1/4/02

IN THE MATTER OF THE APPLICATION OF PAINTERS MILL VENTURE, LLP - OWNER FOR A ZONING RECLASSIFICATION FROM D.R. 5.5 to D.R. 16 ON PROPERTY LOCATED ON THE NWC OWINGS MILLS BOULEVARD AND LYONS MILL ROAD	* * * * *	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
2nd ELECTION DISTRICT 3rd COUNCILMANIC DISTRICT	*	Case No. R-01-435

* * * * * * * * *

OPINION

This matter is before the Board on a Petition by Painters Mill Venture, LLP (Painters Mill Venture) for reclassification of an 18.3-acre parcel of land located at the northwest corner of Owings Mills Boulevard and Lyons Mill Road on the south side of Lakeside Drive in Baltimore County. The Petition was accompanied by an undocumented site plan. Painters Mill Venture was represented by Robert A. Hoffman, Esquire, and VENABLE, BAETJER AND HOWARD, LLP. The Petition was opposed by Peter Max Zimmerman, People's Counsel for Baltimore County, who appeared before the Board. A hearing was held on September 26, 2001. Briefs were submitted by the parties by the close of business October 30, 2001. A public deliberation was held on November 21, 2001.

Background

The subject property is currently split-zoned D.R. 5.5 (18.17 acres) and D.R. 16 (0.13 acre). Painters Mill Venture's Petition for Reclassification requests that 18.17 acres of the 18.3 acres be rezoned from D.R. 5.5 to D.R. 16. This would permit a higher density residential use of the property.

During the 2000 Comprehensive Zoning Map Process (CZMP), the Baltimore County Planning staff initiated a number of map issues for significant, undeveloped parcels of land in the Owings Mills area, including the Painters Mill Venture parcel. Through Issue No. 3-136, the Planning staff proposed the downzoning of the Painters Mill Venture property, which, at the

time, was zoned D.R. 16 in its entirety, to D.R. 3.5 or D.R. 5.5, or, in the alternative, to retain the existing D.R. 16 classification. In June of 2000, the Office of Planning recommended that the property's D.R. 16 zoning remain unchanged, revising its original D.R. 5.5 recommendation. The Office of Planning revised its recommendation after considering the high-density residential development that surrounds the property. On June 15, 2000, the Baltimore County Planning Board recommended that the property's D.R. 16 zoning be retained. Against the recommendation of the Office of Planning and the Planning Board, on October 10, 2000, the County Council of Baltimore County (County Council) downzoned 18.17 acres of the Painters Mill Venture property to D.R. 5.5, leaving only a small sliver of D.R. 16 zoning.

Painters Mill Venture produced Scott Rouk, a registered Landscape Architect responsible for preparing the Reclassification site plan. In addition, they produced Timothy Madden, a certified Land Planner and registered Landscape Architect who was accepted by the Board as an expert in the areas of land planning and landscape architecture. Mr. Rouk and Mr. Madden explained that there is an approved forest buffer easement located along the western boundary of the property in question. The forest buffer easement prohibits development on the entire western side of the property. At one point, the forest buffer widens to effectively divide the property in half. Mr. Madden did admit on cross-examination that there is a process by which to request a modification reduction of the forest buffer area of the property. However, Mr. Madden explained that the Department of Environmental Protection and Resource Management has already granted one such modification, and he felt that this would eliminate the possibility that the Department would grant a further reduction of the buffer area.

In addition, the property has two transcontinental gas line easements which divide the remainder of the property into three separate developable parcels, a 1.59-acre parcel adjacent to Lakeside Drive; a 5.72-acre parcel adjacent to Owings Mills Boulevard; and a 1.9-acre parcel

located at the northwest corner of Owings Mills Boulevard and Lyons Mill Road. While development is prohibited within these easement areas, the easements may be crossed by roadways to link the properties. Connecting the roads is only permitted across gas line easements area at 90-degree angles.

Painters Mill Venture contended that, because of the property's limited developable area, multi-family residential housing, which is permitted by right in the D.R. 16 zone without restrictions but not in a D.R. 5.5 zone without the added requirement of proving compatibility, is the best use of the property. The Petitioner contended that, because it is developed vertically rather than horizontally, such development would be more compatible with the environmental restrictions on the property. Multi-family housing does not require rear yard areas, and there would be no demand for rear yard accessory structures, such as swimming pools or sheds. Additionally, they contend that multi-family housing would not require multiple access points or road connections between residential housing units associated with lower density, single-family detached housing. Therefore, they contend that less developable land is required.

On cross-examination, Mr. Madden estimated that the site could accommodate approximately 120 multi-family units.

A review of the map and area show nearby low and medium density development, D.R. 3.5 and D.R. 5.5, on both the north and south sides of Lyons Mill Road. On the north side, just west of the Owings Run Apartments, is the Lyons Gate townhouse community zoned D.R. 5.5. Further, to the east, close to Painters Mill Road, there is a single mixed family home and townhouse community zoned D.R. 16. The north side also has a number of older single-family homes in both directions.

Mr. Stanley Dillon, a resident of the area, testified on behalf of the Protestants and stated that the south side of Lyons Mill Road is zoned predominantly D.R. 3.5 and D.R. 5.5. There is a

cornfield flanked by the single-family home communities of Lyonswood on the east and Whitehurst on the west. There is also an historic home called "Persimmon" east of the cornfield.

Mr. Morton Mack, a managing partner of Painters Mill Venture, testified that he visited with Councilman Bryan McIntire prior to the October 2nd rezoning hearing and was told that the zoning would be kept at D.R. 16. He admitted that he never made any claim that environmental constraints affected the zoning of the property. None of the witnesses testified that the property was unusable under the existing zoning.

Finally, Painters Mill Venture produced a letter from Councilman T. Bryan McIntire dated May 1, 2001, to Arnold F. "Pat" Keller, the Director of the Baltimore County Office of Planning. In the letter, Mr. McIntire stated:

> Toward the end of the last Comprehensive Zoning Map Process, the above captioned property came under consideration for several uses. Working under the zoning map, I did not know that there were severe environmental constraints, which, in effect, divide the property into two developable portions. Therefore I feel it only fair to the property owner that this matter be reconsidered in the out-of-cycle process, and that the previous designation of D.R. 16 be retained.

This letter was accepted by the Board after initial objection by the People's Counsel was withdrawn with the understanding that People's Counsel was preserving the opportunity to argue the weight or significance of the letter. People's Counsel presented various e-mails and correspondence from interested citizens living in the area supporting the position of People's Counsel that the D.R. 5.5 zoning should be retained.

The various zoning and tax maps submitted by the parties into evidence before the Board clearly show the forest buffer and two pipeline easements that traverse the property.

Decision

In supporting its position, the Petitioner bears a heavy burden of proving that the current zoning on the property in the 2000 CZMP was a "mistake" on the part of the County Council. Expert opinions, such as those presented by the Petitioner herein, while instructive, are not

determinative of the question as to whether or not the County Council made a mistake in the rezoning process. In *Cappolino v. County Board of Appeals*, 23 Md.App. 358, Judge Davidson stated at page 371:

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

The Board does not consider that the testimony of the experts presented by the Petitioner was sufficient to overcome the substantial burden proving that the County Council committed an error in the reclassification during the 2000 CZMP. The law does not require that the property owner be allowed the maximum number of lots that the property can accommodate.

In addition, the Board has considered the letter written to the Planning Director by Councilman McIntire and has elected to give this letter no weight whatsoever in its deliberation. Councilman McIntire was not present to be cross-examined with respect to the assertions made in the letter. In addition, it is questionable whether or not his testimony would even be admissible before the Board. "Individual council members and other city officials may not testify as to the motives actuating council action." [Quoted by Judge Hinkle in the matter of the application of Toll House, Inc. /Hayfields for zoning reclassification from R.C. 2 to R.C. 4 on the property located on the north side of Shawan Road west of Western Run Road, Case No. 95-CV-08791 quoting *Montgomery County Council v. District Land Corp.*, 274 Md. 691, 704-705 (1975) and *Montgomery County v. Schooley*, 97 Md.App. 107, 114-119.]

Furthermore, while the Board is aware that councilmanic courtesy generally prevails in the rezoning of land within the district of a particular councilman, the rezoning process requires the votes of all seven council persons, and Councilman McIntire's letter does not speak to the intentions of the other individual members of the County Council during this 2000 CZMP.

Therefore, the Board will give no weight to the letter of Councilman McIntire submitted by the Petitioner.

The Board considers that the Petitioner has failed to prove that the County Council committed error in the rezoning of the subject property from D.R. 16 to D.R. 5.5 during the 2000 Comprehensive Zoning Map Process. The Petition to reclassify the property will be denied.

ORDER

THEREFORE, IT IS ORDERED, by the Baltimore County Board of Appeals, this 3rd day of January, ~~2001~~ 2002, that the Petitioner's request to reclassify the parcel of land located at the northwest corner of Owings Mills Boulevard and Lyons Mill Road, on the south side of Lakeside Drive in Baltimore County, from D.R. 5.5 to D.R. 16 be and the same is hereby **DENIED**.

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*.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence S. Wescott, Chairman

Margaret Worrall

Melissa Moyer Adams

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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January 3, 2002

Robert A. Hoffman, Esquire
VENABLE, BAETJER & HOWARD, LLP
210 Allegheny Avenue
Towson, MD 21204

RE: *In the Matter of: Painters Mill Venture LLP*
-Legal Owner /Petitioner Case No. R-01-435

Dear Mr. Hoffman:

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 of 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,

Kathleen C. Bianco /trs

Kathleen C. Bianco
Administrator

Enclosure

c: David Karceski, Esquire
Petitioner :
Morton J. Macks /Painters Mill Joint Venture
Morris & Ritchie Associates, Inc.
Robert J. Haines, Esquire
/Board of Ed. /MS 1102-J
People's Counsel for Baltimore County
Pat Keller, Planning Director
Lawrence E. Schmidt /Zoning Commissioner
W. Carl Richards /PDM
Arnold Jablon, Director /PDM
Edward J. Gilliss, County Attorney

Printed with Soybean Ink
on Recycled Paper

10/20/01

RE: PETITION FOR RECLASSIFICATION Owings Mills Boulevard, NWC Owings Mills Blvd and Lyons Mill Road 2nd Election District, 3rd Councilmanic	*	BEFORE THE
	*	COUNTY BOARD OF APPEALS
	*	FOR
Legal Owner: Painters Mill Venture, LLP Petitioner(s)	*	BALTIMORE COUNTY
	*	Case No. R-01-435

* * * * * * * * * * * * *

People's Counsel's Post-Hearing Memorandum

I. Introduction

This is the first case to be decided upon a request for piecemeal zoning reclassification from the year 2000 comprehensive zoning map process (CZMP). It is also the first which we recall involving a request for reclassification in this area of Owings Mills, that is to say, in the "New Town" area south of Reisterstown Road.

The existing zone on the subject 18.17 acre property is medium density D.R. 5.5, a flexible and commonly found classification which allows all types of homes, with group homes and multifamily dwellings subject to compatibility review. BCZR 1B00.1, 1B01.1A1c. By multiplication, and allowing for computational refinements, the present zoning allows over 100 residential units.

The requested D.R. 16 zone is at the highest density of the D.R. zones. It allows the same types of homes, and does not involve compatibility review. The present request does not include a documented site plan, an option allowed under Code Sec. 2-356(l) and (n). If a documented site plan is filed, any rezoning grant is conditioned on adherence to

the plan. Otherwise, the potential use is open-ended, subject to maximum density. Here, the maximum would be over 290 units, likely apartments.

Baltimore County adopted residential zoning according to density in Bill 100, 1970. The zones are, from low to high, D.R. 1, 2, 3.5, 5.5, 10.5, and 16, the number signifying maximum density units per acre. One of the intentions of density zoning is to "foster a variety of housing types." BCZR 1B00.2A.

We begin with background on the area, review of the issue in the 2000 CZMP, and discussion of law. Then, we address Petitioner's claims. We will show the Council decision was reasonable, consistent with the public safety, health, and welfare for the area, and in no way a "mistake" or "error" as that term is defined under Code Sec. 2-356(j) and the case law. We will also show why, even were there a mistake, the requested zoning is not warranted. We will demonstrate that the arguments about mistake are absurd and/or without substantial justification; that the predictable barrage of expert planning argument is conclusory or quasi-conclusory; and that citizen testimony and correspondence is, in contrast, compelling. We will finally discuss the extraordinary and unorthodox introduction into evidence of a May 1, 2001 post-legislative process letter from Councilman McIntyre to Planning Director Arnold Keller.

The principal questions presented for review are:

1. Is there legally sufficient evidence of legislative "mistake" during the 2000 comprehensive zoning map process?

2. Is the requested zoning warranted?

3. Should the post-map letter from Councilman McIntire be excluded as tantamount to testimony invasive of the legislative process, privilege, and immunity? Even if it were considered, does it contain any valid evidence of legal "mistake?"

II. The Area

The Owings Mills area is well-known. The property involved here is readily visible and is not an obscure property. It is near the south edge of the growth area, with primary frontage at the northwest corner of Lyons Mill Road, an east-west two-lane road, and Owings Mills Boulevard, a four-lane north-south boulevard. Petitioner attempted to group it exclusively with the town center commercial and high-density development to the north, and with the D.R. 16 zoning on the immediate west and east boundaries. But a full review of the map and area shows nearby low and medium density development – D.R. 3.5 and D.R. 5.5 – on both the north and south sides of Lyons Mill Road. On the north side, just west of the Owings Run Apartments, is the Lyonsgate townhouse community on D.R. 5.5 zoning. Further to the east, close to Painters Mill Road, there is a mixed single-family home and townhouse community zoned D.R. 16. The north side also has a number of older single-family homes in both directions. Mr. Stanley Dillon resided in this area. On the south side of Lyons Mill Road, the zoning is predominantly D.R. 3.5 and 5.5. Here, there is Mr. Ballard's cornfield flanked by the single-family home communities of Lyonswood on the east (where Ernestine Durham, Hazel Perry, and the Bell family reside) and Whitehurst on the west (where Mr. Thompson resides). There is also a historic home called Persimmon east of the cornfield.

In context, this is an area of mixed zoning and land use. Aside from the Owings Run Apartments, the south and west are exclusively low and medium density. At the outset, it is noteworthy there is no rule which requires an unbroken stretch of a particular zoning classification or which forbids variation, especially as to residential density.

III. The 2000 CZMP

The property was reviewed as Issue 3-136 in the CZMP. As shown by the CZMP logs, this section of Owings Mills was the focus of numerous issues identified for review. In this connection, William Hughey stated there were eight issues which the Planning Staff itself raised because of concerns about congestion and/or overgrowth. This was consistent with the Master Plan 2010's observations on Page 177 to the effect that there may already be an imbalance and predominance of townhouses, condominiums, and apartments and that remaining high-density zoned vacant parcels should be reviewed.

The Planning staff presented the Council with three suggested options for classification: D.R. 16, D.R. 10.5, and D.R. 3.5. As is customary, the staff notified the property owner. The Issue file reflects a copy of an engineering plan for the property prepared by Morris Ritchie & Associations. It shows the forest buffer and pipelines which have been discussed at some length in the present hearing. Indeed, the trees are readily visible on the property, and the pipeline is also shown on the zoning maps. The property owner and area citizens had the opportunity to comment on the issue. The only written communication was by e-mail from Ernestine Durham, President of the Lyonswood Association, supporting a reduction in zoning density and giving substantial reasons relating to the overcrowding of the area and traffic congestion. Mr. Morton

Macks, the managing partner for the owner, testified that he visited with Councilman McIntire and was told on October 2 that the zoning would be kept at D.R. 16. He also admitted that he never made any claim that environmental constraints affected the zoning of the property. He did not testify that the property was unusable under the existing zoning, or that he ever made such a claim.

There were twists in planning recommendations. The staff initially recommended D.R. 5.5 based on concerns about excessive growth but switched to D.R. 16, apparently to go with high-density apartment development. The Planning Board recommended D.R.16. The Council held a hearing and ultimately voted on October 10, 2000 to reclassify the subject property from D.R. 16 to D.R. 5.5. The minutes are attached. The Council thus rejected the Planning Board recommendation, as it is often does. While it is said the Council may defer to the view of the Council member for the relevant district, the legislative action is collective, recorded in a duly enacted ordinance, and reflected on the official "200 scale" zoning map. The Council does not have to give a reason for its action. See People's Counsel v. Beachwood, 107 Md.App. 627 (1995).

IV. The Law in Brief; Judge Davidson's Trilogy

To assist this Board and get to the main points in the case more quickly, we will dispense with lengthy quotations from the case law. Rather, we will cite and/or attach the key cases and give a condensed explanation.

Coppolino v. County Board of Appeals, 23 Md.App. 358 (1974) is the first of a trilogy of attached landmark opinions by Judge Rita Davidson and important here for several reasons. It sanctified and reinforced Baltimore County's quadrennial

comprehensive rezoning process. It also involved a request from D.R. 5.5 to D.R. 16, there around the Belair Road artery. It solidified the strong presumption in favor of legislative action, so long as reasonable and fairly debatable. It expressed the idea that the reasonableness of council zoning must be judged as of time of decision, and not by Monday morning quarterbacking. It emphasized that expert opinions must be scrutinized to determine whether they are strong and substantial enough to be given any weight. It gave some definition to and illustrations of the mistake concept.

Judge Davidson followed with Boyce v. Sembly, 25 Md.App. 43 (1975). This involved a request for commercial zoning of property in Lutherville zoned D.R. 5.5. Subsequently, she wrote Howard County v. Dorsey, 292 Md. 351 (1982). This Court of Appeals decision is the last to discuss in detail the "mistake" concept.

The gist of the trilogy is that Board of Appeals' scope of review is extremely narrow in piecemeal rezoning cases. The agency must exercise restraint. It must guard against the temptation to usurp the legislative function, substitute judgment, second-guess elected officials, and destabilize or erode the integrity of comprehensive legislation. It must reject the pretext that contrary planning opinions or developers' views are superior and must be approved. The ultimate inquiry is whether there is any rational basis to support existing zoning as workable in the area not confiscatory. It does not have to be the "best" zoning classification, the zoning the planners want, the zoning which gives developers the most money, or the zoning that may be imagined by some expert to be preferable from one point of view or another.

These judicial opinions include discussion of the presumption the Council is aware of all relevant facts. While proof of lack of such awareness may bear on "mistake" if material, this concept must be understood in context and must not be misused. The test of awareness is objective, not subjective. A classic case of unawareness of relevant facts, which Judge Davidson cited, is Bonnie View Club v. Glass, 242 Md. 46 (1966). There, an unknown abandoned underground mine essentially prevented development under existing zoning. It was not discovered until after the legislative decision.

The "mistake" standard does not invite open-ended inquiry into the subjective thought process of a legislator, or how each detail was thought about or considered. A long-standing principle disallows inquiry into "... motives of the legislature in the enactment of laws, lest the legislature be subordinated to the courts." County Council for Mont. County v. District Land Corp., 274 Md. 691 (1975). We will discuss this further in Section IX below on the admissibility of Councilman McIntire's May 1, 2001 letter.

In the Coppolino-Boyce-Dorsey trilogy, the courts found the evidence and claims in each case insufficient as a matter of law to overcome the comprehensive zoning legislation. The claims in those cases echo the claims here. They included allegations of environmental constraints or other obstacles to development in the existing zoning, allegations that the requested zoning is appropriate for the surroundings, and/or citations to support for the request in master plan or planning office recommendations. Indeed, the arguments in the present case do not rise even to the level of the arguments found insubstantial in the trilogy.

The trilogy also reconfirmed the concept that the master plan, as with all planning recommendations, is advisory with respect to legislative rezoning "in accordance with a comprehensive plan." The Court of Appeals clarified this in the first case dealing with Baltimore County's quadrennial zoning process, Nottingham v. Baltimore County, 266 Md. 339 (1972):

> "Zoning or rezoning in accordance with a comprehensive plan is a legislative function.... There is no requirement that the comprehensive plan [map] adopted by the legislative body must conform to the recommendations of the master plan...."
>
> "...A zoning agency is not bound to follow every detail of a land use plan. As we understand it, such a plan is simply a basic scheme generally outlining planning and zoning objectives in an extensive area. It is in no sense a final plan and is continually subject to modifications in light of the actual land use development. It serves as a guide rather than a strait-jacket."

The Baltimore County Charter has remained a guide via the 1978 amendment of Section 523. Subsequently, a very specific Towson master plan recommendation against new office buildings west of Bosley Avenue in West Towson was found not mandatory in People's Counsel v. Webster, 65 Md.App. 694 (1986).

V. Later Baltimore County Appellate Cases

In 1987, the CSA issued Bancroft Homes, Inc.v. People's Counsel, No. 221, September Term, 1987, attached. This unreported opinion may be reviewed inasmuch as it is arises from this Board and is in its records. *It involved a request for D.R. 16 zoning* on land zoned D.R. 5.5 on Smith Avenue, virtually across from the Bonnie View Country Club, but surrounded by apartments and high density townhouses at Bonnie Ridge and in

the Jones Falls valley. There are similarities between that case and the present one, in that the petitioner produced a parade of experts to argue the high density surroundings and the difficulty of developing on D.R. 5.5 zoning. This Board granted the rezoning and was then reversed in the courts. The Board may take notice that there is now a very nice D.R. 5.5 townhouse development at the site called The Greens at Smith.

The most recent residential density case is People's Counsel v. Beachwood, 107 Md.App. 627 (1995). There, this Board granted D.R. 3.5 in place of D.R.1 zoning on a tract on Back River, based in part on Planning Board and OPZ staff recommendations. In an extensive opinion, the CSA reversed. Judge Charles Moylan reinforced the rule favoring comprehensive zoning, which does not tolerate subversion by conclusory planning opinions. He wrote, among other pertinent points:

> "The fact that the 1992 Comprehensive Zoning departed from earlier comprehensive zonings is of no consequence. The fact that the D.R. 1 zoning is out of character with surrounding zoning does not *per se* establish a mistake on the part of the County Council. The fact that the County Master Plan, as a set of guidelines, may have suggested a more intensive zoning does not establish a mistake on the part of the County Council. The fact that a more intense residential zoning would have been compatible with surrounding circumstances does not, *ipso facto*, establish that the D.R. 1 zoning was not also compatible. The fact that a more intense residential zoning would have made development of the tract more advantageous to the property owner does not establish a mistake in the Comprehensive Zoning." 107 Md.App. at 658-59.

