

Jeffrey N Perlow

From: Tammy Zahner
Sent: Wednesday, August 30, 2017 12:07 PM
To: Jeffrey N Perlow
Subject: R-98-366
Attachments: Eichelman Brothers R-98-366 CBA Opinion.pdf

Jeff,

Attached is the Opinion issued by the Board in the reclassification case we spoke about a few minutes ago. I checked our Docket Sheets and there is no record that the case was appealed to the Circuit Court. Unfortunately there is no indication as to when the file was closed, or who the file was returned to. The file is not in our closed files for 1998.

I hope this helps. Sorry I couldn't be of more assistance.

Tammy A. Zahner, Legal Secretary
Board of Appeals of Baltimore County
Second Floor, Suite 203
105 West Chesapeake Avenue
Towson, Maryland 21204
(410) 887-3180
(410) 887-3182 (Fax)

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IN THE MATTER OF
THE APPLICATION OF
EICHELMAN BROTHERS, INC.
MERRITT PROPERTIES, LLC
FOR A ZONING RECLASSIFICATION
FROM M.L.R.-I.M. to M.L.-I.M.
ON PROPERTY LOCATED ON THE NORTH
WEST SIDE WASHINGTON BOULEVARD,
OPPOSITE LANSDOWNE ROAD
(3406 WASHINGTON BOULEVARD)
13TH ELECTION DISTRICT
1ST COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
*
* CASE NO. R-98-366
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O P I N I O N

This case comes to the Baltimore County Board of Appeals based on a Petition for Reclassification, Cycle III, 1998, and was heard by the Board at public hearing on March 16, 1999. Counsel for the Petitioner was Robert A. Hoffman, Esquire. Peter Max Zimmerman, People's Counsel for Baltimore County, appeared in defense of the zoning maps approved by the County Council. The case was publicly deliberated by the Board members on April 6, 1999.

Opening statements were initially made by Mr. Hoffman and Mr. Zimmerman. Mr. Hoffman outlined his client's position concerning the mistake in zoning made by the County Council which he would attempt to prove during the hearing, and of his awareness of the burden placed upon the Petitioner to have the rezoning petition granted. Mr. Zimmerman stated that he would offer no live witnesses, but would rely on the legal principles involved, and let the Board hear the facts and apply those to statutory law and case law, and render a decision.

Mr. Zimmerman initially offered three (3) exhibits that would be discussed during the hearing:

People's Counsel Exhibit 1 - ADC road map of the general area; People's Counsel Exhibit 2 - 1996 aerial map - (1"-200' scale); and People's Counsel Exhibit 3 - 1996 Comprehensive Zoning Map adopted by the County Council on October 8, 1996, and in specific the general Lansdowne area.

Mr. Hoffman offered four (4) witnesses to support the Petitioner's contention that the County Council had made an error relative to the property when the 1996 Comprehensive Zoning Maps were adopted.

Mr. Gary Swatco, Development Contract Manager for the Merritt Corporation, testified. The Merritt Corporation is the Contract Purchaser of the subject site, and during the course of his testimony, Mr. Swatco referenced Petitioner's Exhibits No. 1, No. 2, and No. 3; these were:

Petitioner's Exhibit 1 - an Amended Plat to Accompany Petition; Petitioner's Exhibit 2 - the 200' scale Zoning Map; and Petitioner's Exhibit No. 3 - the 200' scale Aerial Map of the area.

Mr. Swatco described the property as being on the west side of Washington Boulevard just north of the Baltimore Beltway and to the east of I-95. He expressed a desire on the part of the Petitioner relative to 51.92 acres which Petitioner was desirous of having changed from M.L.R.-I.M. to an M.L.-I.M. designation. Mr. Swatco reviewed Petitioner's Exhibit 2 - a color-coded map identifying the immediate area and citing the number and variety of businesses which currently existed in the area of the Beltway Business Center (Brinks, Coca-Cola, a paper distributor, a storage area, etc.). Particular emphasis was placed during his testimony concerning the

development of the Beltway Business Center which was approved in several phases and the history of Commerce Drive, the I-95 overpass and the roadway that was to connect to Lansdowne Boulevard, and of the extensive community involvement which took place in 1996, when the community expressed its desire that it did not want Lansdowne Boulevard extended because of the proximity of several schools in the area. Particular emphasis was placed on Commerce Drive which would create the industrial feeder in which case the Lansdowne Boulevard extension would be eliminated.

On cross-examination, Mr. Swatco acknowledged no present limitations on development relative to the current zoning and that the land could be developed and utilized with a number of permitted uses. Mr. Swatco acknowledged ownership of the Beltway Business Center consisting of 500,000 sq. ft., in which 90 acres was owned. He indicated that the Merritt Corporation had always been interested in the subject property as far back as 10 years ago, but apparently the family ownership of the subject property was substantial in number and the Merritt Corporation could not reach any clear agreement with the owners as to any purchase. He opined that the site had always been used as a junkyard pre-dating the 1945 zoning and that the contract entered into between the Merritt Corporation and the Eichelmans was not contingent on the rezoning.

Ms. Theresa Lowery also testified in support of the rezoning. She indicated that she was a community leader and was very active in three community associations in the immediate area of the site.

Ms. Lowery is well-known to the Board, having testified on such matters relative to zoning in the past; however, she did not submit to the Board the necessary Rule 8 papers in which specific authority was granted to her by any association to speak in support of the rezoning petition. To that end, her testimony was accepted only as an interested individual in the process. She opined that she was quite familiar with the area and that it had always been used as a junkyard and that the heavy truck traffic in the area was always of concern to the community. She indicated that the local community organizations did support the rezoning in 1976. Some of those associations sent representatives to the County Council requesting down-zoning in an attempt to keep trucks out of the school corridor lying to the east of the property; i.e., Lansdowne Middle School and High School. The solution was to create a feeder road diverting traffic from Washington Boulevard to the I-95 overpass. She also described the area surrounding Bloomfield Park as a pocket of residential homes, and as far as she was concerned, she was in favor of the zoning citing that "anything would be better than the presently existing junkyard." She also described her activities with then-Councilman, Jack Murphy concerning the down-zoning in 1976 and also the fact that Mr. Murphy, who now serves on the Planning Board, was in favor of the reclassification petition. She opined that, while present zoning offered varied opportunities, rezoning would also present additional job possibilities.

