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RE: PETITION OF DANIEL W.
HUBERS, MARVIN E. SMITH
GERALDINE SMITH AND WILLIAM
W. SMITH

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

OF DANIEL W. HUBERS FOR A
ZONING RECLASSIFICATION ON
PROPERTY LOCATED ON THE NE/S
CARROLL ISLAND ROAD, 194' W
OF THE C/L BOWLEY'S QUARTERS
ROAD, 435' NE OF C/L CARROLL
ISLAND ROAD
15th ELECTION DISTRICT
5th COUNCILMANIC DISTRICT

CASE NO. R-97-469(CYCLE 1, 1998) BEFORE THE COUNTY BOARD \*
OF APPEALS OF BALTIMORE
COUNTY \*

IN THE

CIRCUIT COURT

FOR

BALTIMORE COUNTY

Case No. 03-C-98-004123

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### MEMORANDUM DECISION

In this zoning matter, the property owners, Daniel W. Hubers and the Smiths, (hereinafter referred to collectively as ("Hubers") appeal the decision of the Board of Appeals denying their Petition for reclassification of their 9.64 acres of land. The property had been down-zoned statutorily by the County Council at the conclusion of its 1996 quadrennial review of the County's zoning maps, and Hubers was dissatisfied with that action.

Hubers bases his right to a reversal of the Board's decision on two contentions. The first is a constitutional argument that

he was denied due process by the County's legislative scheme of councilmanic deference to make the ultimate decision on map revisions without prior notice. The second is a challenge to the sufficiency of the evidence to support the Board's denial of the requested reclassification.

I.

Hubers was not denied due process when the County Council enacted Bill Number 133-96 down-zoning the subject property without prior notice to Hubers of its intention to reject the recommendations of the Planning Board.

At the outset, this Court flatly rejects the claim of People's Counsel that Hubers failed to present the denial of due process argument to the Board of Appeals. (Mem.p.18). On the first page of its opinion, the Board noted that one of the Petitioners' two grounds for relief was that: "There exist procedural errors which have denied the Petitioners <u>due process</u> of law." Thus, the Board was aware that a due process argument was being made and its rejection of that argument is implicit on pages 9 and 10 of the opinion wherein the Board concluded that the County Council "...is not required to file its own application under Section 26-123(e) with its own requested zoning."

Hubers acknowledges that Swarthmore Co. v. Kaestner, 258 Md. 517 (1970), would appear to dispose of his argument that he should have received notice and the right to be heard (presumably before the County Council) if the Council intended to reject the

recommendation of the Planning Board. Speaking for the Court in that case, Judge Barnes wrote:

... In short, the County Council need not follow the recommendations of the planning board and need not have any further or additional hearing in regard to the changes or amendments the County Council may see fit to make. We have held that the County Council is not required to follow the recommendations of the Planning Board. Miller v. Abrahams, 239 Md. 263, 272...(1965). We have also indicated that a substantial change may be validly made in a proposed comprehensive zoning map after the public hearing has been held on the originally proposed comprehensive zoning map and no additional notice or hearing was required by statutory language quite similar to that used in Sec. 22-21 of the Baltimore County Charter [Code]. Hewitt v. County Comm'rs of Baltimore County, 220 Md. 48, 56...(1959). Indeed, in Ark Readi-Mix v. Smith, 251 Md. 1, 3 (1968), we sustained a change made by the County Council in that case on a proposed comprehensive zoning map requested on the same day the ordiance was passed, where there had been no prior discussion, proposal or a request for the change made at the hearing on the proposed comprehensive zoning map and, of course, no notice or prior hearing in regard to the requested change.

### 258 Md. at 532

Hubers contends, however, that the *Kaestner* decision was rendered moot when the Baltimore County Code was revised in 1996. \$26-124(a), the successor to \$22-21 of the 1968 Code, ends with "but subject to the provisions of Sec.26-123(e)", thereby imposing upon the County Council, without saying so, a duty to

provide for another hearing whenever one of its members is inclined to disagree with a map classification or reclassification recommended by the Planning Board. Such a requirement would make it virtually impossible for the Council to ever complete the adoption of a new map. Moreover, this interpretation of the revised statute requires one to conclude that the Council intended to place a restriction on the practice of councilmanic deference without even providing the procedural framework for a new hearing.

People's Counsel traced the legislative history of §§26-124(a) and 26-233(e) in its Hearing Supplement. It would serve no purpose to repeat that detailed analysis here. Therefore, this Court will simply adopt the analysis and conclusions in the Supplement as a further ground for rejecting Hubers denial of due process contention.

#### II.

The Board did not err in rejecting Hubers argument that the County Council's final zoning classifications were "totally inappropriate".

Here Hubers argues that the classifications assigned to the property by the County Council are "totally inappropriate" in light of the criteria for reclassification by the Board found in \$2-356(j) of the County Code. Indeed, he contends that the testimony and evidence produced by the Petitioners was so overwhelming, and so uncontroverted by the evidence produced by

People's Counsel, that the question before the Board was not even fairly debatable.

In a detailed and carefully constructed opinion, the Board first summarized the characteristics of the subject property for zoning purposes as follows:

This Board, having heard testimony and reviewing the evidence, concludes that the finally-determined zoning assigned by the County Council was not inconsistent or inappropriate for the site. The subject property itself is in a triangle formed by Carroll Island Road and Bowleys Quarters Road and Eastern Avenue. It is presently undeveloped and heavily wooded. A large portion of the property is in the Chesapeake Bay Critical Area region and is a designated Limited Development Area, relatively flat. Undoubtedly, it is one of the largest undeveloped land areas in this section of Baltimore County and is the 'gateway' to the Bowleys Quarters Peninsula, with both commercial and residential proparties nearby. The Carroll Island Shopping Center is directly across Carroll Island Road.

(Op.p.11)

Then, after reviewing the Court of Appeals decisions establishing the "heavy burden" a property owner must meet in order to "escape the binding impact of comprehensive zoning" expressed the basis for its decision in the following paragraph:

The Board concludes that there was no evidence presented at the hearing which would allow its members to properly grant this rezoning. Within its appropriate governmental sphere, the Baltimore County Council is the legislature for the citizens of Baltimore

County and is the ultimate repository of all legislative power possessed by the County. When it undertakes once every four years its comprehensive zoning function, it speaks for the voice of the people. As with all legislative bodies, it may sometimed [sic] make policy decisions that are, in the eyes of some observers, wrong. For the ordinary rightness or wrongness of their decisions, however, legislators are answerable only to their electorates at the next election. Thus, unless there is probative evidence to show that there were then existing facts which the Council, in fact, failed to take into account, or subsequently occurring events which the Council could not have taken into account, the presumption of validity accorded the comprehensive zoning is not overcome, the question of error is not "fairly debatable" (Boyce v. Sembly, 25 Md. App. 52.)

(0p.p.19)

People's Counsel points out at page 21 of his Memorandum that when the Board of Appeals reviews a legislative judgment, such as this one by the Council, the Board's scope of review is limited - similar to the role of a circuit court judge, when reviewing a decision of an administrative agency. Indeed, whereas a number of cases from Baltimore County resulted in the Court of Appeals reversing commercial rezonings by the Board, he could find no case reversing the Board when it had upheld a comprehensive zoning decision.

It may well be that the witnesses produced by Hubers had better zoning credentials than those of the opposition and gave sound reasons for their opinions. The point is, however, that

the issue facing Councilman Gardina - whether it was appropriate to down-zone this property - unquestionably was fairly debatable. Therefore, he did not have to agree with the Planning Board and was legally entitled to have his colleagues join with him in adopting a map that reflected his considered judgment as to which zoning classifications for this property were best suited for all the citizens of his district.

For the reasons stated, the decision of the Board of Appeals is AFFIRMED.

Date:

June 26, 2000

Judge

ut & Ca

Copies sent to:

Edward C. Covahey, Jr., Esq. Anthony J. DiPaula

Peter Max Zimmerman, Esq. Carole S. DeMilio

Board of Appeals

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

PETITION OF DANIEL W. HUBERS, MARVIN E. SMITH, GERALDINE SMITH, AND WILLIAM W. SMITH AS TRUSTEES UNDER THE LAST WILL AND TESTAMENT OF GILBERT K. SMITH, WILLIAM W. SMITH AS TRUSTEE F/B/O LOIS A. LEACH c/o Daniel W. Hubers 1520 Old Eastern Avenue Baltimore, Maryland 21221

FOR JUDICIAL REVIEW OF THE DECISION OF CIVIL THE COUNTY BOARD OF APPEALS ACTION OF BALTIMORE COUNTY No. 3-C-98-04123

Room 49, Old Courthouse, 400 Washington Avenue, Towson, MD 21204

IN THE CASE OF: IN THE MATTER DANIEL W. HUBERS, ET AL. FOR A ZONING RECLASSIFICATION ON PROPERTY LOCATED ON THE NE/S CARROLL ISLAND ROAD, 194 FT. W OF C/L OF BOWLEY'S QUARTERS ROAD, 435 FT. NE OF C/L CARROLL ISLAND ROAD 15TH ELECTION DISTRICT

5TH COUNCILMANIC DISTRICT CASE NO. R-97-469 (Cycle I, 1997)

> PROCEEDINGS BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come Kristine K. Howanski, Margaret Worrall, and Charles L. Marks, constituting 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 Afollowing certified copies or original papers on file in the pepartment of Permits and Development Management and the Board of Appeals of Baltimore County:

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

No. R-97-469

February 28, 1997 Petition for Reclassification filed by Edward C. Covahey, Jr., Esquire, on behalf of Petitioners /Legal Owners, Daniel W. Hubers,

# Case No. R-97-469 /Daniel W. Hubers, et al Civil Action No. 3-C-98-04123

(continued from Feb. 28, 1997)	Marvin E. Smith, William W. Smith, and Geraldine Smith; to reclassify from C.B. and D.R. 3.5 zone to B.RA.S. and B.R.
October 6	Comments from the Baltimore County Zoning Plans Advisory Committee.
September 29	Certificate of Posting of property.
	Publication in newspapers.
October 23	Hearing Day #1 held before the County Board of Appeals.
November 25	Hearing Day #2 held before the County Board of Appeals.
December 11	Hearing Day #3 held before the County Board of Appeals (concluded).
January 20, 1998	People's Counsel's Memorandum filed by Peter Max Zimmerman.
January 21, 1998	Petitioner's Memorandum filed by Edward C. Covahey, Jr., Esquire, and Anthony J. DiPaula, Esquire, counsel for Petitioners.
February 17	Public Deliberation for final determination conducted by the County Board of Appeals.
April 8	Opinion and Order issued by the Board; Petition for Reclassification from the current classification of D.R. 3.5 and C.B. to B.R. and B.RA.S. is DENIED.
April 24	Petition for Judicial Review filed in the Circuit Court for Baltimore County by Edward C. Covahey, Jr., Esquire, and Anthony J. DiPaula, Esquire, on behalf of Daniel W. Hubers, et al.
April 27	Copy of Petition for Judicial Review received by the Board of Appeals from the Circuit Court for Baltimore County.
April 28	Certificate of Notice sent to interested parties.

Petitioner's Exhibit Nos. 1-Site Plan as currently zoned

2-Site Plan -identical to 1 except showing requested rezoning

3-1992 CZMP 200-scale zoning map w/subj. prop. outlined

4-1996 CZMP 200-scale zoning map w/subj. prop. outlined

5-Gerber C.V.

6-OP document creating 5-069 -Oct.

25, 1995

7-Map 5-069 outlined

8-Pl. Board Log of Issues revised July 12, 1996

9-County Council Log of Issues Oct. 8, 1996

10-DEPRM /ZAC Comments 5/12/97

11-Deed for subject property

12-July 8, 1997 letter to Arnold Keller from A. DiPaula

13-Inside front of OP file on Issue 5-069 w/ handwritten notes

14-Public Hearing Comments -June 24, 1996 CZMP -5th Dist. Issues

### People's Counsel's Exhibit No. 1-ADC map of area

2-Tax map showing area

3-Packet (5 pg.) 1996 CZMP material

4-Address list

5-1996 CZMP Planning Board Report

6-Inter-office correspondence from Patricia Beere

7-Bill 86-94 - June 6, 1994

8-Balto. Co. CZM Process

9-5th District changes to Long of Issues

10-5-23-96 Interoffice corresp. from Pat Beere final staff recommendations

11-CZMP 1996 Log of Issues -June 6, 1996, revised July 12, 1996 ind. introd. pages.

12-Oct. 8, 1996 Thos. Peddicord from Vincent Gardina

13-Balto. Co. Council Minutes
Oct. 8, 1996

14-Bill 133-96 Sept. 16, 1996

15-GIS map -East Ave./Carroll Island area Planimetrics 3/95

16-NE Bengies /Bowley's Qtrs - Zoning Map

17-CZM Final Log of Issues, Adopted 10/8/96

18-Appendix IV-B Procedures & Standards for Mapping Land Use "Areas"

19A-1000-scale zoning map 4B

19B-1000-scale zoning map 5B

20-Report by Pl. Board to CBA July 31, 1997

21-Bill 180-95

## Case No. R-97-469 /Daniel W. Hubers, et al Civil Action No. 3-C-98-04123

June 23, 1998

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.

Respectfully submitted,

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: Edward C. Covahey, Jr., Esquire
Anthony J. DiPaula, Esquire
Daniel W. Hubers, et al
People's Counsel for Baltimore County

Virginia W. Barnhart, County Attorney

IN THE CIRCULT COURT FOR BALTIMORE COUNTY

PETITION OF DANIEL W. HUBERS, MARVIN E. SMITH, GERALDINE SMITH, AND WILLIAM W. SMITH AS TRUSTEES UNDER THE LAST WILL AND TESTAMENT OF GILBERT K. SMITH, WILLIAM W. SMITH AS TRUSTEE F/B/O LOIS A. LEACH C/O Daniel W. Hubers 1520 Old Eastern Avenue Baltimore, Maryland 21221

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

IN THE CASE OF: IN THE MATTER
DANIEL W. HUBERS, ET AL. FOR A
ZONING RECLASSIFICATION ON PROPERTY
LOCATED ON THE NE/S CARROLL ISLAND
ROAD, 194 FT. W OF C/L OF BOWLEY'S
QUARTERS ROAD, 435 FT. NE OF C/L
CARROLL ISLAND ROAD
15TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT
CASE NO. R-97-469
(Cycle I, 1997)

\* CIVIL
ACTION

No. 3-C-98-04123

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the provisions of Rule 7-202(e) of the Maryland Rules of Procedure, Kristine K. Howanski, Margaret Worrall, and Charles L. Marks, constituting the County Board of Appeals of Baltimore County, has 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, Edward C. Covahey, Jr., Anthony J. DiPaula and COVAHEY & BOOZER, P.A., 614 Bosley Avenue, Towson, Maryland 21204, Counsel for Petitioner; Daniel W. Hubers, et al. as Trustees f/b/o/ Lois A. Leach, 1520 Old Eastern Avenue, Baltimore, MD 21221, Petitioners; and Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, 400 Washington Avenue, Room 47, Towson, MD 21204; a copy of which Notice is attached hereto

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R-97-469, Daniel W. Hubers, et al File No. 3-C-98-004123

and prayed that it may be made a part hereof.

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 Edward C. Covahey, Jr., Anthony J. DiPaula and COVAHEY & BOOZER, P.A., 614 Bosley Avenue, Towson, Maryland 21204, Counsel for Petitioner; Daniel W. Hubers, et al. as Trustees f/b/o/ Lois A. Leach, 1520 Old Eastern Avenue, Baltimore, MD 21221, Petitioners; and Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, 400 Washington Avenue, Room 47, Towson, Maryland 21204, this 28th day of April, 1998.

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

April 28, 1998

Anthony J. DiPaula, Esquire COVAHEY & BOOZER, P.A. 614 Bosley Avenue Towson, MD 21204

RE: Civil Action No. 3-C-98-04123 DANIEL W. HUBERS, ET AL

Dear Mr. DiPaula:

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. Raddyfr

Legal Secretary

Enclosure

c: Daniel W. Hubers, et al



### County Board of Appeals of Baltimore County

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

April 28, 1998

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-98-004123 DANIEL W. HUBERS, ET AL

Dear Mr. Zimmerman:

Notice is hereby given, in accordance with the Maryland Rules of Procedure, that a Petition for Judicial Review was filed on April 24, 1998, 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. 3-C-98-04123.

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

Very truly yours,

Charlotte E. Radcliffe

Legal Secretary

### Enclosure

C: David R. Cahlander /Stevens Road Improvement Assn.
Tom Lehner /Bowleys Quarters Improvement Assn.
Spellman, Larson & Associates, Inc.
Norman E. Berger
James Earl Kraft /Bd of Education
Pat Keller
Jeffrey Long /Planning
Lawrence E. Schmidt
Arnold Jablon, Director /PDM
Virginia W. Barnhart, Co. Atty

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

PETITION OF DANIEL W.
HUBERS, MARVIN E. SMITH,
WILLIAM W. SMITH, GERALDINE
SMITH, AND WILLIAM W. SMITH
AS TRUSTEES UNDER THE LAST
WILL AND TESTAMENT OF
GILBERT K. SMITH, WILLIAM W.
SMITH AS TRUSTEE F/B/O
LOIS A. LEACH
c/o Daniel W. Hubers
1520 Old Eastern Avenue
Baltimore, Maryland 21221

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

IN THE CASE OF IN THE MATTER \*
OF THE APPLICATION OF DANIEL
W. HUBERS, ET AL. FOR A \*
ZONING RECLASSIFICATION ON
PROPERTY LOCATED ON THE NE/S \*
CARROLL ISLAND ROAD, 194 FT.
W OF C/L OF BOWLEY'S QUARTERS \*
ROAD; ALSO NW/S OF BOWLEY'S
QUARTERS ROAD, 435 FT. NE OF \*
C/L CARROLL ISLAND ROAD
15TH ELECTION DISTRICT \*
5TH COUNCILMANIC DISTRICT
BOARD CASE NO. R-97-469 \*
(CYCLE I, 1997)

CIVIL ACTION NO.: (198-4/23)

Case: 83-C-98-884123 CF-Civil Fili

89.89

Arrearance Fee

19.00

TOTAL \$39.80

COMMENT: Daniel Hubers

Receipt #199800000183 Cashier: BH CCRACOF067 84/24/98 1:41Fm

### PETITION FOR JUDICIAL REVIEW

Daniel W. Hubers, Marvin E. Smith, William W. Smith, Geraldine Smith, William W. Smith as Trustee under the Last Will and Testament of Gilbert K. Smith, William W. Smith as Trustee f/b/o Lois A. Leach, hereinafter "Petitioners", by

M

Edward C. Covahey, Jr., Anthony J. DiPaula and Covahey & Boozer, P.A., their attorneys, petition this Court for Judicial Review of the Opinion and Order of the Baltimore County Board of Appeals issued on April 8, 1998 denying the reclassification of the Petitioners' property, and further represent unto this Court:

- 1. That on April 8, 1998, the Baltimore County Board of Appeals issued its Opinion and Order denying the reclassification of the Petitioners' property which sought the reclassification of the subject property from DR3.5 and CB back to BR and BR-AS.
- 2. That Petitioners were parties to the proceeding before the Board and in fact were the Petitioners seeking the reclassification of their property back to its zoning classifications as they existed prior to 1996 Comprehensive Zoning Process.
- 3. That the Petitioners request that the decision of the Board be reversed and that the Petitioners request to have the property rezoned back to its original zoning classifications be granted.

Anthomy J. DiPaula Covahey & Boozer, P.A. 614 Bosley Avenue

Edward Covaney, Ji

Towson, Maryland 21204 (410) 828-9441

### CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on this $\mathcal{J}\mathcal{U}^{/\mathcal{H}}$ day of
April , 1998, a copy of the foregoing Petition for
Judicial Review was served upon the County Board of Appeals by
hand delivering a copy thereof to the Board at 400 Washington
Avenue, Room 49, Towson, Maryland 21204 and to the People's
Counsel for Baltimore County, 400 Washington Avenue, Room 48,
Towson, Maryland 21204.

Anthony J. DiPaula

98-04-25.ds

IN THE MATTER OF THE APPLICATION OF DANIEL W. HUBERS, MARVIN E. SMITH, \* COUNTY BOARD OF APPEALS WILLIAM W. SMITH, GERALDINE SMITH AND WILLIAM W. SMITH AS TRUSTEE UNDER THE LAST WILL AND TESTAMENT OF GILBERT K. SMITH, WILLIAM W. \* SMITH AS TRUSTEE f/b/o/ LOIS A. LEACH FOR A ZONING RECLASSIFICATION\* CASE NO. R-97-469 ON PROPERTY LOCATED ON THE NE/S CARROLL ISLAND RD, 194' W OF C/L OF BOWLEYS QUARTERS RD; ALSO NW/S OF BOWLEYS QUARTERS RD, 435' NE OF \* C/L CARROLL ISLAND ROAD 15TH ELECTION DISTRICT 5TH COUNCILMANIC DISTRICT

BEFORE THE

OF

BALTIMORE COUNTY

(Cycle I, 1997)

#### OPINION

This case comes to the Board of Appeals based upon a request by the Petitioners to reclassify their property located at Carroll Island Road and Bowleys Quarters Road from the current classification of D.R. 3.5 and C.B. to B.R. and B.R.-A.S. The Petitioner was represented by Edward C. Covahey, Esquire. Peter M. Zimmerman, People's Counsel for Baltimore County, participated in these proceedings. The hearing itself encompassed three days of public hearing, and was concluded by a public deliberation which was held by the Board on Tuesday, February 17, 1998.

