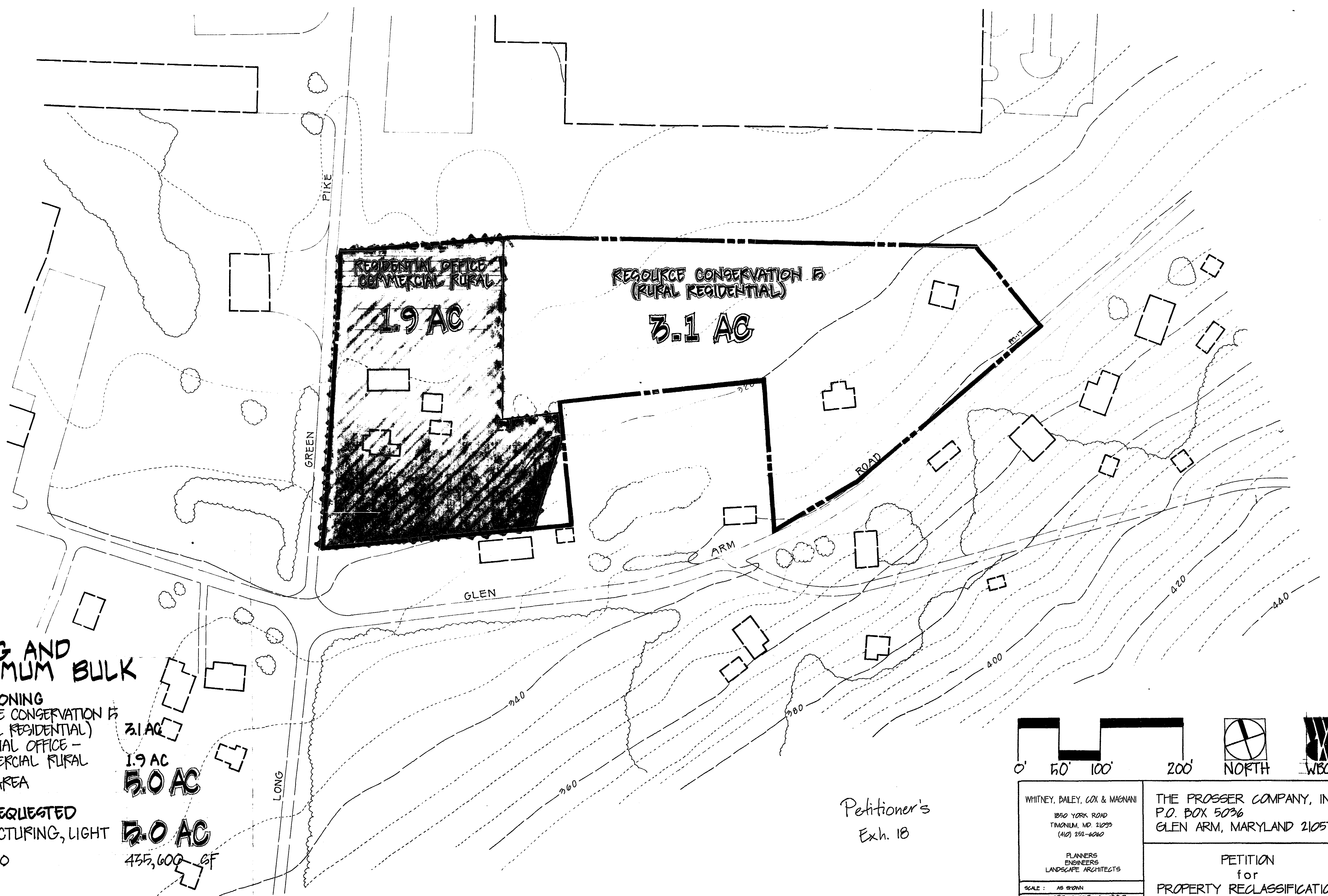
PLANNERS
ENGINEERS
LANDSCAPE ARCHITECTS

SCALE: AS SHOWN
DATE: SEPTEMBER 1, 1993

THE PROSSER COMPANY, INC.
P.O. BOX 5036
GLEN ARM, MARYLAND 21057

PETITION
for
PROPERTY RECLASSIFICATION





**ZONING AND
MAXIMUM BULK**

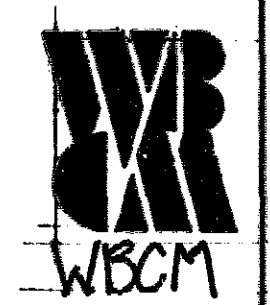
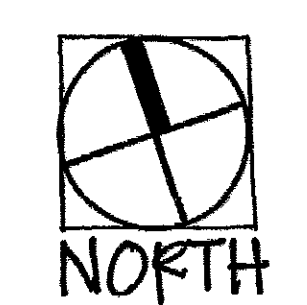
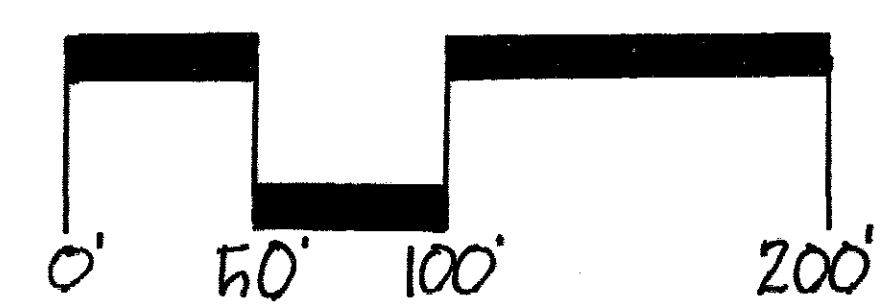
EXISTING ZONING
RESOURCE CONSERVATION B
(RURAL RESIDENTIAL)
RESIDENTIAL OFFICE -
COMMERCIAL RURAL
TOTAL AREA