Mr. Jeffrey Long, with the Baltimore County Office of Planning, also spoke in favor of the reclassification petition. He has appeared before this Board on many occasions and is the Section Chief of Planning, with particular responsibility in Cycle III rezoning. He also opined concerning the 1976 zoning which was put in place to protect the schools along Lansdowne Boulevard. He cited the current high unemployment in the area, and that the reclassification would give greater flexibility to revitalize the area, in addition to creating jobs which were sorely needed in this portion of Baltimore County. He testified that in his opinion the change was not a substantial one and reclassification would increase the uses that would be available to the purchaser assisting in revitalization efforts without producing any significant detrimental effects. He indicated that the Office of Planning was recommending the plan and also discussed the Master Plan project involving Vero Road (by way of Commerce Drive). He indicated that, if the property had been placed as an issue in 1996, his department would not have opposed the reclassification. However, it was overlooked as it had been in years past due to insufficient departmental staffing, and he acknowledged that the Planning staff had accountability to the County Council for making such a recommendation but failed to do so. He opined that the extension of Lansdowne Boulevard had really been "off the books" for at least 10 years and that the Commerce Drive facility was listed in the Master Plan for 1990. In his opinion, the County

Council had clearly made an error in the rezoning of other properties in the area but not considering the subject property for the requested rezoning, and further that the requested M.L.-I.M. zoning is consistent with general zoning in the immediate area. Mr. Long described the contemplated buffer on the property and the transportation at the site, but also acknowledged that the Petitioner could reapply in the upcoming regular map process for the currently requested reclassification. Also discussed was the floor area requirement, of importance in the various zones.

Mr. David Martin, a director of planning for G.W. Stephens, Inc., and acknowledged as an expert in land planning, also testified in support of the reclassification and indicated that he had evaluated the site and understood the reclassification process. He proceeded to go through the list of factors which are required for reclassification in the Baltimore County Code (BCC) Section 2-356(j)(2). He cited the 1990 census which indicated the the area as having roughly 785 residents, with the current residency around 811. The stable transportation both present and proposed, the adequacy of public water and sewerage, solid waste, school facilities, recreational facilities, park facilities, and the compatibility with what were the present uses in the general area. He also cited the number of jobs that would be created by the reclassification, and during the course of the testimony referred a number of times to Petitioner's Exhibit 2 (in color) citing present M.L.-I.M. zones in dark purple, commercial retail in

red, and the residential areas in yellow. He opined that he believed the reclassification would be consistent with the Master Plan, but acknowledged that the capital programs of Baltimore County did not include any current funding for the extension of Commerce Drive.

On cross-examination, reference was made to People's Counsel Exhibit 4 concerning projects on Vero Road to be extended from the City Line to US1 Alt. (Washington Boulevard) and the Master Plan comments on page 98. Considerable testimony also ensued relative to various floor area ratios, and the differences in same under the M.L.R. and M.L. designations, and the fact that very few multi-story buildings currently existed in the general area of the subject site being requested to be reclassified.

Mickey A. Cornelius also testified relative to the traffic flow. His credentials were accepted by both parties relative to Petitioner's Exhibit 7 as to his expertise concerning traffic and transportation flow. He described the general traffic patterns around the site and also that most of the traffic signals in the area were either "A" or "B", with the one at Sulphur Spring Road and Benson Avenue being a "C", all of which are acceptable. He described the traffic flow from Washington Boulevard to Commerce Drive and also the Caton Industrial Park traffic that utilizes Washington Boulevard to get to the Baltimore Beltway, and if the site were developed as "M.L.", acceptable traffic limits would be present. He also stated that the Vero Road extension was included

in the capital budget through 1993. During the period from 1993 to 1996, it was eliminated with the developer to pay for Vero Road going either way. On cross-examination, he acknowledged that Vero Road was not critical to development of the property - direct access being present to Washington Boulevard, and that the extension of Vero Road or Commerce Drive was immaterial. The testimony of Mr. Cornelius concluded Petitioners case-in-chief. Closing statements were made by both Mr. Hoffman and Mr. Zimmerman.

This Board is well-aware of extensive case law in which the Courts of Maryland have stated that comprehensive zoning has a presumption of validity, but such presumption can be overcome. However, in such cases, there must be probative evidence to show that the assumption or premises relied upon by the Council at the time of the comprehensive zoning were invalid. Error can be shown by showing that at the time of the comprehensive zoning, the County Council failed to take into account then existing facts or projects or trends that were reasonably foreseeable of fruition in the future (People's Counsel for Baltimore County vs. Beachwood I Limited Partnership 107 Md. 627 (1995)). The Maryland Courts have demonstrated a reluctance to substitute their judgment 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 (Bonnyview Country Club vs. Glass 242 Md. 46). Additionally, in the exercise of political power, the vital 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, or illegal so that review of such question by the court is narrow in scope (Walker vs. the Board of County Commissioners of Talbott County, 208 Md. 72). Similarly in Norbeck Village Joint Venture vs. 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 the zoning classifications of M.L.-I.M., M.L.R-I.M., and D.R. 5.5. It is significant that the property was reclassified in 1976; and that five (5) Comprehensive Zoning Map Processes have come and gone without anyone requesting a change in the present zoning including the owners, local community organizations, the Planning staff, or the interested Contract Purchaser, who even admitted in testimony that negotiations have been on-going with the owners for the last 10 years. The only mistake, if any, is the road configuration that initially caused the down-zoning in 1976 fearing an extension of Lansdowne

Boulevard. At the present time, that has been abandoned, and the Commerce Drive and Vero Road proposals are still not definitive. During the past 20 years, no one has believed the present zoning to be inappropriate; and the present zoning does not deny the Petitioner any reasonable use of his property, and simultaneously maintains adequate safeguards against overdevelopment of the property from the community's standpoint.

The Board is unable to determine any serious nature of the "purported" mistake or error that fatally affects the County Council's Comprehensive Zoning Maps adopted in 1976. We find quite significant that neither the County Council nor the Petitioner had any question that the present zoning classification was appropriate at the time of the comprehensive rezoning in 1996 and years prior; and that the Petitioner was apparently satisfied with that zoning classification during the period from 1976 through 1996 since it made no effort to have it reconsidered at the time of the general review of zoning.

The fact that the property is no longer being used as a junkyard and "anything would be better" than that does not justify reclassification by the Board outside of the Comprehensive Zoning Map Process, nor does the fact that reclassification would provide the contract purchaser greater flexibility in development of the property warrant reclassification at this time. Further, while the Board recognizes the positive employment factors in reclassification that might provide additional jobs in the area,

that factor alone does not constitute the "mistake" element so essential in determining the appropriateness of a reclassification.