The basis of the Petitioners' request for a reclassification of the zoning of the subject property is two-fold:

- There exist procedural errors which have denied the 1) Petitioners due process of law; and
- An error was committed based upon the zoning changes 2) themselves.

The provisions by which zoning regulations and zoning maps begin are with the Planning Board, which is authorized by Section 26-123 of the Baltimore County Code (BCC), which body is to

recommend to the County Council for adoption those proposals which show the boundaries of proposed districts, divisions or zones into which the County is divided pursuant to the Title. Under (d), provisions are made for the Planning Board every four years, after a complete review of the zoning maps then in effect, to make recommendations to the County Council as to a new or comprehensively revised version of such map in accordance with the provisions of Section 26-123(b) through (c). The maps produced must identify as a separate issue each area or parcel of land recommended or considered by the Planning Board for a change in zoning. Section (e) provides for a specific time table relative to raising issues during the Comprehensive Zoning Map Process:

- 1. Public and Planning Director beginning August 1st -October 31st;
- 2. Planning Board and Planning Director beginning November 1st - November 30th; and
- 3. County Council beginning December 1st January 15th.

  During Period 2 only members of the Planning Board and Planning
  Director may raise issues; and during Period 3 only members of the
  County Council may raise issues. No new issue may be raised by
  anyone after January 15th. The term "issue" or "issues" refers to
  a tract or parcel of land proposed for a change in zone or district
  classification. If the request for zoning change was not initiated
  by the owner or the owner's agent, the Office of Planning and
  Zoning is mandated by Section (f) to provide written notice by
  regular mail to all property owners whose property is being
  considered for a possible change for a zoning classification. That

notice must state that the property is being considered for a possible change of zoning classification and additional information can be secured from the Office of Planning and Zoning. The notice must be mailed to the owner of the property at the address shown in the tax assessment records of the County at least thirty days (30) prior to the Planning Board's final vote on the recommended map or maps to be submitted to the County Council. However, failure to send the notice or failure to receive does not invalidate or otherwise affect any change or changes in the zoning of the property.

The Petitioners contend that there was no public notice concerning the fact that the County Council was going to consider any zoning change as to the Petitioners' property other than a "B.L." (Business, Local) rezoning contemplated by the Office of Planning. This was not the first recommended change in the property's zoning since the professional planning staff had earlier recommended B.L. and D.R. 2 zoning in their original 1995 recommendation.

Factually, in the summer of 1995, the professional planning staff had identified the subject site along with 118 other parcels totalling 128.9 acres in the Fifth Councilmanic District as properties they recommended being down-zoned from existing classifications of B.R.-A.S. and B.R. to B.L. (Business Local) and D.R. 2. In 1996, the Office of Planning and Zoning filed their comprehensive zoning map application (Petitioner's Exhibit No. 6 and People's Counsel's Exhibit No. 3) which was received on October

25, 1995 and included the property in question, which set forth the Office of Planning & Zoning's request as to changes being sought by the professional planning staff. That request was assigned as Issue No. 5-069; it does not reference that any portion of the 128.9 acres involving Issue 5-069 be rezoned to C.B., nor was any acreage supplied for the zones requested. This was the only application filed relative to the Petitioners' property.

No evidence was submitted or testimony offered during the hearing that any additional application was filed by the County Council during the period prescribed under BCC Section 26-123(e). The "Log of Issues" (Petitioner's Exhibit No. 8) that was available for public inspection also did not identify any of the properties being proposed for reclassification to C.B.; based upon the testimony at the hearing, it is evident that the professional planning staff was looking for the Petitioners' entire tract to be classified as B.L. (Business Local). But it is also evident from the testimony produced at the hearing that the Petitioners were aware that their property was under consideration for rezoning, albeit it is also quite evident that they were under the very strong impression that the reclassification was to be B.L. to which they had no strenuous objections.

On April 11, 1996, the Planning Board, as provided under BCC Section 26-123(c), held a public hearing on the issues and the recommendations of the Planning Board at which time several protestants appeared and raised objections concerning the downzoning of the subject property and other properties

specifically identified under Issue 5-069 (Petitioners' Exhibit No. 14).

On May 21, 1996, the professional planning staff recommended to the Planning Board for the first time that the subject property be classified C.B. as to 4.6 acres and D.R. 3.5 as to the remainder. This was the first time this zoning had been suggested and was never disseminated to the public (People's Counsel's Exhibit No. 6 and Petitioners' Exhibit No. 8). The Planning Board decided against the rezoning and recommended to the County Council that the Petitioners' tract should be left alone, retaining the B.R. zoning. The Planning Board's final recommendations were available to the general public in the public libraries and all County Council offices.

Ultimately, the County Council enacted Bill 133-96 which reflected a C.B. and D.R. 3.5 zoning classification for the subject property. In addition, other areas within Issue 5-069 were downzoned throughout the entire Fifth Councilmanic District, as well as those in proximity on the Back River Neck Peninsula.

Again, it is evident from the testimony and evidence produced at the hearing that the Petitioners were aware of the Issue and some possible change in zoning of the subject property. Additionally, it is obvious from the testimony and evidence that the Petitioners had every reason to assume that the Planning Board's recommendation of a B.R. zoning classification would be followed by the Baltimore County Council. Petitioners' Exhibit 7 entitled "Baltimore County Comprehensive Map Issues," under date of

October 8, 1996, reflects the subject site as being downzoned to C.B. as to 4.60 acres on the Carroll Island frontage and D.R. 3.5 to the 5.04 acres in the rear of the property.

Admittedly, the testimony and evidence tend to indicate that this was the first time that the zoning maps reflected a downzoning to C.B. and D.R. 3.5. Were the Petitioners entitled to receive any notice that the County Council was going to deviate from the suggested course of action suggested by the Planning Board? Counsel for the Petitioners argued very strongly that notice is an essential element whenever rezoning of property is being considered. The <u>Baltimore County Code</u> does provide notice; and Petitioners were aware that a change in the present zoning was possible. In the realm of zoning, however, there are no guarantees that the recommendations of the professional planning staff or the Planning Board shall be binding on the part of the County Council. The provisions of <u>Baltimore County Code</u> Section 26-34 appear to the Board to be quite clear and conclusive:

"Whenever the Planning Board shall have made a recommendation to the County Executive or to the County Council, such recommendation shall be advisory only." [Emphasis added.]

Throughout the pertinent sections of the BCC, the Planning Board recommendations are deemed to be "advisory" only, with the <u>final</u> authority vested in the County Council. Even with the extensive notices required and public hearings provided, and with subsequent placement of the Planning Board's final recommendations available in public places, Section 26-123(d) states that "the Planning

Board, after completely reviewing the zoning map then in effect, shall <u>recommend</u> to the County Council a new or comprehensively revised version of such map in accordance with the provisions set forth above." (emphasis added)

The Petitioners allege that with no public notice of the fact that the County Council was going to consider reclassifying the Petitioners' property to C.B., and that since the issue had not been raised by the Director of Planning or the Planning Board, the County Council was required to identify the same as an issue before January 15, 1996 as required by Section 26-123(e).

There is no doubt or question raised from the testimony received at the hearing but that the local councilman was familiar with the general area, having visited the site on at least two separate occasions, along with all of the affected rezoning sites up for consideration in his district. Efforts were being made by local community groups and citizens to have him reconsider the decision of the Planning Board, since it was obvious from the testimony of the local residents testifying that the B.R. zoning was considered to be too intense for the area; and would be detrimental to the quality of life in the immediate area. It was also evident that the councilman was considering the efforts relative to community conservation undertaken by the County to stabilize the general area of the subject site. Undoubtedly, the intensity of future potential development at the gateway to the Back River Neck Peninsula was of genuine concern to him. The former area planner, Jack Dillon, acknowledged during the hearing

that, on one of his visits to the area with the councilman, he had suggested a B.L. zoning for the frontage and D.R. 2 for the rear, believing that lower density was consistent with the critical area designations; and while he had not thought of the new C.B. zoning classification, he wished that he had done so because its use, limits, and controls made it so appropriate here.

In reaching his final decision to classify the subject site as C.B. and D.R. 3.5, the councilman was not acting in an arbitrary, capricious, discriminatory or illegal manner. Admittedly, the present provisions of the <u>Baltimore County Code</u> do provide authority that appears to be inconsistent with the general public notices and procedures that safeguard an individual's property rights. However, and nevertheless, the <u>Baltimore County Code</u> also grants that final authority to the County Council and imposes much trust and confidence in the Council to provide the appropriate zoning consistent with both the specific area and the overall councilmanic district's general health, safety and welfare.

As Petitioner expresses in his Brief, this Board takes note of the legislative practice of "Councilmanic Courtesy" in such zoning matters. Each member of the Council recognizes their responsibility in determining the appropriateness of the zoning which each member ultimately assigns, and that consideration is given only after long and thoughtful deliberation on the part of that Council person in assessing the zone appropriate, factoring into the decision what is best for the immediate area and the entire councilmanic district.

As stated in <u>Swarthmore Company v. Kestner</u>, 258 Md. 517 (1970), the Court of Appeals held that:

[I]n short, the County Council need not follow the recommendations of the Planning Board and need not have any further or additional hearings in regard to the changes amendments the County Council may see fit to make. We have held that the County Council is not required to follow the recommendations of the Planning Board. Miller v. Abrams, 239 Md. 263, 272 (1965). We have also indicated that a substantial change may be validly made in a proposed comprehensive zoning map after the public hearing has been held on the originally proposed comprehensive zoning map and no additional notice or hearing was required by statutory language quite similar to that used in Section 22-21 of the Baltimore County (Code). Hewitt v. County Commissioners of Baltimore County, 220 Md. 48, 56 (1959)

While counsel for the Petitioners argues that the current statute (BCC 26-124[a]) does limit the Council's right to consider a change in zoning, referencing Section 26-123(e), additionally quoted in the briefs submitted to the Board by People's Counsel in the case of <a href="Ark Readi Mix v. Smith">Ark Readi Mix v. Smith</a>, 251 Md. 1,3 (1968), the Courts sustained a change made by the County Council in that case on a proposed comprehensive zoning map requested on the same day that the ordinance was passed, where there had been no prior discussion, proposal or request for the change made at the hearing on the proposed comprehensive zoning map and, of course, no notice or prior hearing in regard to the requested change.

It is the conclusion of the Board that the County Council was not limited to the recommendations of the Planning Board, and is

not required to file its own application under Section 26-123(e) with its own requested zoning. Section 26-34, BCC, is quite clear concerning the fact that recommendations of the Planning Board are advisory only as to both the County Executive and the County Council; with Section 26-124(a), BCC, providing that "after the expiration of such period of notice and following the public hearing or hearings, the 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)." Under Section 24-124(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."

There is no question but that the subject site was designated as one that was being considered by the Planning Board for a zoning change and therefore the "issue" referencing a tract or parcel of land proposed for a change in zone or district classification was the subject of Planning Board consideration; and it was not necessary for the County Council to raise any new issue.

Secondly, the Petitioners argue that the final classifications assigned were totally inappropriate as related to the provisions of the BCC Section 2-356(j), Findings prior to reclassification:

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

- (1) That, except as limited by the terms of subsection (j)(3) of this section, there has occurred a substantial change in the character of the neighborhood in which the property is located since the property was last classified or that the last classification of the property was established in error.
- (2) That the prospective reclassification of 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, 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 surrounding area; any pertinent of the 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.

This Board, having heard testimony and reviewing the evidence, concludes that the finally-determined zoning assigned by the County Council was not inconsistent or inappropriate for the site. The subject property itself is in a triangle formed by Carroll Island Road and Bowleys Quarters Road and Eastern Avenue. It is presently undeveloped and heavily wooded. A large portion of the property is in the Chesapeake Bay Critical Area region and is a designated Limited Development Area, relatively flat. Undoubtedly, it is one of the largest undeveloped land areas in this section of Baltimore County and is the "gateway" to the Bowleys Quarters Peninsula, with both commercial and residential properties nearby. The Carroll

Island Shopping Center is directly across Carroll Island Road.

Testimony received at the hearing was varied as to the appropriateness of the C.B. and D.R. 3.5 Council zoning. Jack Dillon, the former County area planner, and Gary Kerns testified that the present Master Plan, valid for the years 1989-2000 and approved by the County Council, reflects the property as being intended for mixed commercial uses. Public water and sewerage is available adjacent to the area and could service both C.B. and B.R. zoning. The immediate area services 13 persons per acre compared to 4.1 to one acre of ground in the rest of Baltimore County. While commercial uses are prevalent in the area, there are also residential uses to the north and east with the Williams motor home park across Eastern Avenue. As one progresses down the Bowleys Quarters Peninsula, there are principally residential homes and waterfront use properties. For the most part, these are singlefamily homes with some relatively new townhouses and apartments having been constructed. The lower portion of Bowleys Quarters Road is considerably less dense and served by private water and sewer towards the lower end. There is also a new "Fairwinds" development with 90 homes underway on 30 acres to the southwest across Frog Mortar Creek.

It was Mr. Norman Gerber's opinion that the County Council had erred in granting the C.B. zoning classification when one considers the totality of demographics, the characteristics of surrounding property, and the zoning and location of the site. This was countered by Mr. Jack Dillon, Mr. Gary Kerns, the County planner in

charge of the comprehensive map process, and also Mr. Jeffrey Long, the County planner for the area.

Substantial testimony was received at the hearing concerning the issue of "change" and "mistake." Mr. Norman Gerber, an expert planner, opined that the C.B. zoning as applied was not appropriate due to the limited sidewalk accessibility; the general demographics of the area; the heavily travelled Carroll Island and Bowleys Quarters Road; and the proximity of the Carroll Island Shopping Center, along with the heavily zoned M.L. and commercial properties nearby to the subject site. Mr. Gerber cited the official Master Plan for the County for years 1989-2000, reflecting that the land was designated for mixed commercial usages.

Mr. Joseph Larsen (Spellman, Larsen, and Associates, Inc.) testified as to the availability of public water and public sewerage immediately adjacent that had sufficient capacity to serve any facilities relating to a B.R. (Business, Roadside) zoning.

Countering this testimony was that of Mr. Jeffrey Long, a County planner; Mr. Jack Dillon, the former Eastern area planner until March 1996; Mr. Gary Kerns, County planner in charge of the comprehensive map process; Ms. Karen Brown, current County planner for the area; and four interested citizens residing in the area. Mr. Long related that the assigned C.B. zone met the required legislative uses and performance standards. He also stated his support for the rear area assigned a D.R. 3.5 zoning, stating that the D.R. 3.5 zoning density was within the specified parameters of the Limited Development Area; and provides for a substantial

variety of uses by right and special exception, along with a maximum of 23-24 homes on approximately 7 acres. He related as to the other residential properties nearby to the subject site. He also opined as to the correctness of the finally determined zoning on the part of the County Council from the perspective of the planning staff of Baltimore County.

The Board also heard from Ms. Karen Brown as to the community conservation efforts undertaken by the County in its efforts to rehabilitate the Bowleys Quarters /Essex area; and from Mr. Dillon as to the intense efforts made during the 1996 rezoning process; and as to the existing commercial and residential zoning and why downzoning would substantially improve the quality of life in an area of deterioration that was already the subject of intense County rehabilitation efforts. Mr. Dillon expressed his conclusion that the C.B. zoning was a satisfactory one considering the heavy traffic on primary roadways and that, while no present sidewalks existed, these would come with future development.

Testimony was also received from four area residents, three of whom were presently involved or had been past officers of the Bowleys Quarters Improvement Association. All these individuals expressed familiarity with the differences involved in C.B. and B.R. zoning designations; and expressed their observations that a B.R. classification was both too intense and detrimental to a quality of life that presently existed in the Bowleys Quarters area.

There is no doubt but that when the County Council passed Bill

86-94 in 1994 there existed a desire on the Council's part to create a less intense commercial use other than the three which currently existed at that time (B.L., B.M., and B.R.). The reasoning, from a legislative perspective, was that a new zone was needed to assist those areas of the County where community conservation efforts were underway to rehabilitate the older, more established neighborhoods. The Bill states the legislative purposes for the Community Business zone in BCZR 229.1A:

1. The primary purpose of the community business zone (C.B.) is to provide for the daily shopping and service needs of nearby residents through small businesses which do not generate large amounts of traffic at any one time. The zone shall accommodate vehicular parking needs, but also be pedestrian oriented. Where appropriate, parking should be located to the side and to the rear. In design, the C.B. zone should reflect elements of the architectural style of neighboring residential buildings, so that the commercial development becomes an integral, harmonious component of the neighborhood.

Council Bill 180-95 passed by the Council on October 2, 1995 and which repealed and re-enacted BCZR Section 229.1 et.seq. amended the statement of legislative policy by designating the initial statement as subsection A.1, and adding subsection A.1 which states:

2. The C.B. zone is not intended to be used to replace the B.L.R., B.L., B.M. or B.R. zones on developed sites. Rather, the zone is intended as an additional classification which may be appropriate for locations that are no longer desirable for other noncommercial purposes but where application of the other business zones may prove detrimental to nearby residential properties.

The Bill established performance standards, appearance requirements, pedestrian access and orientation, and encouraged

screening as to service areas. Ideally, the newly established zone would be locally commercial in nature, encouraging pedestrian traffic, utilizing local retail and service functions in the zone as compared to much broader commercial uses available in the B.R. zone.

The bulk and area regulations in the BCZR, Section 229.5, severely limit the type of service functions in the zone, as well as signage and landscape requirements found in other areas of the County zoning regulations. In reading Bill 180-95, it is obvious that the intent of the new legislation was to encourage localized businesses catering to such an area as opposed to broader, wider County-luring vendors, such as large discount operations, all-purpose hardware chains, and similar ventures in favor of more localized, smaller operations, again catering to the general needs of the immediate community.

As was succinctly stated in the Petitioners' Brief, comprehensive zoning has a presumption of validity, and such presumptions can be overcome. However, there must be probative evidence to show that the assumptions or premises relied upon by the Council at the time of the comprehensive zoning were invalid. Error can be established by showing that at the time of the comprehensive zoning the Council failed to take into account then existing facts or projects or trends that were reasonably foreseeable of fruition in the future, so that the Council action was presumed, initially, on a misapprehension (People's Counsel for Baltimore County v. Beechwood I Ltd. Partnership, 107 Md. App. 627

[1995]).

Maryland courts have demonstrated a reluctance to substitute their judgement in legislative matters; and, in the case of comprehensive zoning or rezoning, a strong presumption of correctness is present, and those who attack it bear a heavy burden in overcoming this presumption (Bonnie View Country Club v. Glass, 242 Md. 46). Additionally, the exercise of the police power by the legislative body adopting the zoning ordinance is a proper function of the power granted to it by statute; and such ordinances to be attacked must be affirmatively and clearly shown to be arbitrary, capricious, discriminatory, arbitrary or illegal so that review of such question by the Court is narrow in scope (Walker v. Board of County Commissioners of Talbott County, 208 Md. 72).

Similarly, in Norbeck Village Joint Venture v. Montgomery County (254 Md. 59), the Court held that for a property owner to escape the binding impact of comprehensive zoning he must show that the plan lacked the necessary relationship to the general public interest and welfare; and that it was presumed or that the effect of the plan is to deprive him of any reasonable use of the property.

It is the conclusion of this Board that the Petitioners have not met their burden of proof required to establish error or mistake on the part of the County Council under Section 2-356 in assigning the subject property a zoning classification of C.B. and D.R. 3.5. There is clear and sufficient evidence to establish that the local councilman was familiar with the site. He had visited it

on two prior occasions, in addition to visiting all of the subject sites which were to be considered for rezoning in the Fifth Councilmanic District.

The subject site is within the confines of community conservation efforts of the County, and resides in an area of the County in need of special attention that caters to less intense commercial development. Concurrently the testimony and evidence produced at the hearing is also convincing that the D.R. 3.5 rear zoning is also applicable in reducing commercial intensity. While all of the zoned D.R. 3.5 property may not be conducive to residential development, a sufficient portion thereof is developable to provide an area of potential residential development that will accommodate the requirements of the C.B. zone, and suit Limited Development Area guidelines.

Additionally, the <u>Baltimore County Code</u>, Section 2-356(j)(3)(b) establishes definitive standards for rezoning of properties in the Chesapeake Bay Critical Area region. As stated in subsection (j)(3)(b):

No reclassification may be granted unless the Board has made written findings that the proposed reclassification will; (1) minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have runoff from surrounding land; (2) preserve fish, wildlife, and plant habitat; and (3) be consistent with established land use policies for development in the Chesapeake Bay critical area which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement, and activities of persons in that area can create adverse environmental impacts. [Emphasis

added.]