The case also involved arguments relating to site constraints – such as wetlands, roads, and sewage – and disappointment of the developer's expectations.

VI. Expert Testimony and Conclusory Opinions; Citizen Testimony

Expert planning and zoning testimony has a looser, more subjective quality than expert testimony in most other areas of the law. Planning is not a science. It is primarily a mixture of art and opinion as to what fits in an area. Anyone with a background in engineering, landscape architecture, land planning and development can present as an "expert" in zoning and become facile in giving opinions on any matter. Usually, experts are on the side of property owners interested in resale or development. There are no hard and fast rules. Judge Luttig's observations for the U.S. Court of Appeals in AT&T Wireless v. City Council of Virginia Beach, 155 F.3d 423 (4th Cir. 1998) are apt here:

> "In all cases of this sort, those seeking to build will come armed with exhibits, experts, and evaluations. Appellees, by urging us to hold that such a predictable barrage mandates that local governments approve applications, effectively demand that we interpret the Act so as always to thwart average, nonexpert citizens; that is, to thwart democracy."

The usual expert parade arrived in the present case.

To guard against routine acceptance of such testimony, the appellate courts have held consistently that expert evidence is not entitled to weight unless based on strong substantial supporting facts and sound reasoning. People's Counsel v. Beachwood, 107 Md.App. 627, 649-51 (1995). Judge Moylan wrote at page 650:

> "A self-evident reason for rejecting as an effective catalyst an expert opinion that a mistake was made is the fact that the opinion is merely conclusory or is, at best, quasi-conclusory."

Furthermore, "... the opinion of an expert is of little or no weight in the absence of strong supporting facts..." *Ibid.* Judge Moylan went on:

"There have been numerous occasions when the Court of Appeals has held that the testimony of expert witnesses that there had been a mistake was not sufficient to generate a fairly debatable issue with respect to mistake. On a number of occasions reclassifications by the [Baltimore] County Board of Appeals, finding a mistake on the basis of such opinions, were overturned." Pahl v. County Board of Appeals, 237 Md. 294 (1965)...; Brenbrook Const. Co. v. Dahne, 254 Md. 443 (1969)...; Creswell v. Baltimore Aviation, 257 Md. 712 (1970)...; Stratakis v. Beauchamp, 268 Md. 643 ... (1970). On another occasion, it was a reclassification by the Zoning Commissioner of Baltimore County based on an unsupported expert opinion that was held to have been without the benefit of substantial evidence of mistake. Agneslane, Inc. v. Lucas, 247 Md. 612 (1967)."

Here, as explained in Section VIII, *infra*, Petitioner's principal expert, Timothy Madden, gave unfounded opinions lacking in sufficient substance to deserve any weight. Jeffrey Long of OPZ followed with an equally conclusory and vapid Planning Board report. He also sponsored and relied on the introduction of the aforesaid May 1, 2001 letter from Councilman McIntyre, also to be reviewed in our section on analysis.

In contrast, Mr. Thompson presented cogent, specific testimony on relevant issues. He was the only witness with real-life knowledge of the area and problems which high-density zoning would aggravate. He was educated, articulate, and a good observer. Ms. Durham and Ms. Perry also gave helpful specific information, which corroborated Mr. Thompson's. The Court of Appeals has recognized the value of citizen testimony since Eger v. Stone, 253 Md. 533 (1969). There, the issue was traffic congestion and overcrowding in a special exception case. These also bear on the appropriateness of the zoning classifications at issue here.

VII. The Notice Problem

It became apparent during Mr. Thompson's testimony and from e-mails that some citizens had difficulty seeing the sign posted on the property. The explanation for this, in retrospect, is that the sign faced Lyons Mill Road. Mr. Thompson was finally able to see the sign because it is on the way from Whitehurst east to Owings Mills Boulevard. On the other hand, residents of Lyonswood – Ms. Durham and Ms. Perry – would ordinarily take Lyons Mill Road west and turn right at Owings Mills Bouleverd on their way to I-795 or other points north. Taking this route, they would not see the sign, as it did not face the boulevard. It was only after our office found Ms. Durham's 2000 CZMP e-mail and ultimately searched out her phone number and reached her that she, and through her Ms. Perry, found about the hearing. By then, however, they had work obligations and could not attend. While it is possible that some Lyonswood residents might on occasion drive up Lyonswood Road past the intersection, we have reason to believe, and have received one other phone message to the effect, that others were unaware of the hearing.

Under the circumstances, while we did not ask for a continuance, we ask the Board to give particular consideration to the e-mails. They were specific and should not be discarded as generalized citizen opposition. In addition, while there may be no perfect way to post a sign, it seems that on large properties, especially where oriented to several roads, consideration should be given in the future to an additional sign. This is the only way most residents find out about the hearings.

VIII. Analysis

A. There Is No Mistake

In a nutshell, Petitioner centers its claim on environmental constraints said to affect the mapped D.R. 5.5 zoning, on the "compatibility" standard for D.R. 5.5 group and multifamily housing, on the immediate proximity of apartments zoned D.R. 16, and on the recommendations of the master plan and planning office:

1. **Environmental constraints**. The constraints to which Mr. Madden testified are the forest buffer and the two transcontinental pipelines. The trees are readily visible and the pipelines are well-known and identified on county maps.

Petitioner had voluntarily accepted the buffer delineation to promote development of the adjacent Owings Run apartments and had obtained a variance there. This is not a hardship, but rather an agreed reasonable buffer in the area. All residential development is subject to forest buffer standards under Title 14 of the County Code.

This buffer left the remaining vacant 18 acres here with an area of 9-10 acres for development. This, in turn, divides into sections of over 7 acres and a little less than 2 acres. A further variance would be necessary to connect them.

The two pipelines are constraints only insofar as prospective building envelopes. Roads may cross them, as is common along their routes throughout the county. Indeed, the 1000 scale zoning map shows these pipelines running through or near other residential developments of varying types, and zoning density.

Petitioner has not alleged that constraints leave the property unusable in the D.R. 5.5 zoning classification for uses permitted by right. Indeed, Madden actually tried to

downplay the large difference between allowable development in D.R. 5.5 and D.R. 16 zones. While the higher density calculates to an allowance of about 300 units, Madden guessed that the site could accommodate practically about 120 multifamily units. Ironically, this fits the range of the D.R. 5.5 allowance of over 100 units. A property owner has no right either to the maximum number of lots a property can physically accommodate, or to the zoning which satisfies his preferred scope of development. If that were true, zoning would collapse like a house of cards.

Both north and south of Lyons Mills Road, there are recent nearby developments of single-family homes or townhouses under D.R. 3.5 and D.R. 5.5 zoning and older single-family homes, all in proximity to multifamily housing. Petitioner clearly has the option to develop the subject property with any housing mix up to about 100 units.

Indeed, environmental constraints should logically lead to less density, not more. This is especially true as Petitioner accepted the constraints to maximize development of Owings Run, and get a variance there. To twist these same constraints into a justification for more density both distorts common sense and seriously overreaches.

Keep in mind that Madden's hypothesis of limited potential of the site is not binding. It must be taken with a grain of salt. Petitioner has chosen not to submit a documented site plan. Therefore, approval of D.R. 16 zoning would leave Petitioner free to design around the environmental constraints, obtain further waivers, and/or maximize the height and length of buildings to approach more closely the 300 units there allowed.

Petitioner also failed entirely to address potential uses by special exception. There are numerous such potential D.R. 5.5 uses enumerated in BCZR 1B01.1C1-28. The

Court of Appeals has observed that uses permitted by special exception as well as by right should be considered in the evaluation of the mapped zoning in a rezoning case. Stratakis v. Beauchamp, 268 Md. 643 (1973).

It is telling that Petitioner never communicated its concern about environmental constraints to the County Council during the 2000 CZMP. If there were a legitimate argument, it was up to the Petitioner to make it then. It is also significant that Petitioner has not tried to develop or market the property as now zoned, but rather has come in immediately to regain the higher zoning.

The "environmental constraints" argument against D.R. 5.5 zoning is a charade, a mirage, and an afterthought. The D.R. 5.5 zoning turns out to be not just reasonable, but probably the best fit from an environmental point of view.

Boyce v. Sembly found insubstantial a more dramatic claim of environmental constraints.

> "The applicants contend that at the time of the comprehensive zoning of 1971 the Council erred in placing the subject property in the D.R. 5.5 zone because they failed to take into account the fact that the subject property was then unsuitable for residential development. A witness qualified in the fields of real estate and real estate appraisal and the contract purchaser of the subject property testified that it was 'unsuitable' for residential development because of its physical characteristics and its proximity to the railroad tracks. They stated that as much of the land in the western sector of the subject property lay in the flood plain, and was not usable for any purpose; that in order to provide access to the western portion of the tract it would be necessary to bridge Roland Run Stream at great expense; and that, in any event, the maximum permitted density of 35 units could not be achieved either by single-family residential development or apartment development because the eastern portion of the subject property , adjoining the railroad right-of-way, was undesirable for residential development while the western portion contained insufficient usable land for the construction of 35 units. They concluded that

> residential development on the subject property would be economically unfeasible and that the only reasonable use which could be made of it consisted of commercial use on the eastern portion of the tract with off-street parking located on the western portion.... They further conceded that the subject property was adjoined on the west and north by land upon which single-family development had taken place; that single-family development presently existed along the right-of-way of the railroad on land adjoining or lying in close proximity to the subject property; and that single-family development had recently occurred on land adjoining the railroad right of way in other communities located near Lutherville." 25 Md.App. 53-54.

In the present case, Petitioner does not even claim it is economically unfeasible to have residential development of any type in the D.R. 5.5 zoning. Rather, the claim is that multifamily housing is suitable from an area planning perspective and that it will be hindered by D.R. 5.5 "compatibility" review. To this, we now turn.

2. **Compatibility and "Compatibility."** Petitioner complains bitterly that D.R. 5.5 zoning includes a "compatibility" standard applicable to group and multifamily housing. Madden said that the mere existence of "compatibility" review by a hearing office would make the property hard to sell. Yet, he also said that the property can and should be developed compatibly, in the generic sense, at the much higher density D.R. 16 where there is no "compatibility" review.

This is doubletalk. It is to be remembered that compatibility in the generic sense is one of the elementary purposes of zoning. In Village of Euclid v. Ambler Realty Co., 272 U.S. 365 (1926), the Supreme Court spoke, among other things, of preventing the right thing in the wrong place. Code Sec. 2-356 makes reference to compatibility, as the Board Chairman pointed out. More particularly, BCZR 1B00.1H states:

"That the flexibility of density residential zoning has resulted, in some situations, in residential development that is incompatible with existing neighborhoods."

Again, all legislative zoning is restrictive in nature. It is based on the consensus that it advances the greater good – the public safety, health, and welfare – based on democratic principles. The County Council has found it proper to have specific "compatibility" review for group and multifamily housing in the medium density D.R. 5.5 zone, where all types of housing are allowed. This is not an oppressive requirement. It actually demands nothing more than what the developer should be doing anyway. The only difference is that it provides for neutral review of the developer's plan, rather than acquiescing to the unilateral self-interest of the developer.

In effect, Petitioner here wants the right to develop multifamily housing without oversight for compatibility and, by implication, in a manner that a hearing officer might or would find incompatible. Stripped of pretense, Petitioner wants the right to have an incompatible multifamily development. This is subversive of the public interest in land use control. That the D.R. 5.5 zoning gives the public greater protection is a good thing, not a bad thing. It allows for multifamily housing, subject to review.

The Court in Beachwood rejected a more attractive argument for compatibility argument accompanied by a documented site plan. Petitioner's argument here is not close to being substantial enough to overturn comprehensive zoning.

3. Density; multifamily and other types of housing. The idea that high density zoning for multifamily housing is the only legal zoning here is another myth. It is usual in rezoning cases for a Petitioner to claim that requested high density zoning fits better in

the surroundings or accords with the master plan. Coppolino, Bancroft Homes, and Beachwood illustrate variations on the same theme that the nature of the area and good planning call for higher density.

If it were mandatory to follow the recommendations of planners and developer's experts, it would be pointless to have comprehensive zoning. The County Council is elected and responsible to draw the zoning boundaries, including those for residential density. There is no mechanical rule that the legislature must zone for the identical density on any particular length or strip of land. There are many areas in Baltimore County where single-family homes, townhouses, and multifamily housing are part of a neighborhood mix. These are judgment calls.

Here, moreover, the claim of exclusive surrounding high-density apartments dissolves in the bigger picture. The townhouses in Lyonsgate to the west zoned D.R. 5.5 contradict the claim. The single-family homes and townhouses to the east, closer to Painters Mill Road, occupy a large area. Then, immediately to the south are the single-family home developments of Lyonswood and Whitehurst, flanking the cornfield and historic home. This is a mixed area. The addition of more high-density apartments is as likely to be a curse as a blessing.

That these single-family homes and townhouses are of recent vintage confirms demand for a variety of housing. Indeed, Mr. Thompson viewed demand as greatest for the single-family homes and townhouses, and found there were enough apartments already, without even counting multifamily housing still in the development process.

D.R. 5.5 zoning here has as much, or more justification than the D.R. 5.5 zones upheld in Coppolino, Boyce, and Bancroft Homes, and the D.R. 1 zoning in Beachwood.

4. The Master Plan. The Master Plan 2010 text actually supports the D.R. 5.5 zone. It recognizes the predominance of townhouses, condominiums, and apartments. It calls for a review of properties zoned for high density.

No one doubts the county identified Owings Mills as a growth area in the late 1970s/early 1980s. The zoning and development of the town center, Newtown, and infrastructure reflect that plan. But plans adjust over time. By the end of the millennium, Owings Mills was bursting at the seams, and the Master Plan as much as said that.

At the same time, the Master Plan Land Use Map for Owings Mills gives a mixed picture for the subject site. When confronted with the variation in color coding at the northwest corner of Owings Mills Boulevard and Lyons Mill Road, Petitioner had to try to rationalize that the map showed an incorrect alignment for Owings Mills Boulevard. That is a weak explanation.

Even if the map did identify this site as for multifamily use alone, this would merely reflect the D.R. 16 zoning on the comprehensive map prior to the 2000 CZMP. It would not preclude review and rezoning in the legislative process. In any event, the master plan is ultimately a guide, and not mandatory.

5. The Planning Board Report. The current report is general and descriptive in nature. Even at that, it is incomplete and misleading. It does not give a sense of the variety of land use, zoning, and development in the area. It does not mention the

congestion problems which have so plagued the area that the Master Plan called for reconsideration of high density zoning.

On its face, it does not go so far as to state that the Council made a mistake in year 2000, much less bring forward any facts to justify such a conclusion. It merely recommends that the rezoning be approved. There are no reasons. It is a bad report. Even if it were a good report, and well-founded, it again is merely advisory.

B. The Rezoning Is Not Warranted

The above analysis of Petitioner's claims on mistake is also relevant to the issue of whether high density zoning is warranted. For reasons stated, these factors logically point to lower density, just as the Council decided.

But there is more. Upon inquiry as to the factors enumerated in Sec. 2-356(j)(2), Timothy Madden answered virtually in rote or boilerplate style, with abstract statements about the capacity of nearby signalized intersections, the availability of public water and sewer, and the advantages of apartments. He does not live in Owings Mills, and gave no indication of having any sense of daily life. He was either unaware or indifferent to traffic congestion, elementary school overcrowding, paucity of services (libraries, recreation, fire stations, supermarkets), and Master Plan recognition of problems in this area. He had no concern for citizens in Lyonswood, Whitehurst, or Lyonsgate. He showed no interest in the cornfield or the historic Persimmon property. His vision was narrow and distorted so as to support only masses of apartments.

In contrast, Mr. Thompson showed specifically how the area was already overcrowded. Through him, we learned of the overcrowded elementary school and

limited recreational opportunities, congested traffic, distance from fire services, and limited local shopping options. Being familiar with development in the area, he observed that high-density zoning would generate more population and traffic than low-density housing. This is common sense. He also disagreed with Petitioner's premise that children do not live in apartments there but rather are concentrated in single-family houses.

Not a single citizen residing in the area supports the request for D.R. 16 zoning. The citizens who wrote in or sent e-mails corroborated Mr. Thompson's concerns. Remarkably, they exemplify concerns which the Master Plan identified in calling for zoning review of properties zoned in high-density classifications. The County Council reviewed this property in light of these concerns. It found D.R. 16 zoning excessive and unwarranted. There is no substantial evidence to contradict this finding.

IX. The CBA Should Exclude the Post-Map Process Letter from a Council Member. In Any Event, the Letter Does Not Prove "Mistake."

The quadrennial comprehensive zoning map process provides ample opportunity for public participation, review, and then legislative action. Within the framework of the process, all interested persons have a fair opportunity for input. Once it is over, Council review ends until the next process. In the meantime, the County Board of Appeals may consider rezoning petitions within limited parameters.

The process does not allow for post-map inquiry into the subjective mental state of any legislator. Nor does it not allow for post-map lobbying. The CBA, with one exception, has never allowed testimony by Council members or testimony about what Council members said or thought about during the process. In that exceptional case,

Toll House, Inc., 95 CV 0871, attached, the Board denied the reclassification anyway. On appeal, the Circuit Court affirmed. In rejecting Petitioner's argument based on the testimony of former Councilman Mintz, Judge Hinkel said that "... whether Mr. Mintz's testimony is even admissible in evidence is questionable." Page 16.

Here, Petitioner's offer via Jeffrey Long of Councilman McIntire's May 1, 2001 letter to the Planning Director was tantamount to an offer of testimony from the Councilman. It not only violates basic principles of Maryland law, but also suffers from the aggravating due process of law problems that the Councilman was not present for cross-examination as to whether he contemplated his letter might be offered in evidence and about what representations Petitioner made to secure the letter. For example, did the Petitioner claim that the "environmental constraints" made the property unusable? Did the Petitioner make clear that the constraints were appropriate forest buffer constraints agreed to as part of the Owings Run process? Did the Petitioner claim there was no opposition to the rezoning? Once a letter is allowed in the fashion allowed here, then it would only be fair to have the Councilman available for testimony. But, in the form of a letter or testimony, the admission and/or consideration by the Board of such evidence would be a post-map invasion of the sanctity of the legislative process. It also would invite one-sided lobbying efforts without any safeguards for other interested parties. It would open the floodgates to subpoenas of Council members in future cases. Moreover, the interest in protecting against the admission of such evidence adheres to the public in general and to the legislature as an institution.

Judge Hinkel cited County Council for Montgomery County v. District Land Corp., 274 Md. 691 (1975), which we quoted earlier. In District Land, the Court also said:

> "As a general rule, the motives, wisdom, or propriety of a municipal governing body are not subject to judicial inquiry... In addition, individual council members and other city officials may not testify as to the motives actuating council action, as recorded in its minutes, nor may they testify as to what they intended or meant by an adopted measure."

The Court confirmed, moreover, that this principle applies to zoning cases.

The CSA in Montgomery County v. Schooley, 97 Md.App. 107 (1993) discussed the problem extensively when a party sought to depose a council member to secure evidence of legislative intent on a redistricting plan. Chief Judge Wilner described it as bringing into play the common law principle of legislative privilege and absolute immunity. He also explained that the privilege is not merely personal to each member of the legislative body. Rather, when the action of the legislature is under attack,

> "It is, indeed, the cumulative effect of these individual privileges that serves the broader purpose of the privilege – protecting the independence and integrity of the Legislature as an institution of republican government. The problem is a very practical one, but one that raises quite clearly the underlying Constitutional concern."
>
> "If the attack is on the legislative process itself or on the end product of that process, rather than on the conduct of an individual legislator, the motivation and legislative conduct of each member associated with the challenged process or product necessarily comes into question. If even one member is permitted to waive his individual privilege and testify in support of the attack, the other members will, perforce, be required either to respond or risk the consequence of an adverse judgment based, at least in part, on the unfavorable testimony of their colleague. When viewed in that context, the waiver by one legislator of his privilege may, in effect, dictate the waiver by other legislators of their privilege. One willing member could thus cripple the privilege of other members and be the instrument for

> dismantling the separation of powers pillar upon which the privilege is, in part, based." 97 Md.App. at 120.

The Court also cited Schlitz v. Commonwealth, 854 F.2d 43 (4th Cir. 1988); Baker v. Mayor & City Council, 894 F.2d 679 (4th Cir. 1990); and Hollyday v. Rainey, 964 F.2d 1441 (4th Cir. 1992) to support its position. He also invoked the similar concerns arising where attempts are made to depose members of quasi-judicial administrative agencies. Public Service Commission v. Patuxent Valley, 300 Md. 200 (1984). Thus, County Board of Appeals members cannot be deposed either to explain what they mean in a given opinion, to admit that they failed to consider some problem, or to criticize or undermine an opinion, whether it be majority, minority, or dissenting.

In view of the institutional scope of the problem, these concerns and cases also led Judge Wilner to the additional conclusion of the Court that the County, in effect the public, has standing to invoke the privilege and object to such proposed evidence, whether in discovery or at trial. Here, Councilman McIntire has not waived his privilege. It is not clear that he intended his letter to be used in evidence. In any event, he would not be in a position to waive the institutional privilege which flows from the separation of powers doctrine. This is a fundamental problem, and it would be plain error for the Board here to admit or give weight to the May 1, 2001 letter.

The danger in admitting the letter is of just the type which concerned Judge Wilner. The statements made in the letter invite further inquiry as to whether the Councilman understood the weakness of the environmental constraints argument or was otherwise given incomplete information or misled. Based on the objective evidence in

the present case, it is apparent that the "environmental constraints" do not support an argument for mistake, and that the Council's action was never mistaken with respect to environmental constraints or anything else. In other words, the Councilman's letter itself does not provide a substantial basis to conclude there was a mistake. But its very admission might influence a decision-maker simply because of the conclusion.