The procedure of the Comprehensive Zoning Map review in Baltimore County is unique because of the short period between reviews. The current scheme permits the County Council to meet newly perceived trends every fourth year. The process is a total one and coordinates the Capital Budget, the Master Plan, water and sewer plans, the State Highway Commissions' annual construction projects and all other considerations necessary for the integration of a comprehensive general zoning plan rather than a piece-meal review of individual tracts (Coppolino vs. County Board of Appeals of Baltimore County, 23 Md. App. 358 (1974)).

While the Board recognizes that many of the findings of fact as required under BCC 2-356(j)(2) have been satisfied, nevertheless, from the Boards' independent review of the testimony and evidence in this case, we cannot determine or find any error in the County Council's adoption of the comprehensive zoning in 1996 as it affected the property here involved. While the issue of the road realignment does present a "fairly debatable" topic for consideration, an examination of the entire record leads the Board to the conclusion that the County Council did not err or make a mistake in the 1996 Comprehensive Map Process and that the Petition for Reclassification should appropriately be denied, recognizing that the Petitioner will have ample opportunity within the next map process to apply for reclassification rather than the piece-meal or

spot -zoning process which is being attempted in this particular case.

O R D E R

IT IS THEREFORE this 3rd day of May, 1999 by the
County Board of Appeals of Baltimore County

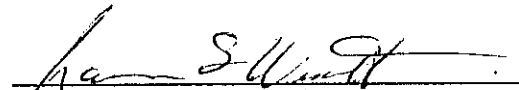
ORDERED that the Petition for Reclassification from M.L.R.-
I.M. to M.L.-I.M. be and is hereby DENIED.

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.

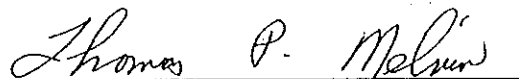
COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY



Charles L. Marks, Chairman



Larry S. Wescott



Thomas P. Melvin



Maryland Department of Transportation
State Highway Administration



cd
Parris N. Glendening
Governor

David L. Winstead
Secretary

Parker F. Williams
Administrator

Date: 10.13.98

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

RE: Baltimore County
Item No.

R-98-366

3406 Washington Blvd.

Dear Ms. Stephens:

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.

Should you have any questions regarding this matter, please contact Larry Gredlein at 410-545-5606 or by E-mail at (lgredlein@sha.state.md.us).

Very truly yours,

L. J. Burns

lr Ronald Burns, Chief
Engineering Access Permits
Division

LG

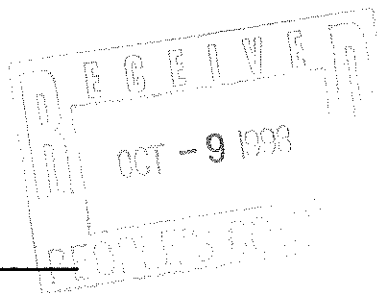
My telephone number is _____

Maryland Relay Service for Impaired Hearing or Speech
1-800-735-2258 Statewide Toll Free

Mailing Address: P.O. Box 717 • Baltimore, MD 21203-0717
Street Address: 707 North Calvert Street • Baltimore, Maryland 21202



Baltimore County
Office of Planning



401 Bosley Avenue
Towson, Maryland 21204
(410) 887-3211
Fax: (410) 887-5862

TO: Members, Baltimore County
Planning Board

DATE: October 5, 1998

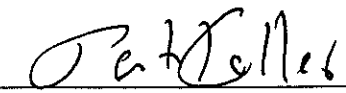
FROM: Arnold F. 'Pat' Keller, III
Director, Office of Planning

SUBJECT: 3406 Washington Boulevard / Merritt Properties, LLC

Please be advised that pursuant to the appropriate sections of the Baltimore County Code, an amendment to the subject reclassification petition was submitted to the Baltimore County Board of Appeals (see attached letter dated October 5, 1998). The purpose of the amendment is to provide a greater buffer to the adjacent Bloomfield residential community located to the north by applying a transition in zoning between the developable portion of the site and the residential community.

The Office of Planning supports the amended request since rezoning would: 1) encourage redevelopment of the property with a use more compatible with existing land uses in the immediate area; 2) facilitate a Master Plan programmed project involving the extension of Vero Road (via Commerce Drive) from the city line to Washington Boulevard (which would negate any need to extend Landsdowne Road beyond Washington Boulevard); and 3) provide a significant buffer to the Bloomfield community.

Previously, the Planning Board adopted the staff's recommendation to rezone the applicant's property from MLR-IM to ML-IM. However, under the heading of Mistake/Change/Error the following was stated, "The requested ML-IM zoning appears to be more appropriate for the subject site in view of the adjacent land uses in the vicinity. However, it will be incumbent upon the petitioner to prove that the County Council made an error when the Comprehensive zoning maps were last adopted." Based upon further consideration of the amended request, this office recommends that the Planning Board recommend to the County Board of Appeals that the subject property be rezoned from MLR-IM to ML-IM (49.59 acres), MLR-IM (1.59 acres) and DR 5.5 (0.74 acre). In addition, under the heading of Mistake/Change/Error, indicate the following: "Rezoning of the subject property would encourage improvement of the site with a more appropriate land use which would facilitate the extension of a programmed Master Plan project. Therefore, the Planning Board concludes that an error was made when the Comprehensive Zoning Maps were last adopted."


Arnold F. 'Pat' Keller, III

AFK:JL
Attachment

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on Recycled Paper

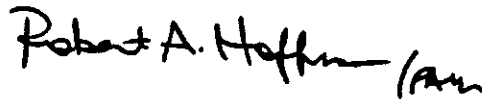
October 5, 1998

Page 2

meaningful transition in zoning between the heavier industrial uses (including the existing junkyard) and the residential zoning fulfills the intent of the Zoning Regulations and comprehensive Zoning Map. Leaving the existing zoning in place is clearly in error.

At the hearing before the County Board of Appeals, the Petitioner will present evidence demonstrating its entitlement to the requested reclassification and will present evidence regarding each of the factors outlined in Section 2-356(j)(2) of the Baltimore County Code to prove error. For the reasons stated in this letter and for other reasons as may be presented at the hearing before the County Board of Appeals, it is respectfully submitted that the present zoning of MLR-IM is in error and the subject property should be reclassified to ML-IM.

Yours truly,

A handwritten signature in black ink that reads "Robert A. Hoffman" followed by a stylized flourish or initials "RAH".