The Board concludes that there was no evidence presented at the hearing which would allow its members to properly grant this rezoning. Within its appropriate governmental sphere, the Baltimore County Council is the legislature for the citizens of Baltimore County and is the ultimate repository of all legislative power possessed by the County. When it undertakes once every four years its comprehensive zoning function, it speaks for the voice of the people. As with all legislative bodies, it may sometimed make policy decisions that are, in the eyes of some observers, wrong. For the ordinary rightness or wrongness of their decisions, however, legislators are answerable only to their electorates at the next election. Thus, unless there is probative evidence to show that there were then existing facts which the Council, in fact, failed to take into account, or subsequently occurring events which the Council could not have taken into account, the presumption of validity accorded the comprehensive zoning is not overcome, the question of error is not "fairly debatable" (Boyce v. Sembly, 25 Md.App. 52.

For the reasons so stated, this Board will deny the Petitioners' request for rezoning.

#### ORDER

IT IS THEREFORE, this 8th day of April, 1998 by the County Board of Appeals of Baltimore County

ORDERED that the Petition for Reclassification from the current classification of D.R. 3.5 and C.B. to B.R. and B.R.-A.S be

and is hereby DENIED

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

Kristine K. Howanski, Chairman

Margaret Worrall

Charles L. Marks



#### County Board of Appeals of Baltimore County

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

May 15, 1997

#### NOTICE OF HEARING

CASE NUMBER: R-97-469
NE/S Carroll Island Road, 194' W of c/l Bowleys Quarters Road; also NW/S
Bowleys Quarters Road, 435' NE of c/l Carroll Island Road
15th Election District - 5th Councilmanic
Legal Owner(s): Daniel W. Hubers, et al

Reclassification petition to change the property's zoning from D.R.-3.5 and C.B. to B.R. and B.R.-A.S.

HEARING: THURSDAY, OCTOBER 23, 1997 at 10:00 a.m., Room 48 Old Courthouse, 400 Washington Avenue before the County Board of Appeals.

ROBERT O. SCHUETZ, CHAIRMAN COUNTY BOARD OF APPEALS

cc: Daniel W. Hubers, et al Edward C. Covahey, Jr.

PETITION OF: Daniel W. Hubers, et al

CIVIL ACTION # 3-C-98-04123

IN THE MATTER OF DANIEL W. HUBERS, ET AL

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

Clerk's Office

r-te: 6-23-98

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#### County Board of Appeals of Baltimore County

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

December 15, 1997

#### NOTICE OF DELIBERATION

Having concluded the hearing in this matter on December 11, 1997, the Board has scheduled the following date and time for deliberation in the matter of:

DANIEL W. HUBERS, ET AL -Petitioners Case No. R-97-469

DATE AND TIME: Tuesday, February 17, 1998 at 9:30 a.m.

LOCATION : Room 48, Basement, Old Courthouse

NOTE: CLOSING BRIEFS AND PROPOSED FINDINGS OF FACT ARE DUE FROM COUNSEL ON WEDNESDAY, JANUARY 21, 1998 Original and 3 copies)

Kathleen C. Bianco Administrator

cc: Counsel for Petitioner

: Edward C. Covahey, Jr.

Petitioner

: Daniel W. Hubers, et al

Spellman, Larson & Associates, Inc.

Norman E. Gerber

David R. Cahlander /Stevens Road Improvement Assn. Tom Lehner /Bowleys Quarters Improvement Assn.

James Earl Kraft /Bd of Education

People's Counsel for Baltimore Co. Pat Keller Jeffrey Long /Planning Lawrence E. Schmidt Arnold Jablon, Director /PDM Virginia W. Barnhart, Co Atty

Copied: K.W.C.

IN THE MATTER OF

BEFORE THE

DANIEL W. HUBERS,

COUNTY BOARD

MARVIN E. SMITH,

\* OF APPEALS OF

WILLIAM W. SMITH, GEERALDINE SMITH and

WILLIAM W. SMITH, Trustees \* BALTIMORE COUNTY

Under the Last Will and

Testament of Gilbert K. Smith,

and

WILLIAM W. SMITH, Trustee F/B/O Lois A. Leach

CASE NO.

Petitioners

PETITION AND BRIEF IN SUPPORT OF RECLASSIFICATION REQUEST

Daniel W. Hubers, Marvin E. Smith, William W. Smith, Geraldine Smith and William W. Smith, Trustees under the Last Will and Testament of Gilbert K. Smith, and William W. Smith, Trustee F/B/O Lois A. Leach, Petitioners, by Edward C. Covahey, Jr., Anthony J. DiPaula, and Covahey & Boozer, P.A., their attorneys, present this Petition and Brief pursuant to \$2-356 et. seq. of the Baltimore County Code. The grounds in support of the Petitioners' reclassification request are as follows:

1. The subject property is zoned on the comprehensive zoning map effective December 2, 1996 as C.B. (Community Business) and D.R. 3.5. (Density Residential 3.5), and the Petitioners request that it be reclassified to its former classification of B.R.-A.S. (Business Roadside-Automotive Services) and B.R. (Business Roadside).

- 2. The Baltimore County Council erred in adoption of the last comprehensive map in classifying the property as D.R. 3.5. (Density Residential 3.5) and C.B. (Community Business) for the following reasons:
- A. The Baltimore County Planning Board made recommendations to the Baltimore County Council for its public hearing on the log of issues and recommended that the subject property retain its then existing zoning of B.R.-A.S. and B.R.
- B. The Baltimore County Council held a public hearing with respect to the issues pertaining to the comprehensive rezoning for the 5th Election District, and there was no public notice nor notice to the property owners with respect to any contemplated change in the then existing zoning of the subject property.
- C. That the property owners queried the Professional Planning Staff prior to the Councilmanic hearings and were assured that the existing zoning for the subject property would remain the same consistent with the public hearing held by the Baltimore County Planning Board wherein the Planning Board recommended that the subject property retain its then existing zoning of B.R.-A.S. and B.R.
- D. That the County Council, at its public hearing with respect to enactment of the comprehensive zoning

map, ignored the recommendation of the Planning Board, and without public notice or notice to the subject property owners downgraded the zoning of the subject property to its present zoning of C.B. and D.R. 3.5.

- E. That the Petitioners have been deprived of an interest in their property without due process of law in that the Baltimore County Council did not provide them notice of any contemplated change in the zoning classification of the subject property.
- F. That the subject property is situate immediately on the opposite side of Carroll Island Road from Carroll Island Shopping Center and is situate between Bowleys Ouarters Road and Eastern Avenue.
- G. That the portion of the subject property that is zoned D.R. 3.5 is not suitable for residential development within the context of D.R. 3.5 zoning.
- H. That Carroll Island Road is serviced by Baltimore County metropolitan water and Baltimore County sanitary sewage and both of which are of sufficient capacity to serve the subject property within the context of the zoning requested in this Petition.
- I. That the property is ideally suited for commercial development within the context of B.R. and B.R.-A.S.

zoning because of its location with respect to Eastern Avenue, Carroll Island Road, and Bowleys Quarters Road.

J. That the actions of the County Council in reclassifying the Petitioners' property without proper notice amounts to confiscation of Petitioner's private property without due process of law, and same is unconstitutional as a matter of law.

EDWARD C. COVAHEY, JR.

ANTHONY J. DIPAULA Covahey & Boozer, P.A. 614 Bosley Avenue Towson, Maryland 21204 (410) 828-9441 Attorney for Petitioners

#### CERTIFICATE OF SERVICE

HEREBY CERTIFY that on this 23 day of fewing, 1997, a copy of the foregoing Petition and Brief in Support of Reclassification Request was mailed, first class, postage prepaid, to Baltimore County Office of Law, 400 Washington Ave., 2nd Floor, Towson, Maryland 21204.

ANTHONY J. DIPAULA

97-02-47.ldr



### Petition for Reclassification

### to the Board of Appeals of Baltimore County for the Property at Quarters Rd., comprising 9.64 acres ±

This Petition shall be filed with the Department of Peri The undersigned, legal owner(s) of the property situate in Baltimore made a part hereof, hereby petition (1) that the zoning status of the	mits & Development Management  County and which is described in the description and plat attached hereto and herein described property be reclassified, pursuant to the Zoning Law
of Baltimore County, from an C.B. and D.R. 3.5	zone to an B.RA.S. and B.Rzone, for the reasons
given in the attached and (2) xor xxSpecial Exceptions and xinex20x	ing Regulations of Baltimore County, to use the notest described properties.
	·
and (3) for the reasons given in the attached statement a variance f	from the following sections of the Zoning Regulations of Baltimore County:
and (5) for the reasons given in the minutes of the	
N/A	
IN / Z3.	
	t Zanina Danulations
Property is to be posted and advertised as prescribed	tion advertising, posting, etc., upon filing of this petition, and further agree to
1, or we, agree to pay expenses of above Special Exceptional and restrictions of Barbara and restrictions of Barbara and restrictions of Barbara and restrictions.	altimore County adopted pursuant to the Zoning Law for Baltimore County.
and are to be bound by the forming regulations and restriction of the	
	I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition
Contract Purchaser/iLessee:	Legal Owner(s):
•	(Type or Print Name)
(Type or Pnnt Name)	(type or rount name)
Cionatura	Signature
Signature	
Address	(Type or Print Name)
	•
City State Zip Code	
	Signature
	Address Phone No.
Attorney for Petitioner:	
	City State Zip Code
Edward C. Covahey, Jr.	Name, address and phone number of legal owner, contract purchaser or representa-
(Type or Print Name)	to be contacted.
50,00	Daniel W. Hubers
Signature	Name 16 A
614 Bosley Avenue 828-9441	1520 Old Eastern Avenue (8) 1-1000
Address Phone No.	Address Baltimore, MD 21221 Phone No
Towson, MD 21204	OFFICE USE ONLY
City State Zip Code	ESTIMATED LENGTH OF HEARING
	unavailable for Hearing the following dates
	Next TWO Months
	ALLOTHER
	REVIEWED BY:DATE

R.91.469

Legal Owner(s): Damiel W. Hubers Marvin E. Smith William W. Smith Geraldine Smith and William W. Smith, Trustees under the Last Will and Testament of Gilbert K. Smith William W. Smith, Trustee F/B/O Lois A. Leach

	RE: Case No.: 1-469
	Petitioner/Developer:
-	Daniel W Hubers, et a
	Date of Hearing/Closing: Oct 23 199
Baltimore County Department of Permits and Development Management County Office Building, Room 111 111 West Chesapeake Avenue Towson, MD 21204	
Attention: Ms. Gwendolyn Stephens	
Ladies and Gentlemen:	
This letter is to certify under the penalties of perjuwere posted conspicuously on the property located $W$ $GF$ $BOWLEYS$ $GWARTERS$	tat CARROCK 15. RD. 200'+
The sign(s) were posted on $\frac{9/29/97}{M}$	onth, Day, Year)
	Sincerely,
	(Signature of Sign Poster and Date)  GARY FREUND  (Printed Name)
•	(Address)
	(City, State, Zip Code)
	(Teiephone Number)

2.91.469





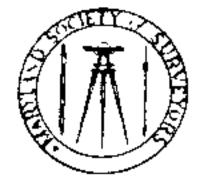
ROBERT F SPELLMAN, PLS JOSEPH L LARSON JO ANN W ROGGE

SUITE 109 — JEFFERSON BUILDING 105 W CHESAPEAKE AVENUE TOWSON, MARYLAND 21204 TEL (410) 823-3535 FAX (410) 825-5215

DESCRIPTION FOR ZONING CARROLL ISLAND ROAD, NEAR BOWLEYS
QUARTERS ROAD, 15TH DISTRICT, BALTIMORE COUNTY, MARYLAND

Beginning for the same at a point in the centerline of Carroll Island Road at the distance of 194.33 feet measured northwesterly along the centerline of Carroll Island Road from the centerline of Bowleys Quarters Road and running thence and binding on the centerline of Carroll Island Road north 69 Degrees 42 Minutes 00 Seconds west 271.78 feet thence leaving the centerline of Carroll Island Road and running north 22 Degrees 00 Minutes 01 Seconds east 219.73 feet north 69 Degrees 42 Minutes 00 Seconds west 322.33 feet north 6 Degrees 11 Minutes 21 Seconds east 232.72 feet south 88 Degrees 52 Minutes 57 Seconds east 308.15 feet north 2 Degrees 36 Minutes 48 Seconds east 67.36 feet north 75 Degrees 40 Minutes 38 Seconds east 510.91 feet south 36 Degrees 11 Minutes 23 Seconds west 75.43 feet south 11 Degrees 14 Minutes 23 Seconds west 96.88 feet and north 88 Degrees 11 Minutes 23 Seconds east 194.18 feet to a point in the centerline of Bowleys Quarters Road and running thence in the bed of Bowleys Quarters Road south 16 Degrees 19 Minutes 31 Seconds west 236.22 feet and south 39 Degrees 39





ROBERT E SPELLMAN PLS JOSEPH L LARSON JO ANN W ROGGE

#### SUITE 109 — JEFFERSON BUILDING 105 W CHESAPEAKE AVENUE TOWSON, MARYLAND 21204 TEL (410) 823-3535 FAX (410) 825-5215

DESCRIPTION FOR ZONING CARROLL ISLAND ROAD, NEAR BOWLEYS

QUARTERS ROAD, 15TH DISTRICT, BALTIMORE COUNTY, MARYLAND

Page: 2

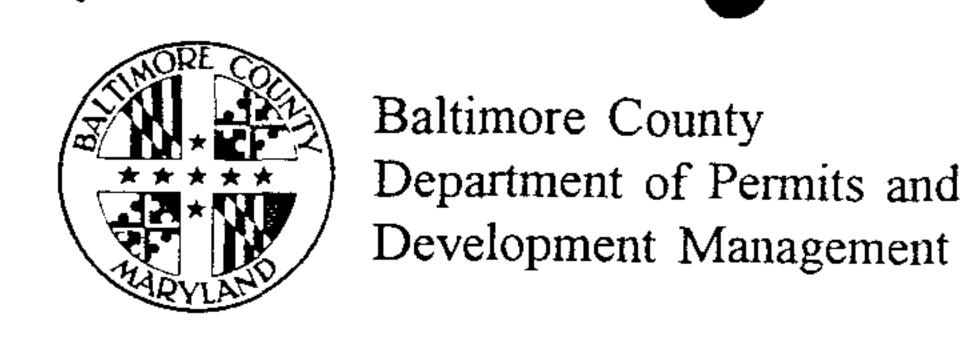
Minutes 41 Seconds west 139.45 feet to a point near the northwest side of Bowleys Quarters Road and running thence near the northwest side of Bowleys Quarters Road south 19 Degrees 50 Minutes 46 Seconds west 7.14 feet and running thence north 67 Degrees 23 Minutes 01 Seconds west 163.29 feet and south 23 Degrees 11 Minutes 41 Seconds west 443.70 feet to the place of beginning.

Containing 9.64 acres of land, more or less. 02/26/97



BALTIMORE COUNTY, MARYLAND OFFICE OF FINAL REVENUE DIVISION R-97-46 MISCELLANEOUS CASH RECEIPT
DATE 28 1697 ACCOUNT 001-6181 \$5
* 1250.00
RECEIVED SMITH + HUDOUS #2
#074 9644 NKC 11 Told
Rd 194' West Of Bowless Querters Rc'  \$1.250.00
TO TO 50 PENERLE OF CASHIER  VALIDATION OR SIGNATURE OF CASHIER
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

OFFICE OF BUDGET & FINAN- MISCELLANEOUS RECEI		1	035869	05/2/97 01 5 JMR R 4279 Devt 5 513 ZONING VERIFICATION
5/12/97	ACCOUNT	001-6150	<u> </u>	Dept 5 513 ZONING VERIFICATION CR 303. 035869 \$35.00 CK P-A-I-D
				Baltimore County Haryland
	. AMOUNT \$	35.00 (WCR)		Office Of Budget & Finance
CASWASE LE COM	AMOUNT \$  Covahey, Jr.			•
CASWASE IS COME				•
#080 - RECLAS	Covahey, Jr.		,	•
FROM:EGWalu C.	Covahey, Jr.		, , , , , , , , , , , , , , , , , , ,	•



Development Processing County Office Building 111 West Chesapeake Avenue Towson, Maryland 21204

October 6, 1997

Edward C. Covahey, Jr., Esquire 614 Bosley Avenue Towson, MD 21204

RE: Item No.: 469

Case No.: R-97-469

Petitioner: Daniel Hubers, et al

Dear Mr. Covahey:

The Zoning Advisory Committee (ZAC), which consists of representatives from Baltimore County approval agencies, has reviewed the plans submitted with the above referenced petition, which was accepted for processing by Permits and Development Management (PDM), Zoning Review, on February 28, 1997.

Any comments submitted thus far from the members of ZAC that offer or request information on your petition are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. Only those comments that are informative will be forwarded to you; those that are not informative will be placed in the permanent case file.

If you need further information or have any questions regarding these comments, please do not hesitate to contact the commenting agency or Roslyn Eubanks in the zoning office (410-887-3391).

Sincerely, Richards, Jr.

Zoning Supervisor

WCR/re
Attachment(s)



4 *			
Attac	h original petition	Due Date	5/29/97
To:	Arnold L. Jablon		
From:	Bruce Seeley 135/48		
Subject:	Zoning Item #469		
	<u>Hubers/Smith</u>		
	Zoning Advisory Committee Mee	ting of <u>May</u>	12, 1997
	epartment of Environmental Prote nents on the above-referenced zor		esource Management has no
exten	epartment of Environmental Protesion for the review of the above-reenvironmental regulations apply t	ferenced zo	Resource Management requests an oning item to determine the extent to
	epartment of Environmental Protering comments on the above-refere		_
X		nds and Flo	ith the Regulations for the Protection odplains (Sections 14-331 through
X	_Development of this property must Regulations (Sections14-401 thro		
X	Development of this property must Regulations (Sections 26-436 thr Baltimore County Code).		ith the Chesapeake Bay Critical Area 1, and other Sections, of the
X_	_See Attached		

Hubers/Smith Property-Petition for Reclassification R-97-469:

The majority of the site is located within the Chesapeake Bay Critical Area and is classified as a Limited Development Area. As such, the portion within the CBCA is limited to a maximum of 15% impervious surface. Forest clearing is limited to 20% with 1:1 replacement, or up to 30% clearing with 1.5:1 replacement. Forest clearing proposed outside the CBCA is limited by the Forest Conservation Regulations and is based on land use classification. Non-tidal wetlands are also located throughout the site and both the CBCA Regulations and the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains require a minimum non-disturbance buffer.

<u> </u>	Attach original petition	Due Date <u>6/12/97</u>
To:	Arnold L. Jablon	
From:	Bruce Seeley 3 5)49	
Subject:	Zoning Item_R-97-469	
	Carroll Island R	oad
	Zoning Advisory Committee Meeting of	of <u>Cycle 1</u>
	Department of Environmental Protection ents on the above-referenced zoning ite	$oldsymbol{arphi}$
exten		and Resource Management requests an ced zoning item to determine the extent to ite.
	epartment of Environmental Protection ing comments on the above-referenced	——————————————————————————————————————
X	• • • • • • •	nply with the Regulations for the Protection and Floodplains (Sections 14-331 through
<u> </u>	Development of this property must cor Regulations (Sections 14-401 through	nply with the Forest Conservation 114-422 of the Baltimore County Code).
- X	Development of this property must cor Requiations (Sections 26-436 through Baltimore County Code).	nply with the Chesapeake Bay Critical Area 26-461, and other Sections, of the
X	Additional comments:	

The entire site is forested and contains non-tidal wetlands. A large portion of the property is located within the Chesapeake Bay Critical Area and is classified as Limited Development Area. For the area located within the CBCA, the CBCA Regulations limit forest clearing to a maximum of 30% with 2:1 replacement or mitigation and require a 25 foot non-disturbance buffer from the non-tidal wetlands. For the area outside the CBCA, any development must comply with both the Forest Conservation Regulations which limits forest clearing based on existing zoning, and the Regulations for the Protection of Water Quality, Streams, Wetlands, and Floodplains which requires a 25 foot non-disturbance buffer from the non-tidal wetlands.



David L Winstead Secretary Parker F. Williams Administrator

Ms. Roslyn Eubanks
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County 5.7.97

Item No. R-97-469

HE/3 Connoul Iscono Rd.

194' W OF BOWLRYS QUONTENS

Dear Ms. Eubanks:

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 affected by any State Highway Administration projects.

Please contact Larry Gredlein at 410-545-5606 if you have any questions.

Thank you for the opportunity to review this item.