There is a further problem in admitting the letter in the manner offered here. It tends to give area residents the impression that real estate investors and developers have favored access to a one-sided post-map lobbying process.

In their zeal to win the case, the Petitioner and the Planning Office's sponsorship of this letter have combined to endanger the institutional framework of the legislative process and to give the appearance that piecemeal rezoning has engrafted to it an indefinite lobbying process which is stacked against the citizens.

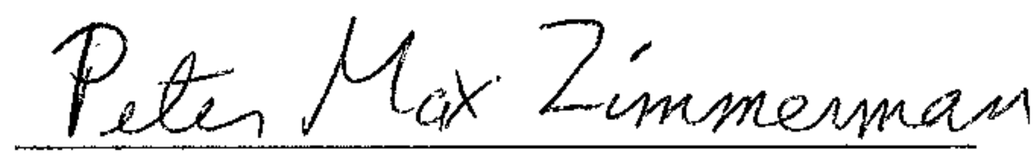
Conclusion

This is a case of a disappointed property owner seeking to regain the high density zoning which the Council judged excessive at the time of the 2000 CZMP. It is not a hardship case. There is no emergency. This property owner has successfully invested in and marketed property in Owings Mills for a long time. It has owned the subject property for many years and has chosen not to sell it or develop it. There is no complaint that the property owner has lost money on its investments, taken as a whole or with reference to this property. As with hundreds or thousands of other property owners, it must abide by legislative judgment.

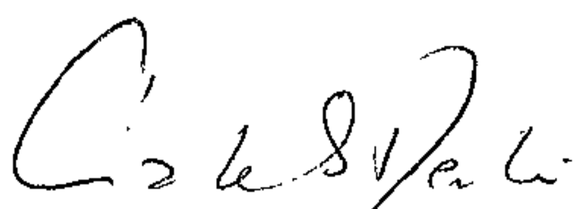
It may develop the property at D.R. 5.5 zoning. Or it may wait and try to make a better argument for D.R. 16 zoning in the 2004 CZMP process. The present timing is particularly bad for a request for high-density zoning. This area of Owings Mills is overcrowded and saturated. The great hopes of planners in the 1970s and 1980s has led to mixed results and unintended excesses. The County Council has had to grapple with how to adjust this growth area to maintain some reasonable level of quality of life.

The 2000 CZMP reclassification of the subject property was part of this adjustment process. The citizens who live in the area and who have participated in the CZMP and in this case are supportive of the Council's judgment.

Under all the circumstances, this piecemeal rezoning classification is not legally supportable and is not in the interest of the neighborhood community. To grant it would undermine the comprehensive zoning map process to satisfy the immediate desires of one investment partnership.



PETER MAX ZIMMERMAN
People's Counsel for Baltimore County



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10/19/01

IN THE MATTER OF PAINTERS MILL VENTURE, LLP	*	BEFORE THE
	*	COUNTY BOARD
PETITION FOR RECLASSIFICATION FOR THE PROPERTY LOCATED AT	*	OF APPEALS OF
NORTHWEST CORNER OF OWINGS MILLS BOULEVARD	*	BALTIMORE COUNTY
AND LYONS MILL ROAD	*	
		Case No. R-01-435
2ND ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	
	*	

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PETITIONER'S MEMORANDUM IN SUPPORT OF PETITION FOR RECLASSIFICATION

Painters Mill Venture, LLP ("Painters Mill Venture"), Petitioner, by Robert A. Hoffman with Venable, Baetjer and Howard, LLP, its attorney, respectfully submits this Memorandum in support of its Petition for Reclassification, as follows:

INTRODUCTION

On February 28, 2001, Painters Mill Venture filed a Petition for Reclassification accompanied by an undocumented site plan for an 18.3 acre parcel of land located at the northwest corner of Owings Mills Boulevard and Lyons Mill Road, on the south side of Lakeside Drive in Baltimore County. See Petitioner's Exhibit No. 1. The subject property is currently split-zoned D.R.5.5 (18.17 acres) and D.R.16 (0.13 acres). See Petitioner's Exhibit No. 1. Specifically, Painters Mill Venture's Petition for Reclassification requests that 18.17 acres of the 18.3 acres be rezoned from D.R.5.5 (Density Residential, 5.5 dwelling units per acre) to D.R.16 (Density Residential, 16

density units per acre), which would permit a higher density residential use of the property. See Baltimore County Zoning Regulations, Section 1B02.2.A ("B.C.Z.R.").

During the 2000 Comprehensive Zoning Map Process ("CZMP"), the Baltimore County Planning Staff initiated a number of map issues for significant, undeveloped parcels of land in the Owings Mills area, including the Painters Mill Venture parcel. See People's Counsel Exhibit No. 6. Through Issue No. 3-136, the Planning Staff proposed the down-zoning of the Painters Mill Venture property, which, at the time, was zoned D.R.16 in its entirety, to D.R.3.5 or D.R.5.5, or, in the alternative, to retain the existing D.R.16 zoning classification. See People's Counsel Exhibit No. 5. In June of 2000, the Office of Planning recommended that the property's D.R.16 zoning remain unchanged, revising its original D.R.5.5 recommendation. (T., p. 88) The Office of Planning revised its recommendation after considering the high-density residential development that surrounds the property. (T., pp. 93-93) On June 15, 2000, the Baltimore County Planning Board also recommended that the property's D.R.16 zoning be retained. See Petitioner's Exhibit No. 5 and People's Counsel Exhibit No. 6. Against the recommendation of the Office of Planning and Planning Board, on October 10, 2000, the County Council of Baltimore County ("County Council") down-zoned 18.17 acres of the Painters Mill Venture property to D.R.5.5, leaving only a sliver of D.R.16 zoning. See People's Counsel Exhibit No. 6.

Painters Mill Venture now seeks to have the D.R.5.5 zoned portion of its property returned to D.R.16 zoning. If the rezoning is secured, Painters Mill Venture could develop the property with high-density, multi-family residential housing, a use permitted by right in the D.R.16 zone.

Appearing before the County Board of Appeals of Baltimore County ("Board of Appeals") on its Petition for Reclassification, Painters Mill Venture had the burden of proving its entitlement to the requested reclassification by demonstrating that the requirements of Section 2-356(j) of the Baltimore County Code ("B.C.C.") had been met. As outlined below, Painters Mill Venture produced strong and substantial evidence on each of the requirements. The Board, therefore, should grant the requested relief, which would enable Painters Mill Venture to develop the property for multi-family residential housing.

ARGUMENT

Based on the Evidence Presented before the Board of Appeals, Painters Mill Venture is Entitled to the Requested Reclassification.

As discussed above, Painters Mill Venture has requested reclassification of the D.R.5.5 zoned portion of its property to D.R.16. Section 2-356(j)(1) of the Baltimore County Code provides for two separate and distinct ways by which a property can be reclassified. To reclassify a property, the Board must find either "a substantial change in the character of the neighborhood" or "that the last classification of the property was established in error." B.C.C. § 2-356(j)(1). Painters Mill Venture has requested reclassification based on an error by the County Council in the 2000 CZMP.

According to the well-developed law of Maryland, courts have generally used the terms "error" and "mistake" interchangeably. People's Counsel v. Beachwood I Ltd. Part., 107 Md. App. 627, 641 (1995); Boyce v. Sembly, 25 Md. App. 43, 44 (1975). Error or mistake can be established by showing that, at the time of the last comprehensive

rezoning, "the County Council failed to take into account then existing facts, or projects or trends which were reasonably forseeable of fruition in the future, so that the Council's action was premised initially on a misapprehension." Beachwood I Ltd. Part., 107 Md. App. at 645; Boyce, 25 Md. App. at 51-52.

In reviewing the Council's action, the County Council is presumed to have considered all relevant facts and circumstances. Beachwood I Ltd. Part., 107 Md. App. at 645-46. In order to overcome that presumption, a petitioner has the burden of proving: (1) there were then-existing factors that made the rezoning incorrect; and (2) the literal failure of the County Council to have considered those factors. People's Counsel v. Prosser Co., 119 Md. App. 150, 179 (1998); Beachwood I Ltd. Part., 107 Md. App at 645; Boyce, 25 Md. App. at 52. One way of meeting this burden is for a petitioner to show that "specific physical facts were not readily discernible at the time of the comprehensive zoning." Boyce, 25 Md. App. at 52.

Once error is established, the Board must then make a finding that the prospective reclassification is "warranted." People's Counsel v. Mockard, 73 Md. App. 340, 347 (1987). In doing so, the Board must consider each of the factors enumerated in B.C.C. Section 2-356(j)(2) and articulate findings that an error occurred and reclassification is warranted based on those factors. Id. at 349-50. See also B.C.C. § 2-356(n).

As outlined below, Painters Mill Venture produced strong and substantial evidence before the Board to prove that: (1) the County Council committed an error in rezoning the property during the 2000 comprehensive rezoning process; (2) and reclassification of the property is warranted.

1. The County Council Erred in Rezoned the Painters Mill Venture Property.

In order to prove its entitlement to the requested reclassification, Painters Mill Venture first had to demonstrate that the County Council "erred" in rezoning the subject property. To meet this burden, Painters Mill Venture had to prove that factors existed in the Fall of 2000 that made the rezoning from D.R.16 to D.R.5.5 incorrect and that the Council failed to take those factors into consideration when it rezoned the property. In the hearing before the Board of Appeals, Painters Mill Venture proved, by way of numerous exhibits and expert testimony, that these requirements had been met.

Painters Mill Venture produced the testimony of Scott Rouk, a registered landscape architect responsible for preparing the reclassification site plan (formerly with Morris & Ritchie Associates, Inc.), and the testimony of Timothy Madden, a certified land planner and registered landscape architect, who was accepted by the Board as an expert in the areas of land planning and landscape architecture. See Transcript of Proceedings before the Board of Appeals, dated September 26, 2001 ("T."), pp. 16-17, 47-48. As these experts testified, the property is severely environmentally constrained, and these environmental constraints, which have existed since before the Fall of 2000, render the present D.R.5.5 zoning inappropriate. (T., pp. 27-30, 66-70, 72)

As Mr. Rouk and Mr. Madden explained, there is an approved forest buffer easement located along the western boundary of the Painters Mill Venture property. (T., pp. 27-30, 66) The forest buffer easement prohibits development on the entire western side of the property. (T., p. 29); Petitioner's Exhibit No. 1. At one point, the buffer widens to effectively divide the property in half. Petitioner's Exhibit Nos. 1 and 3. On

cross-examination, Mr. Madden admitted that there is a process by which to request a modification/reduction of the forest buffer area on the property. (T., pp. 30-31) However, as Mr. Madden explained, the Department of Environmental Protection and Resource Management has already granted one such modification, eliminating the possibility that the Department would grant a further reduction of the buffer area.[1] (T., pp. 67-68)

The property is further constrained by two transcontinental gas line easements, which divide the remainder of the property into three separate developable parcels: a 1.59 acre parcel adjacent to Lakeside Drive; a 5.72 acre parcel adjacent to Owings Mills Boulevard; and, to the south, a 1.9 acre parcel located at the northwest corner of Owings Mills Boulevard and Lyons Mill Road. (T., p. 28); Petitioner's Exhibit Nos. 1 and 3. Development is prohibited within these easement areas as well. (T., p. 28) Additionally, there are restrictions governing any possible road connections between the developable parcels, which further restrict development of the site. Connecting roads are only permitted across the gas line easement areas at ninety degree (90°) angles, and such connections are only permitted if no substantial grading changes are required.[2] (T., p. 70) Because the property is a "rolling" piece of land, Mr. Madden testified that opportunities to provide connections between parcels would, therefore, be limited. (T., p. 70)

Taking into consideration the property's limited developable area, multi-family residential housing, which is permitted by right in the D.R.16 zone without restrictions,

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[1] Similarly, Mr. Rouk testified that the forest buffer area has been "approved and established" and "cannot be disturbed in the eyes of [the Department of Environmental Protection and Resource Management]." (T., p. 31)

[2] Mr. Madden testified that grading changes in excess of two (2) feet are not permitted in the transcontinental gas line easement areas. (T., p. 70)

but not the D.R.5.5 zone without the added requirement of proving compatibility, is the best use for the property.[3] (T., pp. 71, 102-04, 138-39) See also B.C.Z.R., §§ 1B01.A.1.c and d. Because it is developed vertically rather than horizontally, such development would be more compatible with the environmental restrictions on the property. (T., p. 138) Multi-family housing does not require rear yard areas, and there would be no demand for rear yard accessory structures, such as swimming pools or sheds. (T., 138-39) Additionally, multi-family housing would not require multiple access points or road connections between residential housing units associated with lower density, single-family detached housing. (T., 70-71) Therefore, less developable land is required. (T., pp. 70-71, 138-39)

Based on all the evidence and testimony presented during the hearing, this Board should find that, in accordance with B.C.C. Section 2-356(j)(1), Painters Mill Venture demonstrated that the severe environmental constraints on the property render the property's D.R.5.5 zoning classification incorrect.

As further required, by B.C.C. Section 2-356(j)(1), Painters Mill Venture produced substantial evidence, through its witnesses, that the County Council failed to take these environmental constraints into account when it rezoned 18.17 acres of the property to D.R.5.5. Painters Mill Venture introduced a letter from Councilman T. Bryan McIntire, dated May 1, 2001, to Arnold F. "Pat" Keller. In this letter, Councilman McIntire indicated that, at the time of the 2000 CZMP, he was unaware of "severe

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[3] Mr. Madden testified that the compatibility requirement, applicable to D.R.5.5 zoned property only, would substantially impair Painters Mill Venture's ability to develop multi-family residential housing on the property. (T., pp. 100-05)

environmental constraints" on the property. See Petitioner's Exhibit No. 6. As Councilman McIntire explained:

> Toward the end of the last comprehensive Zoning Map Process, the above captioned property came under consideration for several uses. Working from the zoning map, I did not know there were several environmental restraints, which, in effect, divide the property into two developable portions. I therefore feel it only fair to the property owner that this matter be reconsidered in the out-of-cycle process and that the previous designation of DR16 be retained.

See Petitioner's Exhibit No. 6.[4]

Painters Mill Venture also produced the testimony of Jeffrey Long, Section Chief of the Development Review Section of the Office of Planning. (T., pp. 151-152) Mr. Long confirmed that his office never made the Councilman aware of any environmental constraints prior to the completion of the comprehensive rezoning process. (T., pp. 151-152) Additionally, Painters Mill Venture offered the testimony of Morton Macks, managing partner of Painters Mill Venture. (T., pp. 175-80) Mr. Macks explained that neither he nor any of his employees had any discussions with or submitted any information to the Councilman on the environmental constraints during the comprehensive rezoning process. (T., pp. 176-78)

Painters Mill Venture, therefore, presented overwhelming evidence demonstrating that the down-zoning of the property from D.R.16 to D.R.5.5 resulted from a "mistake" or "error" as defined by Maryland case law, which evidence was not rebutted.

2. The Requested Reclassification is Warranted.

In addition to proving that the County Council erroneously down-zoned the

---

[4] As indicated by Councilman McIntire's May 1, 2001 letter, the Councilman clearly had no knowledge of an exhibit in the Office of Planning's file, prepared by Morris & Ritchie Associates on behalf of Walgreens, that shows the location of the forested area on the property. Protestants were unable to produce any evidence to the contrary.

property, Painters Mill Venture also produced strong and substantial evidence that the requested reclassification is warranted. B.C.C. § 2-356(j)(2). On behalf of Painters Mill Venture, Mr. Madden testified regarding each of the factors enumerated in B.C.C. Section 2-356(j)(2). Mr. Madden examined each factor and, based on that examination, concluded, in his expert opinion, that the property was rezoned in error and the prospective reclassification is warranted. The evidence that Mr. Madden used to reach that conclusion with regard to each factor is provided below:

Populations Trends

Mr. Madden considered population trends and testified that returning the property to its D.R.16 zoning classification would have no adverse effect on the surrounding area. (T., p. 77) In formulating his opinion, Mr. Madden considered the property's being located within the Owings Mills Growth Area. (T., p. 52) The Owings Mills Growth Area, designated as "a receptor of growth for the county," was adopted as part of the 1984 Baltimore County Master Plan. (T., pp. 52-53, 76) Because the Growth Area concept permits the concentration of a mix of high-density development in one place, Mr. Madden explained that additional population was actually *intended* to be funneled into this area. (T., p. 76)

Availability and Adequacy of Present and Proposed
Public Facilities, Utilities, and Services

According to Mr. Madden, Baltimore County has made a significant investment, in the form of necessary infrastructure and county services, to support the high-density development intended for the Owings Mills Growth Area. (T., p. 76) Therefore,

sufficient public facilities, utilities, and services are available to support high-density, residential development of the property. (T., p. 85)

Transportation Facilities

The Painters Mill Venture property is located at the intersection of Owings Mills Boulevard and Lyons Mill Road and the intersection of Owings Mills Boulevard and Lakeside Drive. See Petitioner's Exhibit No. 1. Because these roads function well and their intersections operate at a level of service "A," Mr. Madden concluded that the surrounding roads provide "a more than adequate road network" and have sufficient capacity to support the proposed development. (T., pp. 77-78) In fact, Mr. Madden opined that the existing road network was "specifically designed" to accommodate higher density residential development on the Painters Mill Venture property. (T., pp. 61-62, 78) Painters Mill Venture dedicated the "entire right-of-way" in addition to road improvements for the portion of Owings Mills Boulevard adjacent to its property. (T., pp. 80-82) Painters Mill Venture's decision to do so was predicated on the fact that the property was zoned for high-density residential development. (T., p. 81)

Additionally, Mr. Madden explained that high-density residential development is "typically funneled towards [a] fewer number of more highly developed access points . . .." (T., p. 79) The property's predominant road frontage is on Owings Mills Boulevard, a minor arterial roadway. (T., pp. 18, 61) Typically, minor arterial roadways permit only a limited number of access points making them suitable for high-density development. (T., p. 61) While lower density, single-family detaching housing requires multiple access points, multi-family residential housing does not require *any* frontage on public right-of-

ways. (T., pp. 61, 70-71) Therefore, high-density residential development is the only appropriate residential use for the property. (T., pp. 61-62)

Water-Supply, Sewerage, and Solid-Waste-Disposal Facilities

Similarly, Mr. Madden concluded that the existing water-supply, sewerage, and solid-waste-disposal facilities are more than adequate to accommodate the property, if reclassified to D.R.16. (T., pp. 82-83). Because the water and sewer systems were designed to serve the full potential capacity of the entire Owings Mills Town Center, which was never developed to its full capacity, there is a built-in water and sewer reserve. These water and sewer systems are "immediately available" to the property. (T., pp. 82-83) See also People's Council Exhibit No. 2, pp. 174-75. It would be wasteful to put a low-density development on property served by such infrastructure built for higher density development. (T., p. 62)

Schools

Mr. Madden also testified that multi-family residential housing, permitted by right in the D.R.16 zone, generates fewer school children at the elementary, middle, and high school levels than lower density, single-family detached housing. (T., p. 84) Therefore, the D.R. 16 classification would have a lesser impact on area schools than the current D.R.5.5 zoning. (T., p. 84)

Recreational Facilities

Mr. Madden testified that recreational facilities have been put in place to support the high-density development originally intended for this property. (T., p. 85) Mr. Madden noted that Baltimore County has designed an excellent comprehensive recreation

and open space plan for the Owings Mills Growth Area. (T., p. 85) That plan includes the Northwest Area Park, which Mr. Madden characterized as "an excellent facility for active recreation," that will, in part, be comprised of ballfields and other active play areas, and the Red Run greenway system, which will create additional recreational opportunities for the residents in the area. (T., p. 85) Randy Thompson, a concerned citizen, agreed that "space-wise, there's probably going to be enough ballparks [and] fields, for the kids to play soccer and baseball . . .." (T., pp. 202-03)

Other Public Facilities

Mr. Madden identified fire and rescue and library services as other important public facilities that he considered. (T., p. 86) Each of those facilities is adequate or being upgraded to support high-density development on the property. (T., p. 86)

a. Fire and Rescue Services

Mr. Madden testified, in his expert opinion as a land planner, that there are adequate fire and rescue services available in Baltimore County. (T., p. 86) The County has designed a fire and rescue communication and distribution system and has the necessary equipment and manpower to support that system. (T., p. 86) Additionally, the property is located in close proximity to a large water main, which can adequately serve the fire protection needs of multi-family residential housing. (T., p. 62)

b. Library Facilities

Mr. Madden also testified that Baltimore County's library facilities are adequate. (T., p. 86) As Mr. Madden testified, the library system in the Owings Mills Town Center area is not overcrowded. (T., p. 116) While Mr. Thompson complained that there is no

"walk-in" library in the area, he admitted that he was unaware of any residential communities in Owings Mills that have a library within walking distance. (T., pp. 203, 214-15)

Compatibility of Uses Generally Allowable under the Prospective Classification with the Present and Projected Development or Character of the Surrounding Area

Mr. Madden testified that the Painters Mill Venture property is located in a "high-density area."[5] (T., p. 87) See also Petitioner's Exhibit Nos. 2 and 3. The property is surrounded by D.R.16 zoned properties with the exception of the Rite-Aid property, which is zoned BL. (T., p. 65) See also Petitioner's Exhibit No. 2. Additional multi-family residential housing, and the design guidelines associated with such development, would be compatible and not out of character with those adjacent properties. (T., pp. 86-87) Because low-density development does not "work well" in an area designated for high-density development, Mr. Madden explained that D.R.5.5 development would not be a suitable use for the property. (T., p. 87)

To supplement Mr. Madden's testimony, Painters Mill Venture also produced the testimony Mr. Long, who testified that "given . . . the proximity of the property to Owings Mills Boulevard and the adjacent [high-density] development to the west, . . . D.R.16 zoning as proposed is appropriate for this property." (T., p. 152) Similarly, William Hughey, Third District Planner for the Office of Planning, testified that the high-density development that surrounds the property confirms the appropriateness of the D.R.16 zoning classification. (T., pp. 193-94)

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[5] Mr. Scott Rouk testified that there is significant number of high-density residential developments, either completed or under construction, located in close proximity to the property. (T., pp. 19-26)

Even one of the Protestants, Stanley Dillon, a resident of Owings Mills, testified on direct examination, that he would not object to multi-family residential units in the form of condominiums on the property. (T., p. 219)

Any Pertinent Recommendation of the Planning Board or Office of Planning and Zoning

Mr. Madden also reviewed the recommendations of both the Office of Planning and the Planning Board. (T., pp. 87-89) The Office of Planning originally recommended that the property be rezoned D.R.5.5. (T., p. 162) In June of 2000, the Office of Planning revised that recommendation from D.R5.5 to D.R.16 prior to the Planning Board vote. (T., p. 88); Petitioner's Exhibit No. 5. Mr. Hughey testified that the recommendation was revised after "review[ing] the general land use areas around the site." (T., p. 193) On June 15, 2000, the Baltimore County Planning Board also recommended that the property retain its D.R.16 rezoning. (T., pp. 88-89); People's Counsel Exhibit No. 6. To support its recommendation, the Planning Board cited the 2010 Baltimore County Master Plan ("2010 Master Plan"), which indicates that the property is designated for multi-family residential housing.