Robert A. Hoffman

RAH/pam

TO1DOCS1/PAM01/0061108.01

VENABLE, BAETJER AND HOWARD, LLP
Including professional corporations

210 Allegheny Avenue
Post Office Box 5517
Towson, Maryland 21285-5517
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OFFICES IN

MARYLAND
WASHINGTON, D.C.
VIRGINIA

VENABLE
ATTORNEYS AT LAW

Robert A. Hoffman
(410) 494-6262

September 17, 1998

HAND-DELIVERED

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

Re: Petition for Reclassification
Property: 3406 Washington Boulevard
Contract Purchaser: Merritt Properties, LLC

Dear Ms. Howanski:

I am representing Merritt Properties, LLC, the contract purchaser, with respect to the above-referenced zoning reclassification request for property located at 3406 Washington Boulevard. The subject property is presently zoned as MLR-IM and comprises approximately 51.92 acres. Merritt is requesting that the zoning be changed to ML-IM, MLR-IM and DR 5.5.

The purpose of this letter is to set forth the reasons why the requested reclassification should be granted. As you may know, the subject property is located on the west side of Washington Boulevard, north of the Baltimore Beltway and east of I-95. This area of Baltimore County is industrial with most of the property surrounding the subject parcel being zoned and used for heavier industrial uses. The subject property has been used as a junk yard for an extended period of time. The rezoning is requested in order to make the property's classification consistent with that of the majority of properties surrounding it. The requested reclassification would give the contract purchaser greater flexibility in developing the property while providing a significant buffer to the adjacent Bloomfield residential community to the South. Providing a

September 17, 1998

Page 2

meaningful transition in zoning between the heavier industrial uses (including the existing junkyard) and the residential zoning fulfills the intent of the Zoning Regulations and comprehensive Zoning Map. Leaving the existing zoning in place is clearly in error.

At the hearing before the County Board of Appeals, the Petitioner will present evidence demonstrating its entitlement to the requested reclassification and will present evidence regarding each of the factors outlined in Section 2-356(j)(2) of the Baltimore County Code to prove error. For the reasons stated in this letter and for other reasons as may be presented at the hearing before the County Board of Appeals, it is respectfully submitted that the present zoning of MLR-IM is in error and the subject property should be reclassified to ML-IM.

Yours truly,

A handwritten signature in black ink, appearing to read 'R. Hoffman', with a long horizontal flourish extending to the right.

Robert A. Hoffman

RAH/pam

cc: Mr. Robert Merritt

TOIDOC51/PAM01/0061108.01



Baltimore County
Office of Planning

401 Bosley Avenue
Towson, Maryland 21204
(410) 887-3211
Fax: (410) 887-5862

TO: Members
Baltimore County Planning Board

DATE: May 29, 1998

FROM: Arnold F. 'Pat' Keller, III
Director, Office of Planning

In the current cycle, five zoning reclassification petitions were accepted by the Baltimore County Board of Appeals. In compliance with the County Code, recommendations on the petitions are submitted in the attached report.

The Planning Board is scheduled to review the petitions on July 9, 1998, and to make final recommendations on July 23, 1998. The Planning Board's report must be submitted to the Baltimore County Board of Appeals no later than July 31, 1998.

The Board of Appeals has tentatively scheduled hearings on these petitions and will advertise these hearings as required. Hearings are set to take place during the period from September 17, 1998, through October 29, 1998.

A handwritten signature in cursive script, reading "Pat Keller".

Arnold F. 'Pat' Keller, III

AFK:JL:lsn

Attachment





Maryland Department of Transportation
State Highway Administration

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 4.13.98
Item No. 1
Case R-98-366
MERIT PROPERTY, LLC

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

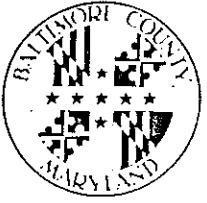
Ronald Burns, Chief
Engineering Access Permits
Division

LG

My telephone number is _____

Maryland Relay Service for Impaired Hearing or Speech
1-800-735-2258 Statewide Toll Free

Mailing Address: P.O. Box 717 • Baltimore, MD 21203-0717
Street Address: 707 North Calvert Street • Baltimore, Maryland 21202



Baltimore County
Fire Department

Office of the Fire Marshal
700 East Joppa Road
Towson, Maryland 21286-5500
410-887-4880

April 13, 1998

Arnold Jablon, Director
Zoning Administration and Development Management
Baltimore County Office Building
Towson, MD 21204
MAIL STOP-1105

RE: Property Owner: SEE BELOW

Location: DISTRIBUTION MEETING OF April - October 1998

Item No.: See Below

Zoning Agenda:

Gentlemen:

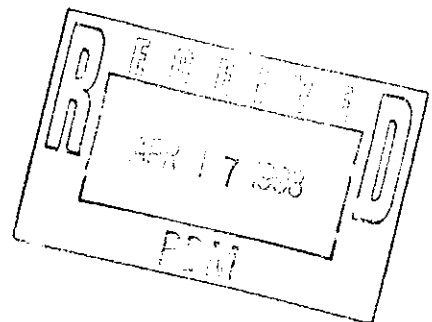
Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

8. The Fire Marshal's Office has no comments at this time,
IN REFERENCE TO THE FOLLOWING ITEM NUMBERS:

Item #1, #3, #4, #5,

REVIEWER: LT. ROBERT P. SAUERWALD
Fire Marshal Office, PHONE 887-4881, MS-1102F

cc: File



March 2, 1998

Page 2

County Code to prove error. For the reasons stated in this letter and for other reasons as may be presented at the hearing before the County Board of Appeals, it is respectfully submitted that the present zoning of MLR-IM is in error and the subject property should be reclassified to ML-IM.