Very truly yours,

for A

Ronald Burns, Chief

Engineering Access Permits

Division

LG

BALTIMORE COUNTY, MARYLAND

#### Inter-Office Correspondence

TO: K. Howanski DATE: January 21, 1998

M. Worrall C. Marks

FROM: Kathi

SUBJECT: Case No. R-97-469 /Daniel W. Hubers, et al /Petition for

Reclassification

The subject matter is scheduled for deliberation on Tuesday, February 17, 1998, at 9:30 a.m. As requested by the Board at the conclusion of the hearing on December 11, 1997, the following documents were filed by Counsel, copies of which are provided herewith for each panel member's review:

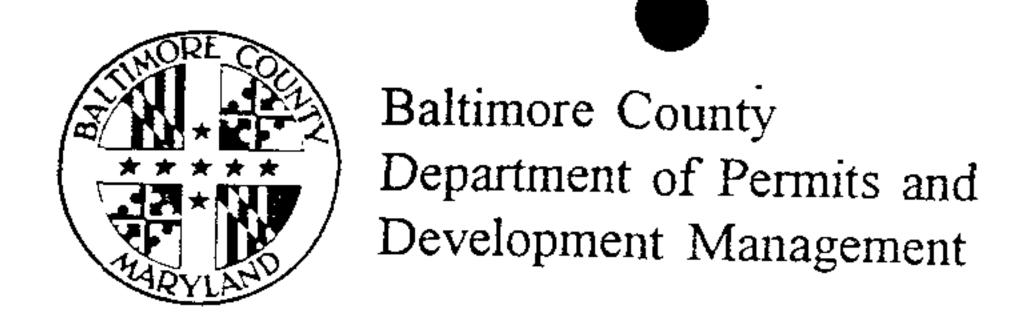
- 1. People's Counsel for Baltimore County's Memorandum and, separately, a copy of the Final Report of the Baltimore County Planning Board dated June 18, 1992, concerning "Performance Based Zones" (see attached letter from People's Counsel) filed 1/20/98.
- 2. Petitioner's Memorandum filed by Tony DiPaula 1/21/98.

A copy of the Notice of Deliberation was forwarded to you in December. Should you have any questions regarding the above, or need any additional information, please call me.

kathi

Attachments

July Colon



Development Processing County Office Building 111 West Chesapeake Avenue Towson, Maryland 21204

April 30, 1997

Edward C. Covahey, Jr., Esquire 614 Bosley Avenue Towson, MD 21204

RE: Reclassification Petition Cycle I, #R-97-469 (Carroll Island Road

Dear Mr. Covahey:

As you are aware, Baltimore County is no longer responsible for posting properties for routine zoning hearings. However, Baltimore County will post all properties that were filed as part of Cycle I zoning reclassification. To cover the cost of posting this property, you must remit a check for \$35.00 (payable to Baltimore County, Maryland). Please send this check, as soon as possible, to either myself or Sophia.

If you have any questions regarding the sign posting, please do not hesitate to contact Gwendolyn Stephens at 410-887-3391.

Very truly yours,

W. Carl Richards, Jr. Zoning Supervisor Zoning Review

WCR:scj

c: Board of Appeals





OFFICE OF PEOPLE'S COUNSEL

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

(410) 887-2188

PETER MAX ZIMMERMAN People's Counsel Deputy People's Counsel

97 NOV 2

(x) :

C

November 25, 1997

Kristine K. Howanski, Chairman Board of Appeals of Baltimore County Room 49 Courthouse 400 Washington Avenue Towson, MD 21204

Hand-delivered

Re: Procedural Issues

HUBERS/SMITH/LEACH

Petition for Reclassification

Case No. R-97-469

Dear Chairman Howanski:

The Petitioners have objected that the County Council's enactment of C.B./D.R.-3.5 is different from both the original staff recommendation and the Planning Board recommendation. This procedural objection should be overruled.

Code Section 26-124(a) provides for one or more Council hearings after receipt of the Planning Board recommendation. It goes on to state, in the last sentence of the subsection:

"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)."

This means that the Council may choose to legislate any zoning classification on a property under consideration. (Please note that Sec. 26-123(e) merely refers to the schedule for raising issues.)

The Court of Appeals, moreover, has addressed this language, as formerly codified in Section 22-21 of the County Code. In Swarthmore Co. v. Kaestner, 258 Md. 517, 266 A.2d 341 (1970), Sec. 2, attached, Judge Barnes emphasized that this allows the

Kristine K. Howanski, Chairman Board of Appeals of Baltimore County November 25, 1997 Page Two

Council to adopt any zoning classification and is not limited to the Planning Board recommendations.

In <u>Hubers</u>, this means, as a matter of law, that there is no procedural objection to the C.B./D.R.-3.5 zoning.

In any event, the record shows that there was adequate notice to the Petitioner of potential downzoning, that the zoning adopted simply involved different degrees of downzoning (C.B. rather than B.L., D.R.-3.5 rather than D.R.-2), and that the ultimate residential zoning on the rear is less restrictive than originally proposed.

Moreover, the record shows that the Office of Planning and Zoning made public its revised C.B./D.R.-3.5 recommendations for the Hubers property in the spring of 1997.

In conclusion, as a matter of law and on this record, there is no valid procedural objection to the legislative enactment of C.B./D.R.-3.5

Very truly yours,

Peter Max Zimmerman

People's Counsel for Baltimore County

Carole S. Demilio

Deputy People's Counsel

PMZ/caf Enclosures

cc: Edward C. Covahey, Jr., Esq.
Attorney for Petitioner/Developer

Arnold F. "Pat" Keller, III Director, Office of Planning DANIEL W. HUBERS, ET AL
NE/s Carroll Island Road, 194'
W of centerline Bowleys Quarters
Road; also NW/s Bowleys Quarters
Road, 435' NE of centerline Carroll
Island Road

R-97-469 ITEM #5, CYCLE I, 1997

15th Election District 5th Councilmanic District

From D.R. 3.5 & C.B. to B.R. & B.R.-A.S. Open Site Plan 9.64 +/- acres

February 28, 1997

Petition for Reclassification filed by Edward C. Covahey, Jr., Esquire, on behalf of Daniel W. Hubers, et al, Petitioners.

Edward C. Covahey, Jr., Esquire COVAHEY & BOOZER, P.A. 614 Bosley Avenue Towson, MD 21204

Counsel for Petitioners

Daniel W. Hubers, et al 1520 Old Eastern Avenue Baltimore, MD 21221

Petitioners

Spellman, Larson & Associates, Inc. Suite 406 Jefferson Building Towson, MD 21204

James Earl Kraft Baltimore County Board of Education Mail Stop 1102-J

People's Counsel for Baltimore County

Pat Keller
Jeffrey Long
Lawrence E. Schmidt
W. Carl Richards, Jr.
Docket Clerk /PDM
Arnold Jablon, Director /PDM

Norman E. Gerber 35 Pickburn Court Cockeysville, MD 21030

Added /from sign-in sheet 10/23/97: David R. Cahlander Stevens Road Imp Assn 218 Stevens Road Baltimore, MD 21220

Tom Lehner
Bowleys Quarters Imp Assn
1004 Susquehanna Avenue
Baltimore, MD 21220

#### Civil Action No. 3-C-98-04123

February 28, 1997 Petition for Reclassification filed by Edward C. Covahey, Jr., Esquire, on behalf of Petitioners /Legal Owners, Daniel W. Hubers Marvin E. Smith, William W. Smith, and Geraldine Smith; to reclassify from C.B. and D.R. 3.5 zone to B.R.-A.S. and B.R.

October 6 Comments from the Baltimore County Zoning Plans Advisory Committee.

September 29 Certificate of Posting of property.

Publication in newspapers.

October 23 Hearing Day #1 held before the County Board of Appeals.

November 25 Hearing Day #2 held before the County Board of Appeals.

December 11 Hearing Day #3 held before the County Board of Appeals (concluded).

January 20, 1998 People's Counsel's Memorandum filed by Peter Max Zimmerman.

January 21 Petitioner's Memorandum filed by Edward C. Covahey, Jr., Esquire, and Anthony J. DiPaula, Esquire, counsel for Petitioners.

February 17 Public Deliberation for final determination conducted by the County Board of Appeals.

April 8 Opinion and Order issued by the Board; Petition for Reclassification from the current classification of D.R. 3.5 and C.B. to B.R. and B.R.-A.S. is DENIED.

April 24 Petition for Judicial Review filed in the Circuit Court for Baltimore County by Edward C. Covahey, Jr., Esquire, and Anthony J. DiPaula, Esquire, on behalf of Daniel W. Hubers, et al.

April 27 Copy of Petition for Judicial Review received by the Board of Appeals from the Circuit Court for Baltimore County.

April 28 Certificate of Notice sent to interested parties.

June 23, 1998 / Record of Proceedings and transcript of testimony filed in the Circuit Court for Baltimore County.

June 28, 2000  $\sqrt{g}$  Memorandum Decision issued by the CCt; decision of the CBA is AFFIRMED (Robert E. Cahill, Sr., J).

# COUNTY POATR OF ALL FALLS OO JUL 14 PM 2: 23

# CIRCUIT COURT FOR BALTIMORE COUNTY Suzanne Mensh Clerk of the Circuit Court County Courts Building 401 Bosley Avenue P.O. Box 6754

Towson, MD 21285-6754 (410)-887-2601, TTY for Deaf: (800)-735-2258 Maryland Toll Free Number (800) 938-5802

07/13/00

Case Number: 03-C-98-004123 AE

Date Filed: 04/24/1998 Status: Closed/Active

Disposition

04/24/98

Judge Assigned: To Be Assigned,

In The Matter of: Daniel W Hubers , et al

#### CASE HISTORY

#### OTHER REFERENCE NUMBERS

Description Number

Case Folder ID C98004123V01

Administrative Agency R-97-469

#### INVOLVED PARTIES

Type Num	Name(Last First,Mid,Title)	Addr Str/End	Addr Update	Entered
	Hubers, Daniel W Capacity Trustees Under The Last Will 1520 Old Eastern Ave Baltimore, MD 21221	And Testament Of Gi 04/24/98	CT DO 06/28/00 lbert K Smith	04/24/98

Serve On Daniel W Hubers

Attorney: 0014355 DiPaula, Anthony J 04/24/98
Covahey & Boozer, P A
614 Bosley Ave
Towson. MD 21204
(410)828-9441

0014822 Covahey, Edward C Covahey & Boozer, P.A 614 Bosley Avenue Towson, MD 21204 03-C-98-004123 Date: 07/13/00 Time: 11:13 Page:

(410)828-9441

Disposition

Type Num Name(Last.First,Mid.Title) Addr Str/End Addr Update Entered

CT D0 06/28/00 04/24/98 Capacity Trustee Under The Last Will And Testament Of Gilbert K Smith

Mail: 1520 Old Eastern Ave 04/24/98

Baltimore, MD 21221

002 Smith, Marvin E

PET

Serve On: Daniel W Hubers

Attorney: 0014355 DiPaula, Anthony J 04/24/98

Covahey & Boozer, P.A.

614 Bosley Ave Towson, MD 21204 (410)828-9441

0014822 Covahey, Edward C 04/24/98

Covahey & Boozer, P A 614 Bosley Avenue Towson, MD 21204 (410)828-9441

003 Smith, William W PET

CT DO 06/28/00 04/24/98

Capacity Trustee Under The Last Will And Testament Of Gilbert K Smith

Mail: 1520 Old Eastern Ave 04/24/98

Baltimore, MD 21221

Attorney: 0014355 DiPaula, Anthony J 04/24/98

Covahey & Boozer, P A

614 Bosley Ave Towson, MD 21204 (410)828-9441

0014822 Covahey, Edward C 04/24/98

Covahey & Boozer, P.A. 614 Bosley Avenue Towson, MD 21204 (410)828-9441

FBO Leach, Lois A

PET 004 Smith, Geraldine CT DO 06/28/00 04/24/98

04/24/98

Capacity Trustee Under The Last Will And Testament Of Gilbert K Smith

04/24/98 Mail 1520 Old Eastern Ave

Baltimore, MD 21221

Serve On Daniel W Hubers Attorney 0014355 DiPaula, Anthony J

Covahey & Boozer, P A

614 Bosley Ave

Towson, MD 21204

(410)828-9441

03-C-98-004123 Date: 07/13/00 Time: 11:13 Page: 3

0014822 Covahey Edward C Covahey & Boozer. P A 614 Bosley Avenue Towson, MD 21204 (410)828-9441 04/24/98

Type Num	Name(Last First, Mid. Title)	Addr Str/End	Disposition Addr Update	Entered
ITP 001	Smith, Gilbert K Capacity . Deceased Will And Testament	Of	CT DO 06/28/00	04/24/98
	County Board Of Appeals Of Baltimore Cou Old Courthouse Room 49 400 Washington Avenue Baltimore, MD 21204	unty The 04/24/98	CT D0 06/28/00	04/24/98

Attorney 0029075 Zimmerman, Peter M Removed. 05/13/98 05/13/98

ITP 003 Peoples Counsel For Baltimore County CT D0 06/28/00 05/12/98
Attorney 0029075 Zimmerman, Peter M 05/13/98
People's Counsel For Baltimore County

Room 47 Courthouse 400 Washington Ave Towson, MD 21204 (410)887-2188

ITP 004 Cahlander, David CT D0 06/28/00 07/27/98

Mail 218 Stevens Road 07/27/98

Baltimore, MD 21220

ITP 005 Lehner, Thomas CT D0 06/28/00 07/27/98

Mail 1004 Susquehanna Avenue 07/27/98

Baltimore. MD 21220

#### CALENDAR EVENTS

Date	Time	Dur (	Cer	Evnt	Lvl	Atty	Jdg	Day	0f	Rslt	Ву	ResultDt	Jdg	Ţ	Not1ce	Rec	User	ID
09/28/98	09 30A	020	yes	MOTN			TBA	01	/01	CON		06/28/00			07/28/98	<b></b>	BK	
10/05/98	09.30A	020	yes	CIVI			TBA	01	/01	RES	С	08/10/98		Р			JD	GB
10/28/98	09:30A	02Q <u>3</u>	yes	CIVI			ТВА	01	/01	POS	С	10/27/98	JGT	Ρ			GB	TS
02/16/99	09-30A	040	yes	CIVI			JOH	01	/01	POS	С	02/16/99	JGT	P			KLS	FG
10/01/99 Stenogra		_	•	CIVI i Mint			REC	01	/01	CON	С	10/01/99	REC	P	08/11/99	Υ	RPA	

03-C-98-004123 Date: 07/13/00 Time: 11:13 Page: 4

#### JUDGE HISTORY

JUDGE ASSIGNEDType Assign Date Removal RSNTBA To Be Assigned.J 04/24/98

#### DOCUMENT TRACKING

Num/Seq Description	Filed	Entered	Party	Jdg Ruling		Usei	r ID
0001000 Petition for Judicial Review (pet002-004 as well)		04/24/98	PET001	TBA	06/28/00	JM	PH
0001001 Answer	05/12/98	05/13/98	ITP002	TBA	06/28/00	PH	PH
0001002 Answer	07/13/98	07/14/98	ITP003	TBA	06/28/00	DR	PH
0002000 Certificate of Notice	04/28/98	04/29/98	ITP002	TBA	06/28/00	DR	PH
0003000 Transcript of Record from Adm Agency *	06/23/98	06/24/98	ITP002	TBA	06/28/00	DFF	PH
0004000 Notice of Transcript of Record Sent	06/24/98	06/24/98	ITP001	TBA	06/24/98	DFF	DFF
0005000 Notice of Transcript of Record Sent	06/24/98	06/24/98	ITP002	TBA	06/24/98	DFF	DFF
0006000 Notice of Transcript of Record Sent	06/24/98	06/24/98	ITP003	TBA	06/24/98	DFF	DFF
0007000 Notice of Transcript of Record Sent	06/24/98	06/24/98	PET001	TBA	06/24/98	DFF	DFF
0008000 Scheduling Order	06/29/98	06/29/98	000	TBA	06/29/98	JD	JD
0009000 Motion to Strike response to Petition for Judicial Review Filed by PET001-Hube PET002-Smith, Marvin E, PET003-Smith, Wi Geraldine	ers, Danie	1 W.		JTS Denied	09/22/98	RHP	PH
0009001 Answer with Request for Hearing Filed by ITP005-Lehner Thomas, ITP004-0 ITP003-Peoples Counsel For Baltimore Cou	Cahlander,		ITP005	TBA	06/28/00	SD	PH
0010000 **Stipulation for Extension to File Memoranda to 08/15/98 (fd by ALL Parties	07/21/98 s)	07/24/98	000	TBA	07/24/98	DR	DŘ
0011000 Hearing Notice	07/28/98	07/28/98	000	TBA	07/28/98	BK	BK
0012000 Order extending time to file the brief	08/05/98	08/05/98	000	ALB Granted	08/05/98	PH	PH

03-C-98-004123 Date: 07/13	3/00 Time: 1	L1:13	Page:	5
Num/Seq Description	Filed Entered Part	y Jdg Ruling	Closed User ID	
0013000 Notice of Postponed Trial Issued	08/10/98 08/10/98 000	TBA	08/10/98 GB GB	
0014000 Memorandum Pursuant to Rule 7-207 Filed by PET001-Hubers, Daniel W, PET002 PET003-Smith, William W, PET004-Smith (	2-Smith, Marvin E,	01 TBA	08/19/98 DFF DFF	
0015000 People's Counsel, et al's Memorandum Filed by PET001-Hubers, Daniel W. PET002 PET003-Smith, William W. PET004-Smith, C	02-Smith, Marvin E,	01 TBA	09/30/98 DR DR	
0016000 Notice of Postponed Trial Issued	11/13/98 11/13/98 000	TBA	11/13/98 KLS KLS	
0017000 Hearing Notice	08/11/99 08/11/99 000	TBA	08/11/99 RPA RPA	
0018000 Hearing Supplement Legislative History * with Exhibits.	y 09/22/99 09/24/99 ITP0	03 TBA	06/28/00 DFF PH	
0019000 Open Court Proceeding Oct 1, 1999 Hon Robert E. Cahill Sr signed	10/01/99 10/01/99 000 Hearing had Order to b	TBA e	06/28/00 DJ PH	
0020000 Order affirming decision	06/28/00 06/28/00 000	REC Granted	06/28/00 PH PH	
0021000 Docket entries sent to Baltimore County	07/13/00 07/13/00 000	TBA	CAM CAM	

#### TICKLE

Board of Appeals

Code Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Туре	Num	Seq
1YRT One Year Tickle (Jud	CLOSED	04/24/99	365	no	no	DAAA	D	000	000
1ANS 1st Answer Tickle	CLOSED	05/12/98	0	no	no	DANS	D	001	001
SLTR Set List For Trial	DONE	05/12/98	0	yes	yes	1ANS	Т	001	001
SLMM Set List Motions Mar	DONE	04/18/01	999	yes	yes	DARH	D	000	000
SLMH Set List For Motions	CANCEL	07/24/98	0	no	no	SLMM	Т	000	000
SLTR Set List For Trial	CANCEL	10/27/98	0	yes	no	CIVI	S	000	000
SLTR Set List For Trial	CANCEL	02/16/99	0	yes	no	CIVI	S	000	000
EXPU Exhibit Pickup Notic	CLOSED	08/27/00	30	no	no			000	000

03-C-98-004123 Date: 07/13/00 Time: 11:13 Page: 6

#### EXHIBITS

Line # Marked Code Description SpH Sloc NoticeDt Disp Dt Dis By
Offered By: ITP 002 County Board Of Appeals Of Ba

Offered By: ITP 002 County Board Of Appeals Of Ba 000 B BOX 85/CBA TRANSCR B

#### DIFFERENTIATED CASE MANAGEMENT

#### TRACKS AND MILESTONES

Track R1 Description: EXPEDITED APPEAL TRACK Custom: Yes

Assign Date: 06/29/98 Order Date: 11/13/98

Start Date 06/29/98 Remove Date:

Milestone Scheduled Target Actual Status

Motions to Dismiss under MD. Rule 2-322( 07/14/98 06/28/00 CLOSED

All Motions (excluding Motions in Limine 08/22/99 06/28/00 CLOSED

TRIAL DATE is 10/01/99 09/27/98 10/01/99 REACHED

#### PUBLIC NOTE TITLES

1) 7/17/98 JOINT REQUEST TO MOVE T/D TO 10/28/98

#### CIRCUIT COURT FOR BALTIMORE COUNTY

Suzanne Mensh

Clerk of the Circuit Court County Courts Building

401 Bosley Avenue P.O. Box 6754

Towson, MD 21285-6754

(410)-887-2601, TTY for Deaf: (800)-735-2258 Maryland Toll Free Number (800) 938-5802

NOTICE OF HEARING/TRIAL

Case Number: 03-C-98-004123

Administrative Agency: R-97-469

CIVIL

In The Matter of: Daniel W Hubers , et al

STATE OF MARYLAND, BALTIMORE COUNTY, TO WIT:

TO: County Board Of Appeals Of Baltimore County The Old Courthouse Room 49 400 Washington Avenue Baltimore, MD 21204

You are hereby NOTIFIED TO APPEAR before a Judge of the:

CIRCUIT COURT FOR BALTIMORE COUNTY

County Courts Building 401 Bosley Avenue

Towson, Maryland 21285-6754

Court date: October 1, 1999

At: 09:30 AM

Civil Non-Jury Trial

1 1/2 HOURS RECORD APPEAL

OUNTY BOARD OF APPEALS

PLEASE NOTE: All counsel are expected to confer with each other with regard to the assigned trial date and to advise the court and other parties of any pre-existing conflict promptly.

