

ZONING CASE HISTORY DATABASE (1939 - PRESENT)

GIS Attribute Table ID

(SEARCH ON THIS FIELD):

Case Type Prefix: Case Year: Case Number: Case Type Suffix:

Existing Use:

19990185

CR

1999

0185

XA

Office

Legal Owners/Petitioner

(SEARCH ON THIS FIELD):

1st Preference Mortgage Corporation, Et. Al.

House/St.
Number:

House/Street
Number Range:

House/St.
No. Suffix:

Prefix
Dir.:

Pre. Type:

Street Name (SEARCH ON THIS FIELD):

Suf. Type:

Suffix
Dir.:

Suite/Apt./Unit
Number:

9423

BELAIR

RD

Property Description (SEARCH ON THIS FIELD):

SE/S Belair Road, corner NE/S Halbert Avenue (9423 Belair Road)

Existing Zoning Classification

R.O.A.

Area: .621 acre +/-

Election District: 11th

Councilmanic District 5th

Critical Area: NO

Floodplain:

Historic Area:

Related (Prior and Future) Cases:

Violation Cases:

Concurrent Cases:

Tax Account ID:

Deed Liber #:

Deed Folio #:

Miscellaneous Notes

1.)

1.)

/

2.)

2.)

/

3.)

3.)

/

Zoning Case #92-203-XA

Contract Purchaser:

N/A

Attorney:

John B. Gontrum

Petition Reviewer: WCR

Petition Reviewer 2:

Petition Filing Date:

Day of Week:

Hearing Date:

Hearing Time:

Hearing Location:

03/23/1999

10:00 AM

BOA

Closing Date:

Commissioner Hearing Continued From

Commisioner Hearing Resceduled From:

Formal Request For Hearing

Case Number:

C 1999 0185 XA

Petition Type # 1: RECLASSIFICATION

Petition Request # 1: RECLASSIFICATION from R.O.A. to R.O.

Petition Type # 2: SPECIAL EXCEPTION

Petition Request # 2: SPECIAL EXCEPTION for Class "B" general office building expansion.

Petition Type # 3: VARIANCE

Petition Request # 3: VARIANCE to allow a front yard setback of 10 feet in lieu of the front yard averaging of 25 feet; to allow landscape buffers of 10 feet in lieu of the required 20 feet; and to permit a double-face, illuminated, free-standing sign with 100 square feet total face area in lieu of the permitted 8-square foot non-illuminated wall-mounted sign.

Petition Type # 4:

Petition Request # 4:

200 Foot
Scale Map
Reference:

Existing Use:

Office

Proposed Use:

Existing Zoning Classification

R.O.A.

Requested Zoning Classification:

R.O.

Existing District:

Requested District:

North/South Coordinate:

East/West Coordinate:

Census Tract:

1000 Foot
Scale Map
Reference:

Commissioner Case Number
Zon. Comm. or Dep. Zon. Comm?
Commissioner Order Date
Commissioner Decision
Commissioner Order Restrictions

Board of Appeals Case Number
Appeal to Board of Appeals?:
Appellant:
Board of App. Description:
Board of Appeals Filing Date:
Date Case Sent To Board:
Board of Appeals Hearing Date:
Board of Appeals Decision Date:
Board of Appeals Decision:

Circuit Court Case Number
Circuit Court Filing Date:
Circuit Court Decision Date
Circuit Court Decision:

MD Court of Special Appeals Filing Date:
MD Court of Special Appeals Decision Date:
MD Court of Special Appeals Decision:

MD Court of Appeals Filing Date:
MD Court of Appeals Decision Date:
MD Court of Appeals Decision:

U.S. Supreme Court Filing Date
U.S. Supreme Court Decision Date:
U.S. Supreme Court Decision:

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IN THE MATTER OF
THE APPLICATION OF
1ST PREFERENCE MORTGAGE CORP.,
ET AL -PETITIONERS FOR A ZONING
RECLASSIFICATION FROM ROA TO RO;
AND SPECIAL EXCEPTION AND VARIANCES
ON PROPERTY LOCATED ON THE EAST
SIDE BELAIR RD AT INTERSECTION
WITH HALBERT AVENUE
(9423 BELAIR ROAD)
11TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. CR-99-185-XA
* (DOCUMENTED PLAN)
*

* * * * *

O P I N I O N

This case comes before the Board on petition for a reclassification from R-O-A (Residential-Office, Class A) to R-O (Residential-Office). The petition also seeks a special exception to expand an existing Class B office building on the property and the front yard setback and landscape buffer variances. The subject property is part of a larger tract of land owned by the Petitioners containing approximately 1.6 acres which was assembled by the Petitioners in two transactions in 1997. The remaining property is zoned R-O-A, D.R. 3.5 and D.R. 5.5.