Yours truly,



Robert A. Hoffman

RAH/pam

cc: Mr. Robert Merritt

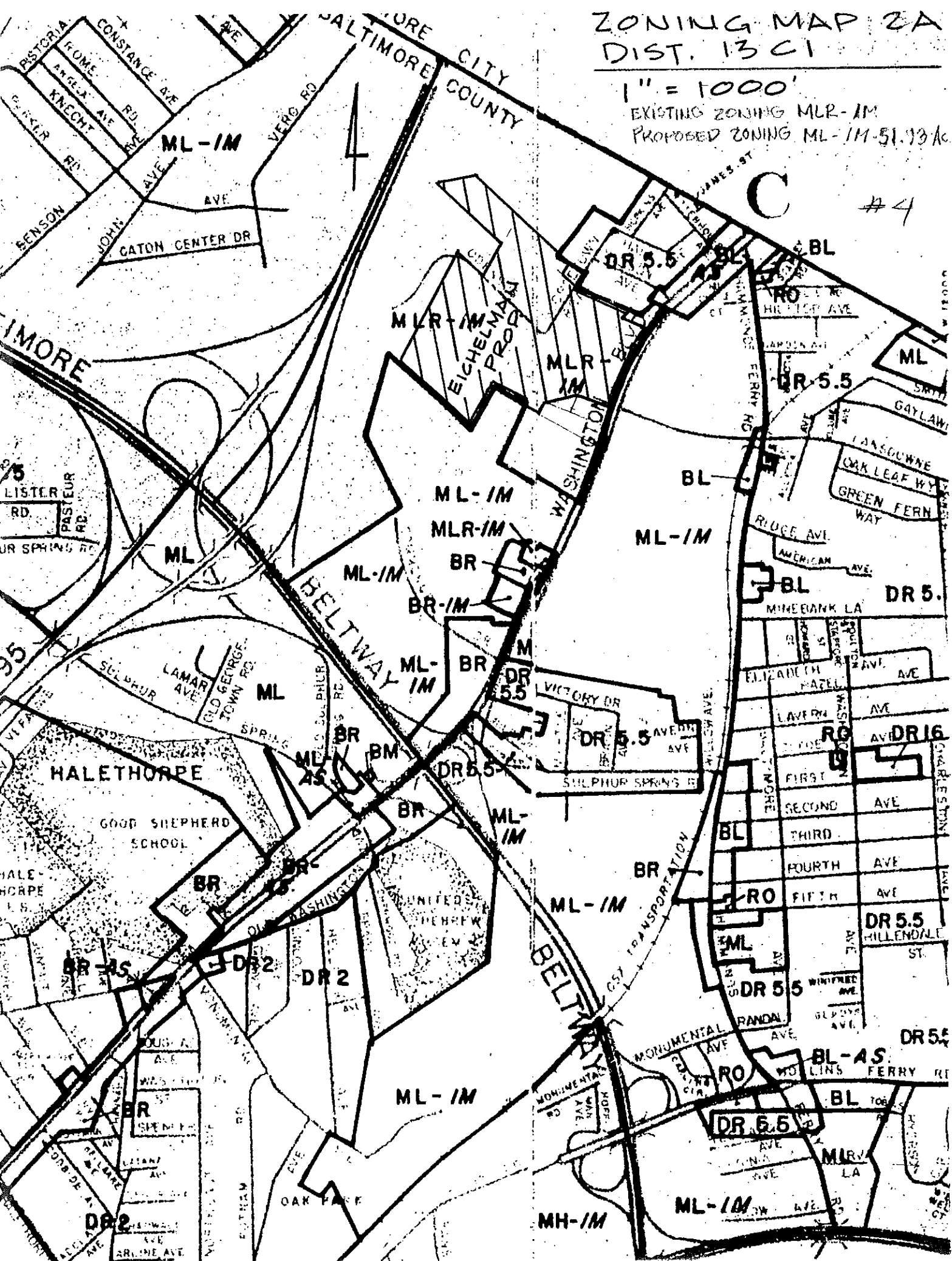
TO1DOCS1/PAM01/0061108.01

ZONING MAP 2A DIST. 13 C1

1" = 1000'

EXISTING ZONING MLR-IM

PROPOSED ZONING ML-IM-51.13 Ac±





Petition for Reclassification

to the Board of Appeals of Baltimore County

for the property located at 3406 WASHINGTON BOULEVARD

This Petition shall be filed with the Department of Permits & Development Management.

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made part of hereof, hereby petition (1) that the zoning status of the herein described property be reclassified, pursuant to the

Zoning Law of Baltimore County, from an MLR-IM zone to an ML-IM zone, for the reasons given in the attached statement and (2) for a Special Exception under the Zoning Regulations of Baltimore County, to use the herein described property for:

See Attached Letter

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

Property is to be posted and advertised as prescribed by Zoning Regulations.

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

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/Lessee:

Merritt Properties LLC
(Type or Print Name)

By: [Signature]
Signature Robb L. Merritt, Partner

206 Lord Baltimore Drive
Address

Baltimore MD 21207 21244
City State Zipcode

Attorney for Petitioner:

Robert A. Hoffman
Venable, Baetjer and Howard, LLP
(Type or Print Name)

[Signature]
Signature

210 Allegheny Ave. (410) 494-6200
Address Phone No

Towson MD 21204
City State Zipcode

Legal Owner(s):

Eichelman Brothers, Inc.
(Type or Print Name)

[Signature]
Signature MARTIN E. EICHELMAN, PRESIDENT

(Type or Print Name)

Signature

3406 Washington Blvd 410-242-6700
Address Phone No.

Baltimore MD 21207
City State Zipcode

Name, Address and phone number of legal owner, contract purchaser or representative to be contacted.