> If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the Americans with Disabilities Act, please contact the Court Administrator's Office at (410) 887-2687 or use the Court's TDD line, (410) 887-3081, or or the Voice/TDD M.D. Relay Service, (800) 735-2258.

Application for postponement must be made in writing with copies to all attorneys.

Please refer to Information Desk for Court Room Designation.

Assignment Clerk: Abbott, Richard Assignment Office Phone: (410)-887-2660

Date Issued: 08/11/99

CIRCUIT COURT FOR BALTIMORE COUNTY

DCM OFFICE

401 Bosley Avenue

County Courts Building

P.O. Box 6754

Towson MD, 21285-6754

#### NOTICE OF NEW CIVIL TRIAL DATE

Case Number: 03-C-98-004123 AE

Case Title: In The Matter of: Daniel W Hubers , et al

To: County Board Of Appeals Of Baltimore County The Old Courthouse Room 49
400 Washington Avenue
Baltimore MD 21204-

A postponement of the Trial Date has been granted in this case. A new trial date has been scheduled on:

Civil Non-Jury Trial on 02/16/99 at 09:30AM 1/2 - 1 HOUR, APPEAL, AGREED DATE.

Please Note:

Scheduling Order Deadlines: This Notice does not alter or extend those deadlines set forth in the current Scheduling Order, except that the Deadline for the exchange of lists of all exhibits and copies of paper exhibits and the Deadline for Motions in Limine, including objections to exhibits, will remain, respectively, fifteen (15) and five (5) prior to the New Trial date in this Notice.

If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the Americans with Disabilities Act, please contact the Court Administrator's Office at (410)887-2687 or use the Court's TDD line, (410)887-3081, or the Voice/TDD M.D. Relay Service, (800)735-2258.

Please refer to the Information Desk for Court Room designation.

Date Issued: 11/13/98

Honorable John Grason Turnbull County Administrative Judge

31:12 Hd 91 NON 86

7745 - Fr 77725 - Fr 160

#### CIRCUIT COURT FOR BALTIMORE COUNTY

Suzanne Mensh

Clerk of the Circuit Court County Courts Building 401 Bosley Avenue

P.O. Box 6754

Towson, MD 21285-6754

(410)-887-2601, TTY for Deaf: (800)-735-2258 Maryland Toll Free Number (800) 938-5802

NOTICE OF MOTIONS HEARING

Case Number : 03-C-98-004123

Old Case number:

CIVIL

In The Matter of Daniel W Hubers , et al

STATE OF MARYLAND, BALTIMORE COUNTY, TO WIT:

TO: County Board Of Appeals Of Baltimore County The Old Courthouse Room 49 400 Washington Avenue Baltimore, MD 21204

This case has been assigned a hearing on all open motions on:

CIRCUIT COURT FOR BALTIMORE COUNTY

County Courts Building 401 Bosley Avenue

Towson, MD 21285-6754

Court date: September 28, 1998

At: 09:30 AM

Motion Hearing (Civil)

PLEASE NOTE: If you desire to submit prior to this hearing date, please contact the Motion Assignment Clerk. A total of no more that one-half hour is allotted for a hearing on "Motion Days". If motions will take more than one-half hour, please contact the Motion Assignment Clerk for reassignment.

> If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the Americans with Disabilities Act, please contact the Court Administrator's Office at (410) 887-2687 or use the Court's TDD line, (410) 887-3081, or or the Voice/TDD M.D. Relay Service, (800) 735-2258.

A court reporter will not be present at the motion hearing unless specifically requested. Requests for reporters should be directed to the Motion Assignment Clerk. All requests for a postponement MUST BE MADE IN WRITING AS SOON AS POSSIBLE. This should be directed to the Motion Assignment Clerk with a copy to all counsel. Claim of not receiving this notice will not constitute reason for postponement.

Please refer to Information Desk for Court Room Designation.

Assignment Clerk: Beverly Karmasek Assignment Office Phone: (410)-887-2660

#### NOTICE OF CIVIL TRACK ASSIGNMENT AND SCHEDULING ORDER

## CIRCUIT COURT FOR BALTIMORE COUNTY CIVIL ASSIGNMENT OFFICE COUNTY COURTS BUILDING 401 BOSLEY AVENUE P.O. BOX 6754 TOWSON, MD 21285-6754

County Board Of Appeals Of Baltimore County The Assignment Date: 06/29/98 Old Courthouse Room 49

400 Washington Avenue Baltimore MD 21204

Case Title: In The Matter of: Daniel W Hubers , et al

Case No: 03-C-98-004123 AE

The above case has been assigned to the EXPEDITED APPEAL TRACK. Should you have any questions concerning your track assignment, please contact: Richard P. Abbott at (410) 887-3233.

You must notify this Coordinator within 15 days of the receipt of this Order as to any conflicts with the following dates:

#### SCHEDULING ORDER

1.	Motions to Dismiss under MD. Rule 2-322(b) are due by	07/14/98
2.	All Motions (excluding Motions in Limine) are due by	08/26/98
3.	TRIAL DATE is	10/05/98
	Civil Non-Jury Trial: Start Time: 09:30AM: To Be Assigned: 1/2 HOUR APPEAL	

#### Honorable John Grason Turnbull II Judge

<u>Postponement Policy:</u> No postponements of dates under this order will be approved except for undue hardship or emergency situations All requests for postponements must be submitted in writing with a copy to all counsel/parties involved. All requests for postponements of cases filed after October 1, 1994 must be approved by the Judge.

<u>Settlement Conference (Room 507):</u> All counsel and their clients <u>MUST</u> attend the settlement conference <u>in person</u>. All insurance representatives <u>MUST</u> attend this conference <u>in person</u> as well. Failure to attend may result in sanctions by the Court. Settlement hearing dates may be continued by Settlement Judges as long as trial dates are not affected. (Call [410] 887-2920 for more

<u>Special Assistance Needs:</u> If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the Americans with Disabilities Act, please contact the Court Administrator's Office at (410) 887-2687 or use the Court's TDD line, (410) 887-3018, or the Voice/TDD M.D. Relay Service, (800) 735-2258.

Court Costs: All court costs MUST be paid on the date of the settlement conference or trial.

cc: Anthony J DiPaula cc: Edward C Covahey Jr cc: Peter M Zimmerman Issue Date 06/29/98

98 1NF -2 PM 1: 00

CONMIT BOARD OF LPREALS
RECEIVED

#### CIRCUIT COURT FOR BALTIMORE COUNTY

Suzanne Mensh

Clerk of the Circuit Court County Courts Building

401 Bosley Avenue

P.O. Box 6754

Towson, MD 21285-6754

(410)-887-2601, TTY for Deaf: (800)-735-2258 Maryland Toll Free Number (800) 938-5802

NOTICE OF RECORD

Case Number: 03-C-98-004123

Old Case number:

CIVIL

In The Matter of: Daniel W Hubers , et al

Notice

Pursuant to Maryland Rule 7-206(e), you are advised that the Record of

Proceedings was filed on the 23rd day of June, 1998.

Suzanne Mensh

Clerk of the Circuit Court, per\_

Date issued: 06/24/98

TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY THE

Old Courthouse Room 49 400 Washington Avenue Baltimore, MD 21204

#### COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

#### MINUTES OF DELIBERATION

IN THE MATTER OF: Daniel W. Hubers, et al -Petitioners

Case No. R-97-469

DATE : February 17, 1998 at 9:30 a.m.

BOARD / PANEL : Kristine K. Howanski (KKH)

Margaret Worrall (MW)
Charles L. Marks (CLM)

SECRETARY: Kathleen C. Bianco

Administrator

PURPOSE: To deliberate Case No. R-97-469 /Petition for

Reclassification /Daniel W. Hubers, et al for reclassification from presently existing zoning of D.R. 3.5 and C.B. to B.R. and B.R.-A.S. Hearing on this matter held by the Board of Appeals on December 11, 1997.

Upon deliberation between panel members, the following decision was reached by the Board:

KKH: Petition for Reclassification DENIED.

MW: Petition for Reclassification DENIED.

CLM: Petition for Reclassification DENIED.

The Board's unanimous decision based on testimony and evidence produced at hearing and after public deliberation is that Petition for Reclassification from existing D.R. 3.5 and C.B. to B.R. and B.R.-A.S. is DENIED.

Written Opinion and Order to be issued by the Board as required by statute. Appellate period to run from date of written Order.

These minutes indicate public deliberation in this matter was held this date in the subject matter and a final decision rendered in which the requested reclassification was denied.

Respectfully submitted,

Katheren C. Beanco

Kathleen C. Bianco

Administrator

Case No. R-97-469

notibe.

Reclassification: From D.R. 3.5 & C.B. to B.R. & B.R.-A.S. Open Site Plan 9.64 +/- acres

2/28/97 -Petition for Reclassification filed by Edward C. Covahey, Jr., Esquire, on behalf of Daniel W. Hubers, et al, Petitioners.

- 10/23/97 Hearing Day #1 concluded before Board. Scheduled for Day #2, to be held on Tuesday, November 25, 1997 at 11:30 a.m.; notice of assignment sent to parties; availability of all parties verified 10/23/97. Added Norman Gerber, David Cahlander (Steven Road Imp Assn), and Tom Lehner (Bowleys Quarters Imp Assn) to the file for notification, etc.
- 10/27/97 -Notice of Assignment /Day #2 sent to parties; scheduled for Tuesday, 11/25/97 at 11:30 a.m.
- 11/25/97 Hearing day #2 concluded; scheduled for Thursday, December 11, 1997 for conclusion of this case /hearing day #3. Notice of Assignment /Day #3 sent to parties this date.

  Letter filed by P. Zimmerman In Re: Procedural Issues Hubers/Smith/Leach with copy provided to Mr. Covahey by Mr. Zimmerman. Copies of this letter sent to K.W.C. this date with copy of day 3
- 12/11/97 Hearing concluded before the Board (K.W.C.); closing briefs and proposed findings of fact due from counsel January 21, 1998. Deliberation to be scheduled and notice sent.
- 12/15/97 Notice of Deliberation sent to parties; scheduled for Tuesday, February 17, 1998 at 9:30 a.m. Courtesy to K.W.C.
- 1/20/98 eople's Counsel's Memorandum filed.
- 1/21/98 Petitioner's Memorandum filed by T. DiPaula.
   Copies of both memos sent to panel members (K.W.C.)
- 2/17/98 -Deliberation concluded. Unanimous decision of Board Petition for Reclassification to be DENIED. Written Opinion/Order to be issued. K.C.W. Appellate period to run from date of written Order.

#### BALTIMORE COUNTY, MARYLAND

Board of Appeals of Baltimore County Interoffice Correspondence

DATE:

January 25, 2002

TO:

Arnold Jablon, Director

Permits & Development Management

Attn.: W. Carl Richards, Jr.

FROM:

Theresa R. Shelton

Board of Appeals

SUBJECT:

Daniel W. Hubers

R-97-469

**Circuit Court Case No.: 03-C-98-004123** 

Judge Cahill of the Circuit Court issued a Memorandum Opinion and Order on June 26, 2000 AFFIRMING the Board of Appeals. No further appeals have been taken in this matter. The Board of Appeals is closing and returning the file that is attached herewith.

Attachment: SUBJECT FILE ATTACHED

REVISED 4/30/91

### COVAHEY & BOOZER, P. A.

ATTORNEYS AT LAW

614 BOSLEY AVENUE

TOWSON, MARYLAND 21204
AREA CODE 410

828-9441

EDWARD C. COVAHEY, JR.

F VERNON BOOZER \*

MARK S. DEVAN

FAX 410-823-7530

ANNEX OFFICE
SUITE 302
606 BALTIMORE AVE
TOWSON, MD 21204

MARK S. DEVAN
ANTHONY J. DIPAULA \*
THOMAS P. DORE
ROGER J. SULLIVAN

April 30, 1997

\* ALSO ADMITTED TO D. C. BAR

#### HAND DELIVERY

Baltimore County Zoning Office 111 W. Chesapeake Avenue Towson, Maryland 21204

ATTN: Carl Richards

RE: PETITION FOR RECLASSIFICATION NORTH SIDE CARROLL

ISLAND ROAD, 194 FEET WEST OF BOWLEY'S QUARTERS ROAD,

COMPRISING 9.64 ACRES + OR -

PETITIONERS: HUBERS AND SMITH, ET AL.

Dear Mr. Richards:

Per your request, the following are the addresses and phone numbers for the Petitioners:

Daniel W. Hubers 1520 Old Eastern Avenue Baltimore, MD 21221 (410)335-3234 (410)887-6486

William W. Smith, et al. 8709 Cowenton Avenue Perry Hall, MD 21128 (410)335-5450 (410)529-1900

With respect to your request for the Trust Agreement pursuant to which the Smiths are Trustees and in title, it is my understanding that that was created under the Last Will and Testament of Kenneth G. Smith who passed away in late 1973. We are obtaining a copy of his Last Will and Testament pursuant to which the Trust was created, but in the meantime, following up the conversation between Sophie in your office and Tony DiPaula of mine, I am attaching a

COUNTY BOARD OF ATTEALS
97 APR 31 PM 12: 21

Baltimore County Zoning Office April 30, 1997 Page 2

copy of the Deed to the property to evidence that in fact the Petitioners are in title as named Trustees.

We will forward a copy of the Last Will and Testament as soon as we are able to obtain same, although based upon what is attached, it is unclear whether that will in fact be necessary.

Very truly yours,

Edward C. Covahey, Jr.

ECC, Jr./ds 4 ds.175 enclosure

cc: Daniel W. Hubers William W. Smith

13-409

### COVAHEY & BOOZER, P. A.

ATTORNEYS AT LAW

614 BOSLEY AVENUE

TOWSON, MARYLAND 21204

AREA CODE 410 828-9441

EDWARD C. COVAHEY, JR

F. VERNON BOOZER \*

MARK S DEVAN

ANTHONY J. DIPAULA \*

THOMAS P. DORE

FAX 410-823-7530

ANNEX OFFICE SUITE 302 606 BALTIMORE AVE TOWSON, MD 21204

\* ALSO ADMITTED TO D. C. BAR

ROGER J SULLIVAN

May 5, 1997

#### HAND DELIVERY

Baltimore County Zoning Office 111 W. Chesapeake Avenue Towson, Maryland 21204

ATTN: Carl Richards/Sophie

RE: PETITION FOR RECLASSIFICA

PETITION FOR RECLASSIFICATION NORTH SIDE CARROLL ISLAND ROAD, 194 FEET WEST OF BOWLEY'S QUARTERS ROAD,

COMPRISING 9.64 ACRES + OR -

PETITIONERS: HUBERS AND SMITH, ET AL.

Dear Mr. Richards/Sophie:

Following up your request for supporting documentation, including the Trust pursuant to which the Trustees are in title of the above referenced property, enclosed please find a copy of the Last Will and Testament of Kenneth G. Smith, filed and probated in the Orphan's Court for Baltimore County on February 1, 1974 and docketed in the estate records in Liber 140, folio 315.

This should fully satisfy the request.

Very truly yours,

Anthony J. DiPaula

AJD/ds 5 ds.22 enclosure

cc: Daniel W. Hubers

COUNTY BOARD OF MICE SALES

#### COVAHEY & BOOZER, P. A.

ATTORNEYS AT LAW 614 BOSLEY AVENUE

TOWSON, MARYLAND 21204

AREA CODE 410 828-9441

EDWARD C. COVAHEY, JR

F. VERNON BOOZER \*

MARK S DEVAN

ANTHONY J DIPAULA \*

THOMAS P DORE

ROGER J SULLIVAN

FAX 410-B23-7530

ANNEX OFFICE SUITE 302 606 BALTIMORE AVE TOWSON, MD 21204

April 24, 1998

#### HAND DELIVERY

County Board of Appeals of Baltimore County Old Courthouse, Room 49 400 Washington Avenue Towson, Maryland 21204

ATTN: Kathleen Bianco

RE: PETITIONERS: DANIEL W. HUBERS, ET AL.

CASE NO.: R-97-469

Dear Kathy:

Enclosed is a courtesy copy of the Petition for Judicial Review which has this date been filed with the Circuit Court. I believe the Clerk of the Circuit Court, in accordance with Rule 7-202(d) will be officially serving a copy on the Board. In the meantime, please advise what we need to do about ordering the transcript, or whether you arrange for that at the Petitioners' expense.

Very truly yours,

Anthony J. DiPaula

AJD/ds 4'ds.90 enclosure

cc: People's Counsel (with enclosure) (via hand delivery)

<sup>\*</sup> ALSO ADMITTED TO D C BAR

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh

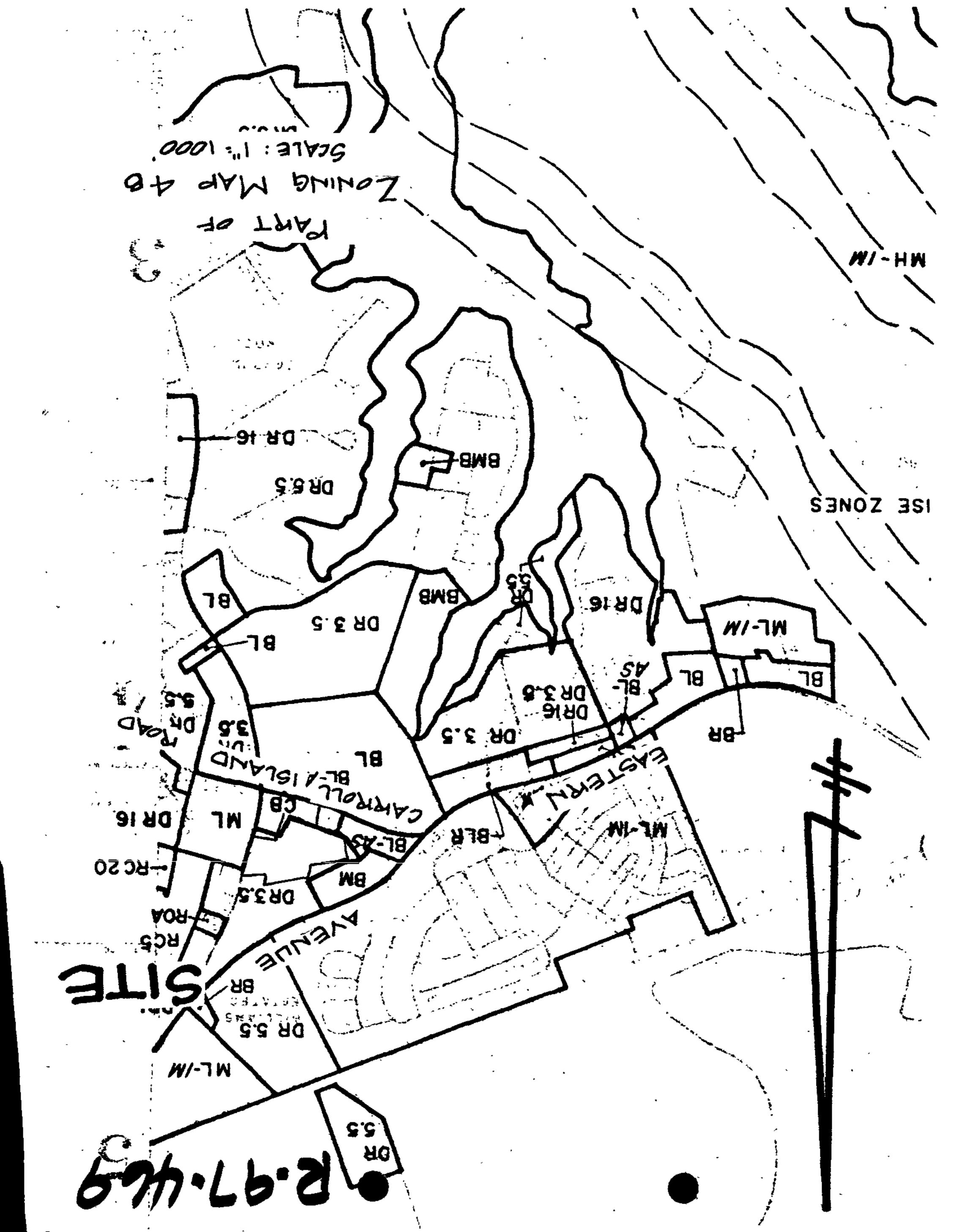
Clerk of the Circuit Court County Courts Building 401 Bosley Avenue P.O. Box 6754