3.1 AC
1.9 AC
5.0 AC

ZONING REQUESTED
MANUFACTURING, LIGHT
F.A.R. 2.0

5.0 AC
435,600 SF

Petitioner's
Exh. 18



WHITNEY, BAILEY, COX & MAGNANI
1850 YORK ROAD
TIMONUM, MD 21093
(410) 252-8080

PLANNERS
ENGINEERS
LANDSCAPE ARCHITECTS

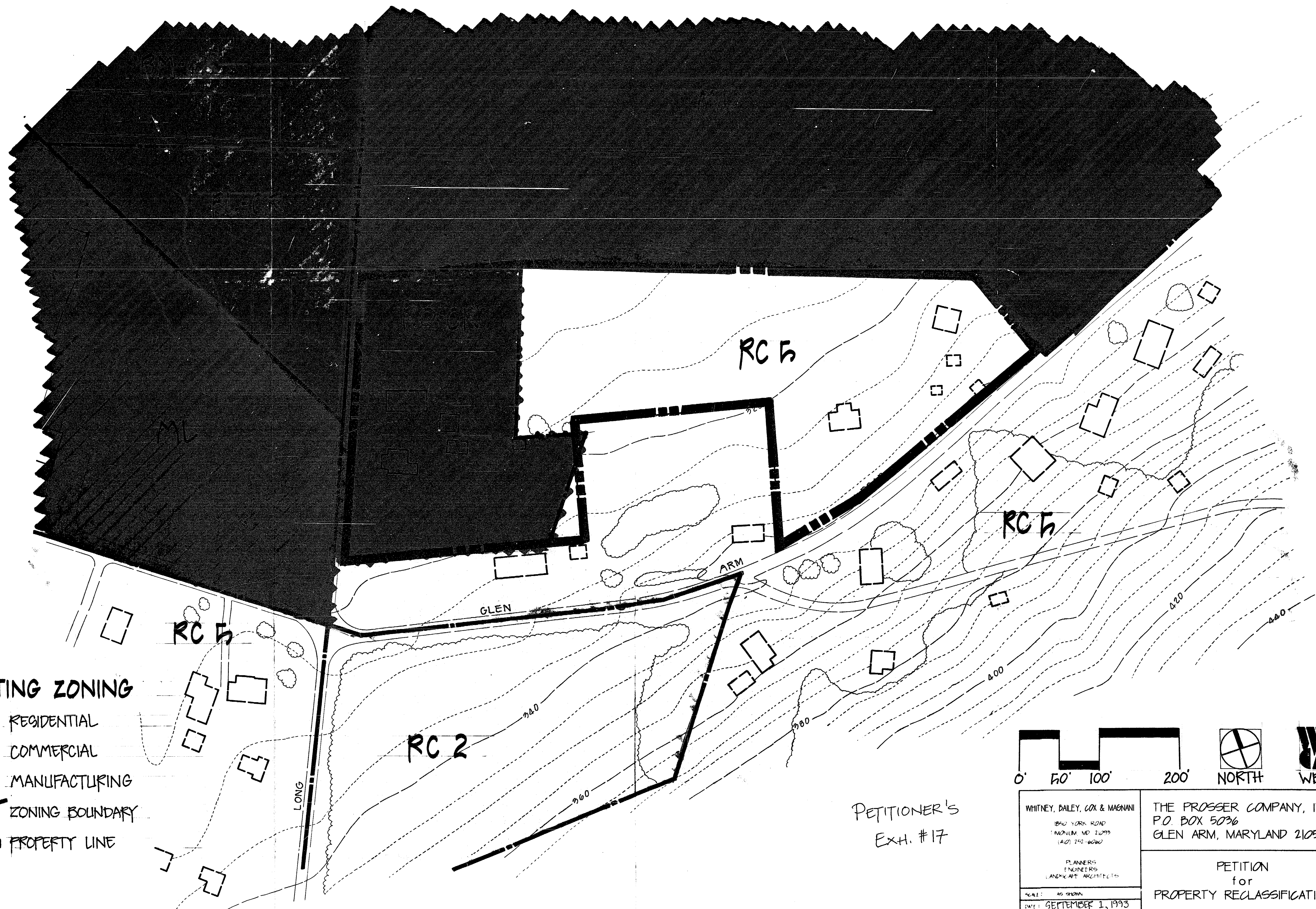
SCALE: AS SHOWN
DATE: SEPTEMBER 1, 1993

THE PROSSER COMPANY, INC.
P.O. BOX 5036
GLEN ARM, MARYLAND 21057

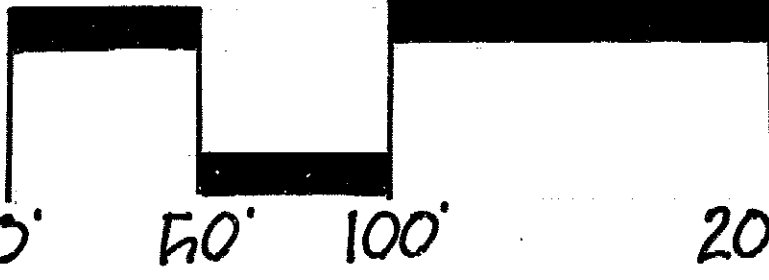
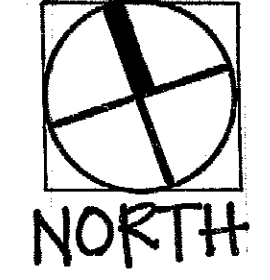
PETITION
for
PROPERTY RECLASSIFICATION

EXISTING ZONING

-  RESIDENTIAL
-  COMMERCIAL
-  MANUFACTURING
-  ZONING BOUNDARY
-  PROPERTY LINE



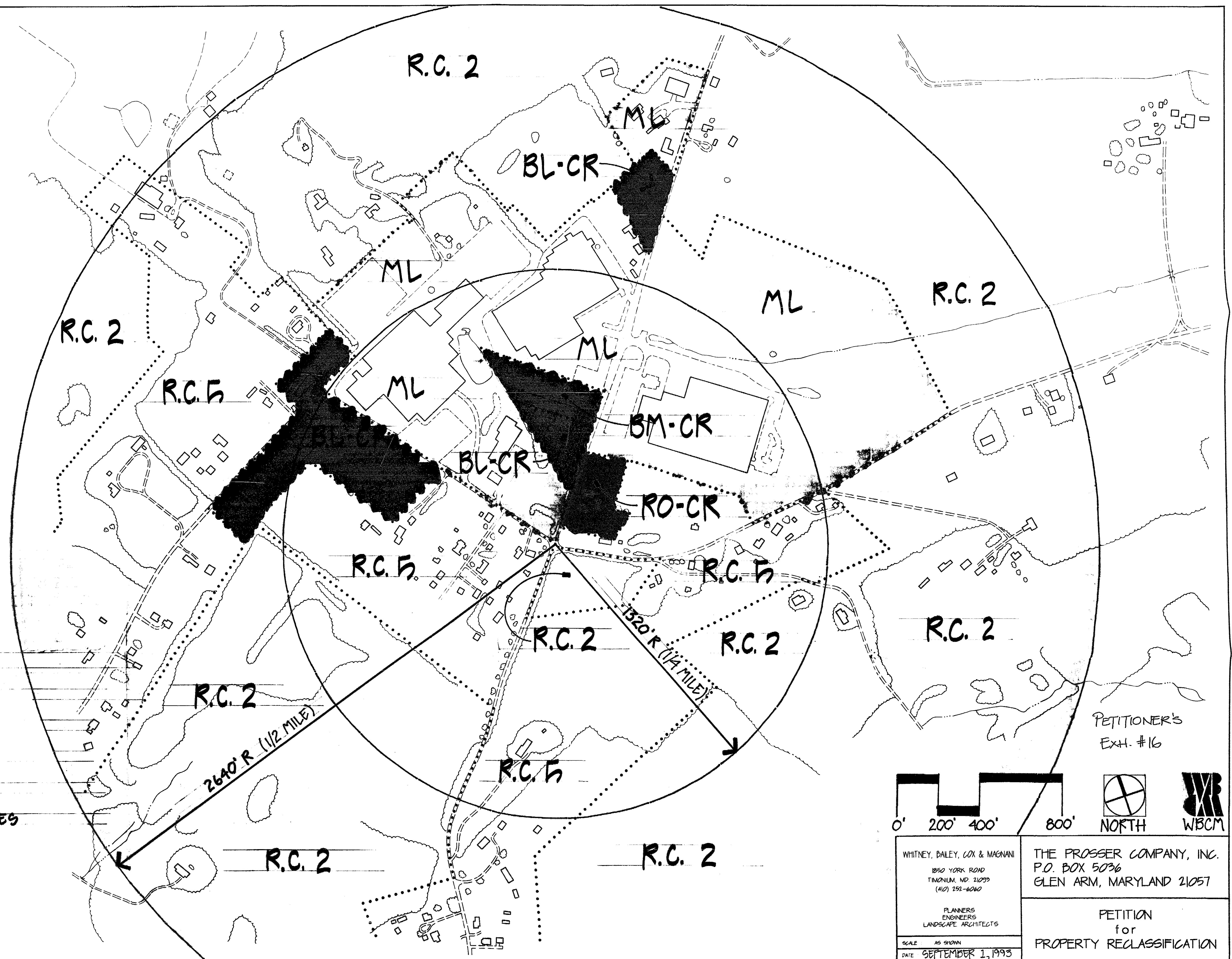
PETITIONER'S
EXH. #17

		
WHITNEY, BAILEY, COX & MAGNANI 880 YORK ROAD MONUM, MD 21093 (410) 242-8000	THE PROSSER COMPANY, INC. P.O. BOX 5036 GLEN ARM, MARYLAND 21057	
PLANNERS ENGINEERS LANDSCAPE ARCHITECTS SCALE: AS SHOWN DATE: SEPTEMBER 1, 1993		