Consistency of the Current and Prospective Classifications with the Master Plan

To reach his conclusion, Mr. Madden considered the 2010 Master Plan. (T., 89-94) In Mr. Madden's opinion, the D.R.5.5 zoning classification was placed on the property "without forethought and independent review of the Master Plan." (T., p. 75) As Mr. Madden explained, the proposed reclassification, though, is consistent "with all aspects of the Master Plan." (T., pp. 74-75, 89, 91, 142); Petitioner's Exhibit No. 5 and 6.

While Protestants speculated that the prospective classification was not consistent with the Master Plan, Mr. Madden, on cross-examination, disposed of all of the Protestants' concerns. (T., pp. 128-38) Mr. Madden testified that the entire property is designated for high-density residential housing. (T., p. 131) In doing so, Mr. Madden explained that, because the Owings Mills Growth Area Land Use map is not completely accurate with regard to the Owings Mill Boulevard road alignment, a fraction of the property is mistakenly designated for single-family detached housing. (T., pp. 130-32) The Protestants also raised speculation as to whether the proposed reclassification is consistent with the Master Plan's goal of achieving a balance between different residential housing types that emphasizes single-family detached homes. (T., pp. 133-34) On that issue, Mr. Madden explained, in striking such a balance, the Owings Mills Town Center area should be viewed as a whole, rather than examining small areas of the Town Center or individual properties in a piecemeal fashion. (T., p. 135)

County Plan for Sewerage and Water-Supply Facilities

As discussed above, Mr. Madden testified that the existing water and sewer facilities were "designed to the full potential capacity" of the entire Owings Mills Town Center. (T., p. 83) Mr. Madden noted that "full capacity" would include the Painters Mill Venture property, even if reclassified to D.R.16. (T., p. 84)

The Capital Program

Mr. Madden also considered the Capital Program in reaching his conclusion. (T., p. 94-95) Mr. Madden testified that the Capital Facilities Plan that pertains to the Owings Mills Growth Area and the property is near completion. (T., pp. 94-95) There are no

outstanding or additional capital projects required in order for the property to be developed consistent with the D.R.16 zoning. (T., p. 95)

Painters Mill Venture produced strong and substantial evidence on all of the relevant factors necessary for the Board of Appeals to find that an error occurred and reclassification is warranted. The Protestants presented no credible evidence to rebut that evidence.

CONCLUSION

As the above recitation of the evidence demonstrates, Petitioner Painters Mill Venture produced strong and substantial evidence of its entitlement to the requested reclassification. Therefore, Painters Mill Venture respectfully requests that the Board grant the reclassification from D.R.5.5 to D.R.16, which would allow Painters Mill Venture to develop high-density, multi-family residential housing on the property.

Respectfully submitted,

ROBERT A. HOFFMAN
Venable, Baetjer and Howard, LLP
210 Allegheny Avenue
P.O. Box 5517
Towson, Maryland 21204
(410) 494-6200

M.S. 2013

7-25-02

Theresa Shelton

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

07/26/02

Case Number: 03-C-02-001171 AE
Date Filed: 02/04/2002
Status: Closed/Inactive
Judge Assigned: To Be Assigned,
Location :

In The Matter of: Painters Mill Venture L L C

C A S E H I S T O R Y

02 JUL 26 AM 10:29

OTHER REFERENCE NUMBERS

Description	Number
Case Folder ID	C02001171V01
Administrative Agency	R-01-435

INVOLVED PARTIES

Type	Num	Name(Last,First,Mid,Title)	Addr Str/End	Disposition Addr Update	Entered
PET	001	Painters Mill Venture L L C		BT SS 04/02/02	02/04/02
			Party ID: 0477503		

Capacity : Legal Owner
Mail: 4750 Owings Mills Blvd 02/04/02
Owings Mills, MD 21117

Attorney: 0016339 Zink, John H Appear: *02/04/2002* *02/04/02*
Venable, Baetjer & Howard, LLP
P O Box 5517
210 Allegheny Avenue
Towson, MD 21285-5517
(410)494-6200

Type	Num	Name(Last,First,Mid,Title)	Addr Str/End	Disposition Addr Update	Entered
ITP	001	County Board Of Appeals Of Baltimore County	Party ID: 0477504	BT SS 04/02/02	02/04/02

Capacity : Agency
Mail: Old Courthouse Room 49 02/04/02
400 Washington Avenue
Baltimore, MD 21204

Attorney: 0029075 Zimmerman, Peter M Appear: 03/05/2002 03/05/02
People's Counsel For Baltimore County
Room 47 Courthouse
400 Washington Ave
Towson, MD 21204
(410)887-2188

CALENDAR EVENTS

Date	Time	Dur	Cer	Evnt	Lvl	Atty	Jdg	Day	Of	Rslt	By	ResultDt	Jdg	T	Notice	Rec	User ID
07/03/02	09:30A	01H	yes	CIVI	S		TBA	01	/01	VAC	C	04/02/02		P			KLS JJ

JUDGE HISTORY

JUDGE ASSIGNED	Type	Assign Date	Removal RSN
TBA To Be Assigned,	J	02/04/02	

DOCUMENT TRACKING

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User ID
0001000	Petition for Judicial Review	02/01/02	02/04/02	PET001	TBA		04/02/02	CG JJ
0001001	Answer	03/01/02	03/05/02	ITP001	TBA		04/02/02	MJ JJ
0002000	Transcript of Record from Adm Agency *	03/05/02	03/06/02	ITP001	TBA		04/02/02	DFF JJ
0003000	Notice of Transcript of Record Sent	03/06/02	03/06/02	ITP001	TBA		03/06/02	DFF DFF
0004000	Notice of Transcript of Record Sent	03/06/02	03/06/02	PET001	TBA		03/06/02	DFF DFF

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User ID
0005000	Scheduling Order	04/01/02	04/01/02	000		TBA	04/01/02	KLS KLS
0006000	Voluntary Dismissal in Entirety *	04/02/02	04/02/02	000		TBA	04/02/02	JJ JJ

TICKLE

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type	Num	Seq
1ANS	1st Answer Tickle	CLOSED	03/01/02	0	no	no	DANS	D	001	001
1YRT	One Year Tickle (Jud	CLOSED	02/01/03	365	no	no	DAAA	D	001	000
SLTR	Set List For Trial	DONE	03/01/02	0	yes	yes	1ANS	T	001	001

EXHIBITS

Line #	Marked	Code	Description	SpH	Sloc	NoticeDt	Disp Dt	Dis By
Offered By: ITP 001 County Board Of Appeals Of Ba								
000		I	BOX 305/EXHIBITS		B			

DIFFERENTIATED CASE MANAGEMENT

TRACKS AND MILESTONES

Track R1 Description: EXPEDITED APPEAL TRACK Custom: Yes
Assign Date: 04/01/02 Order Date : 04/01/02
Start Date : 04/01/02 Remove Date:

Milestone	Scheduled	Target	Actual	Status
Motions to Dismiss under MD Rule 2-322(		04/16/02	04/02/02	CLOSED
All Motions (excluding Motions in Limine		05/21/02	04/02/02	CLOSED
TRIAL DATE is	07/03/02	06/30/02	04/02/02	CLOSED

4/2/02

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY

*

PETITION OF:
PAINTERS MILL VENTURE, LLP *

*

FOR JUDICIAL REVIEW OF THE
OPINION OF THE COUNTY BOARD *
OF APPEALS OF BALTIMORE COUNTY
OLD COURTHOUSE, ROOM 49 *
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204 *

CIVIL ACTION
NO.: 03-C-02-01171

02 APR -5 AM 11:51

*

IN THE MATTER OF: ZONING
RECLASSIFICATION FROM *
D.R.5.5 TO D.R.16 /
PAINTERS MILL VENTURE, LLP *

CASE NUMBER: R-01-435 *

* * * * * * * *

NOTICE OF WITHDRAWAL OF PETITION FOR JUDICIAL REVIEW

Petitioner, Painters Mill Venture, LLP, legal owner, by John H. Zink, III and David H. Karceski with Venable, Baetjer and Howard, LLP, its attorneys, hereby withdraws its Petition for Judicial Review in this Action, and requests the appeal to be dismissed.

Respectfully submitted,

John H. Zink, III /DHK

JOHN H. ZINK, III

DAVID H. KARCESKI
Venable, Baetjer and Howard, LLP
210 Allegheny Avenue
P. O. Box 5517
Towson, Maryland 21285-5517
(410) 494-6200
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of April, 2002, a copy of the foregoing NOTICE OF WITHDRAWAL OF PETITION FOR JUDICIAL REVIEW was mailed to Peter M. Zimmerman, People's Counsel, 400 Washington Avenue, Towson, Maryland 21204, and to Kathleen C. Bianco, Administrator, County Board of Appeals of Baltimore County, Old Courthouse, Room 49, 400 Washington Avenue, Towson, Maryland 21204.

DAVID H. KARCESKI

TO1DOCS1/DHK01/#134617 v1

3/1/02

TO WOR file

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY	*	
	*	
PETITION OF: PAINTERS MILL VENTURE LLP	*	
	*	CIVIL ACTION
FOR JUDICIAL REVIEW OF THE OPINION OF THE COUNTY BOARD	*	NO.: 03-C-02-01171
OF APPEALS OF BALTIMORE COUNTY OLD COURTHOUSE, ROOM 49	*	
400 WASHINGTON AVENUE TOWSON, MARYLAND 21204	*	
IN THE MATTER OF: ZONING	*	
RECLASSIFICATION FROM D.R. 5.5 TO D.R. 16 /	*	
PAINTERS MILL VENTURE LLC	*	
CASE NO: R-01-435		

* * * * * * * * * * * *

PROCEEDINGS BEFORE THE ZONING COMMISSIONER
AND THE BOARD OF APPEALS OF BALTIMORE COUNTY:

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now comes the County Board of Appeals of Baltimore County and, in answer to the Petition for Judicial Review directed against it in this case, herewith transmits the record of proceedings had in the above-entitled matter, consisting of the following certified copies or original papers on file in the Department of Permits and Development Management and the Board of Appeals of Baltimore County:

ENTRIES FROM THE DOCKET OF THE BOARD APPEALS
AND DEPARTMENT OF PERMITS & LICENSES OF BALTIMORE COUNTY

R-01-435

February 28, 2001	Petition for Reclassification biled by Robert A. Hoffman, Esquire, on behalf of Painters Mill Venture, LLP, Petitioner
Undated	Notice of Zoning Hearing
August 28	Entry of Appearance filed by People's Counsel for Baltimore County

September 6	Publication in newspaper
September 7	Certificate of Posting
September 17	ZAC Summary of Comments
September 26	Hearing Held before the Zoning Commissioner

PEOPLE'S COUNSEL'S EXHIBITS

PC1. ADC Map of property
PC2. Master Plan 2010 pp. 174-182
PC3. CZMP Aug 2, 1999 – Jan. 18, 2000
PC4. Graph BC 2000 CZMP
PC5. 2000 CZMP Application and Planning Office file (stapled)
PC6. 2000 CZMP Log of Issues – Oct 10, 2000
PC7. E-Mail from Hazel Pe rry dated 9/26/01
PC8. E-Mail from Ernestine Durham dated 9/25/01
PC9. Group of letters from Bell family
PC10. Interoffice correspondence from Robert W. Bolwing, dtd June 27, 2001
PC11. 200 scale zoning map
PC12. 1000 scale zoning map

PETITIONER'S EXHIBITS

1. Site Plan
2. Board w/2000 scale map and photographs
3. Aerial Map with development superimposed
4. Resume of Tim Madden
5. Recommendation of Planning Board, July 19, 2001
6. Page 182 Master Plan 2010
7. Letter to Keller from McIntire, dtd May 1, 2001

October 29	Petitioner's Memorandum in Support of Reclassification filed by Robert A. Hoffman, Esquire --Post- Hearing Memorandum filed by Office of People's Counsel.
January 3, 2002	Order issued by the Board of Appeals. Petitioner's request to reclassify the parcel of land from D.R. 5.5 to D.R. 16 is DENIED.
February 1	Petition for Judicial Review filed in the Circuit Court for Baltimore County by David H. Karceski, Esquire, on behalf of Painters Mill Venture, LLC, legal owner by John H. Zink, III.

February 14	Certificate of Notice sent to interested parties.
February 28, 2002	Transcript of Proceedings filed.
March 5, 2002	Record of Proceedings filed in the Circuit Court for Baltimore County.

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

Respectfully submitted,

Theresa R. Shelton

Theresa R. Shelton, Legal Secretary
County Board of Appeals of Baltimore County
400 Washington Avenue, Room 49
Towson, MD 21204 (410) 887-3180

c: Robert A. Hoffman, Esquire
David H. Karceski, Esquire
John H. Zink, III
Morton J. Machs / Painters Mill Venture
Morris & Ritchie Associates, Inc.
Robert J. Haines, Esquire
People's Counsel for Baltimore County
Board of Ed/MS 1102-J
Pat Keller, Planning Director
Lawrence E. Schmidt / Zoning Commissioner
W. Carl Richards / PDM
Arnold Jablon, Director / PDM
Edward J. Gillis, County Attorney

2/14/02

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY	*	
	*	
PETITION OF: PAINTERS MILL VENTURE LLP	*	
	*	CIVIL ACTION NO.: 03-C-02-01171
FOR JUDICIAL REVIEW OF THE OPINION OF THE COUNTY BOARD	*	
OF APPEALS OF BALTIMORE COUNTY OLD COURTHOUSE, ROOM 49	*	
400 WASHINGTON AVENUE TOWSON, MARYLAND 21204	*	
IN THE MATTER OF: ZONING RECLASSIFICATION FROM	*	
D.R. 5.5 TO D.R. 16 / PAINTERS MILL VENTURE LLC	*	
	*	
CASE NO: R-01-435		

* * * * * * * * * * * *

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the Provisions of Rule 7-202(d) of the *Maryland Rules*, 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:

David H. Karceski, Esquire
Venable, Baetjr and Howard, LLP, 210 Allegheny Ave.,
P.O. Box 5517, Towson, MD 21204

John H. Zink, III
Painters Mill Venture, LLC, 4750 Owings Mills Blvd.,
Owings Mills, MD 21117

Peter M. Zimmerman
People's Counsel, 400 Washington Ave., Towson, MD 21204

A copy of said Notice is attached hereto and prayed that it may be made a part hereof.

RECEIVED AND FILED
02 FEB 14 PM 12:00

Theresa R. Shelton

Theresa R. Shelton, Legal Secretary
County Board of Appeals, Room 49
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 David H. Karceski, Esquire, Venable, Baetjr and Howard, LLP, 210 Allegheny Ave., P.O. Box 5517, Towson, MD 21204; John H. Zink, III, Painters Mill Venture, LLC, 4750 Owings Mills Blvd., Owings Mills, MD 21117; and Peter Max Zimmerman, People's Counsel, 400 Washington Ave., Basement, Old Court House, Towson, MD 21204, this 14th day of February, 2002.

Theresa R. Shelton

Theresa R. Shelton, Legal Secretary
County Board of Appeals, Room 49
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410-887-3180)

2/1/02

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY PETITION OF PAINTERS MILL VENTURE, LLP 4750 Owings Mills Boulevard Owings Mills, Maryland 21117	* * * *	
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 THE APPLICATION OF PAINTERS MILL VENTURE, LLC, LEGAL OWNER, FOR A ZONING RECLASSIFICATION FROM D.R.5.5 TO D.R.16 ON PROPERTY LOCATED ON THE NORTHWEST CORNER OF OWINGS MILLS BOULEVARD AND LYONS MILL ROAD 2ND ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT CASE NUMBER: R-01-435	* * * * * * * * * * * *	CIVIL ACTION NO.: 03-C-02-01171

* * * * * * * *

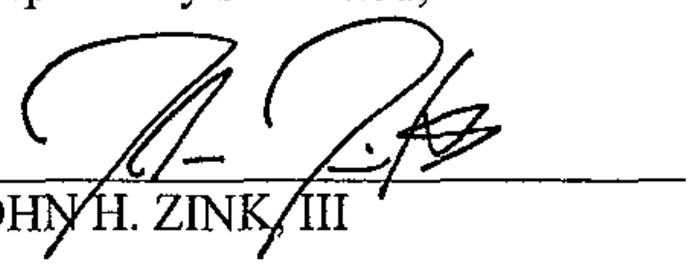
PETITION FOR JUDICIAL REVIEW

Petitioner, Painters Mill Venture, LLC, legal owner, by John H. Zink, III and David H. Karceski with Venable, Baetjer and Howard, LLP, its attorneys, in accordance with Maryland Rule 7-202, files this Petition for Judicial Review from the decision of the County Board of Appeals of Baltimore County, dated January 3, 2002, denying the

RECEIVED AND FILED
02 FEB -1 PM 1:21

Petition for Reclassification in Case No. R-01-435. Petitioner was a party to the agency proceedings.

Respectfully submitted,

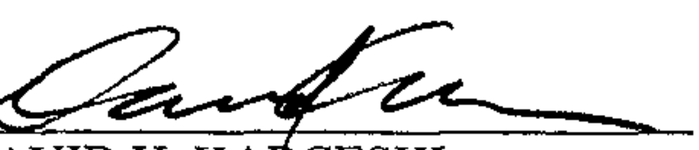


JOHN H. ZINK, III

DAVID H. KARCESKI
Venable, Baetjer and Howard, LLP
210 Allegheny Avenue
P. O. Box 5517
Towson, Maryland 21285-5517
(410) 494-6200
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of February, 2002, a copy of the foregoing PETITION FOR JUDICIAL REVIEW was mailed to Peter M. Zimmerman, People's Counsel, 400 Washington Avenue, Towson, Maryland 21204, and to Kathleen C. Bianco, Administrator, County Board of Appeals of Baltimore County, Old Courthouse, Room 49, 400 Washington Avenue, Towson, Maryland 21204.



DAVID H. KARCESKI

TO1DOCS1/DHK01/#130981 v1

Petition for Reclassification

to the Board of Appeals of Baltimore County

for the property located at NORTH SIDE OF LYONS MILL ROAD, WEST OF OWINGS MILLS BOULEVARD

which is presently zoned/districted D.R. 5.5

This Petition shall be filed with the Department of Permits and 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 a part hereof, hereby petition: (1) that the zoning/district status of the herein described property be reclassified.

pursuant to the zoning law of Baltimore County from a D.R. 5.5 zone/district to a D.R. 16 zone/district, for the reasons given in the attached and (2) for a Special Exception under the zoning regulations of Baltimore County, to use the herein described property for

and (3) for the reasons given in the attached statement, a Variance from the following sections of the zoning regulations of Baltimore County:

COUNTY BOARD OF APPEALS
01 FEB 28 AM 12:11

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above petition(s), advertising, posting, etc. and further agree to and are to be bounded 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:

Name - Type or Print

Signature

Address — Telephone No.

City — State — Zip Code

Legal Owner(s):

(SEE ATTACHED)

Name - Type or Print

Signature

Name - Type or Print

Signature

Address — Telephone No.

City — State — Zip Code

Attorney For Petitioner:

Robert A. Hoffman

Name - Type or Print

Signature

Venable, Baetjer and Howard, LLP

Company

210 Allegheny Avenue — 410-494-6200

Address — Telephone No.

Towson, MD — 21204

City — State — Zip Code

Representative to be Contacted:

Robert A. Hoffman

Name

210 Allegheny Avenue — 410-494-6200

Address — Telephone No.

Towson, MD — 21204

City — State — Zip Code

REV 9/18/98

JRF 2/28/01 "OK to file"

R-01-435

SIGNATURE PAGE

Legal Owner:

Painters Mill Venture, LLP
4750 Owings Mills Boulevard
Owings Mills, Maryland 21117

By: _____
Morton J. Macks, Managing Partner
(410) 356-9900

MORRIS & RITCHIE ASSOCIATES, INC.
ENGINEERS, ARCHITECTS, PLANNERS, SURVEYORS,
AND LANDSCAPE ARCHITECTS

Zoning Description

BEGINNING at a point located at the intersection of the southern right of way of Lakeside Drive, 80 feet wide, and western right of way of Owings Mill Boulevard, variable width. Thence the following courses and distances, viz:

South 21°31' 52" West 140.94 feet to a point of curvature, 176.20 feet along the arc of a tangential curve to the left having a radius of 1327.24 feet being subtended by a chord bearing South 17°43' 41" West 176.07 feet to a point of continuous curvature, 233.66 feet along the arc of a tangential curve to the left having a radius of 938.25 feet being subtended by a chord bearing South 06°47' 26" West 233.06 feet to a point of tangency, South 00°20' 37" East 640.62 feet, South 89°39' 23" West 13.00 feet, 408.29 feet along the arc of a non-tangential curve to the right having a radius of 265.00 feet being subtended by a chord bearing South 43°47' 42" West 369.09 feet South 87°56' 02" West 150.95 feet, South 02°03' 58" East 23.07 feet, North 89°38' 27" West 465.59 feet, North 19°20' 48" East 551.37 feet, North 41°18' 32" East 457.57 feet, North 41°18' 32" East 347.43 feet, North 48°41' 30" West 232.18 feet, North 20°54' 01" East 404.99 feet, South 43°05' 43" East 31.61 feet, 308.11 feet along the arc of a tangential curve to the left having a radius of 1027.76 feet and being subtended by a chord bearing South 59°52' 50" East 306.96 feet, South 68°28' 32" East 45.00 feet to the point of beginning.