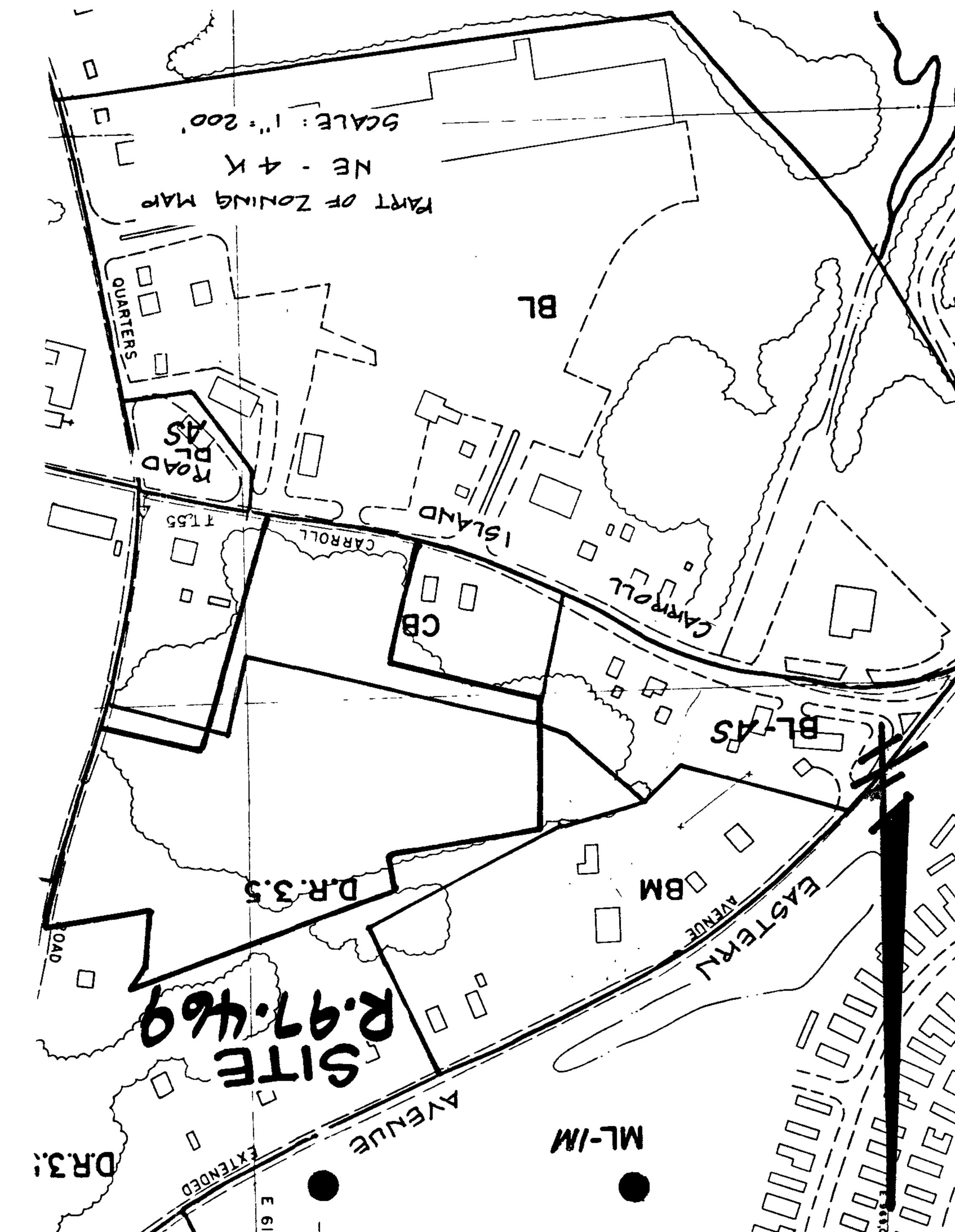
Towson, MD 21285-6754 (410)-887-2601, TTY for Deaf: (800)-735-2258 Maryland Toll Free Number (800) 938-5802

Case Number: 03-C-98-004123

TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY THE Old Courthouse Room 49 400 Washington Avenue Baltimore, MD 21204

Christ 1.98





ADC map of area Pacher (Spg) 1996 CZMP marrial 1996 CZMP Planning Board REport bi donn-office corresponde from Patricia BERIE 5/21 7. Porle 86-94 June 6, 1994 8 B. Cty CZ MProcess 9,5th Dismicr Changes to hogo = 188480 10. 5-23-96 Introffice correspondence from Patricia Brassfinalotaff summendations 1. CEMP 1996 tog of IBSUES CTIMP 1996 Los of Issues - June, 1996, rensed July 12, 1996 ind woned. Pages 12. Oct. 8, 1996 Thos. Peddierrd from Vincent Jasdina 13. B. Cty. Corneil Minures Oct. 8, 1996 14, Bill 133-96 Sups. 16, 1996 From 15: QIS map - Fast Avr. / Corroll Island area - Planimetrics 3/95 - more see p. 2 // Site plan as currently zoned 1 2. Sitz plan - identical to # 1 except showing 3. 1992 CZMP 200-scale zoning map w/ subj. pup. ontlined. 11996 CZMP" 1 Bi Griber C.V. 1 be OP document clearing 5-069-0ct. 25, 1995 1 2 map 5-069 ontlined Steph. Board hos of Issues July 14, 1996 1 gonny Conneil Log of Issues Oct. 8, 1996 10. DEPRIM/ZAC Comments 5-12-97 (more) >

H. Derd proubject peoperry

12. July 8, 1997 letter to Annold Keller from A. Di Paula

13. Droide from of OP file on some 5-069 w)

hardwritten norro Herring Comments CZMP-52 Dist La . Line

Whibuts P. D. P.C. Exhibit Control

16. DE Bingirs Bowley's 2 tres. Thoming Map

17. CZ m Final hop of Dosnes, Adopted 10/8/96

18. Appendix IV-B Pucedurer Standard for Mapping "Land Use"

19. 1000-scale roning map 4B

""

19. L. P. D. D. Cole Long of Book of 20. Report by Pl. Brd to CBA July 31, 1997 21. Bell 180-95

map shall be forwarded to the chairman of the board of appeals for signature.

b. The department of environmental protection and resource management shall forward a copy of the amended official Chesapeake Bay Critical Area map signed in accordance with section 26-123(h)(9)a. of this Code to the Chesapeake Bay Critical Area Commission within the time frame specified in this subsection.

(Code 1978; § 22-21; Bill No. 18, 1990, § 2; Bill No. 63, 1992, § 1; Bill No. 51-94, § 1, 5-20-94; Bill No. 95-94, §§ 1, 2, 7-12-94)

## Sec. 26-123.5. Comprehensive zoning map process fees.

- (a) The fees for filing issues pursuant to section 26-123 to be paid by the person raising an issue shall be as follows:

  - (2) Each noncontiguous lot of record of less than ten (10) acres located outside planned service area

(4) Each noncontiguous lot of record of ten (10) or more acres located outside planned service area ......

(5) Issues filed by a duly constituted civic, improvement or community association as otherwise provided for and limited by section 26-209(a)(2)

(b) For the purpose of this section, contiguous lots of record in the same ownership, included in any issue, wherever situated, shall be considered as one (1) lot of record.

(c) As used in this section, the following words and terms have the meanings indicated:

Issue or issues: Refers to a lot or lots of record proposed for change in zone or district classification.

Lot of record: A parcel of land with boundaries as recorded in the land records of the county on July 1, 1991, whether included within one (1) or more deeds.

- (d) Issues initiated by the office of planning, planning board or by members of the county council shall be exempt from any and all fees established herein.
- (e) The county administrative officer may change the above fees from time to time as deemed appropriate, subject to the provisions of section 15-9. In addition, the county administrative officer shall waive any or all fees established herein for the filing of an issue when filed by a county volunteer fire, ambulance or rescue company. (Bill No. 64, 1991, § 1(22-21.1))

#### 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 ten (10) working days' notice thereof in a newspaper having a general circulation in the county. During such tenday 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

500.00

1250.00

1250.00

75.00

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(j)(3) of this Code shall be submitted to the director of ZADM, who shall process such requests pursuant to section 26-123(g);
  - (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 thirty (30) days of the county council's public hearing, the county council shall take action on the planning board's recommendations.

(Code 1978, § 22-22; Bill No. 14, 1992, § 1; Bill No. 95-94, § 1, 7-12-94)

## 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 16th of each year in which it is required in 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,

1.

SWARTHMORE COMPANY v. KAESTNER

Cite as 200 A.2d 341

raised in his argument at the end of the been no abuse of discretion on the part of husband on this subject were specifically wife's case, upon the facts of this case that there has that her conduct does come within the unclean hands since, to whether the doctrine should be applied. In this instance we are not obliged to decide whether the wife's conduct amounts to chancellor. of the doctrine, The contentions of the assuming arguendo = clearly appears

mensa will not avail by way of recriminathe husband was guilty of conduct which to trial. Accordingly, it would not grounds for divorce a vinculo, but for that conduct which was a short time prior without deciding, that where one the other. Matakieff v. Matakieff, 246 Md. 23, 35, 226 A.2d 887 (1967), and Courson v. Courson, 208 Md. 171, 117 A.2d 850 precluded from obtaining a divorce from entitle the wife to a divorce a vinculo or to grant a divorce, to entertain and grant tion against a cause for an absolute would be grounds for her to receive an duct of the wife amounted to constructive bar alımony. fenses of equal magnitude, each spouse is band for alimony where he is at fault. Dackman v. Dackman, 252 Md. 331, 345, 250 A.2d 60 (1969). It is necessary in must likewise fail. sion and, therefore, not entitled to alimony, vinculo divorce. vorce a desertion, it would date from the time of husband and wife are guilty of marital ofsuch case that facts be shown which would ınherent falsely charging him with income tax evacases there a mensa. Jester v. Jester, 246 Md. 162, 170, 228 A.2d 829 (1967). Where both the an application by a wife against her wife is guilty of constructive desertion by mensa. The wife established that Courson v. Courson, ..., courson, ..., enouse power, independent of The husband's contention that his Therefore, such conduct would Matakieff v. (1969), In this instance if the con-**~** cause for a divorce a Courts of equity have Matakieff, authority spouse

without just cause has departed the home that the thus deserted spouse can then be guilty of conduct amounting to a constructive desertion, the husband would not be enabled here to bar the wife's claim for altimony under the recrimination doctrine because of her constructive desertion.

[6] No useful purpose would be served in further reviewing the facts and the allegations relative to alimony. The criteria to be used have been set forth countless times. They were succinctly stated by Judge (now Chief Judge) Hammord in Newmeyer v Newmeyer, 216 Md. 431, 140 A.2d 892 (1958), as follows:

the station in life of the parties, their by the chancellor \* \* \* the to be considered \* \* \* [
husband's wealth and earning "[I]n reviewing the award of alimony the divorce and the fault that destroyed the home, \* \* \*." Id. at 434, 140 A. the length of time they have gether, the circumstances leads physical condition and ability to work, the home, circumstances leading up Id. at 434, 140 A. the factors [are] lived capacity, the ç <del>;</del>

It is obvious in this case that the chancellor very carefully considered all of these criteria. In Lopez v. Lopez, 206 Md. 509, 112 A.2d 466 (1955), Judge Delaplaine said for the Court:

"[T]he [alimony] award should not be disturbed unless the chancellor's discretion was arbitrarily used or his judgment was clearly wrong. Westphal v. Westphal, 132 Md. 330, 334, 103 A. 846; Mariani v. Mariani, 189 Md. 283, 289, 55 A.2d 713; Brown v. Brown, 204 Md. 197, 206, 103 A.2d 856." Id. at 520, 112 A.2d at 471.

Careful review of this record does not convince us that the chancellor's discretion was arbitrarily used nor does it convince us that his judgment was clearly wrong.

Decree affirmed; appellant Sydney C. Blumenthal, Jr., to pay the costs.

258 Md. 517 The SWARTHMORE COMPANY et al.

Albert C. KAESTNER, Jr. et al. No. 395.

Court of Appeals of Maryland.
June 23, 1970.

charter provision, and no provision therefor existed in the charter. quent to original notice and hearing hearing for changes or amendments subsement the districting maps recommended by planning board did not require notice and therefrom, classification granted by county board appeals section of county code stating that any reed or ineffective pending an appeal, under ately upon being taken and is not suspendof property is valid and effective immedition of board of appeals in reclassification Court of Appeals, Barnes, J., held that ac-Baltimore County, Walter R. Haile, J., which enjoined defendants from using lot Zoning dispute in which appeal was taken from a decree of the Circuit Court, an and that ordinance intended to implerequirement shall, automotive service have the force Ħ rested absence entirely and o<u>‡</u> station, an effect where appeal noqu 0‡ of

Reversed and remanded.

## i, Constitutional Law @=48

In event of ambiguity reviewing court will construe legislation so that it will be valid and within the grant of powers to legislative body enacting the legislation.

## 2. Statutes == 212,4

Reviewing court will not presume that legislative body intended to enact an ineffective and invalid law.

## 3. Zoning ©==673

Reviewing court would assume that legislative body intended to reach a reasonable, rather than an unreasonable result in

enacting section of county code which stated that any reclassification when granted by county board of appeals shall, in absence of an appeal therefrom, have the force and effect of law

## 4. Zoning @=197

peal therefrom, have the force and of law. board of appeals shall, in absence of an apunder suspended or ineffective pending an appeal, ımmediately fication of property is valid and Action of board of appeals in reclassification section of county upon being taken and is granted code stating that γď effective reclassicounty effect not

## 5. Statutes @=219

ment the legislative intent. weight by reviewing court in interpreting continued thereafter, established simultaneously with enact-Legislative <u>٥</u> legislation, and administrative which is entitled uniformly 6 great prac-

## 6. Zoning 5-75

core district commercial, contiguous failure board was district maps Ordinance intended to implement the ៊ comply Ç not invalid by reason supporting recommended çı, commercial, ₩1th area requirement district community planning 유 that any þ

## 7. Constitutional Law c=25f

Constitutional requirement of due process is not violated by absence of notice, a hearing, or even any evidence when a legislative body adopts a legislative act.

## 8. Zoning 5-194

Ordinance intended to implement the districting maps recommended by planning board did not require notice and hearing for changes or amendments subsequent to original notice and hearing where such requirement rested entirely upon charter provision, and no provision therefor existed in the charter.



timore, on the brief), for The Swarthmore ham Adelson and Andrew E. Adelson, Bal-Eugene P. Smith, Baltimore (M. W:11-

Service Oil Co. Lee Harrison, Towson, for Cities

Towson (Power & the brief), for appellees. Thomas G. Bodie and Gordon G. Power, Mosner, Towson, on

Argued before HAMMOND, C. J., and BARNES, McWILLIAMS, FINAN and SMITH, JJ. and

BARNES, Judge.

appellants, J.), filed December 17, 1969, enjoining the mary Judgment and deciding instead that the undisputed facts revealed that the ice station, Election District of Baltimore County (Subject Property) as an automotive servvard and Putty Hill Road in the Ninth half acre lot with improvements located on (Swarthmore) and Cities Service Oil Comraised by the pleadings of Swarthmore and ing Area (C.S.A.) District, and (2) erred in its findings in favor of the appellees, Albert C Kaestner, Jr., et al. (Kaestner), subject property in a Commercial, Support-Circuit Court for Baltimore County (Haile, plaintiffs are whether the lower court (1) erred in rejecting the appellants' Motion for Sumneed not reach the second question in rethe opinion that the lower court was in er-Citgo with regard to laches, estoppel, and County Council of Baltimore County (County Council) had no right to place the gard to the correctness of the lower court's findings upon the issues at the trial. This is an appeal from a decree of the the appellants, Swarthmore and Citgo, standing of the plaintiffs. northwest corner of Goucher Boulein refusing to grant the appellants' (Citgo), from using a one for below, after The The principal questions raised Summary facts revealed that the of Baltimore County Swarthmore Judgment and þ trial on issues We are of and one-Company

served, consists The subject property, as we have obof one and one-half acres

> County of land, located on the northwest corner tersection, is the Endowood Plaza Shopthe Ninth Election District Goucher Boulevard and Putty Hill Road ping Center premises. vard, on the northeast corner Directly across Goucher of Baltimore of that Boule-1 Ξ of

proposed Eudowood Plaza cluding what is now the b cated both to have the subject property reclassiproperty itself a Business Local (B-L) zone Boulevard between the Eudowood part of the Ninth Election District of Baltimore County, substantially all of the then tion of the comprehensive zoning map and the subject property, was classified as tion be "permitted as of right" 40 provided that an automotive-service stafor the special exception since the County Council had enacted Bill No. 40. Bill No. Board of Zoning Appeals on September 6, However, at the hearing before the County exception fied to a B-L zone and to obtain a special (R-10) zone subject property once it obtained the B-L would pursue a C.S.A. designation for the tion which is zoned B-L and which is lo-Clearly, Swarthmore In January 1956, at the time of the adop-Swarthmore withdrew its application ın for its use as an In 1967 Swarthmore sought overlying was left in a had decided that ğ C.S.A. bed of filling premises, The subject Residential on a loca-Goucher District station. Plaza for ä

authorized by Bill No. 40, for submission to the County Council. On July 11 10, the Planning. the subject property zoned B-L, the Baltithe Planning Board held a public hearing Maps for submission to the County Counapproved on its published preliminary maps, and more County Planning Board was prepar-September zoned residential and not districted proved Board showed While Swarthmore was seeking to have Both the preliminary and finally ap-District Maps by r 13, 1967, the Planning Board comprehensive zoning District the subject On July 11, 1967, the Planning property submission ₽° 8 36

> SWARTHMORE COMPANY v. KAESTNER Cite as 266 A 2d 341

the County Council was approved and approved and enacted on May 9 1968, May

and

duced in the County Council. mended by the Planning Board, was introto implement the districting maps recomproperty at the November On April 1, 1968, Bill No. 23, an ordinance and there was no discussion of the subject time, the subject property still appeared on own public hearing on these maps. ber 8, 1967, the County Council in October 1967; ning Board were submitted to the The District Maps approved by the Planmaps as residential and not districted, Council held and on public hearing. At that Novem-County

zone as petitioned by Swarthmore, dated April 3, 1968, granted the reclassifi-Only two days after Bill No 23 had been introduced in the County Council, the cation County Board of Zoning Appeals, by order (Albert C. of the subject plaintiffs below in the Kaestner, Jr., et al.), Zoning Appeals were property to a B-Zoning Among present

Board, as originally incorporated in Bill No. 23, was apparently based upon the action of the Board of Zoning Appeals in re-County Councilman for the District, and the Commercial, Community Core (C.C.) District in which Endowood Plaza was lo-Planning Board. zoning the subject property to B-L, a field examination of the subject property by the Council placed the subject property in a C.S.A. District on the maps under consid-Zoning eration. County Council giving rise to the now before this Court took place. April 1 property's Appeals to the Circuit Court for Baltimore County on May 2, 1968. the April 3 order of the Board of the same parties filed a timely appeal from all of the before the Board of the protestants to the petition for rezoning was passed by the unanimous vote the introduction of Bill No. circuit court that the actions on. This change from the "undistrict-recommendation of the Planning was while the appeal of the subject Appeals on April 3, the and the B-L zoning was being taken to Thus amended, order of the Board Planning Bill No. County Follow. dispute of. 23

> cision there was no further appeal entered affirmed the April 3 order of the Board of had taken effect, the Circuit Court Zoning Appeals which rezoned the subject Baltımore 1968. After Bill No 23 had been enacted County, From the circuit court deon December ç 1968, and tot 15

to this Court.

junction in the case now before this al, filed their Bill of Complaint for sued and construction of the station had commenced, that Albert C. Kaestner, Jr., et 18, 1969. cials and a permit was duly issued on April approved by property, locate an automotive-service station on the more and Citgo then formally proposed to parently determined with finality, ing of the subject property having The B-L zoning and the C.S.A. <u>4</u> Their construction proposal was "permitted as of It was after this the appropriate permit right" county was been apbу Swarthan Indistrict-Court off1-**B**::: 18-

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permits be rescinded by the County. ject property and that their construction that Swarthmore and Citgo not contiguous to a C.C.C. specific the subject property as a C.S.A. District violates "Section 259.2 E of the Zoning Regulations in that the subject property is erty to permit its designation as a C.S.A. District," and (2) that the reclassification to B-L of the subject prop-Baltimore County, L] was pending in the 1968, reclassifying the subject property Board of Zoning Appeals' order of April 3, as amended by Bill No. 40, was premature, masmuch as plaintiffs' appeal [from the ignation of the subject property as essence (1) that the County Council's descuit Court for Baltimore County, alleged in A. District "under the Zoning Regulations, The Bill, filed May 28, 1969, in the Circonstructing rehef prayed for in the Bill was the station on the and there Circuit Court District " districting of bе was no final [from the enjoined District Þ -dus The for 벋



of

proper or that Bill No 23 is, for other rea-SWARTHMORE COMPANY v. KAESTNER Cite as 266 A 2d 341

sons, invalid. The language of Section 22-27, although

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the ground that there was no genuine dis-

as a matter of law

motion on November 6, 1969.

court

Judge Haile

ment, pursuant to Maryland Rule 610,

filed a

Motion for Summary Judg-

In October 1969 Swarthmore and Citgo

"Any reclassification when granted by his testimony in the lower court, Bill N. Planning in the Office of Planning and service stations on land zoned for commertricts already by an administrative body, the *legislatitic* body, *itself*, by adopting a comprehensive zoning map, determines the compatibility United States. It rather combines the concept of the "floating zone" with the more cial or manufacturing use, is unique, being anchored to legislatively determined suitaplication for an individual parcel of land compliance with the established strict cri-teria for approval of a "floating zone" apcompliance with the instead of the first legislation of this character in the Zoning of Baltimore County pointed out in dustrial uses by super-imposing the C.S of automotive service stations on existing familiar type of "Enclidian" ble areas It is, as it were, a "floating zone" which is Euclidian zones sirable characteristics of being a "compreticular use necessary but special in charachensive rezoning" as it relates to one par-Euclidian zones. spirit and purposes of that grant of zoning and planning powers ning, but, in our opinion, is well within the velopment in the law of zoning and plan-Baltimore County as permitting the district upon si Ot areas by the imposition of a special of Euclidian zone upon the existing It is most certainly an ingenious deupon those George Indeed, the general validity of Bill The appellees contend that its imponot challenged in the having the determination established, for İμ for existing Gavrehs, commercial and well as within the Euclidian granted present pow-5

appeal.