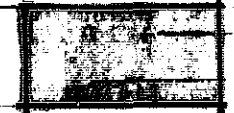
PETITION
for
PROPERTY RECLASSIFICATION

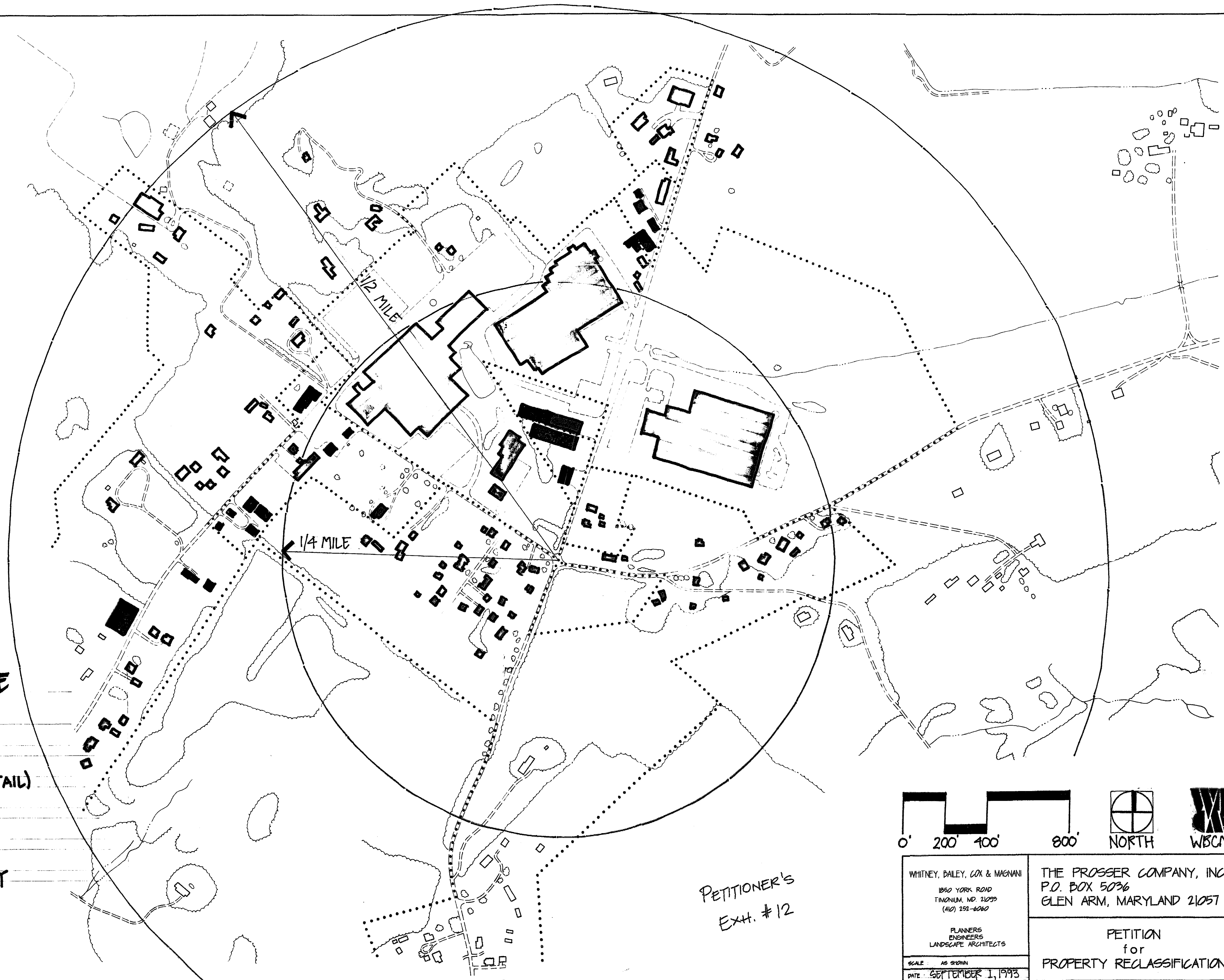
EXISTING ZONING

-  RESIDENTIAL
-  OFFICE
-  BUSINESS
-  MANUFACTURING
-  ZONING BOUNDARIES

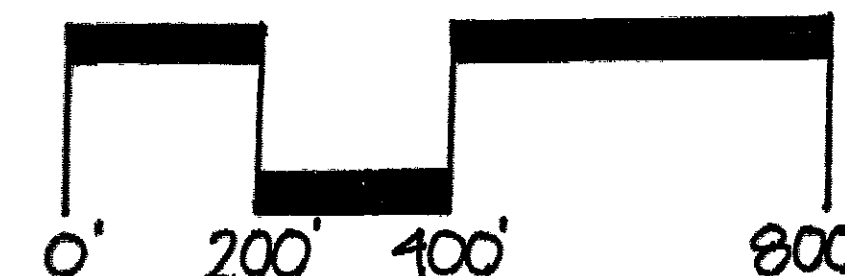


EXISTING LAND USE

-  RESIDENTIAL
-  OFFICE
-  COMMERCIAL (RETAIL)
-  INDUSTRIAL
-  PUBLIC
-  ZONING BOUNDARY



PETITIONER'S
EXH. #12



WHITNEY, DAILEY, COX & MAGNANI
1850 YORK ROAD
TIMONUM, MD. 21055
(410) 251-6060

PLANNERS
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SCALE: AS SHOWN
DATE: SEPTEMBER 1, 1993

THE PROSSER COMPANY, INC.
P.O. BOX 5036
GLEN ARM, MARYLAND 21057

PETITION
for
PROPERTY RECLASSIFICATION

PETITION OF GLEN ARM
COMMUNITY ASSOCIATION, INC. *
AND T. MICHAEL REIER FOR * IN THE CIRCUIT COURT FOR
JUDICIAL REVIEW IN THE CASE * BALTIMORE COUNTY
OF THE PROSSER COMPANY, INC. *
FOR ZONING RECLASSIFICATION * CASE NO. 03-C-95-0288
* * * * *

OPINION AND ORDER OF COURT

This Petition for Judicial Review involves a property owned by the Prosser Company situated on the southeast side of Long Green Pike and the northwest side of Glen Arm Road in the Sixth Councilmanic District of Baltimore County. Prosser filed a Petition for Reclassification with the County Board of Appeals for Baltimore County ("CBA"), requesting that 3.3 acres of RC5-zoned land and 1.9 acres of RO-CR-zoned land be reclassified to ML, as limited and conditioned by a documented site plan. Prosser argued that a mistake had been made in the existing zoning and that the mistake warranted the reclassification.

The CBA granted the reclassification by order dated December 13th, 1994 and Petitioners and People's Counsel filed for judicial review thereof. Judge Hinkel of this Court affirmed the CBA's finding that a zoning error existed on the 1992 Comprehensive Zoning Map but remanded the matter to the CBA, ordering it to articulate its findings with respect to whether the mistake it found did in fact warrant reclassification pursuant to the factors set forth in Baltimore County Code §2-356 (j)(2).

The question for the reviewing court is whether the conclusions reasonably may be based upon the factors proven. The court may not substitute its judgment on the question whether the inference drawn is the right one or whether a different inference would be better supported. The test is reasonableness, not rightness. Annapolis v. Annapolis Waterfront Co., 284 Md. 383, 396 A.2d 1080 (1979), [Citing 4 K. Davis, Administrative Law, §29.05, at 137, 139 (1958).]

Appellate courts have frequently observed that the order of an administrative agency must be upheld on judicial review if it is not based on an error of law, and if the agency's conclusions reasonably may be based upon the factors proven. Ad± Soil, Inc. v. County Commissioners, 307 Md. 307, 513 A.2d 893 (1986). But a reviewing court is under no constraints in reversing an administrative decision which is premised solely upon an erroneous conclusion of law. People's Counsel for Baltimore County v. Maryland Marine Manuf., Inc., 316 Md. 491, 560 A.2d 32 (1989), quoted with favor in United Parcel v. People's Counsel, 93 Md. App. 59, 611 A.2d 993 (1992).

The Court will not set forth again the facts of this case in detail as they are adequately expressed in other materials relating to this litigation. However, we will briefly discuss each of the issues articulated by the property owner and how this Court views each:

ISSUE NO. 1

The Petitioners and People's Counsel emphasize that the adoption of the 1996

Petitioners and People's Counsel filed appeals from Judge Hinkel's decision to the Court of Special Appeals of Maryland. However, shortly after the appeal was received and docketed, Appellants voluntarily dismissed their appeals. Following that dismissal the CBA's chairman, pursuant to Judge Hinkel's order, issued an amended opinion setting forth his findings that the zoning error on the subject property warranted reclassification. However, at the request of Petitioners the chairman reconsidered his decision and withdrew it, conceding that the decision on remand required a minimum of two Board members and appropriate notice to all parties of record. Thereafter, the CBA, with substituted members added on to constitute a full tribunal, conducted public deliberation on June 5th and July 3rd, 1996 and then in September of 1996 issued an order finding that the error in the subject property's existing zoning did indeed warrant the requested reclassification to ML. This appeal in the instant case resulted from Petitioners' and People's Counsel's request for review of that remand decision by the CBA.

While the Petition for Reclassification was pending and under review by various authorities, the Planning Staff, Planning Board and County Council were reviewing the subject site as part of the County's 1996 quadrennial Comprehensive Zoning Map process. The Prosser Company property was the subject of two map issues and with respect to those issues when the 1996 Comprehensive Zoning Map was adopted the Council adopted the Planning Board's recommendation that the site retain its existing

Comprehensive Zoning Map has the effect of making moot the Petition for Reclassification which is the subject of this case. They argue that there are no vested rights in the ML zoning which did survive the map action and that that action supersedes any effect that the CBA's granting of the reclassification might have had. The Court rejects this view. As property owner's counsel observes, if pending petitions for reclassification were simply obliterated by the quadrennial zoning process all that protestants would have to do to defeat any reclassification would be simply to delay it to death by filing endless series of appeals and reviews. This would have the effect of totally emasculating the reclassification process by individual petition and rendering it utterly meaningless. The Court cannot accept that this was the intention of the County Council. Rather, the Court is persuaded that the Council and the Planning Staff tacitly recognized the pendency of the reclassification action when it left the property in the same zoning classifications for map purposes which it had prior to the adoption of the 1996 Comprehensive Zoning Map. Thus the short answer to the first issue is that the pending reclassification was not affected by the adoption of the 1996 Comprehensive Zoning Map.

ISSUE NUMBER 2

The failure of the property in question to satisfy Baltimore County Zoning Regulation 1A00.3A1 was raised in the prior Petition for Judicial Review of this matter

zoning of RC-5 and RO-CR. Thus the zoning of this property is identical on both the 1992 and 1996 Comprehensive Zoning Maps.

In their respective Petitions for Judicial Review, Petitioners and People's Counsel raised somewhat different and partially overlapping issues. The Respondent property owner in its response to the Petitioners' requests for review responded to both and framed issues which appear essentially to deal with contentions raised by both Glen Arm Community Association and People's Counsel. In substance, Respondent frames the issues thus:

1. Was Prosser's Petition for Reclassification affected by the County Council's adoption of the 1996 Comprehensive Zoning Map in the enactment of Bill 133-96?
2. Is the failure of the Prosser property to satisfy the master plan water and sewer requirement an issue properly before this Court at this time?
3. Is the CBA's approval of Prosser's Petition for Reclassification affected by the holding of the Court of Special Appeals in People's Counsel v. Beachwood L.L.P., 107 Md. App. 627, 670 A.2d 484 (1995)?
4. Did the CBA properly refuse to conduct a new evidentiary hearing on remand?
5. Did the CBA properly articulate its findings on remand as required by Code §2-356 (j)(2)?
6. Are issues relating to the CBA's subsequently rescinded order of May 6th, 1996 moot?
7. Was Robert Schuetz, the CBA's Chairman, correct in refusing to recuse himself from the remand consideration and opinion?

which was before Judge Hinkel. He ruled that the regulation in question was in conflict with the Baltimore County Charter and thus was ineffective as acting in derogation of the exclusive jurisdiction of the CBA to grant petitions for reclassification. Petitioners and People's Counsel sought to have that matter reconsidered by Judge Hinkel and he refused to do so. When their appeal to the Court of Special Appeals was dismissed, Judge Hinkel's ruling on this issue became the law of the case and is, as this Court views it, res judicata. Even if this Court were persuaded that Judge Hinkel's ruling does not represent a proper interpretation, we are unable to revisit that interpretation notwithstanding subsequent nisi prius and appellant opinion to the contrary. Accordingly, this Court finds that the failure of the Prosser property to meet sewer and water master plan requirements is not an issue properly to be considered in this matter.

ISSUE NUMBER 3

This Court has reviewed People's Counsel v. Beachwood L.L.P., as apparently did Judge Hinkel when he was asked to reconsider his prior ruling and finds that even if it were considered not res judicata, it appears to be in conformity with the holdings of Beachwood. Our assessment is that Beachwood has no effect on Prosser's Petition for Reclassification.