Robert A. Hoffman
Venable, Baetjer and Howard, LLP
Name

210 Allegheny Ave, Towson, MD 21204 (410) 494-6200
Address Phone No.

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

unavailable for Hearing the following dates

Next Two Months

ALL

OTHER

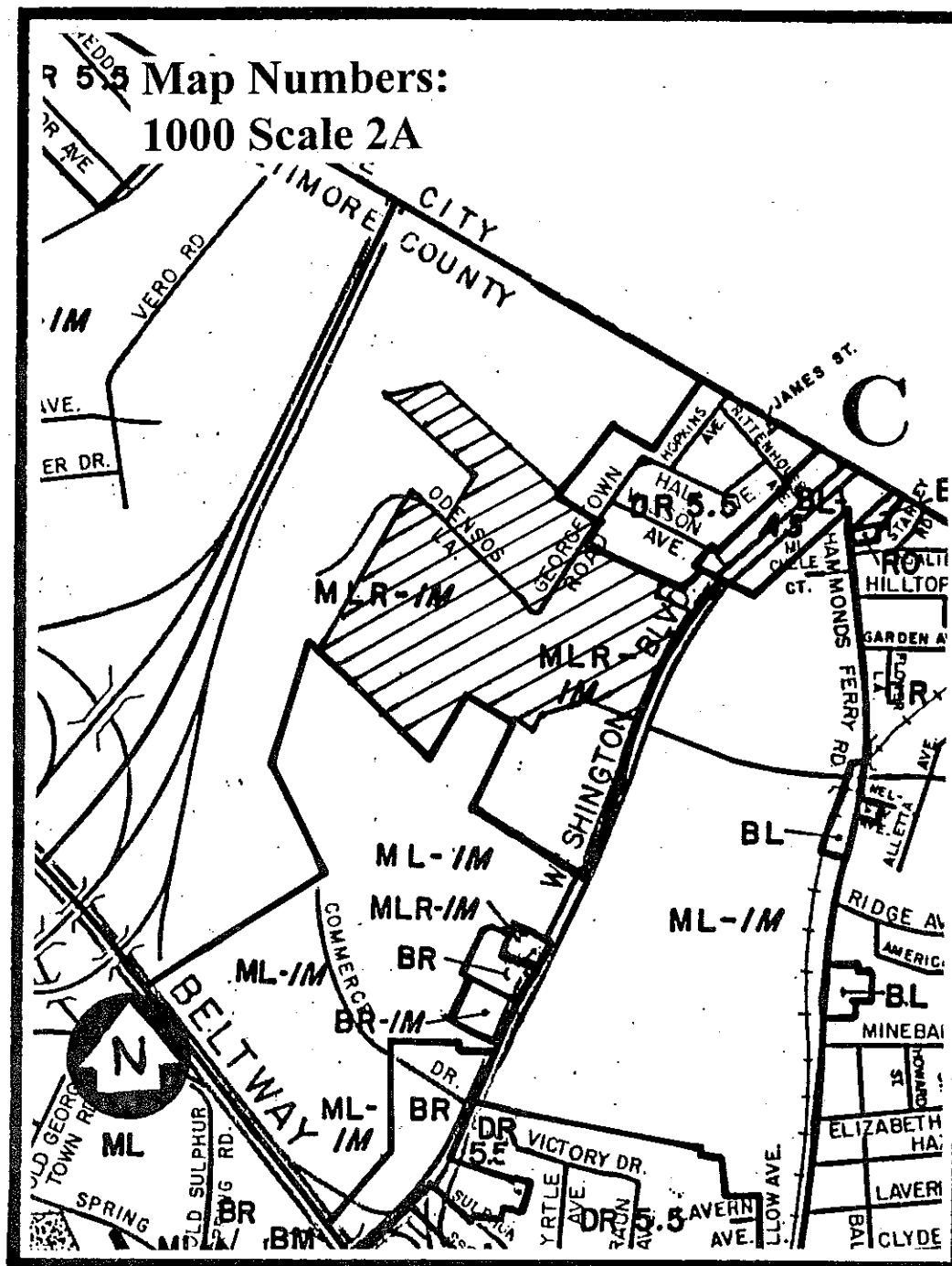
REVIEWED BY:

DATE

R-98-366

**REVISED
DROP-OFF
NO REVIEW**

**WCA
10/1/98**



ITEM NUMBER 1

Location of Property Under Petition

Scale: 1" = 1000'

**Report by the
Baltimore County
Office of Planning
to the
Baltimore County
Planning Board**

**ZONING
RECLASSIFICATION
PETITIONS**

Cycle III, 1998

May 29, 1998

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Introduction

Under the provisions of Section 2-356(e), Baltimore County Code, 1988, (see Appendix A), the Director of Planning is required to submit to the Planning Board, during Period 1 of each zoning cycle, a report on the petitions accepted by the County Board of Appeals for filing during the previous zoning cycle. The report is to contain the following information:

1. Maps showing properties under petition and the reclassifications sought therefore; such maps may also identify groups of such properties located close to each other and show other indications of the inter-relation of petitions with respect to planning considerations.
2. Recommendations on the petitions.
3. Supporting data for the recommendations, including any pertinent data and recommendations submitted by other County agencies.
4. Recommendations for scheduling of all hearings (to be held during the next Period IV, prepared in consultation with the County Board of Appeals).

The five petitions in the current cycle have been reviewed by the planning staff, and the following pages report the Office of Planning staff's analysis and recommendations. The process of formulating these recommendations included: staff inspections of each site; a review of the policies and statements in the current Baltimore County Master Plan, and the preparation and adoption of the 1996 Comprehensive Zoning Map. Comments also were requested from other county agencies including the Board of Education, the Department of Environmental Protection and Resource Management, the Fire Department, the Police Department, the Department of Public Works, the Department of Recreation and Parks, and the Bureau of Traffic Engineering.

In reaching its decision on each petition, the Board of Appeals is required to use the standards in Section 2-356 (j) of the County Code. During the first cycle following a Comprehensive Zoning Map Process, Section 2-356 (k) further limits the Board's authority to granting reclassifications only where the Board finds that the change is warranted upon consideration of the specified factors and also if "the last classification of the property [i.e., by the County Council's vote on October 8, 1996] was established in error".

**PETITIONS FOR RECLASSIFICATION
CYCLE III, 1998**

**Assigned Hearing Dates
County Board of Appeals**

Week of September 14, 1998

Case No. R-98-366
Eichelman Brothers, Inc.
Merritt Properties, LLC
Thursday, September 17, 1998 @ 10:00 a.m.

Week of September 21, 1998

Case No. CR-98-367-A
Elias Rizakos, et ux
Thursday, September 24, 1998 @ 10:00 a.m.

Week of October 5, 1998

Case No. R-98-368
James K. S. Hom, et ux
Thursday, October 8, 1998 @ 10:00 a.m.

Week of October 19, 1998

Case No. R-98-369
Maryland State Fair and Agricultural Society, Inc.
Thursday, October 22, 1998 @ 10:00 a.m.