1968, which reads:

the

 argument on the motion, pleadings, admispute between the parties in regard to sions of fact, deposition, and affidavits, the material fact and that each of the defendplicable to the subject property was invalof the appeal." The lower court's opinion zoning of the site did not have the force imposed on the filling station site, the B-L the issue of whether that portion of the District Map (enacted by Bill No. 23) aption 22-27 of the Baltimore County Code, and effect of law, because of the presence C.S.A. District designation was super-The lower court concluded that the C. no dispute in regard to the facts on was entitled to judgment in its favor matter of law. After considering the District designation was premature result of its construction of Secfiled its decision denying determined that there in its opinion, "when In that deci-

raised by the pleadings and was not one of though the and hearings required by the Charter" force and effect of law." the county board of appeals shall, in the absence of an appeal therefrom, have the issues raised upon the consideration of lower court was also of the opinion Bill No. 23 did not have "the notice question was not specifically notice

the Motion for Summary Judgment.

should have granted the Motion for Sumthe present case, and (2) if the issue was properly raised at all, it was in error in concluding that Bill No. 23 did not have strued Section 22-27 so far as it applies to the lower court. mary Judgment filed by the As we have already indicated, it is our required notice that the lower We do not find it necesand court (1) misconhearings. appellants in

court's fundings upon the issues at the trial sary to decide the correctness of the lower below

existing Euclidian zones. The concept has the desuper-imposition of zoning but, automotive dis-Ħ ್ಷ ⊱ 구 오 þ Ò

and invalid because,

the same construction we have already in-If, however, it be thought that the language of Section 22-27 was ambiguous, a consideration of the established maxims construction in such 25 situation, leads of

will be valid and within the grant of annugu-ers to the legislative body enacting the legislation. As Judge Horney, for the Court, islation. As Judge Horney, for the Court, of Washington County, 245 Md. 441, 445-446, 226 A.2d 264, 267 (1967) stated, quoting with approval Corporations" (3rd Ed.), § 20:41: Ξ A.2d 264, First of all, in the event of ambigu-<u>.</u>< County from McQuillin, "Municipal (1967) stated, Commissioners quoting

> indulged that the ordinance was designed to follow the statute." are in substance alike the presum should be ordinance constitution and public policy. cable provisions of charter, state the light of, and in harmony with, appliter or statute, to enact it. reference to the grant of power, in char-"'Ordinances statute, and if the language ordinance is to enacted pursuant to a construed by are to be þе reading construed Moreover, construed in = ption 18 of both statute partic-W1th with law, an

when carefully analyzed with reference to

The language, in our opinion, means that

reclassification is granted by the

when a

its legislative history, disclose

that intent.

of the legislative intent, nevertheless does,

not representing a sophisticated expression

(a) it is provided. Charter, entitled Powers In Section 602 of the Baltimore county board of appeals, in subsection and functions of County

board of appeals shall be final, unless an appeal be taken therefrom in the provided in section 604 of this (Emphasis supplied.) μĮ, all cases, the order of the article." manner county

the language in the negative, 1. e., that if

the board's action was completely meffec-

The lower court has, in effect, recast

intended to provide that pending an appeal,

the ultimate result on appeal;

it was not

an appeal therefrom" was intended to indi-

that the board's action was subject to

The parenthetical clause "in the absence of

the board's action is subject to the ultimate

determination

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courts

t co

appeal

county board of appeals it has the force and effect of law, but that this status of

an appeal is taken the action of the board

shall not have any effect pending such an

is aggrieved by that decision. rendered by a party to the proceeding who to the Circuit Court for appeals from the County Board of within 30 days after the Board's decision is Section 604 of the Charter provides for Baltimore Appeals County

subject to the ultimate action of the courts

appeal, not that during the period of appeal, the board's action is suspended

and ineffective.

dicate that the status of the board's action which has the force and effect of law is

ed to provide. As we have already stated,

-27 states and is not what it was intend-

This, however, is not what Section

the parenthetical clause was intended to in-

mentioned in the opinion in that case. County v. Missouri Realty, Inc., 219 Md. 155, 148 A.2d 424 (1959) and in prior cases has been Board to reclassify land in particular cases need for the delegation of authority The historical background indicating the reviewed by us. Missouri Realty, 3:1 Inc., 21 ın Baltımore to the

provision in Section 22-27, the provision in the provision in Section 22-27 the Charter would control, thereby i provision in the Charter and any contrary drafting Section 22-27 it was intended that the language was not intended to the effect of the Board's have the same effect as al trary to the in Section 602(a) of the Charter and that Secondly, event of an inconsistency between the Charter provision. ₩e should already provided assume orders Indeed, ineffective. that be conmaking should Ħ



approved in Bill No. 23, is illegal and im-

on the

210 zoning maps

which the subject property appears as one

No. 23, adopted pursuant to Bill No. 40, in

upon the subject property

by Bill

of the properties

legislative body intended to reach a reasoners Credit Control, Inc. v. Comptroller, of Treasury, 241 Md. 656, 660, 217 A.2d 571, 573 (1966). In our opinion, it would be enacting Section 22-27. able, rather than an unreasonable result in suspended and rendered ineffective official action of the board in reclassifying mere entry of an appeal by one of the parunreasonable (if nothing more) to have the the hands of a party could lead to obvious abuses, delay and frustration of the exerdetermination of the appeal by the Circuit Court. Such an unprecedented power in ties to the proceeding before it pending a cise of the police power. zone Thirdly, we should assume that the of a property to See Liquor Deal-Š, completely

[4] Finally, on this point, we should afford great weight to the legislative and administrative interpretation of Section 22-27 as recognizing that the action of the board in reclassification cases was valid and effective immediately upon being taken and was not suspended or ineffective pending an appeal.

In considering the subject property as reclassified to the B-L zone when the Board acted, even though that action was subject to appeal to the Circuit Court, the County Council was following an established practice in Baltimore County which this Court has sanctioned. The practice has long been established to construe the

appealable zoning laws and regulations to sified zone, thus recognizing that the sions of the zoning ordinance in the reclasspecial petitions for reclassifications permit the tion. stands or falls with the reclassifica upon any appeal which may be taken f though such action is subject to further the board's order granting the reclassificaand the special exception necessarily reclassification exception pursuant to the simultaneous consideration S effective reclassification and for provieven 70ntrom ap-으, 20

In Finney v. Halle, 241 Md. 224, 216 A 2d 530 (1966), the applicant simultaneously proceeded with the application for a special exception necessarily supported by the reclassification of the property involved in that case to apartment zoning (R-A). We had expressly given approval to this practice in Tyrie v. Baltimore County, 215 Md 135, 140-141, 137 A.2d 156, 158-159 (1957) in which Judge Hammond (now Chief Judge), for the Court, aptly stated:

ular tract of land the right to the ing of a Special Exception. In stances, if a particular use either by a reclassification or the grantuses may be obtained, in many instances, the lot in question rezoned and also to obtain a Special Exception. This is true achieved, it may be necessary to for a reclassification and a Special land not zoned Business, local, or lower. \* \* \* There is nothing to prevent the owner of such property from petitioning standard practice in such cases." ception at the same time and, indeed, we phasis supplied.) were told at the argument that this "It is obvious then that as to a particfilling station is to be erected on In other inot st have Em-15 the same Er. 둤

[5] The legislative and administrative practice, apparently established simultaneously with the enactment of the legislation in question and uniformly continued there after, is entitled to great weight by us in interpreting the legislative intent. See Sanza v. Md. State Board of Censors, 245

Md 319, 226 A.2d 317 (1967) and Mitchell v Register of Wills for Balumore City, 227 Md. 305, 176 A.2d 763 (1962).

peal, Maryland Rule 885; but, masmuch as the issue is before this Court on the brief of the appellee. It is not clear that court did not pass upon this issue and, although it was discussed in the brief of the by this narrow strip of land and was for street and the land lying to the six feet in width zoned R-R cated a small strip of land approximately appellant, Goucher Boulevard so that the C. basic zones of B.L., B.M., B.R. and/or M. L. \* \* \*." This contention apparently arose because one of the older plats indiacross Goucher Boulevard tricts that they may only be applied areas which are contiguous with C.C.C C.T. Districts \* \* \*" and "overlie No. 40 provides in regard to was invalid because the subject property placed in the C.S.A. District was "not contiguous" to the C.C.C. District directly was argued before us, we will consider In the bill of complaint filed in the lowreason "not contiguous." was separated from the C.C.C. Ħ it was alleged that Bill No was not considered in only be applied from between the C.S.A. Dis-The trial S.A. D15-÷ west apthe 01, 으, ្ន

The District Map indicates that the district lines are drawn to the center of the street in each instance and does not show any narrow strip separating the C.C.C. District across Goucher Boulevard, so that the C.S.A zone abuts the C.C.C. zone at the center of Goucher Boulevard.

Mr. Gavrelis testified that in drawing the district lines "we established the boundary between one district and the other at the center line of the street or on the property line." He also testified that:

"I would say that in my opinion the tract at Goucher Boulevard and Putty Hill does meet the standards as set forth \* \* for a C.S.A. District in Section 259.2 E of the zoning regulations."

# SWARTHMORE COMPANY v. KAESTNER Cite as 260 A 2d 341 d 317 (1967) and Mitchell [6] In any event,

695-96, failure to comply with the requirement that the C.S.A. District be contiguous to a C.C. C.C.C. District and hence is "c to it even if it be assumed, for ment, that it did not "abut" it C. District, no invalidity in Bill No. 23 because of 81-82 (D.Md 1966). Cf. Gruv Jade Corporation v. Perlis, 252 theory, the C.S C.C.C. District ersed by." defined to mean "in close proximity, Laurel Plaza, Incorporated, 256 181-82 (D.Md 1966). Cf. Gru close contact; touching; joining, though not in other, merely that they be "contiguous." In Black's Law Dictionary, "contiguous" is require that the two districts " In any 251 A.2d 589 (1969) the C.S.A. District is near See Grand Union Company event, Bill No. contact; Ħ succession; (1969). neighboring; bounded or "contiguous" "near" F.Supp 40 does not abut" each ver-Cooley ลท the argu-Nd. ĕ ð actual travnear find 684 Kur any adthe ير.

(2)

the chairman of the Board stated erty. Swarthmore and Citgo plaintiffs that this was their to Paragraph V of the bill of trict which would include the subject prophkely be requested to create a C. believe that the County Council would most denied this allegation and alleged, more and Citgo in their respective answers to the proposed maps previously fect, that the plaintiffs had every and against the recommendation ject property as a C.S.A. District, tiffs had no reason to believe the Council would on May 9, 1968 cha by the pleadings and was not one Judgment. not have the notice and hearings Zoning District Maps to designate the subcomplaint it was alleged that the by the Charter, was not specifically to whether or not Bill No. 23 allegedly did As we have indicated, the issue in regard hearing on September 6, Board; raised by In Paragraph V of and, indeed, at that the Motion 1968 change Both for 1967 intention advised the the bill of S complaint to one of reason to displayed Summary of the 15meeting contrary Swarthreguired County 9 before រារា ef-"plainraised D18the the



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BOARD OF ED. OF CHARLES CO. v. ALCRYMAT CORP. OF AMER.

Cite as 260 A 2d 348

Title 22, Section 22-21 of the Charter provides:

ings thereon, giving at least twenty days' lations or zoning maps, the county county council may deem appropriate." tions or may by an ordinance adopt such regulasuch period of notice, the county council notice thereof in at least two newspapers cil shall hold one or more ommending adoption of any zoning regufinal report of the planning board rec-"After the county council has received a changes genera) or amendments therein as the maps subject, however, to such circulation \* \* \* A \*\*\* After throughout expiration public hearof

It is clear from the language of this section of the Charter that the County Council is required to have a hearing on the recommendations of the planning board for changes in the zoning regulations or zoning maps, but that after the expiration of such period of notice (20 days) the County

county council may deem appropriate." Council may adopt the recommended regulations or maps but it may also make "such cated that a substantial change may be valal hearing in regard to the changes and need not have any further or additionshort, the County Council need not follow changes or amendments Miller v. Abrahams, 239 Md. 263, fit to make. We have held that the County Council is not required to follow the amendments the County language quite similar to that used in Sec. 22-21 of the Baltimore County Charter. been held on the originally proposed com-prehensive zoning map and no additional Hewitt v. County Commissioners of Balti-more County, 220 Md 48, 56, 151 A.2d 144, 148 (1959). Indeed, in Ark Readi-Mix recommendations of was passed, where there had been no prior A.2d 220 (1968) we sustained a change made by the County Council in that case on a proposed comprehensive zoning map notice or hearing was required by statutory zoning map after the public hearing has A 2d 309, 314 (1965). posed comprehensive zoning map and, requested on the same day the ordinance Concrete Corp. v. Smith, 251 Md. 1, 3, 246 A.2d 220 (1968) we sustained a change gard to the requested change. course, no notice or discussion, proposal or recommendations of the planning board made in a proposed made at the hearing on the r prior hearing in rethe Planning Board. We have also indi-ಶು Council may therein request for the comprehensive 272, 211 prothe see 9 I

the opinion in Walker as merely character. liance was misplaced, masmuch as we read (1955) as limiting changes, after hearing, bot County, 208 Walker v Board of County to minor changes. sion of Sec. 22-21 of the Charter does not which could be made by the legislative the part of the Court, to limit the changes (which they were) without any attempt izing the changes in Walker as limit the power of the County Council to body to The lower court relied on our decision in minor changes only. Md. 72, In our opinion, this re-Com'rs of Tal-116 A 2d 393 116 The provi-"non" 9

> any type of changes—minor or substantial terials furi-—and, in our opinion, there is no such lim-project. Thation. Hewitt v. County Commissioners County, Perof. Judgment f

islative act. dence when a legislative body adopts a sence of notice, a hearing, or even any 804 (1947). process of law that the Our v. Biermann, 187 Md. 514, 50 A.2d constitutional requirement of due Mayor & City Council of predecessors ıs not violated by the have indicated Bal-)egevia )-

Hence no quired. If or hearing should be required, the remedy decision of the courts. is by amendment of the Charter not by a quent to the hearings for changes or amendments subseof the Charter for any required notice of served, there is no provision in Sec hearing, therefore, rests The requirement of notice and a no such notice or hearing is reprovision, original notice and hearing. and, as we have entirely upon the 22-21 င့

(後養薬に病毒ニリ)

Decree of December 16, 1969, (filed December 17, 1969), reversed and case remanded to the Lower Court for entry of a decree dismissing the bill of complaint and requiring the plaintiffs below to pay the costs in that Court, the costs in this Court to be paid by the appellees.



258 Md. 508 BOARD OF EDUCATION OF CHARLES COUNTY, Md.

ALCRYMAT CORPORATION OF AMERICA. No. 373.

Court of Appeals of Maryland.

June 28, 1970

Action against board of education by subcontractor to recover in tort for ma-

board's failure to raise defense of materials costs would be mental immunity by preliminary objections held that board was not liable in materials and supplies furnish pealed. The Court of Appeals, Barnes, did not result in waiver of defense judgment for furnished The Circuit Court for Charles Perry G. Bowen, Jr., J, rendered at for plaintiff and defendant apassessed against board on school furnished, construction and that rendered 1101 govern-Charles that ίοτ

Reversed.

# i. Schools and School Districts \$\infty 86(2)

Board of education was not hable in tort to unpaid subcontractor when board cancelled general contract for addition to high school shop for failure of general contractor to file payment bond meeting all statutory requirements.

## 2. Schools and School Districts @=86(2)

Subcontractor which had furnished material and labor for school building at request of prime contractor could not recover from board of education on theory that subcontractor was creditor beneficiary of prime contractor or that board was unjustly enriched.

## 3. States = 181(1.12)

defense by necessary implication from statute. sence of express statutory authorization, or action or by failure to plead defense waive agencies Counsel for the of governmental immunity тау not either state Ś. or one affirmative in abo, its

# 4. Schools and School Districts @=114

36 25 -- 1 P

Failure of school board to raise defense of governmental immunity by motion raising preliminary objections to subcontractor's tort action to recover for materials furnished for use on school construction project did not result in waiver of defense. Maryland Rules, Rule 323 b.

## 5, Costs @=238(2)

Where unpaid subcontractor would not have been put to expense of appeal had



Liber 140 Pege 315

Maryland, do hereby make, publish and declare this to be my Last Will and Testament, revoking any and all other wills previously made by me.

be paid by my Personal Representative and my Personal Representative is authorized to pay the same without first obtaining approval of the Orphans Court of Baltimore County, regardless of the amount of said funeral expenses.

and personal effects, including but not limited to jewelry, silverware, furniture, nousehold goods and equipment, books, linens, rugs and other personal chattels and effects, are jointly owned by me with my wife, KATHERINE R: SMITH, as tenants by the entireties, so that such property will automatically pass to my said wife upon my death. However, to the extent that any such property might not be comed by us as tenants by the entireties, I give and bequeath the same, including any automobile or automobiles owned by me at the time of my death, to my said wife, Katherine R. Smith, if she survives me.

THIRD: If my said wife, Katherine R. Smith, should not survive me, I do then give and bequeath all of the household furniture, furnishings and personal effects originally owned by me including but not limited to jewelry, silverware, furniture, household goods and equipment, books, linens, rugs and other personal chattels and effects, excluding any automobile or boat which I might own, unto my sons, GILBERT K. SMITH and WILLIAM W. SMITH, equally or to the survivor of them if only one of them survives me and all of such property which originally belonged to my wife, Katherine R. Smith, I give and bequeath unto my daughter, LOIS A. LEACH, if she is living.

517 1-1Keg 7/71

Deputy

CA-U Lasty

Liber 400 Page 316.

FOURTH: I give and bequeath the sum of Five Thousand Dollars (\$5,000.00) to the corporation of ST. MICHAELS EVANGELICAL LUTHERAN CHURCH, Perry Hall, Maryland.

Dollars (\$1,000.00) each to COMENTON M.E. CHURCH and CAMP CHAPEL M.E. CHURCH, both of Baltimore County.

SIXTH: I direct that all estate, succession and inheritance taxes payable upon the property passing at my death, under my Will, by joint ownership, designation of beneficiary or otherwise, shall be paid out of the residue of my estate without the necessity of my Personal Representative requiring contribution therefor.

SEVENTH: The Marital Trust, Trust "A". In the event that my wife, Katherine R. Smith, survives me, I give, devise and bequeath unto GPLBERT K. SMITH, WILLIAM W. SMITH and MARYLAND NATIONAL BANK; as Trustees, and their successors, a trust fund herein referred to as Trust "A", consisting of securities, cash. or other property equal in plue to the difference between the maximum marital deduction" allowable under the Federal Estate Tax laws, with respect to my estate (being one-half (1/2) of the value of my "adjusted gross estate") and the value of all insurance, jointly held property, specific bequests and all other property passing to my wife, Katherine R. Smith, and included within the "marital deduction" as defined in said Federal Estate Tax laws, and upon trust to invest and reinvest the same and to collect the income thereof, and after paying all proper costs and expenses of the administration of this trust, including such commissions to the Trustees as may from time to time be prescribed by law, to pay all of said income in monthly installments which shall he nearly equal as practicable, to my wife, KATHERINE R. SMITH, during her life.

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My said Trustees, in their absolute and uncontrolled discretion, shall have the power and authority to pay to my said wife from time to time portions of the corpus or principal of this Trust "A" to defray any expense caused her by accident, illness, emergency or to supplement her income, and I direct that my Trustee shall be liberal in the exercise of its discretion.