ISSUE NUMBER 4

Petitioners take issue with the failure of the CBA to conduct an entirely new evidentiary hearing on the Prosser Petition for Reclassification citing the failure of the

SCOPE OF REVIEW

The scope of review by this Court of the actions of an administrative agency like the County Board of Appeals is such that the Court may, through appeal or otherwise, correct any abuse of discretion by such an administrative agency or modify its actions when they are unsupported by facts, or are arbitrary, illegal, capricious or unreasonable. Heaps v. Cobb, 185 Md. 372, 45 A.2d 73 (1945). However, the scope of judicial review of decisions by administrative agencies is narrow, recognizing that Board members have expertise in a particular area and ordinarily should be free to exercise their discretion as such. Finney v. Halle, 241, Md. 224, 216 A.2d 530 (1966). Thus a reviewing court will not substitute its judgment for that of an administrative board where the issue is fairly debatable and the record contains substantial evidence supporting the administrative decision. Montgomery County v. Woodward & Lothrop, Inc., 280 Md. 686, 376 A.2d 483 (1977). The "substantial evidence test" is whether a reasoning mind reasonably could have reached the factual conclusion the agency reached from the record before it. Insurance Commissioner v. National Bureau, 248 Md. 292, 236 A.2d 282 (1967). That test is also defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Bulluck v. Pelham Woods Apts., 283 Md. 505, 390 A.2d 1119 (1978). This review should not consist of judicial-fact finding or a substitution of judicial judgment for agency judgment. Insurance Commissioner v. National Bureau, supra.

CBA to follow its own rules of procedure, inter alia. The CBA elected to take no new evidence but decide instead to base its factual findings regarding Code §2-356 (j)(2) on the existing record testimony.

Pursuant to Rule 7-209 this Court, sitting as an appellate court, "may dismiss the action for judicial review or may affirm, reverse, modify the agency's order or action, remand the action to the agency for further proceedings, or an appropriate combination of the above." The purpose of remanding a case is set forth in Rule 8-604 (d)(1):

- (1) *Generally* -- If the court concludes that the substantial merits of a case will not be determined by affirming, reversing or modifying the judgment, or that justice will be served by permitting further proceedings, the court may remand the case to a lower court. In the order remanding a case, the appellate court shall state the purpose for the remand. The order of remand and the opinion upon which the order is based are conclusive as to the points decided. Upon remand, the lower court shall conduct any further proceedings necessary to determine the action in accordance with the opinion and order of the appellate court.

In this case the order of remand was not to a lower court but rather to the CBA. However, the purpose of the remand was clearly stated by Judge Hinkel. The Circuit Court simply recognized that the CBA failed to articulate its findings and directed it to consider the factors in Code §2-356 (j)(2) and make a statement of findings thereon. Judge Hinkel did not order a de novo hearing or even require that the CBA take any additional testimony. Accordingly, in the view of this Court, the CBA was not required to conduct a new evidentiary hearing at all and did act properly pursuant to the mandate of the remand.

ISSUE NUMBER 5

Petitioners argue that the CBA did not properly articulate its findings on remand as required by Code §2-356(j)(2). However, a reading of the CBA's opinion pursuant to the remand indicates to the contrary. All of the factors mentioned in the Code requirement are mentioned and where appropriate discussed. The Court is persuaded that the CBA complied fully with the Code requirements.

ISSUE NUMBER 6

Petitioners devote substantial ammunition to the correctness of Chairman Schuetz's actions in his attempt at single-handedly complying with Judge Hinkel's remand order, an action which the Chairman later rescinded. Inasmuch as the action was rescinded, any error on his part is moot, and it is immaterial whether or not his actions were properly taken at the time he issued his order of May 6th, 1996.

ISSUE NUMBER 7

This issue was really related to the sixth issue. Petitioners suggest that Chairman Schuetz should have recused himself from the further consideration of this case having acted alone without notice to all parties initially. Nothing suggested by Petitioner, however, persuades the Court that his earlier actions, which as has been pointed out were rescinded, required him to recuse himself from the matter. Indeed, quite the opposite would seem true as he was the only surviving member of the Board which originally heard the testimony in the case and the two new Board members who

were appointed to fill the vacancies left by those who had departed could only rely upon the written transcript of the earlier hearings in support of their conclusions. No personal or procedural reasons requiring recusal have been cited and the Court finds that recusal was unnecessary.

The Court having resolved all of the issues raised in favor of the Prosser Company will **AFFIRM** the order of the CBA of September 19th, 1996 and it is hereby so **ORDERED**.

Christian M. Kahl

Date

CMK:emh

cc: Honorable J. William Hinkel
Michael P. Tanczyn, Esquire
Peter Max Zimmerman, Esquire
G. Scott Barhight, Esquire
David K. Gildea, Esquire

IN THE CASE OF:

IN THE MATTER OF THE
APPLICATION OF THE PROSSER
COMPANY, INC. FOR A ZONING
RECLASSIFICATION ON PROPERTY
LOCATED ON THE SOUTHEAST SIDE
LONG GREEN PIKE AND THE
NORTHWEST SIDE OF GLEN ARM
ROAD (12107 AND 12109 LONG
GREEN PIKE AND 5328 GLEN ARM
ROAD)

11th ELECTION DISTRICT
6th COUNCILMANIC DISTRICT

CASE NO. CR-94-143
CYCLE II, 1993/94

* IN THE

* CIRCUIT COURT

* FOR

* BALTIMORE COUNTY

* CASE NO.: 100/243/95CV- 00288

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**RESPONDING MEMORANDUM OF THE PROSSER COMPANY, INC. IN
OPPOSITION TO SUPPORTING MEMORANDA OF PEOPLE'S COUNSEL AND
GLEN ARM COMMUNITY ASSOCIATION, INC., AND T. MICHAEL REIER**

Respondent, The Prosser Company, Inc. ("Prosser"), pursuant to Maryland Rule 7-207, files its responding memorandum in opposition to the Petitions for Judicial Review and the Supporting Memoranda¹ filed by People's Counsel for Baltimore County ("People's Counsel") and Petitioners Glen Arm Community Association, Inc., and T. Michael Reier ("Petitioners"), in the above-captioned matter and states:

¹ Petitioners and People's Counsel raise similar issues in their supporting memoranda. Accordingly, Prosser, in the interest of economy, addresses all of the issues raised by Petitioners and People's Counsel in a single responding memorandum.

II. Has the alleged failure of the Prosser's property to follow the Baltimore County Master Plan water and sewer plans an issue which is not properly before this Court in the instant Petitions for Judicial Review?

III. Is the Board's approval of Prosser's Petition for Reclassification unaffected by the Court of Special Appeals' holding in *People's Counsel v. Beachwood I, L.P.*, 107 Md. App. 627 (1995)?

IV. Did the Board properly refuse to conduct a new evidentiary hearing on remand?

V. Did the Board properly articulate its findings on remand as required by BCC § 2-356(j)(2)?

VI. Are issues regarding the Board's May 6, 1996 Order, which was rescinded, moot?

VII. Was Board Chairman Robert O. Schuetz correct in refusing to recuse himself?

Standard of Review

"The standard of review of the action of an administrative agency is whether a reasoning mind could have reached the conclusion which the administrative agency reached." *State Ins. Comm'r v. National Bureau of Casualty Underwriters*, 248 Md. 292, 309 (1967) (cited with approval in *Nnoli v. Nnoli*, 101 Md. App. 243, 261 (1994)). "[T]he order of an administrative agency must be upheld on judicial review if it is not based on an error of law, and if the agency's conclusions reasonably may be based upon the facts

Statement of Case

This Petition for Judicial Review involves property which is owned by Prosser and which is situated on the southeast side of Long Green Pike and the northwest side of Glen Arm Road in Glen Arm, Maryland. Prosser filed a Petition for Reclassification with the County Board of Appeals for Baltimore County ("Board"), requesting that 3.300 acres of RC-5-zoned land and 1.900 acres of RO-CR-zoned land be rezoned ML, as limited and conditioned by a documented site plan. Prosser asserted that a mistake had been made in the existing zoning on the 5.2 acres of property under petition, and that the mistake warranted reclassification of the property to ML, as limited and conditioned by the documented site plan.

The Board granted Prosser's Petition for Reclassification by Order dated December 13, 1994 (attached hereto as Exhibit A), and Petitioners and People's Counsel, filed Petitions for Judicial Review of the Board's decision to the Circuit Court for Baltimore County. The Honorable J. William Hinkel of the Circuit Court for Baltimore County affirmed the Board's finding that a zoning error existed on the 1992 Comprehensive Map; however, Judge Hinkel, by Order dated December 13, 1995, remanded the matter to the Board, ordering the Board to articulate its findings with respect to whether the mistake warranted reclassification pursuant to the factors set forth in Baltimore County Code ("BCC") Section 2-356(j)(2) (attached hereto as Exhibit B).

Petitioners and People's Counsel filed appeals from that decision to the Court of Special Appeals of Maryland (No. 169, September Term, 1996). The record in that appeal was received and docketed on April 1, 1996; however, shortly thereafter, Petitioners and People's Counsel voluntarily dismissed those appeals. In light of the dismissal of the Petitioners' and People's Counsel's appeals to the Court of Special Appeals, Robert Schuetz, the Board's Chairman, issued, on May 6, 1996, an amended opinion pursuant to the Circuit Court's remand order. That amended opinion articulated Chairman Schuetz's findings that the zoning error on the subject property warranted reclassification (attached hereto as Exhibit C).

Petitioners and People's Counsel, however, requested, by letters dated May 8, 1996, and May 9, 1996, that Chairman Schuetz reconsider his decision rendered on May 6, 1996, asserting that the decision on remand required a minimum of two board members and required at least ten days notice to all parties of record (attached hereto as Exhibit D). In accordance with Petitioners' and People's Counsel's requests, the Board rescinded Chairman Schuetz's May 6, 1996 decision and, on June 5, 1996 and July 3, 1996, conducted public deliberations on whether the zoning error warranted reclassification.