Containing 18.3 acres of land more or less.

BEING located in the Second Election District of Baltimore County, Maryland, also being as recorded in Deed Liber 4460, folio 473.

STATE OF MARYLAND
MICHAEL LEE RAY
11041
PROFESSIONAL LAND SURVEYOR

Michael L. Ray 2/27/01
Michael L. Ray, Prof. L.S.

☐ 3445-A BOX HILL CORPORATE CENTER DRIVE, ABINGDON, MD 21009 ☎ 410-879-1690 FAX 410-879-1820
☒ 110 WEST ROAD, SUITE 245, TOWSON, MARYLAND 21204 ☎ 410-821-1690 FAX 410-821-1748
☐ 9090 JUNCTION DRIVE, SUITE 9, ANNAPOLIS JUNCTION, MD 20701 ☎ 410-792-9792 FAX 410-792-7395

NOTICE OF ZONING RECLASSIFICATION HEARING

The County Board of Appeals of Baltimore County, by authority of the County Charter, Section 602.(e) and Section 603 and the County Code, Section 2-356(d), will hold a public hearing in Towson, Maryland on the property identified herein as follows:

Case: #R-01-435
NWC Owings Mills Boulevard and Lyons Mill Road
2nd Election District
3rd Councilmanic District
Legal Owner(s): Painters Mill Venture, LLP
Reclassification: of the property from D.R.5.5 to D.R.16.
Hearing: Wednesday, September 26, 2001 at 10:00 a.m. in Room 48 of the Old Courthouse, 400 Washington Avenue.

LAWRENCE S. WESCOTT
Chairman
NOTES: (1) Hearings are Handicapped Accessible; for special accommodations please call (410) 887-3180.
(2) For information concerning the File and/or Hearing, Contact this Office at (410) 887-3180.
J/O/9/050 Sept. 6 C492372

CERTIFICATE OF PUBLICATION

9/6, 2001

THIS IS TO CERTIFY, that the annexed advertisement was published in the following weekly newspaper published in Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 9/6, 2001.

- [x] The Jeffersonian
- [ ] Arbutus Times
- [ ] Catonsville Times
- [ ] Towson Times
- [ ] Owings Mills Times
- [ ] NE Booster/Reporter
- [ ] North County News

S. Wilkinson

LEGAL ADVERTISING

BALTIMORE COUNTY, MARYLAND R-01435
OFFICE OF BUDGET & FINANCE No. 06633
MISCELLANEOUS RECEIPT

DATE 10-10-01 ACCOUNT 01-06-6150

AMOUNT $ 650.00

RECEIVED FROM: BP Amoco Corp. — Linden Ter.

FOR: Refinement for Reclass (Documents)

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

CASHIER'S VALIDATION

PAID RECEIPT
PAYMENT ACTUAL TIME
10/11/2001 10/10/2001 15:13:13
M WG07 CASHIER DIAL DMD DRAWER 2
RECEIPT # 159850 OFLN
Dept 1 520 ZONING VERIFICATION
CR NO. 006633
Recpt Tot 650.00
50.00 CK .00 CA
Baltimore County, Maryland

CERTIFICATE OF POSTING

Date: 9/7/01

RE: Case Number 01-435

Petitioner: _____

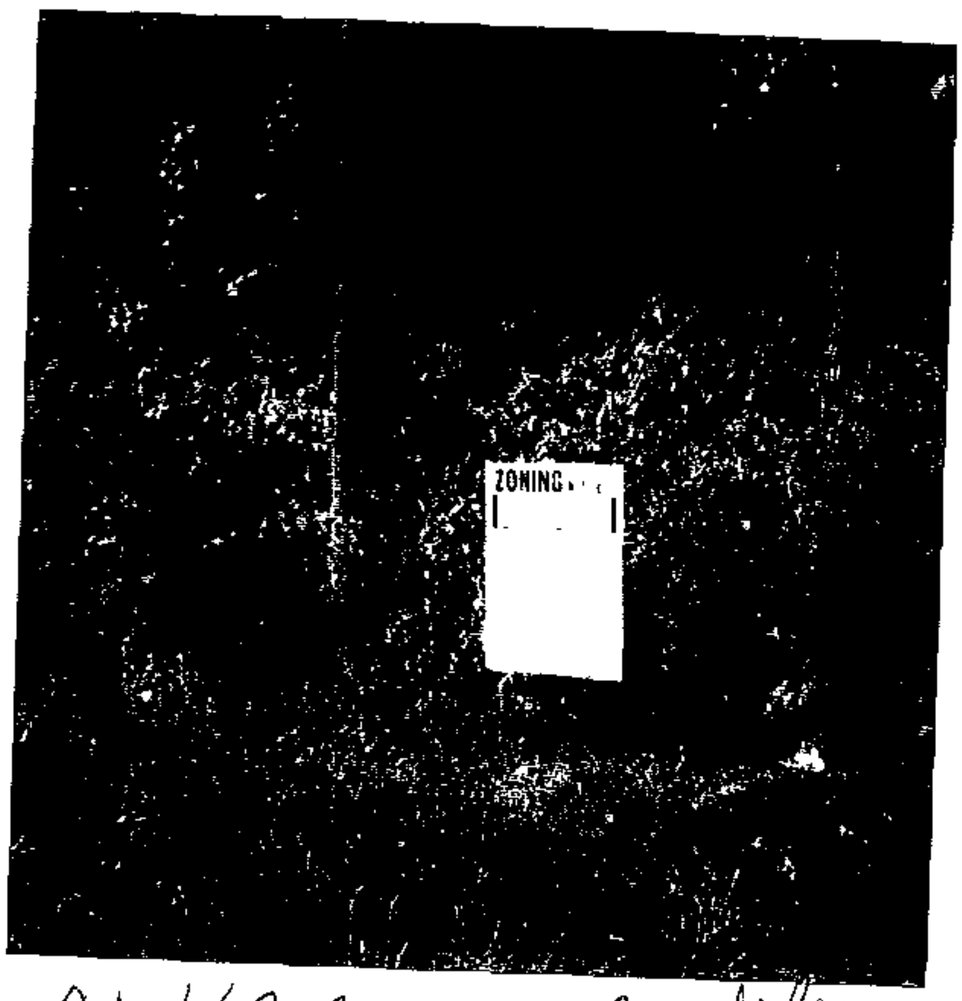
Date of Hearing: _____

This is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at _____

The sign(s) were posted on 9/7/01
(Month, Day, Year)

(Signature of Sign Poster)
ORIGINAL SIGNED BY
LEONARD J. WASILEWSKI

Gary Freund
(Printed Name of Sign Poster)



Balto. Co. Code Enforcement
(Street Address of Sign Poster)

Towson, MD 21204
(City, State, Zip Code of Sign Poster)

01 435
Corner Lyons Mill & owing Mill Blvd
9/7/01

Revised 3/1/01 - SCJ

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
ZONING REVIEW

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The Baltimore County Zoning Regulations (BCZR) require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property (responsibility of the petitioner) and placement of a notice in a newspaper of general circulation in the County, both at least fifteen (15) days before the hearing.

Zoning Review will ensure that the legal requirements for advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements. The newspaper will bill the person listed below for the advertising. This advertising is due upon receipt and should be remitted directly to the newspaper.

OPINIONS MAY NOT BE ISSUED UNTIL ALL ADVERTISING COSTS ARE PAID.

For Newspaper Advertising:

Item Number or Case Number: _____

Petitioner: PAINTERS MILL VENTURE, LLP

Address or Location: North side of Lyons Mill Road, West of Owings Mills Boulevard

PLEASE FORWARD ADVERTISING BILL TO:

Name: Amy Dontell

Address: 210 Allegheny Avenue
Towson Maryland 21204

Telephone Number: (410) 494-6201

Revised 2/20/98 - SCJ

R-01-435

TO: PATUXENT PUBLISHING COMPANY
Thursday, September 6, 2001 Issue - Jeffersonian

Please forward billing to:
Amy Dontell 410-494-6201
210 Allegheny Avenue
Towson, MD 21204

01 AUG 30 AM 10: 28

NOTICE OF ZONING RECLASSIFICATION HEARING

The County Board of Appeals of Baltimore County, by authority of the County Charter, Section 602.(e) and Section 603 and the County Code, Section 2-356(d), will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: R-01-435
NWC Owings Mills Boulevard and Lyons Mill Road
2nd Election District – 3rd Councilmanic District
Legal Owner: Painters Mill Venture, LLP

Reclassification of the property from D.R.5.5 to D.R.16.

HEARING: Wednesday, September 26, 2001 at 10:00 a.m. in Room 48 of the Old Courthouse, 400 Washington Avenue

Lawrence S Wescott /pg

Lawrence S. Wescott
Chairman

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 410-887-3180.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 410-887-3180.

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

ISM W
5

October 9, 2001

NOTICE OF DELIBERATION

IN THE MATTER OF:

PAINTERS MILL VENTURE LLP **--Petitioner**
Case No. R-01-435

Having concluded this matter on 9/26/01, public deliberation has been assigned as follows:

DATE AND TIME : WEDNESDAY, NOVEMBER 21, 2001 at 9:30 a.m.

LOCATION : Hearing Room 48, Basement, Old Courthouse

NOTE: Closing Memos are due on Monday, October 29, 2001 (ORIGINAL AND THREE COPIES).

Kathleen C. Bianco
Administrator

c: Counsel for Petitioner : Robert A. Hoffman, Esquire
David Karceski, Esquire

Petitioner : Morton J. Macks /Painters Mill Joint Venture
Morris & Ritchie Associates, Inc.

Robert J. Haines, Esquire
/Board of Ed. /MS 1102-J
People's Counsel for Baltimore County
Pat Keller, Planning Director
Lawrence E. Schmidt /Zoning Commissioner
W. Carl Richards /PDM
Arnold Jablon, Director /PDM

c S.M.W.

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on Recycled Paper

WCA

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

***** HEARING ROOM - Room 48 *****
Basement - Old Courthouse
400 Washington Avenue

APPEAL HEARINGS SCHEDULED FOR THE WEEK OF SEPTEMBER 24, 2001

Tues. 9/25 9:30 a.m. Case No. CBA-00-143 /Deliberation

In the Matter of:
James Riffin –Legal Owner
49 Scott Adam Road, Cockeysville

10:00 a.m. Case No. CR-02-070 /Hearing

In the Matter of:
Jones Property (Lee R. Jones and
Maud D. Jones –Owners; John F. Owings, Jr. – CP
24 Old Tollgate Road
4th Election District; 3rd Councilmanic

Wed. 9/26 10:00 a.m. Case No. R-01-435 /Hearing

In the Matter of:
Painters Mill Venture, LLP
NW/cor Owings Mills Blvd & Lyons
Mill Road 2nd Election; 3rd Councilmanic

Thurs. 9/27 NO HEARINGS – (YOM KIPPUR) ****

TO:			
	Executive Office	People's Counsel	County Council
	Law Office	Planning Office	Board Members
	Director /PDM	Information Desk	Court Reporter

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County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

JUL 16 2001

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue July 13, 2001

NOTICE OF REASSIGNMENT

CASE #: R-01-435
(Cycle I, Item #3 2001)

IN THE MATTER OF: ***Painters Mill Venture LLP***
Petitioner NW/cor Owings Mills Blvd & Lyons Mill Rd
2nd Election District; 3rd Councilmanic District

Reclassification: From D.R. 5.5 to D.R. 16 /as shown on Plan to Accompany Reclassification Petition

NOTE: To be heard on the merits as advertised and originally assigned on 9/26/01without amendment.

REASSIGNED FOR: **WEDNESDAY, SEPTEMBER 26, 2001 @ 10 a.m. /Hearing on merits**

NOTICE: ***This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.***

Please refer to the Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.

IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

Kathleen C. Bianco
Administrator

---

c: Counsel for Petitioner : Robert A. Hoffman, Esquire
David Karceski, Esquire
Petitioner : *Morton J. Macks /Painters Mill Joint Venture*
Morris & Ritchie Associates, Inc.

Donald Krempel /Div of Physical Facilities
/Board of Ed. /MS 1102-J (changed 7/09/01)
People's Counsel for Baltimore County
Pat Keller, Planning Director
Lawrence E. Schmidt /Zoning Commissioner
W. Carl Richards /PDM
Arnold Jablon, Director /PDM

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7/13/01

Dear Daniel Kowalski

Amend - no amendments on this one - going on 9/26/01.

Karen

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

amended notice 7/13/01
hearing on merits
9/26/01; no amendment
public sep date

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

July 10, 2001

NOTICE OF ASSIGNMENT

CASE #: R-01-435
(Cycle I, Item #3 2001)

IN THE MATTER OF: ***Painters Mill Venture LLP***
Petitioner NW/cor Owings Mills Blvd & Lyons Mill Rd
2nd Election District; 3rd Councilmanic District

Reclassification: From D.R. 5.5 to D.R. 16 /as shown on Plan to Accompany Reclassification Petition

NOTE: There will be no testimony or evidence received by the Board on 9/26/01. The case will be opened on the record for the purpose of submitting an Amended Plan and Petition and continued. A hearing on the merits of the reclassification request will then be held on 11/28/01.

ASSIGNED FOR: **WEDNESDAY, SEPTEMBER 26, 2001 @ 10 a.m. /Open & Continue**
WEDNESDAY, NOVEMBER 28, 2001 @ 10:00 a.m. /Hearing on Merits

NOTICE: **This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.**

Please refer to the Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.

IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

Kathleen C. Bianco
Administrator

c: Counsel for Petitioner : Robert A. Hoffman, Esquire
Petitioner : Morton J. Macks /Painters Mill Joint Venture
Morris & Ritchie Associates, Inc.

Donald Krempel /Div of Physical Facilities
/Board of Ed. /MS 1102-J (changed 7/09/01)
People's Counsel for Baltimore County
Pat Keller, Planning Director
Lawrence E. Schmidt /Zoning Commissioner
W. Carl Richards /PDM
Arnold Jablon, Director /PDM

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County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

SMW
5

October 9, 2001

NOTICE OF DELIBERATION

IN THE MATTER OF:

PAINTERS MILL VENTURE LLP –Petitioner
Case No. R-01-435

Having concluded this matter on 9/26/01, public deliberation has been assigned as follows:

DATE AND TIME : **WEDNESDAY, NOVEMBER 21, 2001 at 9:30 a.m.**

LOCATION : **Hearing Room 48, Basement, Old Courthouse**

NOTE: Closing Memos are due on Monday, October 29, 2001 (ORIGINAL AND THREE COPIES).

Kathleen C. Bianco
Administrator

c: Counsel for Petitioner : Robert A. Hoffman, Esquire
David Karceski, Esquire
Petitioner : Morton J. Macks /Painters Mill Joint Venture
Morris & Ritchie Associates, Inc.

Robert J. Haines, Esquire
/Board of Ed. /MS 1102-J
People's Counsel for Baltimore County
Pat Keller, Planning Director
Lawrence E. Schmidt /Zoning Commissioner
W. Carl Richards /PDM
Arnold Jablon, Director /PDM

c S.M.W.

Printed with Soybean Ink

RE: PETITION FOR RECLASSIFICATION Owings Mills Boulevard, NWC Owings Mills Blvd and Lyons Mill Rd 2nd Election District, 3rd Councilmanic	*	BEFORE THE
	*	COUNTY BOARD OF APPEALS
	*	FOR
Legal Owner: Painters Mill Venture, LLP Petitioner(s)	*	BALTIMORE COUNTY
	*	Case No. R-01-435

* * * * * * * * * * * *

01 AUG 28 PM 3:5
COUNTY BOARD OF APPEALS

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 or other proceedings in this matter and of the passage of any preliminary or final Order. **All parties should copy People's Counsel on all correspondence sent/ documentation filed in the case.**

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 28th day of August, 2001 a copy of the foregoing Entry of Appearance was mailed to Robert A. Hoffman, Esq., Venable, Baetjer & Howard, 210 Allegheny Avenue, Towson, MD 21204, attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN

Baltimore County
Fire Department

700 East Joppa Road
Towson, Maryland 21286-5500
410-887-4500

October 24, 2001

Department of Permits and
Development Management (PDM)
County Office Building, Room 111
Mail Stop #1105
111 West Chesapeake Avenue
Towson, Maryland 21204

ATTENTION: Gwen Stephens

RE: Property Owner: BP AMOCO CORPORATION

Item No.: RO-01-435

Dear Ms. Stephens:

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.

1. Fire hydrants for the referenced property are required and shall be located at proper intervals, along an approved road in accordance with Baltimore County Standard Design Manual Sec. 2.4.4 Fire Hydrants, as published by the Department of Public Works.

REVIEWER: LIEUTENANT JIM MEZICK, Fire Marshal's Office
PHONE 887-4881, MS-1102F

cc: File

RECEIVED
OCT 29 2001
DEPT. OF PERMITS AND
DEVELOPMENT MANAGEMENT

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on Recycled Paper

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits & Development Mgmt.

DATE: June 27, 2001

FROM: Robert W. Bowling, Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For The Zoning Reclassification Cycle I
April 2001 – October 2001
Item Nos. 2, 3, 7

The Bureau of Development Plans Review has reviewed the subject zoning items, and we have no comments.

RWB:HJO:jrb

cc: File

Maryland Department of Transportation
State Highway Administration

Parris N. Glendening
Governor

John D. Porcari
Secretary

Parker F. Williams
Administrator

12:41 AM 01 19 2002

Date: October 17, 2001

Mr. George Zahner
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County
Case No. R-01-435

Dear. Mr. Zahner:

This office has reviewed the referenced Petition for Reclassification and we have no objection to approval. However the owner will be required to obtain an access permit through our office and as a minimum the following will be required:

- A traffic impact analysis.
- Entrance construction compatible to the current MD 140 Streetscape Project.

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,

for Kenneth A. McDonald Jr., Chief
Engineering Access Permits Division

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

700 East Joppa Road
Towson, Maryland 21286-5500
410-887-4500

October 24, 2001

Department of Permits and
Development Management (PDM)
County Office Building, Room 111
Mail Stop #1105
111 West Chesapeake Avenue
Towson, Maryland 21204

ATTENTION: Gwen Stephens

RE: Property Owner: BP AMOCO CORPORATION

Item No.: RO-01-435

Dear Ms. Stephens:

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.

1. Fire hydrants for the referenced property are required and shall be located at proper intervals, along an approved road in accordance with Baltimore County Standard Design Manual Sec. 2.4.4 Fire Hydrants, as published by the Department of Public Works.

REVIEWER: LIEUTENANT JIM MEZICK, Fire Marshal's Office
PHONE 887-4881, MS-1102F

cc: File

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on Recycled Paper

BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County
Interoffice Correspondence

DATE: August 2, 2002

TO: Arnold Jablon, Director
Permits & Development Management
Attn.: David Duvall

FROM: Theresa R. Shelton
Board of Appeals

SUBJECT: **Painyters Mill Venture, LLP**
Case No.: R-01-435
PDM: R-01-435 – Cycle I – 2001 – Item #3
Circuit Court Case No.: 03-C-02-01171

On April 2, 2002 a Voluntary Dismissal in Entirety was entered on the above captioned matter in Circuit Court. No further appeals have been taken in this matter. The Board of Appeals is closing and returning the file that is attached herewith, along with Exhibits.

Attachment: SUBJECT FILE ATTACHED (w/Exhibits)

R-01-435
(Cycle I, Item #3, 2001)

PAINTERS MILL JOINT VENTURE LLP -Petitioner

HEARING DATE: Wednesday, September 26, 2001 /Open and Continue on the record /submission of amendment.
Wednesday, November 28, 2001 /On the Merits

7/10/01 – Notice of Assignment sent to following; case to be opened and continued on the record Wednesday, September 26, 2001 at 10:00 a.m. for submission of amendment; and heard on the merits on Wednesday, November 28, 2001 at 10:00 a.m.:

Robert A. Hoffman, Esquire
Morton J. Macks /Painters Mill Joint Venture
Morris & Ritchie Associates, Inc.
Donald Krempel /Div of Physical Facilities
/Board of Ed. /MS 1102-J (changed 7/09/01)
People's Counsel for Baltimore County
Pat Keller, Planning Director
Lawrence E. Schmidt /Zoning Commissioner
W. Carl Richards /PDM
Arnold Jablon, Director /PDM

7/11/01 – T/C from David Karceski, Esquire – this reclassification request will not be amended. Request that original hearing date of 9/26/01 be retained for hearing this matter on the merits. Advised Mr. Karceski that notice had been sent but that a notice of reassignment will be issued using 9/26/01 as the actual hearing date and pulling the November date from the Board's docket. Also advised People's Counsel of this change.

7/13/01 – Notice of Reassignment sent to parties as shown above with copy to David Karceski, Esquire – pulling November date and scheduling this matter for hearing on originally scheduled date of Wednesday, September 26, 2001 at 10:00 a.m. (with no amendment to be made to this reclass petition).

8/14/01 – Contact person at Board of Education – now Robert J. Haines, Esquire – per t/c from Mr. Krempel's office 8/13/01.

9/26/01 – Board convened for hearing (Wescott, Adams, Worrall); hearing concluded; memos due 10/29/01; deliberation to be assigned and notice sent.

10/09/01 – Notice of Deliberation sent to parties; scheduled for Wednesday, November 21, 2001 at 9:30 a.m. (fyi copy to S.M.W.)