Prior to the 1996 Comprehensive Zoning Maps, the property subject to this petition was zoned R-O and D.R. 16. The balance of the tract also contained R-O and D.R. 16 zoning and, in addition, contained some D.R. 5.5 zoning. The 1996 Comprehensive Zoning Map Process changed all of the R-O zoned property to R-O-A, and the D.R. 16 zoned property to R-O-A and to D.R. 3.5. The D.R. 5.5 portion of the overall tract was left untouched.

In 1990, the County Council adopted the 1989-2000 Master Plan. The Eastern Sector includes a comment with respect to Belair Road:

"2. Pending the completion of a corridor plan,

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the County will continue to resist requests to extend commercial zoning along Belair Road except in situations where the proposal would be in the public interest by demonstrably improving the appearance and traffic flow on Belair Road." p 117

In addition, the Master Plan included as part of the road projects the widening of Belair Road. Construction began on the Belair Road widening project in the first half of 1995 and, thus, was ongoing prior to the 1996 Comprehensive Zoning Map Process.

Part of the subject property, 9423 Belair Road, was owned by Orville Jones in 1990. The property consisted of approximately .49 acre and contained an apartment house and was zoned R-O. Mr. Jones renovated the property and leased it to Petitioner for office use, giving Petitioner a purchase option in 1991. At this time, Jones increased the building area by more than 10 percent, obtaining a special exception in order to legitimize the expansion in the R-O zone. Jones and Petitioner obtained this approval with variances for setbacks, landscaping and amenity open space. (See Zoning Commissioner's Opinion December 16, 1991 in Case No. 92-203-XA.)

Mr. and Mrs. Edward Quelet owned and resided at 9429 Belair Road on 1.9 acres which was zoned D.R. 16 and D.R. 5.5 prior to 1996. Their home had two garages and large yards.

In the 1996 Comprehensive Zoning Map Process, the Petitioner's property was included as part of Zoning Map Issue 5-040. The Planning Board proposed to reclassify the office building owned by Orville Jones at 9423 Belair Road and the Quelet property at 9429

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Belair Road to R-O-A zoning. The Planning Board also proposed an area zoned D.R. 16 to be part D.R. 5.5 and part R-O (this included the telephone office building to the northeast). Both Mr. Jones and the Quelets were notified of Zoning Issue 5-040 and no opposition was communicated to the Planning Board. On October 8, 1996, the Council adopted the Planning Board's R-O-A recommendation, including the Jones and Quelet properties and made one further change. It revised the area recommended for D.R. 5.5 (2.55 acres) to D.R. 3.5. Neither Mr. Jones nor the Quelets appeared at the Council hearing or objected to the Council action.

Petitioners argue that there was an error in the tax records which indicated that the Quelet property was owned by Orville Jones. Petitioners urge this misidentification of the property as an error which caused the County Council to make a "mistake" at the time it classified the property in question to R-O-A.

Petitioners presented as their witness Jeffrey Long, a representative of the Office of Planning of Baltimore County who testified that the Office of Planning regarded R-O-A and R-O zones as essentially being the same. He stated that one of the guidelines from the study that later was proposed by the Office of Planning and by the Planning Board to the County Council stated:

"Sites that are no longer considered suitable for residential uses but are located adjacent to residential areas should be considered for R-O-A, R-O, OR-2, C.B. and B.L.R. zoning."

Mr. Long indicated that the Office of Planning had changed its

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Corporation, et al -Petitioner

position from the time that it recommended the R-O-A zoning into the 1996 Comprehensive Zoning Map Process and now favored R-0 zoning for the property. However, Mr. Long did not testify that any "mistake" had been made with respect to Issue 5-040 in the comprehensive zoning process.

William Monk, a planning expert, and Scott Dallas, a surveyor, also testified for Petitioners. Mr. Monk opined that in his view the site was "unique" and this was based on the fact the middle parcel of land, which is a long narrow parcel, appeared to be undevelopable in his opinion, given the nature of existing improvements. Neither of Petitioner's witnesses could point to any "mistake" on the part of the Council during the 1996 Comprehensive Zoning Process.

Section 2-356 of the Baltimore County Code authorizes the Board of Appeals to hold hearings and grant reclassification of zoning filed by the legal owner of such property or by his legally authorized representative no later than forty-five (45) days prior to the beginning of the next succeeding cycle for rezoning. Subsection (j) states:

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

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established in error.