By Order dated September 19, 1996, the Board found on remand that, pursuant to § 2-356(j)(2) of the BCC, the error in the subject property's existing zoning warranted the zoning reclassification requested by Prosser (attached hereto as Exhibit E). In

opposition to the Board's decision, Petitioners and People's Counsel filed, in the Circuit Court, the instant Petitions for Judicial Review of the Board's remand decision.

During the time when Prosser was pursuing its Petition for Reclassification, the Baltimore County Planning Staff, the Baltimore County Planning Board, and the County Council for Baltimore County were reviewing the subject site as part of Baltimore County's 1996 quadrennial comprehensive zoning map process. The 5.2 acre-site was the subject of two 1996 Comprehensive Zoning Map Issues; Issues 6-001 and 6-017. Issue 6-001 requested that the existing zoning on the 5.2 acre site be changed from RC 5 and RO-CR to ML. Issue 6-017 requested that the existing zoning of RC 5 and RO-CR on the 5.2 acre site be changed to RC 2. On October 8, 1996, the County Council adopted the 1996 Comprehensive Zoning Map. With respect to Issues 6-001 and 6-017, the County Council adopted the Baltimore County Planning Board's recommendation that the subject site retain its existing zoning of RC 5 and RO-CR. When the County Council adopted the 1996 Comprehensive Zoning Map, no changes were made in the zoning on the subject site; the site remained 3.300 acres of RC 5 zoned land and 1.900 acres of RO-CR zoned land. The zoning shown on the 1992 Comprehensive Zoning Map and the 1996 Comprehensive Zoning Map are identical.

Issues

I. Was Prosser's Petition for Reclassification unaffected by the County Council's enactment of Bill 133-96?

proven." *Peoples Counsel v. Mangione*, 316 Md. 491, 496-97 (1989). A reviewing court, however, is under no constraint in reversing an administrative decision that is premised solely upon an erroneous conclusion of law. *Id.* at 497. Once the court determines that the administrative agency applied the proper legal standards, judicial review of the agency's conclusions is then tested by the substantial evidence test. *Montgomery County v. Buckman*, 333 Md. 516, 519-20 (1994).

Accordingly, in the instant matter, "[this] court must consider all of the evidence in the administrative record. [This] court's role, however, is confined to determining the legality of the procedure employed and whether the decision was fairly debatable in light of the evidence adduced before the zoning authority." *Cromwell v. Ward*, 102 Md. App. 691, 709 (1995).

Statement of Facts

The subject site originally consisted of three parcels, two of which are zoned R.O.-C.R. and one of which is zoned R.C. 5. Prosser purchased the three parcels on July 15, 1992, and combined them into one unit for development purposes. Thereafter, Prosser filed a Petition to reclassify the subject property from RO-CR and R.C. 5 to ML.

During a four-day hearing before the Board, testimony revealed that Prosser sought the ML reclassification in order to relocate two of its subsidiaries to the site. At the time of the hearing before the Board, each of the parcels was improved with a residence, and all of the residences had failing septic systems. Since the Board's initial decision, the three residences have been razed. Joseph L. Prosser, Jr., Prosser's

president, testified that Prosser could obtain no R.O. use for the property and that the continued residential use of the site was not economically feasible. See Exhibit A at 2.

In addition to Mr. Prosser's testimony, Peter Swanson, Joseph Bittner, Barbara Amerein, Parker Watson, Patrick Ford, Jeffrey Long, and George Gavrelis testified in support of Prosser's Petition for Reclassification. Peter Swanson, of the Baltimore County Economic Development Office, stated that the County supports the proposed reclassification as limited by the documented site plan. Mr. Swanson further stated that the reclassification was consistent with the Master Plan. See Exhibit A at 2-3.

Patrick Ford, who developed the documented site plan for the subject site, testified regarding the industrial character of the locale surrounding the site. Mr. Ford analyzed the site's existing land uses, and the soils, hydrology, slopes, and existing vegetation on the site. According to Mr. Ford, all three of the septic systems on the site are failing and the systems do not meet County or State standards. Mr. Ford also testified that the proposed reclassification would have no significant environmental impact. See Exhibit A at 3.

Mr. Long, the Planning Staff member who drafted the Planning Staff's report and recommendations, testified that the County supports the proposed reclassification because the Master Plan identifies the property for industrial and employment uses. Mr. Long stated that the proposed rezoning to ML was a reasonable extension of the M.L. zone which abuts the subject site on three sides, and that the documented site plan provides adequate protection for adjacent properties. See Exhibit A at 4.

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Mr. Long also testified regarding the 1992 CZMP, during which the subject site was considered for a CR-district overlay. According to Mr. Long, the CR overlay designation was applied to all RO properties as a matter of course and the Planning Staff did not conduct thorough reviews for each property affected. Mr. Long testified that, during the 1992 CZMP, the County Council made its decision, with regard to the instant site, on the best information available at that time. See Exhibit A at 4.

Mr. Gavrelis, an expert in planning and zoning, testified that because Prosser purchased and combined the three parcels into one unit after the commencement of the 1992 CZMP, the County Council could not have had an opportunity to review the documented site plan, proposed uses or the combination of the lots until after the 1992 Comprehensive Zoning Maps had been adopted. Mr. Gavrelis also testified that the proposed reclassification complies with the Master Plan and complies with the 1992 Proposed Use Map. See Exhibit A at 5.

In addition to expert testimony, three community residents, Joseph Bittner, Barbara Amerein, and Parker Watson, testified in favor of the proposed reclassification and the proposed development for the site. See Exhibit A at 3. Also, Prosser submitted to the Planning Board numerous letters of support from the community, and many local residents attended the Board hearing in support of Prosser's proposed development.

T. Michael Reier, President of the Glen Arm Community Association, opposed the proposed reclassification and testified that the character of the community did not warrant the requested reclassification. See Exhibit A at 6. Ed Nelan, a neighbor on the

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south side of Glen Arm Road directly across from the subject site, and Carol Trella, Secretary of the Long Green Valley Association, also testified that they were opposed to the proposed reclassification. See Exhibit A at 7.

Additionally, Dennis Wertz, a Senior Planner with the Office of Planning and Zoning, testified that he agreed with the testimony of Mr. Long. See Exhibit A at 6. Wallace Lippencott, a representative of the Department of Environmental Protection & Resource Management ("DEPRM"), testified that he was unaware of the designation for the property on the 1992 Proposed Land Use Map but indicated that he was not involved in the recommendation for the proposed reclassification. See Exhibit A at 6. Robert Powell, another DEPRM representative, testified that DEPRM was concerned over the availability of a septic reserve area but agreed that, if building permits were issued, DEPRM would have full authority and opportunity to insure proper septic services. See Exhibit A at 7.

In a 2-1 decision, based on the above-referenced testimony, the Board approved the Petition for Reclassification. Specifically, the Board found that the proposed development on the subject site is in keeping with the adjacent land uses and that no practical use for the three properties exists under their present zoning designation because, no matter what the use proposed or undertaken, all three of the septic systems cannot comply with Baltimore County regulations. See Exhibit A at 7. The Board recognized that the Office of Planning and Zoning staff comments regarding the applicable CR designation were applied in error "as a matter of course" without due

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consideration for each property affected by the issue. See Exhibit A at 8. Accordingly, the Board found that the Office of Planning and Zoning Staff unknowingly misled the County Council in its advice to apply the CR designation to the instant site. See Exhibit A at 8. The Board stated that the County Council could not have known of or foreseen the developments on the property. The Board concluded from its factual findings that the proposed use under the documented site plan complies with the Master Plan and the 1992 Proposed Land Use Map, and the proposed use will remove the health hazard produced by the three failing septic systems, as evidenced by the documented site plan. See Exhibit A at 8.

From that decision, Petitioners filed a Petition for Judicial Review of the Board's decision approving Prosser's Petition for Reclassification. As stated *supra*, Judge Hinkel issued an Order on December 13, 1995 affirming the Board's decision that an error "occurred subsequent to the Comprehensive Zoning Map Process in 1992." Specifically, Judge Hinkel found that :

At the time of the comprehensive zoning, there is evidence that the lots were presented to the Council as three individual lots. The fact that the lots were owned by a single owner does not affect this finding. Each lot currently has a non-functioning septic system. Only a small area on one of the lots can be developed for septic use. Thus, the three lots must be consolidated for development purposes. The Council could not have known about these circumstances in 1992 at the time of the comprehensive zoning because they arose after January 1992 -- the last date on which an issue could have been raised pertaining to the 1992 Comprehensive Zoning Map Process. The failure of the septic systems requires that the three lots be developed in a consolidated fashion. The Council, however, treated the lots as three individual lots during the 1992 Comprehensive Zoning Map Process. Thus as the Board of Appeals determined the zoning afforded the lots was in error.

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See Exhibit B at 7. Judge Hinkel, however, determined that the Board failed to articulate its findings with respect to the factors set forth in BCC § 2-356(j)(2), and therefore, he remanded the matter to the Board for the limited purpose of having the Board articulate its findings regarding whether the error warranted reclassification of the subject property. See Exhibit B at 9.

On remand, the Board "openly deliberated the very narrow issue of whether the proposed zoning classification is warranted in accordance with [BCC] § 2-356(j)(2)." Section 2-356(j)(2) provides, in pertinent part, that:

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. [Bill No. 46, 1979.]

BCC § 2-356(j)(2).

The Board determined that the zoning error on the subject site warranted reclassification. The Board based its conclusion primarily on the testimony of Mr. Long, Ms. Mascari, Mr. Gavrelis, Mr. Swanson, and Mr. Ford. See Exhibit E.