Week of October 26, 1998

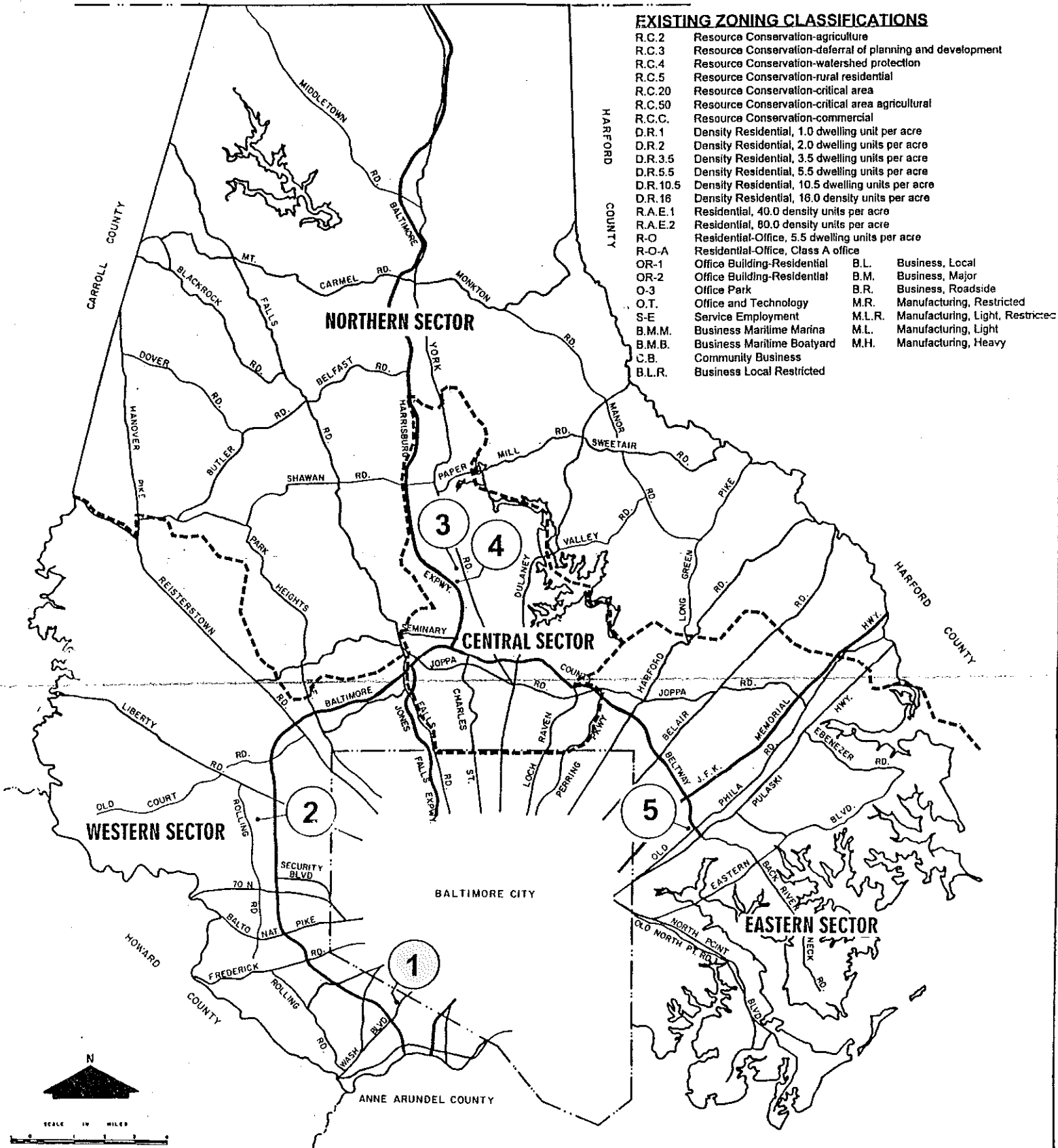
Case No. R-98-370
Oziel Abbas/Continental Properties, Inc.
Thursday, October 29, 1998 @ 10:00 a.m.

BALTIMORE COUNTY, MD
RECOMMENDATIONS OF THE OFFICE OF PLANNING

MAY 29, 1998

ITEM NO. and PETITIONER	LOCATION	ACREAGE	EXISTING ZONING	REQUESTED ZONING	PLANNING RECOMMENDATION
Item No. 1 Eichelman Brothers, Inc. (legal owner) & Merritt Properties, LLC (contract Purchaser)	NW/S Washington Boulevard Opposite Lansdowne Road (3406 Washington Blvd.)	1.8	MLR-IM	ML-IM	ML-IM
Item No. 2 Elias Rizakos & Vula Rizakos	NE/S Windsor Mill Rd., 531 feet SE of the center line of Cresson Ave. (7218 Windsor Mill Rd.)	.40	DR 5.5	BL	BL
Item No. 3 James K. S. Hom & Tuey Mac Hom	NE/S Padonia Park Rd., 364 feet W of York Rd., also W/S York, 211 feet to the rear of 9726 York Road	1.8	ML	BM	BLR
Item No. 4 Maryland State Fair and Agricultural Society, Inc. & Baltimore County MD	NE/S Conrail & MTA Central Light Rail right-of- way, 3,741 feet of N/S Timonium Rd.	4.9	DR 3.5	ML	DR 3.5
Item No. 5 Oziel Abbas (Legal Owner) & Continental Properties, Inc. (Contract Purchaser)	NW/S Philadelphia Road & NE/S Golden Ring Road (8606 Philadelphia Rd.)	1.3	RO	BL	RO

LOCATIONS OF PROPERTIES UNDER PETITION CYCLE III --- APRIL - OCTOBER 1998



SOURCE MATERIAL

Recommendations for the five (5) petitions filed are based on the following:

1. Information compiled during the processing of the Comprehensive Zoning Map adopted by the County Council on October 8, 1998;
2. Capital Budget and 5-Year Capital Program;
3. Zoning Plans Advisory Committee comments;
4. Discussions with other governmental agencies;
5. Field inspections of subject sites; and
6. Baltimore County Master Plan.

CASE NO.:

R-98-366

PETITIONER:

Merritt Properties, LLC

REQUESTED ACTION:

Reclassification to ML-IM (Manufacturing Light, Industrial Major District)

EXISTING ZONING:

MLR-IM (Manufacturing Light Restricted, Industrial Major District)

LOCATION:

3406 Washington Boulevard

AREA OF SITE:

51.92± Acres

ZONING OF ADJACENT PROPERTY/USE:

North:	MLR-IM & DR 5.5	Vacant and Residential
South:	MLR-IM & ML-IM	Daniels Auto and Beltway Business Community
East:	ML-IM	Lansdowne Center, Industrial
West:	MLR-IM	Vacant and Radio Station

SITE DESCRIPTION:

The site had been used as a junkyard and is currently vacant with the exception of a dwelling and a trailer.

WATER AND SEWERAGE:

The area is served by public water and sewer and is designated as W-1, S-1 according to the Master Water and Sewer Plan.

TRAFFIC AND ROADS:

Washington Boulevard (Alternate Route 1), a state road, is a major arterial running north and south with access from I-695 and from I-95 via Sulphur Spring Road. Georgetown Road is a county road through the residential community of Bloomfield Park, and is a private road through the subject property. Vero Road Extended, an extension of Commerce Drive, is a Master Plan Road located on the southwest portion of the subject property. Right-of-way should be reserved on site. Access to the subject property should be from either Washington Boulevard or Vero Road Extended not from the residential Georgetown Road.

ZONING HISTORY:

In 1976, the subject property was rezoned from ML-IM and ML-CS1 to MLR-IM as part of a much larger issue.