In Wells v. Pierpoint, 253 Md. 554 (1969), the Court of Appeals stated that:

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

The Court of Special Appeals in People's Counsel v. Beachwood, 107 Md.App. 625, 637-38 (1995) stated:

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

As acknowledged by Petitioners, they face a heavy burden in requesting reclassification of the subject property. Orville Jones and First Preference had already obtained a special exception and variances for an expansion on the half-acre tract. They elected not to participate in the 1996 Comprehensive Zoning Process although they were notified. The evidence showed that ten issues within two blocks of the subject site were considered by the Council during the Comprehensive Zoning Process. Petitioners purchased the remaining property in 1997 knowing that the Council had zoned the property R-O-A.

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There is no proof that the Council was unaware of the location or condition of the properties which are the subject of this hearing.

It is not sufficient for the Petitioners to claim that the property is otherwise undevelopable. See Rockville v. Stone, 271 Md. 655, 663 (1974). There must be a showing that the owner is deprived of all reasonable use of the property. Economic disadvantage is insufficient. People's Counsel for Baltimore County v. The Prosser Co., Inc., 119 Md.App. 150, 704 A.2d 553 (1992)

The Board would recommend that the issues for a zoning change be raised with the County Council by Petitioners during the 2000 Comprehensive Zoning Map Process so that the Council may determine if another classification would be more appropriate for the property in question.

In view of the Board's decision with respect to the retention of the R-O-A zoning classification, the Board does not reach the issues with respect to the special exception to expand the existing Class B office building on the property and variances from the setback and buffer requirements.

O R D E R

IT IS THEREFORE this 16th day of July, 1999 by the County Board of Appeals of Baltimore County

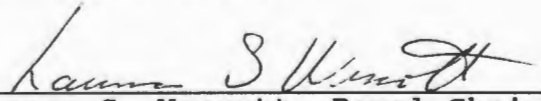
ORDERED that the Petition for Reclassification filed by 1st Preference Mortgage Corporation, et al, requesting the

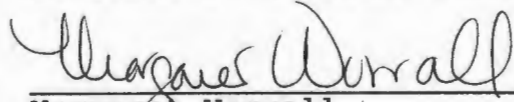
Case No. CR-99-184-XA /1st Preference Mortgage
Corporation, et al -Petitioner

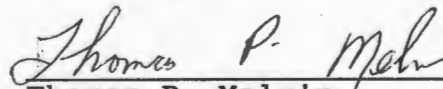
reclassification of the property known as 9423 Belair Road from R-O-A to R-O be and the same is hereby DENIED; and it is further
ORDERED, therefore, that the Petitions for Special Exception
and Variance are DISMISSED AS MOOT.

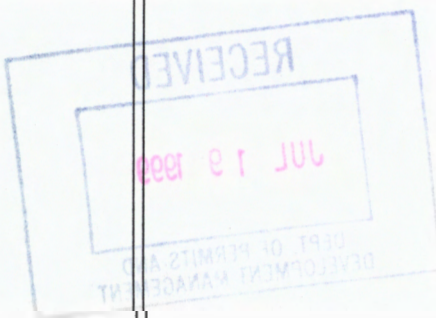
Any petition for judicial review from this decision must be
made in accordance with Rules 7-201 through 7-210 of the Maryland
Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY


Lawrence S. Wescott, Panel Chairman


Margaret Worrall


Thomas P. Melvin





County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
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410-887-3180
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July 16, 1999

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

RE: In the Matter of 1st Preference Mortgage
Corp, et al /Case No. CR-99-185-XA

Dear Mr. Gontrum:

Enclosed please find a copy of the final Opinion and Order issued this date by the County Board of Appeals of Baltimore County in the subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules and Procedure, with a photocopy provided to this office concurrent with filing in Circuit Court. Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Charlotte E. Radcliffe

Kathleen C. Bianco
Administrator

Enclosure

cc: John B. Gontrum, Esquire
William Parisi, President
1st Preference Mortgage Corp.
J.S. Dallas, Inc.
J. Carroll Holzer, Esquire
Mr. William Schmidbauer
Newton A. Williams, Esquire
James Earl Kraft /Bd of Education
People's Counsel for Baltimore Co.
Pat Keller
Jeffrey Long /Planning
Lawrence E. Schmidt
W. Carl Richards, Jr. /PDM
Docket Clerk /PDM
✓ Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

TO WCR
File