The Board found persuasive Mr. Long's testimony that the Office of Planning and Zoning Staff agreed that Prosser's Petition for Reclassification was appropriate and was consistent with the Master Plan. The Board also relied on Mr. Long's testimony

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that the subject site "is noted as an industrial development area as part of the Master Plan." See Exhibit E at 9.

The Board noted that Mr. Ford testified that the Glen Arm area was predominantly business and industrial use, and that Ms. Mascari testified that the three existing buildings on the site are not listed on the Baltimore County Landmarks Preservation List, and that Prosser has the right to raze the existing structures. See Exhibit E at 9-10.

The Board used Mr. Gavrelis's testimony to support most of its findings regarding the factors listed in BCC § 2-356(j)(2). The Board found persuasive Mr. Gavrelis's testimony that the documented site plan complied with the spirit and intent of the BCZR and that the proposed reclassification and development (1) would not impact existing transportation facilities, utilities, or schools, (2) would not impact solid waste disposal services and facilities, (3) would not impact the capital program, (4) accorded with the surrounding manufacturing areas, and (5) accorded with "existing and prospective classifications with the Master Plan, [and] the County plan for sewerage and water supply facilities." See Exhibit E at 10.

The Board also found that "adverse impacts to water supply facilities are mitigated by the proposed reclassification; that sewerage would be improved by the proposed reclassification; and that the general welfare of the community concerning environmental issues would be enhanced by the proposed reclassification and its resultant improvements on the property." *Id.*

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Discussion

I. The Adoption of the 1992 Comprehensive Zoning Maps Does Not Affect Prosser's Petition for Reclassification

Prosser has already addressed, in great detail, the "mootness" issue in its Response to Petitioners' Suggestion of Mootness, which it incorporates herein by reference. As Prosser asserted in its Response, the 5.2 acres at issue were the subject of two 1996 Comprehensive Zoning Map Issues; Issues 6-001 and 6-017. Issue 6-001 requested that the existing zoning on the 5.2 acre site be changed from RC 5 and RO-CR to ML. Issue 6-017 requested that the existing zoning of RC 5 and RO-CR on the 5.2 acre site be changed to RC 2.

On October 8, 1996, the County Council adopted the 1996 Comprehensive Zoning Map. With respect to Issues 6-001 and 6-017, the County Council adopted the Baltimore County Planning Board's recommendation that the subject site retain its existing zoning of RC 5 and RO-CR. Accordingly, when the County Council adopted the 1996 Comprehensive Zoning Map, no changes were made in the zoning on the subject site; the site remained 3.300 acres of RC 5 zoned land and 1.900 acres of RO-CR zoned land. The zoning shown on the 1992 Comprehensive Zoning Map and the 1996 Comprehensive Zoning Map are identical.

Section 2-356(n) of the Baltimore County Code provides that:

(n) *Use of property.* Property may be reclassified under this section only upon making the findings required under subsection (j) 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 26-122 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

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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 26-124 and 26-125 of this Code unless the zone classification of the property is further changed by that map."

(Emphasis added.)

In the instant matter, the subject site consisted of 3.300 acres zoned RC 5 and 1.900 acres zoned RO-CR prior to the enactment of the 1996 Comprehensive Zoning Map. The adoption of the 1996 Comprehensive Zoning Map, did not alter the zoning districts applied to the subject site or the configuration of the zoning lines; the site still consists of exactly the same 3.300 acres zoned RC 5 and 1.900 acres zoned RO-CR. Accordingly, the subsequent enactment of the 1996 Comprehensive Zoning Map did not affect the Board's remand decision granting the Petition for Reclassification pursuant to a documented site plan because the "zoning classification of the [subject] property [was not] further changed by that map."

Petitioners and People's Counsel erroneously assert that the County Council "rezoned" the subject property when it adopted the 1996 Comprehensive Zoning Map. Petitioners and People's Counsel misunderstand that the Board's approval of Prosser's Petition for Reclassification in accordance with the documented site plan did not constitute a change in the 1992 Comprehensive Zoning Map for the purposes of § 2-

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pursuant to a documented site plan because the "zoning classification of the [subject] property [was not] further changed by that map."

16. Petitioners erroneously assert that the County Council "rezoned" the subject property when it adopted the 1996 Comprehensive Zoning Map. Petitioners misunderstand that the Board's approval of Prosser's Petition for Reclassification in accordance with the documented site plan did not constitute a change in the 1992 Comprehensive Zoning Map for the purposes of § 2-356(n).

17. Pursuant to § 2-356(n), Prosser has "three (3) years after the date of the final order granting the petition" to use the property under petition in accordance with an approved documented site plan. Moreover, "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." See § 2-356(n).

18. In the instant matter, as of yet, there is no final order granting the Prosser's Petition for Reclassification because the Petitioners filed a Petition for Judicial Review of the Board's decision. Accordingly, the three year time period has not begun to run.

19. With respect to the Comprehensive Zoning Map Process, the 1992 Comprehensive Zoning Map designates the subject property as 3.300 acres of RC 5 and 1.900 acres of RO-CR. The 1996 Comprehensive Zoning Map, adopted on October 8, 1996, indicates that the subject property's zoning classifications have remained unchanged by the Comprehensive Zoning Map Process.

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20. Petitioners' suggestion that the adoption of the 1996 Comprehensive Zoning Map makes moot the Board's approval of Prosser's Petition for Reclassification defies logic. If Petitioners' assertion were legally correct, then protestants in zoning reclassification cases could easily use the appeal process, as was done in this case, to delay final approval of a Petition for Reclassification until the adoption of the next Comprehensive Zoning Map. This would render the effect of the law and policy embodied in § 2-356 for interim zoning reclassification a nullity.

21. Clearly, the County Council contemplated such possibilities when it indicated in § 2-356(n) that development of property which has been reclassified pursuant to a Petition for Reclassification and a documented site plan must be completed, or substantially underway, within three years after final approval and that subsequent enactment of a zoning map does not effect the reclassified property unless the zone classification is further changed by that map.

22. For example, assume there are 50 acres which are designated as RO on the 1992 Comprehensive Zoning Map. In 1994, "Petitioner X" files a petition with a documented site plan to reclassify all 50 acres to ML, and, in 1995, the Board of Appeals grants the Petition as conditioned and limited by the documented site plan. In 1996, the County Council adopts the Comprehensive Zoning Map which changes the previous 1992 RO designation of the 50 acres to BL. Such a change in zoning is the type of change contemplated in the last sentence of § 2-356(n).

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23. Under the hypothetical set forth in Paragraph 22, the adoption of the 1996 Comprehensive Zoning Map changes the zoning on the 1992 Comprehensive Zoning Map, and, in turn, affects the approved Petition for Reclassification and the documented site plan for the following reason: "Petitioner X's" Petition for Reclassification must demonstrate, pursuant to § 2-356(j), that, (1) with regard to the subject property, there is a mistake in the zoning or a change in the neighborhood, and (2) that the mistake in the zoning or the change in the neighborhood warrants reclassification of the subject property. Assume "Petitioner X" successfully demonstrates to the Board of Appeals that the RO designation on the 1992 Comprehensive Zoning Map was a mistake and that the 50 acres should be zoned ML, as conditioned and limited by the documented site plan. If the 1996 Comprehensive Zoning Map changes the zoning from RO to BL, then the basis for the approval of "Petitioner X's" Petition for Reclassification no longer exists; the County Council has determined that the 50 acres should be zoned BL rather than RO. Now, "Petitioner X" must demonstrate why zoning the 50 acres BL is a mistake.

24. On the other hand, assume that there are 50 acres which are designated as RO on the 1992 Comprehensive Zoning Map. In 1994, "Petitioner X" files a petition with a documented site plan to reclassify all 50 acres to ML, and, on September 1, 1995, the Board of Appeals grants the Petition, as conditioned and limited by the documented site plan. No appeal is filed from that decision. In 1996, the County Council adopts the Comprehensive Zoning Map which retains the 1992 RO designation of the 50 acres. Pursuant to § 2-356(n), "Petitioner X" has three years from September 1, 1995 to proceed with development in accordance with the approved documented site plan. Accordingly,

Petitioner X may proceed with its ML development, as shown on the documented site plan, even though, during the 1996 Comprehensive Zoning Map Process, the County Council elected to retain the RO zoning on the 50 acres.

25. In the instant matter, Prosser filed a Petition with a documented site plan to reclassify 5.200 acres to ML. As stated *supra*, the 1992 Comprehensive Zoning Map designated the subject property 3.300 acres of RC 5 land and 1.900 acres of RO-CR land. The Board of Appeals granted Prosser's Petition for Reclassification, as conditioned and limited by the documented site plan, on the basis that the existing zoning was a mistake and that the mistake warranted reclassification. Those opposed to the reclassification filed an appeal from the Board's approval.

26. The 1996 Comprehensive Zoning Map designates the subject property 3.300 acres of RC 5 land and 1.900 acres of RO-CR land. Accordingly, the basis for Prosser's Petition for Reclassification still exists; the County Council has made a mistake in zoning the property RC 5 and RO-CR. There is no logical reason for a new reclassification case. The error of zoning on the 1992 Comprehensive Zoning Map is the same in 1996. The Comprehensive Zoning Map did not change.

27. Those opposed to the reclassification should not be permitted to use the appellate process to make the issue of reclassification with a documented site plan moot when the County Council has not made any changes to the existing zoning on the subject property. To adopt Petitioners' arguments would result in the inconsistent treatment of Petitions for Reclassification which are appealed and Petitions for Reclassification which

- 2 -

are not appealed. The Baltimore County Council, in its wisdom, adopted § 2-356(n) to permit developers to proceed in accordance with an approved documented site plan, provided that the developer proceeds within three years and any subsequent zoning map does not change the previous zoning map which was the basis for error.