From and after the death of my said wife, my Trustees shall pay, transfer and assign the entire corpus or. principal of this Trust "A" then in the hands of my Trustees, together with all income then accrued, to such persons and corporations, including without limitation the estate of my said wife, or the creditors of my said wife, or the creditors of her estate, for such estates and interests in trust or otherwise as my said wife, Katherine R. Smith, by her Last Will and Testament specifically referring to this power of appointment shall limit. and appoint, and in default of such appointment, or insofar as such appointment shall not extend, my Trustees shall pay over the corpus or principal of this trust fund then in their hands unto the Trustees of the Residuary Trust hereinafter provided for and the same shall then become a part of said Residuary Trust and shall be administered and distributed in the same manner as the original part of said Residuary Trust.

over, deliver, assign, transfer or convey to my said Trustees in satisfaction of this Marital Trust, cash or securities or property in kind. I direct my said Personal Representative to select and designate such property whether cash or securities or real property or interest in real property at the value thereof as finally determined for Federal Estate Tax purposes, provided that any assets to be distributed in satisfaction of this devise and bequest shall be selected in such manner that the cash and other property distributed will have an aggregate

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fair market value fairly representative of this devise and bequest's proportionate share of the appreciation or depreciation in the value to the date or dates of distribution of all property then available for distribution in satisfaction of this devise and bequest. In no event shall there be included in this Marital frust any property with respect to which the marital deduction would not be allowed if it were included.

mentioned in this Item Seventh, my Trustees shall have the same administrative powers and duties as are hereinafter more fully set forth in Paragraphs a, b, and d of Item Ninth, and if any present or future estate tax or revenue laws of the United States or regulations issued thereunder be such as to disqualify this Trust "A" as a "marital deduction" under said laws because of any of said powers or duties then such discretionary powers or duties causing such disqualification shall not be held and exercised by my said Trustees with respect to this Trust "A".

EIGHTH: Residuary Trust, Trust "B" I give, devise and bequeate all of the rest, residue and remainder of my property, of every kind, wherever located, unto GILBERT K. SMITH, WILLIAM W. SMITH and MARYLAND NATIONAL BANK, as Trustees, and their successors in trust, to invest and reinvest the same and to collect the income thereof, and after paying all proper costs and expenses of administration of this trust, including such commissions to the Trustees as may from time to time be prescribed by law, to pay the net income therefrom in regular installments to or for the benefit of my said wife, KATHERINE R. SMITH, for and during the term of her life, and upon her death, or upon my death if my wife should die before me, I give, devise and bequeath unto my sons, GILBERT K. SMITH and WILLIAM W. SMITH, in equal shares, or to the survivor of them lif one of them should not then be living, free of trust, my interest in Smith & Sons

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Co., a co-partnership, over which I have any right of disposition. (However, since my interest in Smith & Sons Co. is held jointly with my wife, it is unlikely that it will pass under this provision unless I survive her.)

The remaining part of the trust estate, upon my -wife's death, or my residuary estate as above specified, if my wife should die before me, shall be distributed as follows: 1. The sum of One Hundred Thousand Dollars (\$100,000.00) plus one-third of the balance of said trust, after deducting the said sum of \$100,000.00 shall be held in further trust by my said Trustees for the benefit of my daughter, LOIS A. -LEACH, and the Trustees shall pay the net become therefrom to her or for her benefit during her lifetime and shall also pay out of principal to her or for her benefit such sum or sums as my Trustees, in their discretion, might deem appropriate to meet emergency expenses caused by accident, illness or inability otherwise to provide for the necessities of life. Upon the death of my daughter, said trust so retained shall terminate and the principal and all accumulated income shall be distributed to her children in equal shares, the child, children, descendent or descendants of any child of hers who has died leaving a child,

the parents share per stirpes and not per capita. 2. One-third (1/3) of the remaining balance of said trust shall be distributed free of trust, to my son, GILBERT K. SMITH, if living and if not, to his children and descendants, per stirpes and not per capita.

children, descendant or descendants then surviving shall take

3. One-third (1/3) of the remaining balance of said trust shall be distributed free of trust, to my son, WILLIAM W: SMITH, if living and if not, to his children and descendants per stirpes and not per capita.

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My said Trustees shall pay to my said wife such sum or sums as she may request, in writing, out of trust principal, from time to time, provided the funds in the Marital Trust "A" have been completely exhausted, not, however, to exceed in any one calendar year an amount equal to five per cent (5%) of the value of the Trust. This right of withdrawal of principal contents.

pal shall not be cumulative.

NINTH: (a) As to any trust created by this Will, I authorize my Trustees whenever and so often as such Trustees believe the interest of the beneficiary or beneficiaries of the trust will be promoted thereby, and without amplication to any Court, to invest and change the investments of the trust estate, including mortgage, sale, lease (even though such lease may be for a term beyond the probable duration of the trust estate), exchange or other disposition of the real cr personal property. embraced in the trust estate; to cause securities held as investments Of the trust estate to be registered in the name of the Trustees or in the name of a nominee; and at the termination of the trust to divide in kind among those entitled thereto as much of the trust estate as in its judgment is capable of division, and to sell the remainder; and the said Trustees are hereby empowered to execute to purchasers, lessees, or anyone entitled. to a conveyance or transfer, good and sufficient deeds, leases, assignments or transfers.

authorize a majority of myswife, Katherine R. Smith, and my sons, Gilbert K. Smith and William W. Smith, or the survivor of them, should one of them also not be living, to replace Maryland National Bank as Trustee or its successor, or any other corporate trustee by a simple instrument in writing with another bank as trustee in Maryland or elsewhere. Upon acceptance by the person making

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the designation of an accounting of the trust, and upon acceptance in writing of the appointment by the designated trustee of
the trust, the trustee replaced shall be relieved of all
responsibilities of the trust and the trustee designated shall
assume the trust and have all the authority given to Maryland
National Bank herein and no court proceedings shall be necessary
either for withdrawal of Maryland National Bank or any successor,
or for the appointment of a successor.

(c) I will and direct that all payments of mincome, and also any payments of principal to be made by my Trustees to any beneficiary of the Reciduary Trust shall be made in the hands of such beneficiary only and not into the hands. of another, whether claiming by authority of such beneficiary or otherwise, in such manner that the same shall not be subject to anticipation or assignment, nor liable to be subjected by attachment or otherwise to the payment of any debts of such beneficiary. But this shall not prevent my Trustees from making such payment by depositing the same in any bank or banking institution to the credit of such beneficiary; and in the case of minor or incapacitated beneficiaries, payments made be made to any duly appointed guardian, to anyone standing in loco parentis to such beneficiary, or in the discretion of the Trustees by applying the same for the care, maintenance, education and support of such beneficiary, in such manner as my said Trustees may deem advisable.

ered to collect and receive the proceeds of all life insurance on my life payable to my Trustees under this will and the receipt of my Trustees for any sum or sums paid shall be a full and complete discharge to the insurance company or companies with respect thereto.

Line. 1/40 Page. 322

In the event that any proceeds of insurance policies on my life are payable to my Trustees hereunder, I direct that my Trustees collect such proceeds and hold the same in the Marital Trust or in the Residuary Trust, or partly in each of said Trusts, or pay such proceeds over, free of any trust, including but not by way of limitation, payments for the account of my Personal Representative, as my Trustees may be directed by my Personal Representative, it being the responsibility of my Trustees to notify my Personal Representative promptly of all insurance proceeds which are received by my Trustees.

Personal Representative, I direct in Trustees to invest the proceeds of such life insurance policies and pay the entire net income to my wife, if living, but if not living, to pay said net income in accordance with the appropriate provisions of the Residuary Trust.

(e) Any property maturing for distribution in respect to which there shall be no person then living and qualified to take, shall be distributed to my heirs living at that time in the same manner as if I had died at that time intestate.

meously with me or under such circumstances that it is impossible or there is no sufficient proof to determine who predeceased the other, then, for purposes of this my Will, she shall be deemed to have survived me.

ELEVENTH: I horeby nominate, constitute and appoint my sons, GILBERT K. SMITH and WILLIAM W. SMITH to be my Personal Representatives. If both of my said sons should die before me,

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or should not qualify as Personal Representatives or should qualify, and be unable to complete the administration of the estate by reason of death of disability. I then nominate, constitute and appoint MARYLAND NATIONAL BANK to be the Personal Representative of this my Last Mill and Testament. I request that my individual Personal Representatives be excused from giving bond. I confer upon my Personal Representatives full authority to do all things necessary for the prompt and proper administration of my estate and I confer upon them or it full power in their or its sole discretion, to sell any property, real or personal, at public or private sale, without first obtaining authority from the Orphans' Court of Caltimore County or from any other Court.

IN TESTIMONY THEREOF, I have hereunto set my hand and affixed my seal this day of in the year nineteen hundred and seventy one.

Kenneth G. Smith

named Testator, KENNETH G. SMITH, as and for his Last Will and Testament, in the presence of us, who at his request, in his presence and in the presence of each other, have hereunto subscribed our names as witnesses thereto.

1. Progenia P. Reppel

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STATE OF MARYLAND

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STATE OF MARYLAND

RENUNCIATION

The Undersigned, Maryland National Pank, appointed Co-Trustee with Albert K. Smith and William W. Smith of a Marital and a Residuary Trust of Kenneth G. Smith late of Baltimore County deceased, do hereby refuse to administer upon the Trusts of the said deceased, and do, therefore, renownce all its right to act as co-trustee upon said deceased's Trusts, and all right, title and claim that it may, or could have had by virtue of said appointment as Co-Trustee.

In Testimony whereof, Michael I. Levine, Senior Trust Officer hereunto subscribe his name on this 23 day of January , 19.78

MARYLAND NATIONAL BANK

MICHAEL I LEVINE

MICHAEL I. LEVINE.

SENIOR TRUST OFFICER

ATTEST:

Milliel Cillian

Trust Officer

E. SCOTT (Attorney for Estate)
406 Jefferson Building

Towson, Maryland 21204

OHECK LIST: Safe Keeping Wills P

(Signature)

(Signature)

Custody of Wills

Petition Docket

## ROPUSO

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THIS CONFIRMATORY DEED, made this day of four, by and between Carrollwood Shopping Center, Inc., a body corporate of the State of Maryland, party of the first part, Grantor, and Daniel W. Hubers, Marvin R. Smith, William W. Smith, Gilbert K. Smith, and Gilbert K Smith and William W. Smith, Trustees F/B/O Lois A. Leach of Baltimore County, Maryland, parties of the second part, Grantees as tenants in common.

WHEREAS, on the 13th day of August, 1984, Carrollwood Shopping Center, as Transferor, and Daniel W. Hubers, Marvin E. Smith, William W. Smith, Gilbert K. Smith, and Gilbert K. Smith and William W. Smith, Trustees F/B/O Lois A. Leach, as Transferees, executed Articles of Transfer, which said Articles were duly filed with the State Department of Assessments and Taxation. Said Articles of transfer fully vested the fee simple title in the hereinafter described properties as follows: to Daniel W. Hubers an undivided one-third interest, to Marvin E. Smith an undivided one-third interest, to William W. Smith an undivided one-fifteenth interest, to Gilbert K. Smith an undivided one-fifteenth interest, and unto Gilbert K. Smith, and William W. Smith, Trustees F/B/O Lois A. Leach an undivided threefifteenths interest, as tenants in common, their personal representatives, heirs, and assigns, and "我以说。"

WHEREAS, the parties hereto deem it advisable to execute this Confirmatory Deed. The party of the first part remains solvent.

dollars and other good and valuable considerations, the receipt of which is hereby acknowledged. Carrollwood Shopping Center. Inc. does grant and convey unto Daniel W. Hubers, an undivided one-third interest, unto Marvin R. Smith an undivided one-third interest, unto William W. Smith, an undivided one-fifteenth interest, unto Gilbert K. Smith an undivided one-fifteenth interest, and unto William W. Smith and Gilbert K. Smith Trustees F/B/O Lois A. Leach. In undivided three-fifteenth interest; their personal representative, heirs, and assigns, in fee simple, all those three lots of Eground situate, lying and being in Baltimore County, State of Maryland, and described as follows, that is to say:

Garroll Island Road distant 189.00 feet northwesterly from the intersection formed by the center line of Bowleys Quarter Road and the center line of Carroll Island Road; running thence and binding on the center line of Carroll Island Road as now surveyed North 69 degrees 42 minutes West 277.11 feet; thence leaving said center line and running for lines of division the nine (9) following courses and distances viz: North 22 degrees 00 minutes 01 seconds East 219.73 feet, North 69 degrees 42 minutes West 322.33 feet to intersect the westernmost line of the whole tract of which the harein described lot is a part; thence binding on part of said line North 6 degrees 11 minutes 21 seconds East 232.72 feet to a point marking the wouthwest corner of that lot of land which by deed date February 29, 1916, was conveyed by Henry P. Pielert to Philip R. Brinkman and wife and funning thence for a line of division

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BALTIMORE COUNTY, MARYLAND
Per Matter State Stat

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between the land now being described and the land of Philip E.
Brinkman South 88 degrees 52 minutes 57 seconds East 308.15 feet
to intersect the North 0 degrees 51 minutes East 117.36 feet line
mentioned in a deed from Bill F. Wheatley and wife and recorded
folio 115, dated January 31, 1950; running thence and binding on
seconds West 50.00 feet; thence North 88 degrees 36 minutes 48
East 198.00 feet, South 27 degrees 35 minutes 00 seconds East 198.00
23 degrees 11 minutes 41 seconds West 453.50 feet to the place of
beginning. Containing 5.664 acres of land more or less.

BEING the same lot of ground which by Deed dated May 31, 1962, and recorded among the Land Records of Baltimore County in Liber W.J.R. No. 3996, folio 182, was granted and conveyed by Charles L. Corkran and Mildred M. Corkran, his wife, to the Grantor herein.

containing 0.054 acres, more or less, conveyed by Charles L. Corkran and Mildred M. Corkran, his wife, to Florence M. Brinkman, which said property is more particularly described in a Deed dated November 15, G.L.B. No. 2225, folio 7.

of the North 20 degrees 57 minutes East 453.50 foot line and the North 85 degrees 55 minutes East 209.00 foot line mentioned in a deed dated recorded among the Land Records of Baltimore County in Liber No. 456, East 209.00 foot line as now surveyed North 85 degrees 55 minutes seconds East 209.00 feet to the end thereof, thence South 39 degrees 46 seconds West 7.14 feet thence North 67 degrees 23 minutes 01 seconds West 163.29 feet to intersect the aforementioned North 20 degrees 57 said line as now surveyed North 23 degrees 23 minutes 01 seconds winutes East 453.50 foot line, thence running and binding on part of 10.02 feet to the place of beginning. Containing 0.20 acres, more or

and recorded among the Land Records of Baltimore County in Liber W.J.R. No. 3996, folio 182, was granted and conveyed by Charles L. Corkran and Mildred M. Corkran, his wife, to the Grantor herein.

Quarter Road at the end of the last or south 19 dagrees west 250.35 feet line of a Deed dated July 29, 1947 and conveyed by Louise M. Christ and Susie Christ to Raymond Brown and Henrietta Brown, his wife, and No. 1580, folio 447, said point being also the beginning of the tract Wheatley and Annette Wheatley, his wife, to Charles L. Corkran and Baltimore County in Liber J.W.B. Mildred M. Corkran, his wife, and recorded among the Land Records of Baltimore County in Liber T.B.S. No. 1816, folio 115, thence running and binding on the first and second lines of the conveyance from

LIBERS 8 1 5 PAGE 6 5 0 Wheatley to Corkran, as now surveyed, south 16 degrees 19 minutes 31 seconds west 236.22 feet and south 39 degrees 39 minutes 41 seconds wast 43.95 feet to the end of the third or north 85 degrees 55 minutes east 209 foot line in a Deed dated February 29, 1916 and conveyed by Henry P. Pielert to William E. Brinkman and Florence M. Brinkman, his wife, and recorded among the Land Records of Baltimore County in Liber W.P.C. No. 456, folio 530; thence leaving the center of Bowleys Quarter Road and binding on said line of the conveyance from Pielerr to Brinkman reversely, and the minth or north 85 degrees 55 minutes east 38 foot line in the Deed dated June 10, 1940 and conveyed by William W. Lingenfelder, Executor, to George A. Biddison, and wife, and recorded among the Land Records of Raltimore County in Liber No. 1102, folio 402, reversely, and of the third line of the conveyance from Wheatley to Corkran, as now surveyed, south 89 degrees 01 minutes 14 seconds west 247.00 feet; thence running and binding on the eighth, seventh and sixth lines of the conveyance from Lingenfelder to Biddison, and the fourth, fifth and sixth lines of the conveyance from Wheatley to Corkran, as now surveyed, north 27 degrees 35 minutes 00 seconds west 198.00 feet, south 88 degrees 40 minutes 32 seconds west 198.00 feet and north 02 degrees 36 minutes 48 seconds east 50.00 feet to the end of the third or south 0 degree 56 minutes west 410 foot line of the Dead dated July 2, 1940 and conveyed by William W. Lingenfelder, Executor, to Curtis C. Simpson and Paul O. Simpson, and recorded among the Land Records of Baltimore County in Liber No. 1110, folio 370, thence continuing and binding on a part of said third line, reversely, north 02 degrees 36 minutes 48 seconds east 67.36 feet to the end of the second or south 73 degrees 26 minutes west 514.02 feed line of the Deed dated May 21, 1947 and conveyed by Louise M. Christ and Susie Christ, both unmarried, to William R. Asher and Suzanne C. Asher, his wife, and recorded among the Land Records of Baltimore County in Liber J.W.B. No. 1567, folio 50; thence running and binding on said second line, reversely, and also on the seventh or north 73 degrees 26 minutes east 514.02 feet line in the conveyance from Wheatley to Corkran, as now surveyed, north 75 degrees 40 minutes 38 seconds east 510.91 feet to the end thereof and to the end of the third or north 34 degrees 46 minutes east 75.43 feet line of the afore-mentioned conveyance from Christ to Brown; thence running and binding on the third, second and first lines of said conveyance, reversely, and also the eighth, ninth and tenth lines of the conveyance from Wheatley to Corkran, as now surveyed, south 36 degrees 11 minutes 23 seconds west 75.43 feet; south 11 degrees 14 minutes 23 seconds west 96.88 feet and north 88 degrees 11 minutes 23 seconds east 194, 18 feet to the place of begin ning. Containing 3.433 acres of land, more or less, as surveyed by Gilmore Watson, Registered Land Surveyor, dated October 12 th, 1962.

BEING all of that tract of land described in a deed dated October 19, 1962 and conveyed by Charles L. Corkran and Mildred M. Corkran, his wife, to Carrollwood Shopping Center, Inc., and recorded among the Land Records of Baltimore County in Liber W.J.R. 4061,

TOGETHER with the buildings and improvements thereupon erected, made or being, and all and every the rights, alleys; ways, waters privileges, appurtenances and advantages to the same belonging or anywise appertaining. 

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TO HAVE AND TO HOLD the said parcels of ground and premises above described and mentioned and hereby intended to be conveyed, together with the rights, privileges, appurtenances and advantages thereto belonging or appartaining, unto and to the proper use and benefit of the said Grantees, their heirs, personal representatives, successors and assigns, in fee simple, that is unto Daniel W. Hubers a one-third undivided interest; unto Marvin R. Smith a one-third undivided interest; unto William W. Smith a one-fifteenth undivided interest; unto Gilbert K. Smith a onefifteenth undivided interest; and unto Gilbert K. Smith and William W. Smith, Trustees F/B/O Lois A. Leach a three-fifteenth undivided interest as tenants in common.

AND the said party of the first part hereby covenants that It has not done or suffered to be done any act; matter or thing whatsoever to encumber the property hereby conveyed; that it will warrant specially the property granted; and that it will execute such further assurances of the same as may be requisite.

WITNESS the corporate name of Carrollwood Shopping Center, Inc. duly signed by Daniel W. Hubers, its President, and its corputate Beal hereunto affixed, duly attedted by Marvin E. Smith, Assistant Secretary, the day and year first above written.

1962

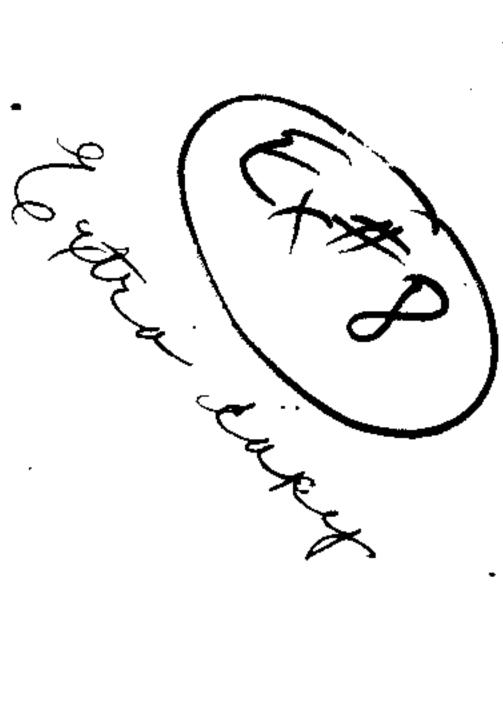
CARROLLWOOD SHOPPING CENTER; INC.

gnature and Corporate Seal:

Marvin E. Smith, Assistant Secretary


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
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VICINITY SCALE: 1"

SITE DAT

DEED MEFERENCE COUNCILMANIC DIST SITE AREA TAX ACCT No 4

tax map parcel no 9 EXISTING ZONING Proposeo Zonina utilities

## SPELLMAN, LAI ASSOCIATES, 1

CIVIL ENGINEERS AND LAND SURV SUITE 406, JEFFERSON BLDG , TOWSON PHONE 823-3535

UNDOCUMENTED PLAN TO ACCO MECLASSIFICATION PETITION

CARROLL ISLAND BOWLEYS QUARTER HUBERS/SMITH MAN