10/29/01 – Petitioner's Memorandum in Support of Petition for Reclassification filed by Robert A. Hoffman, Esquire; People's Counsel's Post-Hearing Memorandum filed by the Office of People's Counsel

---

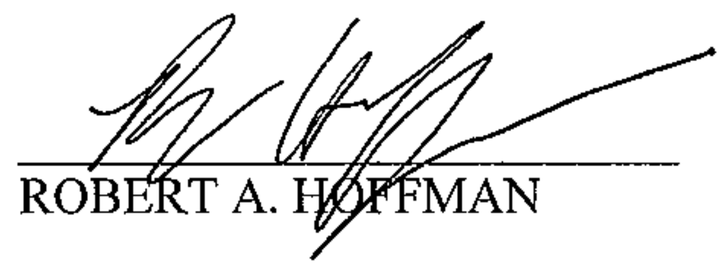
10/30/01 – Copies of above memos to Board (Wescott, Adams and Worrall)

11/06/01 – Letter from R. Hoffman in response to PC's Post-Hearing Memo – as to objection to admission of letter from Councilman McIntire – objection withdrawn by Mr. Zimmerman at hearing; was to address only "weight or significance."

11/08/01 – Reply from P. Zimmerman to R. Hoffman's letter; copies of both letters to S.M.W. this date via US mail (deliberation assigned for 11/21/01).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29 day of October, 2001, a copy of the foregoing PETITIONER'S MEMORANDUM IN SUPPORT OF PETITION FOR RECLASSIFICATION was hand-delivered to Peter M. Zimmerman, Esquire, People's Counsel, 400 Washington Avenue, Towson, Maryland 21204.



ROBERT A. HOFFMAN

TO1DOCS1/DHK01/#124204 v1

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of October, 2001 a copy of the foregoing People's Counsel's Post-Hearing Memorandum was mailed to Robert A. Hoffman, Esq., Venable, Baetjer & Howard, 210 Allegheny Avenue, Towson, MD 21204, attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN

RECLASSIFICATION & REDISTRICTING PETITIONS
ACCEPTED FOR FILING BY BALTIMORE COUNTY BOARD OF APPEALS
FOR THE 19 - 19 ZONING RECLASSIFICATION CYCLE

* Agenda Only
\+ Agenda and Petition
& Agenda and Plat
\# Agenda, Petition and Plat

Distribution:

\# Baltimore County Board of Appeals Hearing File [redacted]
* Zoning Commissioner's Office (Lawrence Schmidt); MS #2112
\# PDM, Zoning Review DRC/ZAC Meeting File (W. Carl Richards, Jr.)
* PDM, Code Enforcement (Helene Kehring)
* PDM, Building Inspection (Karen Hopkins)
& PDM, Development Plans Review (Robert W. Bowling)
\# Planning Office (Mark Cunningham); *Director (Pat Keller)
* Recreation and Parks (Jean Tansey); MS #52
\# DEPRM (Bruce Seeley) - 2 plats
& State Highway Administration, Access Permits Division (Michael M. Lenhart)
& PDM, Building Plans Review (Lt. Herb Taylor) MS #1102F
* Economic Develop. Commission, Business Develop. (Robert Hannon); MS #2M07
* Highways (Tim Burgess); MS #1003
* Community Conservation (David Fields); MS #1102M
\+ People's Counsel (Peter Zimmerman); MS #2010
* Honorable McIntire, County Council, District 3; MS #2201
\# IF CRITICAL AREA, Maryland Office of Planning (Charles Armstrong)
\# IF FLOODPLAIN, Department of Natural Resources (John Joyce)
\# IF FLOODPLAIN, Public Works (David Thomas); MS #1315
* IF FLOODPLAIN, Permits (John Reisinger)
* IF FLOODPLAIN, Code Enforcement (Rick Wisnom)
\# IF ELDERLY HOUSING, Community Development; MS #1102M
\# IF HELICOPTER, Police Department, Aviation Unit (Officer Taylor or Sgt. Wines)
\# IF PAWN SHOP, Police Department, Burglary/Pawn Unit (Det. Kropfelder); MS #1102E
* IF TOWER, Tower Coordinator, c/o OIT; MS #2007

The attached information is being forwarded to you for comment. Your comments should reflect any conflicts with the codes, standards or regulations of your office or department. Development representatives that attend the meeting should be prepared to submit their agency's response as either "no comment", "written comment" or "more review time required" within one week. If no written response is received within two weeks, it is assumed that your agency has "no comment". All written comments must reference the case number. All comments received will be compiled and included in the zoning/reclassification file for review and consideration by the Board of Appeals during the course of the upcoming reclassification hearing (as referenced on the agenda).

You should return your written comments to the Department of Permits and Development Management (PDM), Room 111, County Office Building, 111 West Chesapeake Avenue, Towson, MD 21204 (Mail Stop #1105), Attention: George Zahner.

If you have any questions regarding these zoning reclassifications, please contact Carl at 410-887-3391.

OCT 15 PM 3:13

TO: PATUXENT PUBLISHING COMPANY
Thursday, August 2, 2001 & Thursday, August 9, 2001 Issues - Jeffersonian
Full-Page Ad

Advertising costs should be divided between the following petitioners.
Please forward billing to:

CR-01-433-X	Sohan L. Sambhi 9 Upman Court Baltimore, MD 21228	410-719-1624
R-01-434	Robert A. Hoffman (Amy Dontell) 210 Allegheny Avenue Towson, MD 21204	410-494-6200
R-01-435	Amy Dontell 210 Allegheny Avenue Towson, MD 21204	410-494-6201
CR-01-436	Stuart D. Kaplow, P.A. 15 East Chesapeake Avenue Towson, MD 21286	410-339-3910
R-01-439	Amy Dontell 210 Allegheny Avenue Towson, MD 21204	410-494-6201

NEWSPAPER AD MUST BE FULL-PAGE AD.

SEE ATTACHED SAMPLE FOR PROPER SET-UP OF AD. SEE ATTACHED PAPERS FOR CORRECT WORDING FOR ZONING RECLASSIFICATION CYCLE I (APRIL – OCTOBER 2001) AND CORRECT MAP.

PLEASE FORWARD TO ZONING REVIEW, PERMITS & DEVELOPMENT MANAGEMENT (ATTENTION CARL RICHARDS), A CONTACT POSITIVE PRINT.

ANY QUESTIONS CONCERNING THIS AD, PLEASE CONTACT CARL RICHARDS AT 410-887-3391.

RECLASSIFICATION & REDISTRICTING PETITIONS ACCEPTED FOR FILING BY BALTIMORE COUNTY BOARD OF APPEALS FOR THE APRIL – OCTOBER 2001 ZONING RECLASSIFICATION CYCLE I

BY ORDER OF
LAWRENCE S. WESCOTT, CHAIRMAN, BALTIMORE COUNTY BOARD OF APPEALS
ARNOLD F. KELLER, III, DIRECTOR, OFFICE OF PLANNING AND COMMUNITY CONSERVATION

ACCEPTED FOR FILING BY BALTIMORE COUNTY BOARD OF APPEALS
FOR THE ZONING RECLASSIFICATION CYCLE I
APRIL 2001 – OCTOBER 2001

WESTERN SECTOR

ITEM #1

Property Owner:	Sohan L. Sambhi & Joginder Kaur
Case No./Hearing Date:	CR-01-433-X -- Wednesday, November 14, 2001 at 10:00 a.m.
Contract Purchaser:	N/A
Location:	9217 Liberty Road – SW/S Liberty Road, corner SE/S Chapman Road
Existing Zoning:	R-0
Election District:	2nd
Councilmanic District:	2nd
Acres:	.2783
Proposed Zoning:	B.L. Special Exception for a service garage.
Miscellaneous:	Documented Plan

ITEM #2

Property Owner:	Baltimore County Revenue Authority (Lot A); Paul C. Gourley (Lot B); Ethel B. Smith (Lot C); BP Amoco Corporation (Parcel 246)
Case No./Hearing Date:	R-01-434 -- Wednesday, October 3, 2001 at 10:00 a.m.
Contract Purchaser:	BP Amoco Corporation
Location:	520 Reisterstown Road (rear) – S/S Slade Avenue and N/S Linden Terrace, also 175' SW of centerline Reisterstown Road
Existing Zoning:	R-O
Election District:	3rd
Councilmanic District:	2nd
Acres:	.47
Proposed Zoning:	B.L.-A.S.
Miscellaneous:	Open Plan

ITEM #3

Property Owner:	Painters Mill Venture, LLP
Case No./Hearing Date:	R-01-435 -- Wednesday, September 26, 2001 at 10:00 a.m.
Contract Purchaser:	N/A
Location:	NWC Owings Mills Boulevard and Lyons Mill Road
Existing Zoning:	D.R.5.5
Election District:	2nd
Councilmanic District:	3rd
Acres:	18.3
Proposed Zoning:	D.R.16
Miscellaneous:	Open Plan

ITEM #4

Property Owner:	Highway Realty, Inc. (9913); Eastrel, LLC (9915); David A. Pisanic (9917); Patricia E. Franey (9919); Marie P. & Donald G. Haga (9921)
Case No./Hearing Date:	CR-01-436 – Wednesday, October 24, 2001 at 10:00 a.m.
Contract Purchaser:	N/A
Location:	9913, 9915, 9917, 9919, & 9921 Reisterstown Road – NE/S Reisterstown Road, approximately 200' SE of Olive Lane
Existing Zoning:	R-O
Election District:	3rd
Councilmanic District:	3rd
Acres:	1.95 +/-
Proposed Zoning:	B.L.
Miscellaneous:	Documented Plan (originally filed as open plan, was revised and filed as documented plan)

NORTHERN SECTOR

ITEM #5

Property Owner:	Jarvis Steel & Lumber Co., Inc.
Case No.:	R-01-437 – SEE OUT-OF-CYCLE FILE

CENTRAL SECTOR

No Petitions Were Filed in the Central Sector for Cycle I

EASTERN SECTOR

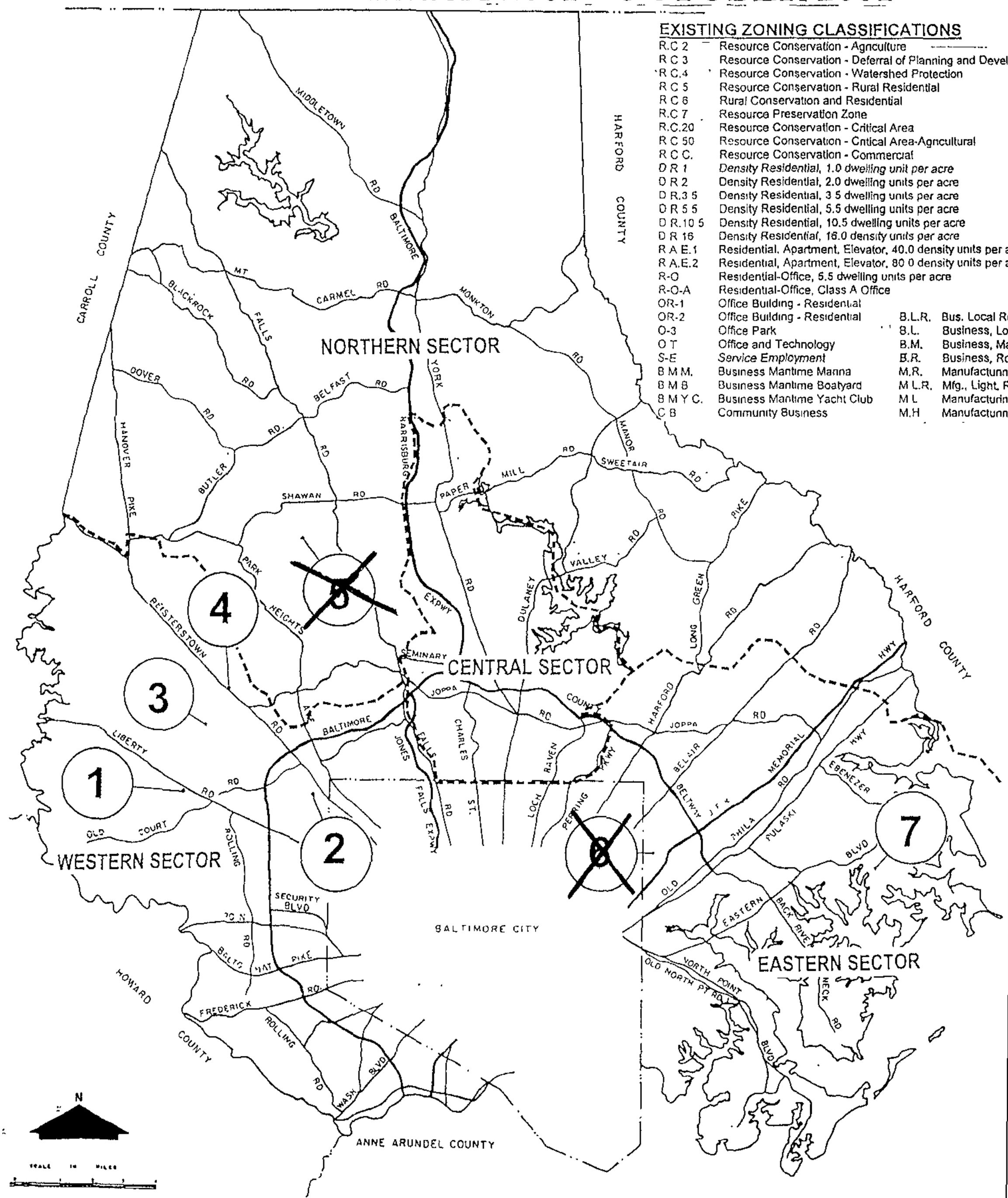
ITEM #6

Property Owner:	Merritt Properties, LLC
Case No.:	R-01-438 -- WITHDRAWN

ITEM #7

Property Owner:	7-Eleven Inc.
Case No./Hearing Date:	R-01-439 -- Wednesday, October 17, 2001 at 10:00 a.m.
Contract Purchaser:	N/A
Location:	204 Bowley's Quarters Road – SW/S Bowleys Quarters Road and SW/S Carroll Island Road
Existing Zoning:	B.L.
Election District:	15th
Councilmanic District:	5th
Acres:	.33
Proposed Zoning:	B.L.-A.S.
Miscellaneous:	Open Plan

LOCATIONS OF PROPERTIES UNDER PETITION
CYCLE I --- APRIL 2001 - OCTOBER 2001



EXISTING ZONING CLASSIFICATIONS

R.C 2	Resource Conservation - Agriculture
R C 3	Resource Conservation - Deferral of Planning and Development
R C.4	Resource Conservation - Watershed Protection
R C 5	Resource Conservation - Rural Residential
R C 6	Rural Conservation and Residential
R.C 7	Resource Preservation Zone
R.C.20	Resource Conservation - Critical Area
R C 50	Resource Conservation - Critical Area-Agricultural
R C C.	Resource Conservation - Commercial
D R 1	*Density Residential, 1.0 dwelling unit per acre*
D R 2	Density Residential, 2.0 dwelling units per acre
D R.3 5	Density Residential, 3 5 dwelling units per acre
D R 5 5	Density Residential, 5.5 dwelling units per acre
D R.10 5	Density Residential, 10.5 dwelling units per acre
D R 16	Density Residential, 16.0 density units per acre
R A E.1	Residential, Apartment, Elevator, 40.0 density units per acre
R A.E.2	Residential, Apartment, Elevator, 80 0 density units per acre
R-O	Residential-Office, 5.5 dwelling units per acre
R-O-A	Residential-Office, Class A Office
OR-1	Office Building - Residential
OR-2	Office Building - Residential
O-3	Office Park
O T	Office and Technology
S-E	*Service Employment*
B M M.	Business Maritime Marina
B M B	Business Maritime Boatyard
B M Y C.	Business Maritime Yacht Club
C B	Community Business
B.L.R.	Bus. Local Restricted
B.L.	Business, Local
B.M.	Business, Major
B.R.	Business, Roadside
M.R.	Manufacturing, Restricted
M L.R.	Mfg., Light, Restricted
M L	Manufacturing, Light
M.H	Manufacturing, Heavy

BALTIMORE COUNTY DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT/ZONING REVIEW

SAMPLE ONLY

BALTIMORE COUNTY, MARYLAND

PUBLIC NOTICE

RECLASSIFICATION & REDISTRICTING PETITIONS ACCEPTED FOR FILING BY BALTIMORE COUNTY BOARD OF APPEALS FOR THE OCTOBER, 1993 - APRIL, 1994 ZONING RECLASSIFICATION CYCLE II

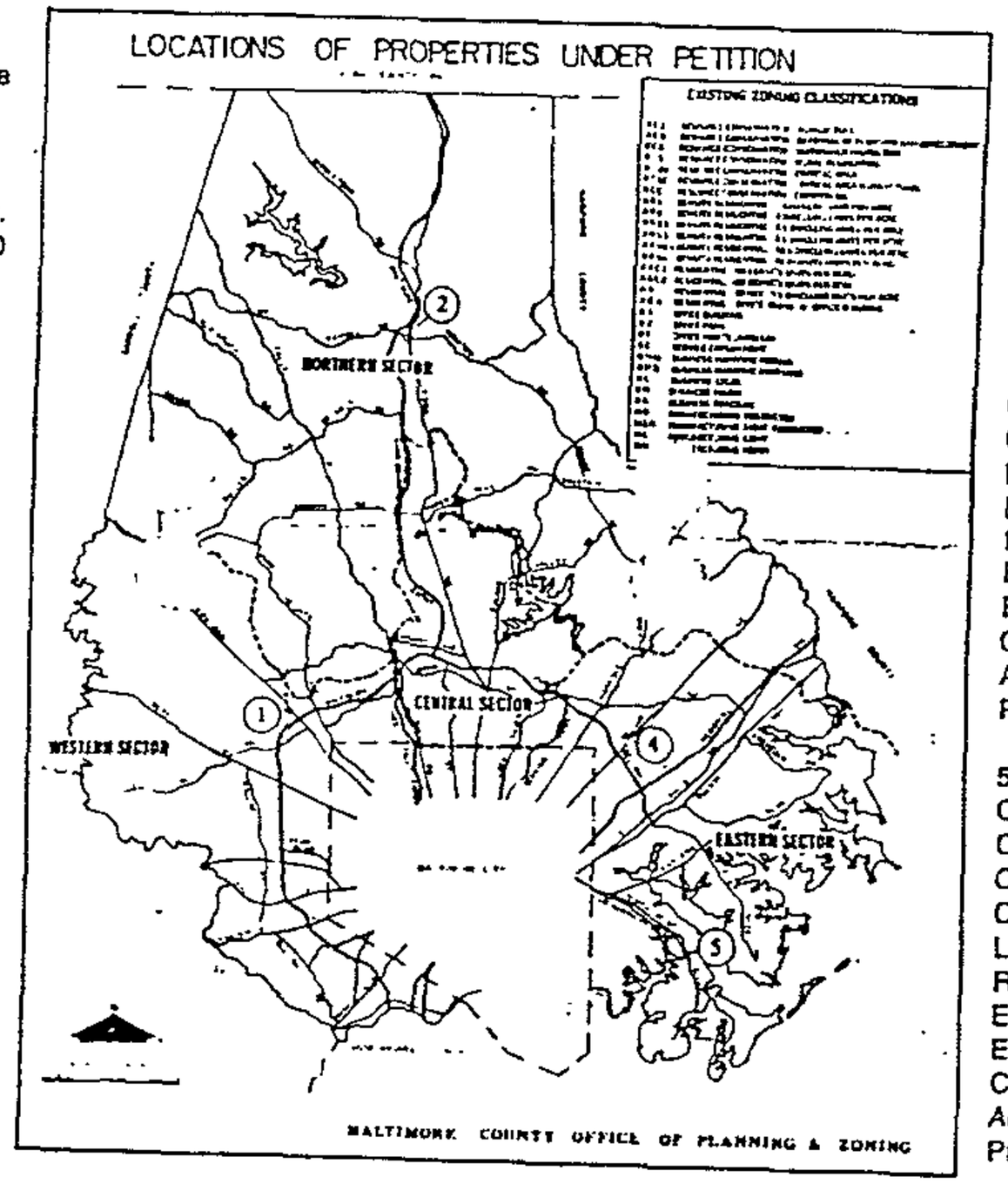
WESTERN SECTOR

1. Property Owner: J.F.O. Holding Corporation & Josephine Owings Grinnings
Case No./Hearing Date: R-94-141; 3/9/94
Contract Purchaser: J. Patrick Gill
Location: SW/S Reisterstown Road, 540' SE of centerline Mt. Wilson Lane, opposite Castleton Avenue (#1838-1850 Reisterstown Road)
Existing Zoning: R.O.
Election District: 3rd
Councilmanic District: 3rd
Acres: 5.81 +/- or 5.25 +/-
Proposed Zoning: B.L.

NORTHERN SECTOR

2. Property Owner: Harford Joint Venture
Case No./Hearing Date: R-94-142; 3/23/94
Contract Purchaser: N/A
Location: N/S Everett Road, W/S York Road (Monkton Centre)
Existing Zoning: R.C.-5
Election District: 7th
Councilmanic District: 3rd
Acres: .90 +/-
Proposed Zoning: B.M.-C.R.

3. Property Owner: The Prosser Company, Inc.
Case No./Hearing Date: CR-94-143; 4/6/94
Contract Purchaser: N/A
Location: SE/S Long Green Pike and NW/S Glen Arm Road (12107 & 12109
Long Green Pike and 5328 Glen Arm Road)
Existing Zoning: R.O. & R.C.-5
Election District: 11th



Councilmanic District: 6th
Acres: 5.2 +/-
Proposed Zoning: M.L.

CENTRAL SECTOR

No Petitions in the Central Sector

EASTERN SECTOR

4. Property Owner: State Highway Administration
Case No./Hearing Date: R-94-144; 4/20/94
Contract Purchaser: White Marsh Dinner Theatre, Inc.
Location: NW/S Belair Road, corner NE/S White Marsh Boulevard (8204
Belair Road)
Existing Zoning: D.R.-5.5
Election District: 14th
Councilmanic District: 6th
Acres: .61 +/-
Proposed Zoning: B.M.