MASTER PLAN/COMMUNITY PLANS:

The property is located within the plan area of the Southwest Area Revitalization Strategy adopted by the Baltimore County Council on December 15, 1997. It is mapped as an "employment center" area; within this area, the goal is to create family supporting job opportunities through industrial and business development. It is also within an "enterprise zone" which allows for property tax and income tax credits to industrial companies that make significant improvements to a property and expand or hire new employees.

The Baltimore County Proposed Land Use Map, adopted by the Baltimore County Planning Board on June 15, 1995, identifies the subject property within an area designated for industrial use.

PROPOSED vs. EXISTING ZONING:

The use regulations for the MLR-IM and ML-IM zones may be found in Sections 248 and 253 of the Baltimore County Zoning Regulations. The MLR zone was created as a transitional zone between residential or institutional areas and ML or MH zones. The IM, Industrial Major District is applied to areas that contain 100± acres or more of land zoned for industrial or semi-industrial use. Greater use of prime industrial land is promoted by discouraging non-auxiliary commercial use. In MLR-IM, the uses permitted are a range of light manufacturing, warehouse and office uses with additional uses permitted by Special Exception. In ML-IM, there is a wider range of light industrial uses permitted including research institutes and laboratories. By Special Exception, additional industrial uses are also permitted.

OFFICE OF PLANNING RECOMMENDATION:

The intent of the Southwest Area Revitalization Strategy is to permit a light industrial zone at this location. Therefore, this office recommends rezoning provided access and buffer issues are addressed prior to redevelopment of the subject property. Access should be from either Vero Road Extended (Commerce Drive) or Washington Boulevard, not from Georgetown Road.

MISTAKE/CHANGE/ERROR:

The requested ML-IM zoning appears to be more appropriate for the subject site in view of the adjacent land uses in the vicinity. However, it will be incumbent upon the petitioner to prove that the County Council made an error when the Comprehensive Zoning Maps were last adopted.

RE: PETITION FOR ZONING RECLASSIFICATION
3406 Washington Boulevard, NW/S Washington
Blvd opposite Lansdowne Rd, 13th Election District,
1st Councilmanic

Legal Owners: Eichelman Brothers, Inc.
Contract Purchaser: Merritt Properties, LLC

Petitioner(s)

* BEFORE THE
* COUNTY BOARD OF APPEALS
* FOR
* BALTIMORE COUNTY
* Case Number: R-98-366
* Item No. 1, Cycle III, 1998
*

* * * * *

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates of other proceedings in this matter and of the passage of any preliminary or final Order.

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

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of August, 1998, a copy of the foregoing Entry of Appearance was mailed to Robert A. Hoffman, Esq., Venable, Baetjer & Howard, 210 Allegheny Avenue, P.O. Box 5517, Towson, MD 21204, attorney for Petitioner(s).

Peter Max Zimmerman
PETER MAX ZIMMERMAN

98 AUG -7 PM 3:11
RECEIVED
COUNTY BOARD OF APPEALS

9/17/98 AMENDED



Petition for Reclassification to the Board of Appeals of Baltimore County

for the property located at 3406 WASHINGTON BOULEVARD

This Petition shall be filed with the Department of Permits & Development Management.

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made part of hereof, hereby petition (1) that the zoning status of the herein described property be reclassified, pursuant to the

Zoning Law of Baltimore County, from an MLR-IM zone to an ML-IM zone, for the reasons given in the attached statement and (2) for a Special Exception under the Zoning Regulations of Baltimore County, to use the herein described property for:

See Attached Letter

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

Property is to be posted and advertised as prescribed by Zoning Regulations.

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

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/Lessee:

Merritt Properties LLC
(Type or Print Name)

By: [Signature]
Signature ROBERT A. HOFFMAN, Partner

206 Lord Baltimore Drive

Address

Baltimore MD 21207 21244
City State Zipcode

Attorney for Petitioner:

Robert A. Hoffman
Venable, Baetjer and Howard, LLP
(Type or Print Name)

[Signature]
Signature

210 Allegheny Ave. (410) 494-6200
Address Phone No

Towson MD 21204
City State Zipcode

Legal Owner(s):

Eichelman Brothers, Inc.
(Type or Print Name)

[Signature]
Signature MARTIN E. EICHELMAN, PRESIDENT

(Type or Print Name)

Signature

3406 Washington Blvd 410-242-6700
Address Phone No

Baltimore MD 21207
City State Zipcode

Name, Address and phone number of legal owner, contract purchaser or representative to be contacted.

Robert A. Hoffman
Venable, Baetjer and Howard, LLP
Name

210 Allegheny Ave, Towson, MD 21204 (410) 494-6200
Address Phone No

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

unavailable for Hearing the following dates

Next Two Months

ALL OTHER

REVIEWED BY: DATE



Petition for Reclassification to the Board of Appeals of Baltimore County

for the property located at 3406 WASHINGTON BLVD

This Petition shall be filed with the Department of Permits & Development Management.

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made part of hereof, hereby petition (1) that the zoning status of the herein described property be reclassified, pursuant to the

Zoning Law of Baltimore County, from an MLR-1M zone to an ML-1M zone, for the reasons given in the attached statement; and (2) for a Special Exception under the Zoning Regulations of Baltimore County, to use the herein described property for:

See Attached Letter

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

Property is to be posted and advertised as prescribed by Zoning Regulations.

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

RECEIVED
BALTIMORE COUNTY BOARD OF APPEALS
JAN 1 1998
K66

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/Lessee:

Merritt Properties LLC
(Type or Print Name)

By: [Signature]
Signature Robb L. Merritt, Partner

206 Lord Baltimore Drive
Address

Baltimore MD 21207 21244
City State Zipcode

Attorney for Petitioner:

Robert A. Hoffman
Venable, Baetjer and Howard, LLP
(Type or Print Name)

[Signature]
Signature Robert A. Hoffman (Partner)

210 Allegheny Ave. (410) 494-6200
Address Phone No

Towson MD 21204
City State Zipcode

Legal Owner(s):

Eichelman Brothers Inc
(Type or Print Name)

[Signature]
Signature MARTIN E. EICHELMAN

(Type or Print Name)

Signature

3406 WASHINGTON BLVD 410-242-6700
Address Phone No

Baltimore MD 21207
City State Zipcode

Name, Address and phone number of legal owner, contract purchaser or representative to be contacted.

Robert A. Hoffman
Venable, Baetjer and Howard, LLP
Name

210 Allegheny Ave, Towson, MD 21204 (410) 494-6200
Address Phone No

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

unavailable for Hearing the following dates

Next Two Months

ALL

OTHER

REVIEWED BY:

JRF

DATE

3/2/98

OK TO FILE

R-98-366