28. The Board initially agreed that there had been a mistake in the zoning classification of the subject property in December of 1994. The Circuit Court agreed that a mistake in the zoning had been made, but remanded the case, deciding that the Board needed to articulate findings on whether the mistake warranted reclassification. An intervening appeal to the Court of Special Appeals of Maryland, which was dismissed by the Petitioners, further delayed the proceedings. On September 13, 1996, nearly two years after its initial ruling and less than a month before the adoption of the 1996 Comprehensive Zoning Map, the Board issued its remand order, finding that the mistake in the property's current zoning warranted a reclassification.

29. In light of the difficult administrative path Prosser has traveled over the past two years, it would be patently unfair, not to mention legally incorrect, to dismiss, at this point, its Petition for Reclassification which the Board of Appeals has reviewed and granted twice. It would be a serious injustice to ignore the clear intent of the statute, upon which Prosser has relied, and declare this case moot.

- 3 -

WHEREFORE, Respondent, The Prosser Company, Inc., respectfully requests that this Honorable Court deny Petitioners' Suggestion of Mootness.

G. Scott Barhight
Whiteford, Taylor & Preston L.L.P.
210 West Pennsylvania Avenue
Towson, Maryland 21204-4515
(410) 832-2000

Attorney for Respondent,
The Prosser Company, Inc.

POINTS AND AUTHORITIES

- (1) Baltimore County Comprehensive Zoning Map Final Log of Issues, Adopted October 8, 1996; Issues 6-001 and 6-017.
- (2) Baltimore County Code, § 2-356(n)
- (3) Baltimore County Code, § 2-356(j)

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of December, 1996, a copy of the foregoing Response to Suggestion of Mootness and Request for Hearing were mailed, first-class, postage prepaid, to:

Michael P. Tanczyn, Esquire
606 Baltimore Avenue, Suite 106
Towson, Maryland 21204
(410) 296-8823

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

County Board of Appeals for Baltimore County
Old Courthouse, Room 49
500 Washington Avenue, Towson, Maryland 21204.

G. Scott Barhight

IN THE CASE OF:

IN THE MATTER OF THE
APPLICATION OF THE PROSSER
COMPANY, INC. FOR A ZONING
RECLASSIFICATION ON PROPERTY
LOCATED ON THE SOUTHEAST SIDE
LONG GREEN PIKE AND GLEN ARM
ROAD (1207 AND 12109 LONG GREEN
PIKE AND 5328 GLEN ARM ROAD)

11th ELECTION DISTRICT
6th COUNCILMANIC DISTRICT

CASE NO. CR-94-143
CYCLE II, 1993/94

* IN THE

* CIRCUIT COURT

* FOR

* BALTIMORE COUNTY

* CASE NO.: 100/243/95CV-0028

ORDER

UPON CONSIDERATION of the Suggestion of Mootness filed by Petitioners, Glen Arm Community Association, Inc. and T. Michael Reier, the Response to Suggestion of Mootness filed by Respondent, The Prosser Company, Inc., and oral argument, it is by the Circuit Court for Baltimore County, this ____ day of _____, 199__

ORDERED, that Petitioners' Suggestion of Mootness be denied.

JUDGE

IN THE CASE OF: * IN THE
IN THE MATTER OF THE * CIRCUIT COURT
APPLICATION OF THE PROSSER *
COMPANY, INC. FOR A ZONING *
RECLASSIFICATION ON PROPERTY *
LOCATED ON THE SOUTHEAST SIDE *
LONG GREEN PIKE AND GLEN ARM *
ROAD (1207 AND 12109 LONG GREEN *
PIKE AND 5328 GLEN ARM ROAD) *
11th ELECTION DISTRICT *
6th COUNCILMANIC DISTRICT *
CASE NO. CR-94-143 *
CYCLE II, 1993/94 *

REQUEST FOR HEARING

The Prosser Company, Inc., Respondent, by and through its attorneys, G.
Scott Barhight and Whiteford, Taylor & Preston L.L.P., respectfully requests a hearing on
its Response to Suggestion of Mootness filed in the above-captioned matter.

G. Scott Barhight, Esquire
Whiteford, Taylor & Preston L.L.P.
210 W. Pennsylvania Avenue
Towson, Maryland 21204-4515
(410) 832-2000

95246

WHITEFORD, TAYLOR & PRESTON
L.L.P.
210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4515
410 832-2000
FAX 410 832-2015
30 COLUMBIA CORPORATE CENTER
1940 LITTLE PATENT PARKWAY
COLUMBIA, MARYLAND 21044
TELEPHONE 410 864-0700
FAX 410 864-0779
G. SCOTT BARHIGHT
DIRECT READER
410 832-2000
202922@mcimail.com

December 19, 1996

Via Hand Delivery

Clerk of the Baltimore County Circuit Court
Civil Division
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204
County Courts

Re: Glen Arm Community Association v. County Board of Appeals
for Baltimore County
Case No: 100/243/95CV00288 - Administrative Appeal

Dear Clerk:

Please accept for filing, on behalf of The Prosser Company, Inc., respondent in
the above-captioned matter, the enclosed Response to Suggestion of Mootness and
Request for Hearing.

In addition, Judge Hinkel's Chambers notified my office on December 17, 1996
that a hearing on the Suggestion of Mootness is currently set for December 23, 1996.
Due to a scheduling conflict, however, I will be unavailable on that date. Anne Marie in
Judge Hinkel's Chambers advised me to notify you of the conflict so that you could
postpone and reschedule the hearing in the above-referenced matter. It is my
understanding that a hearing will not occur on December 23, 1996 in this matter.

Clerk of the Baltimore County Circuit Court
December 19, 1996
Page 2

Should you have any questions or concerns, please do not hesitate to contact me.

Sincerely,
G. Scott Barhight

GSBjdww

Enclosure

cc: Honorable J. William Hinkel
County Board of Appeals
Peter Max Zimmerman, Esquire (Via Fax)
Michael P. Tanczyn, Esquire (Via Fax)

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PETITION OF: * IN THE
Glen Arm Community * CIRCUIT COURT
Association, Inc. *
11909 Long Green Pike *
Glen Arm, Maryland 21057 *
FOR BALTIMORE COUNTY

and *
T. Michael Reier *
11909 Long Green Pike *
Glen Arm, Maryland 21057 *

FOR JUDICIAL REVIEW OF DECISION OF: *

County Board of Appeals *
of Baltimore County *
Old Courthouse, Room 49 *
400 Washington Avenue *
Towson, Maryland 21204 *
(410) 887-3180 *

IN THE CASE OF: *

IN THE MATTER OF *
THE APPLICATION OF *
THE PROSSER COMPANY, INC. *
FOR A ZONING RECLASSIFICATION *
ON PROPERTY LOCATED ON THE *
SOUTHEAST SIDE LONG GREEN *
PIKE AND THE NORTHWEST SIDE *
GLEN ARM ROAD (12107 AND *
12109 LONG GREEN PIKE AND *
5328 GLEN ARM ROAD) *
11TH ELECTION DISTRICT *
6TH COUNCILMANIC DISTRICT *

CASE NO. CR-94-143 * CIVIL ACTION
CYCLE II, 1993 /94 * NO. 100/243/95CV-00288

SUGGESTION OF MOOTNESS

NOW COMES, Glen Arm Community Association, Inc. and T.

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Michael Reier, Appellants, by Michael P. Tanczyn, Esq., their
attorney, which respectfully suggests that by the adoption on the
Baltimore County Comprehensive Zoning Map by the Baltimore County
Council on October 8, 1996, pursuant to Issues 6-001 and 6-017, the
County Council has rezoned the property RCS and RO-CR with an
effective date of December 2, 1996, thereby rendering the pending
Petition for Reclassification moot and subject to dismissal by the
Court as moot.

WHEREFORE, Appellants, Glen Arm Community Association,
Inc. and T. Michael Reier, request this Honorable Court:

A. Dismiss as moot the Petition for Reclassification as
prayed.

MICHAEL P. TANCZYN, ESQ.
606 Baltimore Avenue, Suite 106
Towson, Maryland 21204
Telephone: (410) 296-9823
Attorney for the Appellants

POINTS AND AUTHORITIES

Baltimore County Comprehensive Zoning Map Final Log of Issues
Adopted October 8, 1996, Excerpt 6-001 [page 1] and 6-017 [page 5]
attached

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Bill No. 133-96, Introduced September 16, 1996 and Adopted October
8, 1996, Enacted into law with an effective date of December 2,
1996 attached

Baltimore County Code, §2-356(n), which provides in pertinent part
in the last sentence, "...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
26-124 or 26-125 of this Code unless the zone classification of the
property is further changed by that map."

Baltimore County Code, §26-125, describing the County Council's
requirements to consider and pass quadrennial comprehensive zoning
maps for Baltimore County by Councilmanic District.

MICHAEL P. TANCZYN, ESQ.

REQUEST FOR HEARING

Glen Arm Community Association, Inc. and T. Michael
Reier, Appellants, by their undersigned attorney, respectfully
request a hearing on this Motion unless the Court is inclined,
pursuant to Maryland Rule 2-311, to decide the Motion, after
considering any response of the property owner and People's
Counsel, without a hearing.

MICHAEL P. TANCZYN, ESQ.