5. Property Owner: Beachwood II Limited Partnership & Cignal Development
Corporation
Case No./Hearing Date: R-94-145; 5/4/94
Contract Purchaser: N/A
Location: E/S Morse Lane between Lynhurst and Shore Roads (Beachwood)
Existing Zoning: D.R.-1
Election District: 15th
Councilmanic District: 7th
Acres: 27.309
Proposed Zoning: D.R.-3.5 or D.R.-5.5 or D.R.-10.5

LISTINGS OF PETITIONS: Numbers in the listings are keyed to the map above.

BY ORDER OF
WILLIAM HACKETT, CHAIRMAN BALTIMORE COUNTY BOARD OF APPEALS
P. DAVID FIELDS, DIRECTOR BALTIMORE COUNTY PLANNING AND ZONING

R-01-435

Report by the
Baltimore County
Planning Board
to the
Baltimore County
Board of Appeals

ZONING RECLASSIFICATION PETITIONS

Cycle I, 2001

July 19, 2001

ZONING RECLASSIFICATION PETITIONS

Cycle I, 2001

Report by the Baltimore County
Planning Board

to the

Baltimore County
Board of Appeals

July 19, 2001

Baltimore County
Office of Planning
Towson, Maryland

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Case No. CR-01-436 15

Case No. R-01-439 18

Baltimore County
Office of Planning

401 Bosley Avenue - Ste 406
Towson, Maryland 21204
410-887-3211
Fax: 410-887-5862
E-mail: planning@co.ba.md.us

TO: Members
Baltimore County Planning Board

DATE: May 31, 2001

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

In the current cycle, the Baltimore County Board of Appeals accepted seven reclassification petitions. Please note, however, that two of the petitions--Case Numbers R-01-437 and R-01-438--have been exempted from the regular cyclical procedure of Section 2-356(c) through (h), inclusive, of the Baltimore County Code. In compliance with the Baltimore County Code, recommendations on the remaining petitions are submitted in the attached report.

The Planning Board is scheduled to review the petitions on June 7, 2001, and to make final recommendations on July 19, 2001. The Planning Board's report must be submitted to the Baltimore County Board of Appeals no later than July 31, 2001.

The Board of Appeals has tentatively scheduled hearing dates on these petitions and will advertise these hearing as required. Hearings are set to take place during the period from September 26, 2001 through November 14, 2001.

Pat Keller

Arnold F. 'Pat' Keller, III

AFK: JL
Attachment

Introduction

Under the provisions of Section 2-356(e) of the Baltimore County Code, 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 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 remaining in the current cycle have been reviewed by the planning staff, and the following pages report the Office of Planning'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 a review of the 2000 Comprehensive Zoning Map Process. 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 and Transportation Planning.

In reaching its decision on each petition, the Board of Appeals is required to use the standards in Section 2-356(j) of the Baltimore County Code. During the first cycle following the 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 10, 2000] was established in error."

PETITIONS FOR RECLASSIFICATION
CYCLE I, 2001

Assigned Hearing Dates
County Board of Appeals

Case No. R-01-435
Painters Mill Venture, LLP
NWC Owings Mills Blvd. & Lyons Mill Rd.
Wednesday, September 26, 2001 at 10:00 a.m.

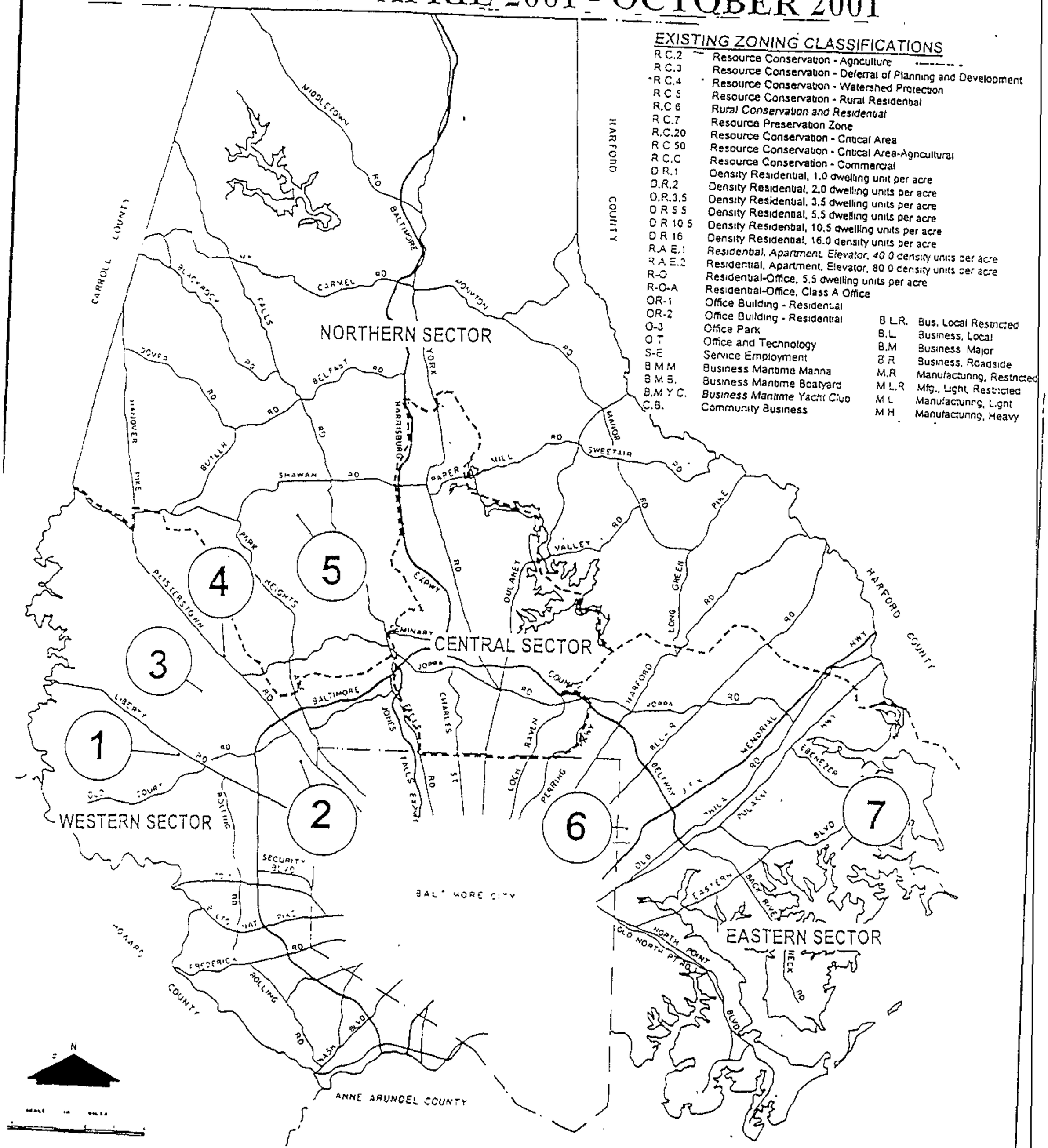
Case No. R-01-434
Balto. Co. Revenue Auth.; Paul Gourley, Ethel Smith; BP Amoco Corp (legal owner), and BP Amoco (contract purchaser)
520 Reisterstown Road, ½ Linden Terrace and 2 Linden Terrace
Wednesday, October 3, 2001 at 10:00 a.m.

Case No. R-01-439
7-Eleven, Inc.
204 Bowleys Quarters Road
Wednesday, October 17, 2001 at 10:00 a.m.

Case No. CR-01-436
Highway Realty, Inc., Eastrel, LLC, David Pisanic, Patricia Franey; Marie and Donald Haga
9913-9921 Reisterstown Rd.
Wednesday, October 24, 2001 at 10:00 a.m.

Case No. CR-01-433-X
Sohan L. Sambhi & Joginder Kaur
9217 Liberty Rd.
Wednesday, November 14, 2001 at 10:00 a.m.

LOCATIONS OF PROPERTIES UNDER PETITION
CYCLE I --- APRIL 2001 - OCTOBER 2001

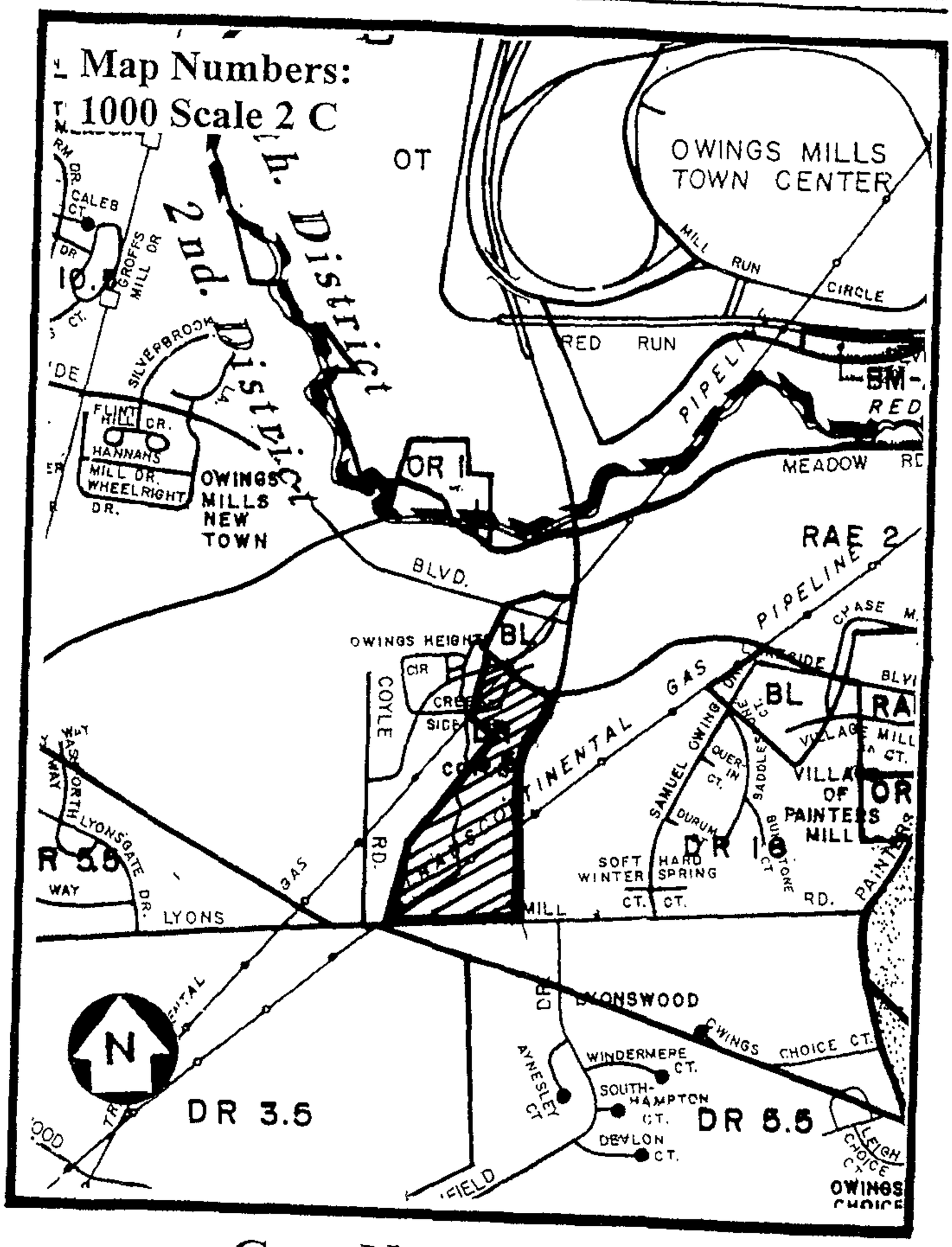


BALTIMORE COUNTY DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT/ZONING REVIEW

SOURCE MATERIAL

Recommendations for the two 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 10, 2000;
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 Number *R-01-435*
Location of Property Under Petition

Scale: 1" = 1000'

CASE NO:
R-01-435

PETITIONERS:
Painters Mill Joint Venture, LLP

REQUESTED ACTION:
Reclassification to DR 16 (Density Residential 16 Dwelling Units Per Acre)

EXISTING ZONING:
DR 5.5 (Density Residential 5.5 Dwelling Units Per Acre)

LOCATION:
North side of Lyons Mill Road, west of Owings Mills Boulevard

AREA OF SITE:
18.17 acres

ZONING OF ADJACENT PROPERTY/USE:

North:	BL	Commercial
South:	DR 16	Residential
East:	DR 16	Residential
West:	DR 16	Residential

SITE DESCRIPTION:
The petitioner's property consists of 18.3 acres of land zoned DR 16 and DR 5.5. The entire property is in forest and undeveloped with the exception of two transcontinental gas pipelines that transverse the property.

WATER AND SEWERAGE:
The site is served by public water and sewer and is designated as W-1, S-1 (existing service area) according to the Master Water and Sewer Plan.

TRAFFIC AND ROADS:
The site has direct access to Owings Mills Boulevard and Lyons Mill Road, which are classified as minor arterials.

ZONING HISTORY:
Zoning issues were filed on the property as part of the 1984 and 2000 Comprehensive Zoning Map Processes. In 1984 the County Council changed the zoning of the subject property from RC 3 to DR 16. In 2000 the County Council rezoned the property from DR 16 to DR 5.5.

MASTER PLAN/COMMUNITY PLANS:
The proposed land use map, adopted by the County Council on February 22, 2000, indicates the site is designated for multi-family residential use.

PROPOSED vs. EXISTING ZONING:

The use regulations for the DR zones may be found in Section 1B01.1A of the Baltimore County Zoning Regulations. The DR 5.5 and DR 16 zones permit a density of 5.5 and 16 dwelling units per acre, respectively.

OFFICE OF PLANNING RECOMMENDATIONS:

Based upon the information provided and analysis conducted, the Office of Planning recommends the applicant's property be rezoned to the DR 16 classification. Staff's current recommendation is consistent with the Planning Board's zoning recommendation for this property as part of the 2000 Comprehensive Zoning Map Process. In addition, the proposed zoning would be consistent with the existing zoning of the properties located in close proximity to the subject site.

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-02-001171

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

02 FEB -5 PM 12:08

R-01-435

February 28, 2001	Petition for Reclassification biled by Robert A. Hoffman, Esquire, on behalf of Painters Mill Venture, LLP, Petitioner
Undated	Notice of Zoning Hearing
August 28	Entry of Appearance filed by People's Counsel for Baltimore County
September 6	Publication in newspaper
September 7	Certificate of Posting
September 17	ZAC Summary of Comments
September 26	Hearing Held before the Zoning Commissioner

PEOPLE'S COUNSEL'S EXHIBITS

PC1. ADC Map of property
PC2. Master Plan 2010 pp. 174-182
PC3. CZMP Aug 2, 1999 – Jan. 18, 2000
PC4. Graph BC 2000 CZMP
PC5. 2000 CZMP Application and Planning Office file (stapled)
PC6. 2000 CZMP Log of Issues – Oct 10, 2000
PC7. E-Mail from Hazel Pe rry dated 9/26/01
PC8. E-Mail from Ernestine Durham dated 9/25/01
PC9. Group of letters from Bell family
PC10. Interoffice correspondence from Robert W. Bolwing, dtd June 27, 2001
PC11. 200 scale zoning map
PC12. 1000 scale zoning map

PETITIONER'S EXHIBITS

1. Site Plan
2. Board w/2000 scale map and photographs
3. Aerial Map with development superimposed
4. Resume of Tim Madden
5. Recommendation of Planning Board, July 19, 2001
6. Page 182 Master Plan 2010
7. Letter to Keller from McIntire, dtd May 1, 2001

October 29	Petitioner's Memorandum in Support of Reclassification filed by Robert A. Hoffman, Esquire --Post- Hearing Memorandum filed by Office of People's Counsel.
January 3, 2002	Order issued by the Board of Appeals. Petitioner's request to

	reclassify the parcel of land from D.R. 5.5 to D.R. 16 is DENIED.
February 1	Petition for Judicial Review filed in the Circuit Court for Baltimore County by David H. Karceski, Esquire, on behalf of Painters Mill Venture, LLC, legal owner by John H. Zink, III.
February 14	Certificate of Notice sent to interested parties.
February 28, 2002	Transcript of Proceedings filed.
March 5, 2002	Record of Proceedings filed in the Circuit Court for Baltimore County.

R-01-435
(Cycle I, Item #3, 2001)

PAINTERS MILL JOINT VENTURE LLP -Petitioner

HEARING DATE: Wednesday, September 26, 2001 /Open and Continue on the record /submission of amendment.
Wednesday, November 28, 2001 /On the Merits

7/10/01 – Notice of Assignment sent to following; case to be opened and continued on the record Wednesday, September 26, 2001 at 10:00 a.m. for submission of amendment; and heard on the merits on Wednesday, November 28, 2001 at 10:00 a.m.:

Robert A. Hoffman, Esquire
Morton J. Macks /Painters Mill Joint Venture
Morris & Ritchie Associates, Inc.
Donald Krempel /Div of Physical Facilities
/Board of Ed. /MS 1102-J (changed 7/09/01)
People's Counsel for Baltimore County
Pat Keller, Planning Director
Lawrence E. Schmidt /Zoning Commissioner
W. Carl Richards /PDM
Arnold Jablon, Director /PDM

7/11/01 – T/C from David Karceski, Esquire – this reclassification request will not be amended. Request that original hearing date of 9/26/01 be retained for hearing this matter on the merits. Advised Mr. Karceski that notice had been sent but that a notice of reassignment will be issued using 9/26/01 as the actual hearing date and pulling the November date from the Board's docket. Also advised People's Counsel of this change.

7/13/01 – Notice of Reassignment sent to parties as shown above with copy to David Karceski, Esquire – pulling November date and scheduling this matter for hearing on originally scheduled date of Wednesday, September 26, 2001 at 10:00 a.m. (with no amendment to be made to this reclass petition).

8/14/01 – Contact person at Board of Education – now Robert J. Haines, Esquire – per t/c from Mr. Krempel's office 8/13/01.

9/26/01 – Board convened for hearing (Wescott, Adams, Worrall); hearing concluded; memos due 10/29/01; deliberation to be assigned and notice sent.

10/09/01 – Notice of Deliberation sent to parties; scheduled for Wednesday, November 21, 2001 at 9:30 a.m. (fyi copy to S.M.W.)

10/29/01 – Petitioner's Memorandum in Support of Petition for Reclassification filed by Robert A. Hoffman, Esquire; People's Counsel's Post-Hearing Memorandum filed by the Office of People's Counsel

---

10/30/01 – Copies of above memos to Board (Wescott, Adams and Worrall)

11/06/01 – Letter from R. Hoffman in response to PC's Post-Hearing Memo – as to objection to admission of letter from Councilman McIntire – objection withdrawn by Mr. Zimmerman at hearing; was to address only "weight or significance."

11/08/01 – Reply from P. Zimmerman to R. Hoffman's letter; copies of both letters to S.M.W. this date via US mail (deliberation assigned for 11/21/01).

Baltimore County
Office of Planning

401 Bosley Avenue - Ste 406
Towson, Maryland 21204
410-887-3211
Fax: 410-887-5862
E-mail: planning@co ba.md.us

TO: Members
Baltimore County Planning Board

DATE: May 31, 2001

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

In the current cycle, the Baltimore County Board of Appeals accepted seven reclassification petitions. Please note, however, that two of the petitions–Case Numbers R-01-437 and R-01-438–have been exempted from the regular cyclical procedure of Section 2-356(c) through (h), inclusive, of the Baltimore County Code. In compliance with the Baltimore County Code, recommendations on the remaining petitions are submitted in the attached report.

The Planning Board is scheduled to review the petitions on June 7, 2001, and to make final recommendations on July 19, 2001. The Planning Board's report must be submitted to the Baltimore County Board of Appeals no later than July 31, 2001.

The Board of Appeals has tentatively scheduled hearing dates on these petitions and will advertise these hearing as required. Hearings are set to take place during the period from September 26, 2001 through November 14, 2001.

Pat Keller

Arnold F. 'Pat' Keller, III

AFK: JL
Attachment

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

February 14, 2002

HAND DELIVERED

Peter M. Zimmerman
People's Counsel
400 Washington Avenue
Towson, MD 21204

RE: Circuit Court Civil Action No. 3-C-02-01171
Petition for Judicial Review
Painters Mill Venture LLP -Zoning Reclassification
Case No.: R-01-435

Dear Mr. Zimmerman:

Notice is hereby given, in accordance with the Maryland Rules, that a Petition for Judicial Review was filed on February 1, 2002, 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 the Maryland Rules.

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-02-01171.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Theresa R. Shelton

Theresa R. Shelton
Legal Secretary

/trs
Enclosure

c: David H. Karceski, Esquire
John H. Zink, III

Printed with Soybean Ink
on Recycled Paper

c: continued

Morton J. Machs / Painters Mill Joint Venture
Morris & Ritchie3 Associates, Inc.
Robert J. Haines, Esquire
Board of Ed/MS 1102-J
Pat Keller, Planning Director
Lawrence E. Schmidt / Zoning Commissioner
W. Carl Richards / PDM
Arnold Jablon, Director / PDM
Edward J. Gillis, County Attorney

Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

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

(410) 887-2188

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

November 8, 2001

2001 NOV -8 PM 12:34

Lawrence S. Wescott, Chairman
County Board of Appeals
of Baltimore County
400 Washington Avenue, Room 49
Towson, MD 21204

Hand-delivered

Re: Petition for Reclassification
NWC Owings Mills Blvd and Lyons Mill Rd,
2nd Election District, 3rd Councilmanic
Painters Mill Venture, LLP, Petitioner
Case No.: R-01-435

Dear Mr. Wescott:

This is in reply to Mr. Hoffman's letter dated November 6, 2001.