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I HEREBY CERTIFY that, on this ____ day of December,
1996, a copy of the foregoing was mailed, postage prepaid, to G.
Scott Barhight, Esquire, Whiteford, Taylor & Preston, 500 Court
Towers, 210 West Pennsylvania Avenue, Towson, Maryland, 21204-4515,
attorney for The Prosser Company, Inc.; and to Peter Max Zimmerman,
Esquire, Baltimore County People's Counsel, Old Courthouse, Room
47, 400 Washington Avenue, Towson, Maryland, 21204; and to County
Board of Appeals for Baltimore County, Old Courthouse, Room 49, 500
Washington Avenue, Towson, Maryland, 21204.

MICHAEL P. TANCZYN, ESQ.

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A BILL
ENTITLED

AN ACT concerning

The Comprehensive Zoning Maps -Fifth District

FOR the purpose of repealing certain existing zoning maps and to adopt an official zoning map

for the Fifth Councilmanic District of Baltimore County, such map to be known as the

1996 Official Comprehensive Fifth Councilmanic District Zoning Map for Baltimore

County and to supersede any previous zoning maps approved by the County Council of

Baltimore County for that particular district

WHEREAS, under the provisions of Section 26-124, Baltimore County Code, 1988, the

County Council has received a final report of the Planning Board on the Board's proposed

County-wide Comprehensive Zoning Map for Baltimore County and has held public hearings

thereon after giving at least 10 working days' notice thereof in a newspaper of general circulation

throughout the County, and during the period of such notice the final report of the Planning

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
Strike-out indicates matter stricken from bill.
Underlining INDICATES AMENDMENTS TO BILL.

Baltimore County 1996 Comprehensive Zoning Map Issues

Issue Number	Owner, Petitioner	Location	Existing Zoning and Acres	Requested Zoning and Acres	Planning Board Recommendations	County Council Decisions	Comments
6-001	James J. Prosser	Northeast side of Long Green Pike and Glen Arm Road, 12107 & 12109 Long Green Pike and 5328 Glen Arm Road.	RC 5 RO CR 3,300 1,900 5,200 Total	ML 5,200 Total	RC 5 RO CR 3,300 1,900 5,200 Total	RC 5 RO CR 3,300 1,900 5,200 Total	U-3, CR-94-143, See Issue 6-017 and 6-018. Board of Appeals approved 9/19/96.
6-002	Stephen C.C.Hung	Northwest corner of Joppa Road and Oak Dale Ave.	DR 5.5 Total	CB 0.410 Total	DR 5.5 0.410 Total	DR 5.5 0.410 Total	
6-003	John R. Brooks	Southwest side of Fork Road, 215' northwest of Hartford Road.	RC 5 Total	BL 0.610 Total	BL 0.610 Total	RC 5 BL 0.610 Total	See Issue 6-006. Overlay adopted.
6-004	Joseph & Ruth Dieter	East side of Clement Ave., 250' north of Joppa Rd. (8911 & 8913 Clement Ave.).	RO Total	BL 0.517 Total	BL 0.517 Total	BL 0.517 Total	

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Baltimore County 1996 Comprehensive Zoning Map Issues

Issue Number	Owner, Petitioner	Location	Existing Zoning and Acres	Requested Zoning and Acres	Planning Board Recommendations	County Council Decisions	Comments
6-017	Long Green, Kingsville, Glen Arm Impr. Assoc.	Northeast corner of Long Green Pike and Glen Arm Road.	RC 5 RO CR 3,300 1,900 5,200 Total	RC 2 5,200 Total	RC 5 RO CR 3,300 1,900 5,200 Total	RC 5 RO CR 3,300 1,900 5,200 Total	See Issue 6-001 and 6-018.
6-018	Long Green, Kingsville, Glen Arm Impr. Assoc.	East and west sides of Long Green Pike, 500' north of	ML Total	RC 2 47,000 Total	ML 47,000 Total	RC 2 47,000 Total	See Issue 6-001 and 6-017. Overlay adopted.
6-019	Bashar & Hana Pharoan	Northeast corner of Ridge and Gumspring Road (4474 Ridge Road).	DR 3.5 Total	RO 0.460 Total	DR 3.5 0.460 Total	DR 3.5 0.460 Total	

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Board, with accompanying maps and supporting exhibits, were shown and exhibited in the Office of Planning, in each Councilmanic District, and at such other public places as designated by the County Council; and after the expiration of such period of notice and hearings, the County Council made certain changes in the Comprehensive Zoning Map for the Fifth Councilmanic District of Baltimore County which the County Council deemed appropriate; now, therefore

SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, that the portion of the official zoning map of Baltimore County referred to in Section 100.2 of the Baltimore County Zoning Regulations and now in effect, including any amendments thereto and comprehensive revisions of portions thereof as it pertains to the Fifth Councilmanic District of Baltimore County, be and it is hereby repealed, and that the boundaries of zones and districts, as established by the Baltimore County Zoning Regulations, as shown on the Official Comprehensive Fifth Councilmanic District Zoning Map for Baltimore County accompanying this Act, are hereby established.

SECTION 2. BE IT FURTHER ENACTED, that the accompanying Official Comprehensive Fifth Councilmanic District Zoning Map for Baltimore County is hereby adopted and declared to be a part of this Act to the same extent as if it were incorporated herein. The Official Comprehensive Fifth Councilmanic District Zoning Map is a series of maps drawn to the scale of 1"=200', and for the authentication each map of the series shall be signed by the chairman of the Baltimore County Council. When this Act stands enacted, the secretary of the County Council shall deliver the same Official Comprehensive Fifth Councilmanic District Zoning Map for Baltimore County to the Director of Permits and Development Management who shall thereupon have legal custody of said map.

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SECTION 3. BE IT FURTHER ENACTED, that the dimension of any zone or district boundary shall be determined by use of the map scale, shown on the zoning map, scaled to the nearest foot. The Director of Permits and Development Management and the County Board of Appeals shall conclusively determine the location and dimensions of zone and district boundaries from the official 200 scale zoning map.

SECTION 4. BE IT FURTHER ENACTED, that in case it be judicially determined that any word, phrase, clause, sentence, paragraph or section of this Act, or that the application thereof, or the application of any portion of the Official Comprehensive Fifth Councilmanic District Zoning Map for Baltimore County, accompanying this Act, to any person, property, or circumstance is invalid, the remaining provisions of this Act and the application of such provisions, and the application of the remaining portions of said Comprehensive Fifth Councilmanic District Zoning Map for Baltimore County to other persons, properties, or circumstances shall not be affected thereby, the County Council of Baltimore County, Maryland, hereby declares that it would have enacted the remaining provisions of this Act and the remaining portions of said map without the provisions or portion or the application thereof so held invalid.

SECTION 5. AND BE IT FURTHER ENACTED, that this Act shall take effect forty-five days after its enactment.

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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 (f) 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)(1) as well as this subsection.

ADMINISTRATION

§ 26-126

(n) *Use of property.* Property may be reclassified under this section only upon making the findings required under subsection (j) 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 26-122 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 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 26-124 or 26-125 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 excep-

(8) The department of environmental protection and resource management shall forward the approved amendments to the official critical area map or zoning map or both and all relevant information to the Chesapeake Bay Critical Area Commission for approval under Ann. Code of Md., Natural Resources article, § 8-1809. (Code 1978, § 22-21; Bill No. 18, 1990, § 2)

Sec. 26-124. Action by county council on adoption of zoning regulations and zoning maps and Chesapeake Bay Critical Area map procedures.

(a) After the county council has received a final report of the planning board recommending adoption of any zoning regulations or zoning maps, the county council shall hold one (1) or more public hearings thereon, giving at least twenty (20) days' notice thereof in at least two (2) newspapers of general circulation in the county. During such twenty-day period, the final report of the planning board with accompanying one (1) inch to one thousand (1,000) feet scale maps and supporting exhibits, if any, together with any minority report and maps from any dissenting members of the planning board, shall be available for inspection at the office of planning and zoning, in each respective councilmanic district, and at such other public place as the county council may designate for public inspection. After the expiration of such period of notice and following the public hearing or hearings, the county council may by ordinance adopt such regulations or maps, subject, however, to such changes or amendments therein as the county council may deem appropriate, but subject to the provisions of section 26-123(e).

(b) No change or amendment may be made in a zoning map to an area or parcel of land which was not considered by the planning board for a change in zoning prior to its submission of the map to the county council.

(c) (1) Each change or amendment to be made in a zoning map as proposed by the planning board shall be voted upon individually by the county council, and each vote

thereon shall be recorded in the council minutes.

(2) The officially adopted zoning map shall be the one (1) inch to two hundred (200) feet scale maps.

(d) Notwithstanding any other provision of this Code relating to reclassifications or rezoning of land, the county council may amend at any time the official zoning map in conjunction with the approval of growth allocation applications and the related amendment of the official critical area map enacted pursuant to section 26-123(g) of this Code, but only after receipt of recommendations from the planning board pursuant to section 26-123(g) and (h) and subject to the procedures established in this subsection below:

- (1) That all requests for growth allocation that involve changes to the underlying zone or zones not subject to section 2-356(i)(3) of this Code shall be submitted to the director of the department of environmental protection and resource management, who shall process such requests pursuant to section 26-123(g) and (h);
- (2) Within a reasonable period from receipt of the recommendations from the planning board, pursuant to section 26-123(h), and subject to the giving of at least twenty (20) days' public notice in two (2) newspapers of general circulation, the county council shall hold a public hearing on the proposed zoning changes;
- (3) Within sixty (60) days of the county council's public hearing, the county council shall take action on the planning board's recommendations. (Code 1978, § 22-22)

Sec. 26-125. County council action on regularly revised zoning map.

Each time the county council receives a recommended zoning map from the director of planning under the procedure set forth in section 26-123(d), the county council shall forthwith schedule a hearing or hearings thereon, in accordance with the procedures set forth in section 26-124. Before October 16 of each year in which it is required in

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