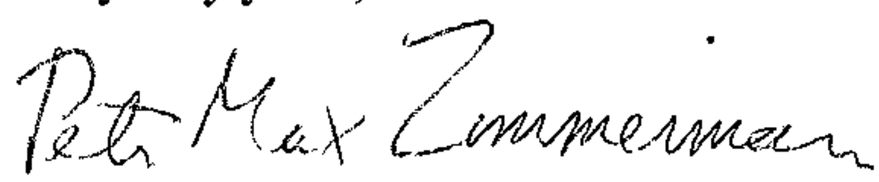
While I withdrew my objection to the Board's reviewing Councilman McIntire's letter, I reserved the right to argue its weight or significance. The thrust of our argument in the memorandum is that must be given zero weight or significance, and that it would be plain error to allow it any impact.

The case law shows that to give the letter impact would be injurious to the legislative process and the institutional separation of powers. It is not an issue which our office can waive. Even had we not raised the issue, the Board would be obligated to follow the law.

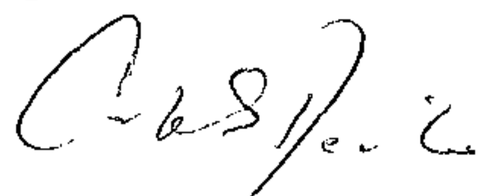
In perspective, the withdrawal of my objection simply concluded the argument about whether the Board should examine the letter. Having examined the letter, the Board must still rule on whether it has any legal bearing, impact, or weight. This is not like a jury trial, where a withdrawal of objection to hearsay results in the consideration of relevant evidence of doubtful reliability. To allow this letter any influence would conflict with public law.

Our argument, therefore, is that Councilman McIntire's letter should be excluded from having any impact. The Board's examination of the letter should not hinder its ability to follow the law. Its technical "admission" is not a reason to depart from the law and open up a Pandora's Box.

Very truly yours,



Peter Max Zimmerman
People's Counsel for Baltimore County



Carole S. Demilio
Deputy People's Counsel

PMZ/CSD/caf

cc: Robert A. Hoffman, Esq.
Attorney for Petitioner

VENABLE, BAETJER AND HOWARD, LLP
Including professional corporations

210 Allegheny Avenue
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OFFICES IN
MARYLAND
WASHINGTON, D.C.
VIRGINIA

Robert A. Hoffman
(410) 494-6262

rahoffman@venable.com

VENABLE
ATTORNEYS AT LAW

November 6, 2001

HAND-DELIVERED

Lawrence S. Wescott, Chairman
County Board of Appeals for
Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

Re: Petition for Reclassification
Painters Mill Venture, LLP
Case No.: R-01-435

01 NOV -6 PM 3:39

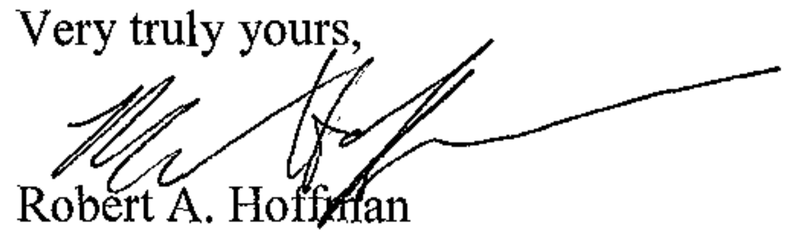
Dear Mr. Wescott:

I have reviewed People's Counsel's Post-Hearing Memorandum in the above-referenced case in which Peter Max Zimmerman objects to the admission of a letter from Councilman T. Bryan McIntire, dated May 1, 2001, regarding the environmental constraints on the property.

At the hearing before the Board of Appeals on September 26, 2001, Mr. Zimmerman withdrew his objection to the admissibility of Councilman McIntire's letter indicating that he would argue only its "weight or significance" in closing argument. See Transcript, pp. 149-150 (copy enclosed).

Given that the objection was withdrawn, I would object to the Board giving any consideration to Mr. Zimmerman's argument that the letter is inadmissible.

Very truly yours,



Robert A. Hoffman

RAH/bl
Enclosure
cc: Peter Max Zimmerman, Esquire (w/o enclosure)

TO1DOCS1/DHK01/#126101 v1

10/30/01
WCR

12 Devlon Court
Owings Mills, MD 21117

September 18, 2001

Mr. Arnold Jablon, Director
Department PDM
Baltimore County
111 W. Chesapeake Avenue, Room 111
Towson, Maryland 21204

RE: Case # R-01-435

Dear Mr. Jablon:

I am writing to register my objection to the proposed zoning change from DR5.5 to DR16 on the parcel on land located on the corner of Owings Mills Boulevard and Lyons Mills Road. As a resident of the Lyonswood Community since August 1992, I have seen the constant growth in this area and am concern about the impact this proposal will have on the surround communities.

Many of the residents of the Lyonswood Development are currently experiencing the adverse impact of the additional traffic on Owings Mills Boulevard and Lyons Mills Road. It is extremely difficult to enter and exit this development especially during the rush hours, with the steady influx of motor vehicles from the employees and visitors of our corporate neighbor, T. Rowe Price. Not only do we have a high level of vehicular traffic, we now encounter a significant number of pedestrians. It is only a matter of time before we have a serious accident on this strip on road because of the speeding cars.

There are approximately 175 apartment units slated for construction on Lyons Mills Road between Owings Mills Boulevard and Painters Mills Road. The recently opened New Town Elementary School is already overcrowded. **An additional 300 homes in this area will definitely put a strain on the current infra-structure. WE NEED TO BE SMART, NOT GREEDY.**

Sincerely,

Ashley Gatewood

Ashley Gatewood

01-3686
OCT 30 2001

Javin & Susie Rudolph, Jr.
4211 Wynfield Drive
Owings Mills, MD 21117

Mr. Lawrence S. Wescott, Chairman
Baltimore County Board of Appeals
County Courthouse
400 Washington Avenue
Towson, MD 21204

Dear Mr. Westcott,

We wish to voice our strong opposition to the rezoning of the property from DR 5 (5 homes per acre) to DR 16 (apartments) in the Painters Mill Venture Case # R-01-435. This property sits opposite the entrance of our single-family home community, ***Lyonswood.*** If one of our residents had not gone far onto the property, no one would have known about the rezoning. ***The sign for the rezoning was placed far back onto the property where no one would see it.***

The increase population density will have a significant negative impact on the lives and property values of the residences in our community. In addition, the increasing number of apartment complexes, will not only deplete property values, but also will add to the Lyons Mills/Owings Mills Blvd congestion and place an even greater burden on the children attending the New Town Elementary School.

Thank you for considering the needs and hearing the voices of the established surrounding communities.

Sincerely,

Mr. & Mrs. Rudolph

Javin & Susie M.Rudolph, Jr.

RECEIVED POST-HEARING
DAY ONE

01 OCT 31 PM 12:49

Kimberly Staton
5 Kentbury Court
Owings Mills, MD 21117

October 3, 2001

Mr. Lawrence S. Wescott, Chairman
Baltimore County Board of Appeals
County Courthouse
400 Washington Avenue
Towson, MD 21204

Mr. Westcott,

I am writing to you to voice strong opposition to the rezoning of the property from DR 5 (5 homes per acre) to DR 16 (apartments) in the Painters Mill Venture Case # R-01-435. This property sits opposite the entrance of our single-family home community, Lyonswood and would have significant negative impact on the lives and property values of the residence in our community.

Over the past four years since I've moved to this community, I've watch the New Town communities grow into an area I regret becoming a part of. This can only add to the frustrations of all of the single-family homeowners in our community and the few others that surround us. Together with the numerous bombardment of town home construction and "luxury apartments", Owings Mills has become an area unfriendly to the property values of the single family home. By allowing the Painters Mill Venture Group to place another apartment complex at the foot of yet another single family home community, Baltimore County will essentially approve a plan that will not only deplete property values, but will add to the Lyons Mills/Owings Mills Blvd congestion and place even more children in trailers at our brand new, poorly planned New Town Elementary School.

Currently, there is already construction of "luxury apartments" adjacent to the Lyonswood community. And if one of our residents had not gone far onto the property, no one would have known about this rezoning. The sign for this rezoning was placed far back onto the property where no one would see it.

It seems that Baltimore County is not listening to the residence of Owings Mills. The "Venture Groups" are building their town homes and apartments and moving on. In the mean time, we live in these communities where roads and schools are planned but not built until after the "Venture Groups" have succeeded in altering zoning requirements, with no concern for the affect on the communities already established. I would like Baltimore County to be proactive this time by addressing the critical questions. How will this added traffic affect rush hour? Where will the additional children go to school? How is this going to affect the property values of established taxpayers already committed to these communities? And, most important, how can the Master Plan be relied upon when the "Venture Groups" continue to manipulate it?

Sincerely,

Kimberly Staton
Tax Payer & Registered Voter

01 OCT 10 AM 10:47

Oct. 2, 2001

Mrs. Carolyn Horne
19 Devlon Ct.
Owings Mills, Md.21117

Mr. Lawrence S. Wescott, Chairman
Baltimore County Board of Appeals
County Courthouse
400 Washington Avenue
Towson, MD 21204

Dear Mr. Wescott,

I'm a resident in The Lyonswood Development and I am opposed to the rezoning of the property from DR5 (5 homes per acre) to DR 16 (apartments) **Reference: Painters Mill Venture Case #R-01-435.** The rezoning sign was placed in a location that was not able to be seen by the public and especially not by the people of our community unless we had reason to go beyond our community on Lyons Mill Rd. I'm opposed for many reasons which I've listed below.
Schools are already overcrowed.
There are already two apartment complexes with in a mile of this one that are already under development.
There is an increase in traffic problems getting to Owings Mills Blvd already.
I have Environmental Concerns (pollution and noise level) from the increase in traffic.
There is already a problem with displaced wildlife, that are feeding on our landscaping.
These problems will only increase with the rezoning of the property from DR5 (5 homes per acre) to DR 16 (apartments) **Reference: Painters Mill Venture Case #R-01-435.**

Sincerely,

Mrs. Carolyn Horne

Mrs. Carolyn Horne
Tax Payer & Registered Voter

01 OCT -5 PM 3:24

VENABLE, BAETJER AND HOWARD, LLP
Including professional corporations

210 Allegheny Avenue
Post Office Box 5517
Towson, Maryland 21285-5517
(410) 494-6200, Fax (410) 821-0147
www.venable.com

OFFICES IN

MARYLAND
WASHINGTON, D.C.
VIRGINIA

VENABLE
ATTORNEYS AT LAW

Robert A. Hoffman
(410) 494-6262

February 27, 2001

HAND-DELIVERED

Lawrence S. Wescott, Chairman
County Board of Appeals for
Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

01 FEB 28 AM 11:28
COUNTY BOARD OF APPEALS

Re: Petition for Reclassification
Property: 18.17 acres of land located
along Owings Mills Boulevard
Lyons Mill Road and Lakeside Drive
Owner: Painter's Mill Venture

Dear Mr. Wescott:

This firm represents Painter's Mill Venture, the owner with respect to the above-referenced zoning reclassification request for property located along Owings Mills Boulevard, Lyons Mill Road and Lakeside Drive, as identified on the plat to accompany this Petition for Reclassification. The subject property is comprised of approximately 18.3 acres of land, 18.17 acres of which was down zoned from DR 16 to DR 5.5 on the 2000 Comprehensive Zoning Map. Painter's Mill Venture believes that the rezoning was a mistake and requests that the zoning be changed back to DR 16.

The property has significant environmental constraints which leaves developable areas only at the intersections of Owings Mills Boulevard and Lyons Mill Road and Owings Mills Boulevard and Lakeside Drive. The limited developable area and location at heavily traveled intersections (one of which is directly across the street from a Rite-Aid) makes the DR 5.5 zone by right wholly inappropriate.

At the Hearing before the Baltimore County Board of Appeals, the Petitioner will present evidence demonstrating its entitlement to the requested reclassification and will

R-01-435

VENABLE
ATTORNEYS AT LAW

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 DR 5.5 is in error and the subject property should be reclassified to DR 16.

Yours truly,

Robert A. Hoffman

RAH/sm
Enclosure

TO1DOCS1/PAM01/#112728 v2

9506 Lyonswood Drive
Owings Mills, Maryland 21117
September 13, 2001

Mr. Arnold Jablon
Director
Department PDM
Baltimore County
111 W. Chesapeake Avenue
Room 111
Towson, Maryland 21204

RE: CASE # R-01-435

Dear Mr. Jablon:

With regard to the hearing scheduled for September 26, 2001, referencing the above captioned case, I oppose the granting of a change in zoning to increase the zoning from DR 5.5 to DR 16. I feel that such a change will adversely impact our community.

Thank you.

Yours truly,

Alexandro N. Bell

m

RECEIVED
SEP 17 2001
DEPT OF PERMITS AND
DEVELOPMENT MANAGEMENT

9506 Lyonswood Drive
Owings Mills, Maryland 21117
September 13, 2001

Mr. Arnold Jablon
Director
Department PDM
Baltimore County
111 W. Chesapeake Avenue
Room 111
Towson, Maryland 21204

RE: CASE # R-01-435

Dear Mr. Jablon:

With regard to the hearing scheduled for September 26, 2001, referencing the above captioned case, I oppose the granting of a change in zoning to increase the zoning from DR 5.5 to DR 16. I feel that such a change will adversely impact our community.

Thank you.

Yours truly,

Deborah Ward Bell

m

RECEIVED
SEP 17 2001
DEPT OF PERMITS AND
DEVELOPMENT MANAGEMENT

9506 Lyonswood Drive
Owings Mills, Maryland 21117
September 13, 2001

Mr. Arnold Jablon
Director
Department PDM
Baltimore County
111 W. Chesapeake Avenue
Room 111
Towson, Maryland 21204

RE: CASE # R-01-435

Dear Mr. Jablon:

With regard to the hearing scheduled for September 26, 2001, referencing the above captioned case, I oppose the granting of a change in zoning to increase the zoning from DR 5.5 to DR 16. I feel that such a change will adversely impact our community.

Thank you.

Yours truly,

Sparky Hayley Bell

Sparky Hayley. Bell

m

RECEIVED
SEP 17 2001
DEPT OF LANDUSE AND
DEVELOPMENT MANAGEMENT

9506 Lyonswood Drive
Owings Mills, Maryland 21117
September 13, 2001

Mr. Arnold Jablon
Director
Department PDM
Baltimore County
111 W. Chesapeake Avenue
Room 111
Towson, Maryland 21204

RE: CASE # R-01-435

Dear Mr. Jablon:

With regard to the hearing scheduled for September 26, 2001, referencing the above captioned case, I oppose the granting of a change in zoning to increase the zoning from DR 5.5 to DR 16. I feel that such a change will adversely impact our community.

Thank you.

Yours truly,

Dominique H. Bell

m

9/17/01
WCR
for file

9506 Lyonswood Drive
Owings Mills, Maryland 21117
September 13, 2001

Mr. Arnold Jablon
Director
Department PDM
Baltimore County
111 W. Chesapeake Avenue
Room 111
Towson, Maryland 21204

RE: CASE # R-01-435

Dear Mr. Jablon:

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Thank you.

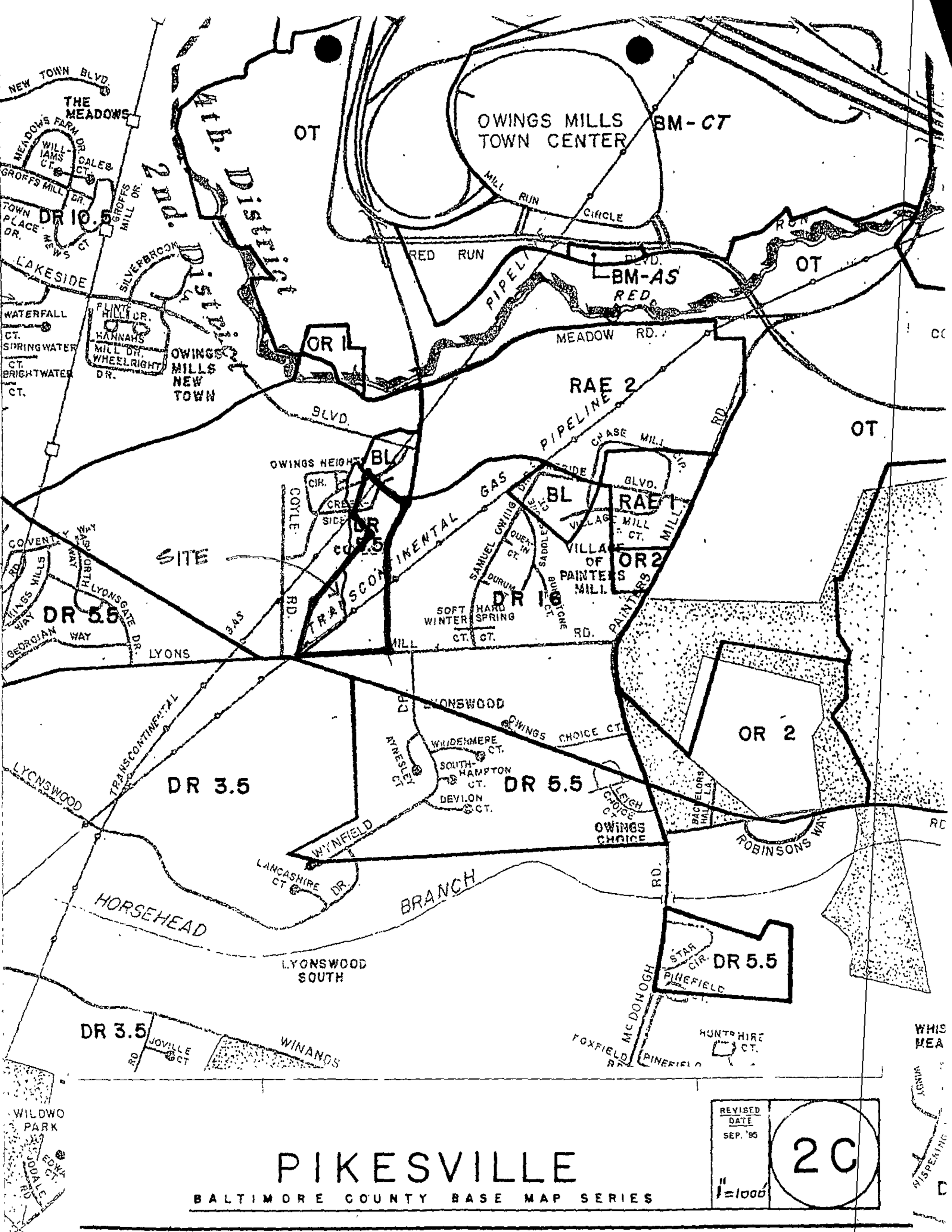
Yours truly,

Yazmin R. Bell

Yazmin R. Bell

m

013185



REVISED DATE SEP. '95

1" = 1000'

2C

PIKESVILLE

BALTIMORE COUNTY BASE MAP SERIES

Page 146

1 dinner. I'm going to be late.
2 DIRECT EXAMINATION
3 BY MR. HOFFMAN:
4 Q. Hi, Mr. Long. State your name and address and
5 your occupation,for the record.
6 A. Jeffrey Long, 401 Bosley Avenue, Towson,
7 Maryland. I'm section chief of the development review
8 section for the county planning office.
9 Q. Your responsibilities for the county planning
10 office include coordinating and processing recommendations
11 of your department to the planning board and to the Board
12 of Appeals with respect to cycle rezoning requests. Did
13 you do that in this case?
14 A. I did.
15 Q. Did you attend the planning board meeting and
16 present the planning staff report that was submitted as
17 Petitioner's number --
18 A. I don't know about the number, but, yes, I did.
19 Q. That was No. 5. Pardon me.
20 A. I presented the report to the planning board, and
21 the planning board accepted staff's recommendation to

Page 147

1 change the property zoned from D.R. 5.5 to D.R. 16.
2 Q. In reaching your conclusions contained in your
3 report, you worked with your staff, your staff members who
4 were involved in the comprehensive rezoning process?
5 A. Correct. Principally Bill Hughey, who's the
6 third district planner for Baltimore County.
7 Q. And prior to making your recommendation, did you
8 receive a letter from the Baltimore County councilman for
9 the Third District --
10 MR. ZIMMERMAN: I object. I will wait until the
11 end of the question.
12 Q. -- dated date May 1, 2000?
13 A. Yes.
14 MR. ZIMMERMAN: I have an objection.
15 MR. HOFFMAN: I'm waiting.
16 MR. ZIMMERMAN: The reason is that the case law
17 says one cannot inquire into the subjective thought
18 process of the county councilmen, and based on that, the
19 county councilmen have traditionally not been allowed to
20 testify or been subpoenaed in this process here before the
21 Board of Appeals.

Page 148

1 And a written communication is equivalent to
2 basically testimony by the County Council. And I simply
3 think we have never had that, and it would not be a good
4 precedent.
5 And, if allowed, I think that the next step is
6 that County Council people be subpoenaed to testify about
7 what they thought, what they knew, what they didn't know,
8 so I have to object.
9 MR. HOFFMAN: My response would be again back to
10 at least part of the burden of proof, which is to at least
11 part of our case, is that there are certain factors or
12 circumstances that the councilman from this district was
13 not aware of, and I have witnesses here today who can
14 testify as to their conversation and what the councilman
15 said to them.
16 But we've got the councilman himself who drafts a
17 letter, not to me, although I was copied on the lettter,
18 he addressed it to the director of the office of planning
19 indicating what his position on this request is, and what
20 he did and didn't know during the map process.
21 I don't know why that's not acceptable evidence

Page 149

1 in the case when the courts have told me I need to prove
2 one of two things, either facts, trends, or circumstances
3 that were in existence at the time that he ignored and,
4 therefore, was a mistake, or facts and circumstances,
5 trends, that were not in existence at the time, but would
6 lead you today to believe there was a mistake.
7 So I think this is the best evidence I could
8 produce on that issue.
9 THE CHAIRMAN: What we are supposed to determine
10 is whether or not the County Council made a mistake or
11 didn't make a mistake.
12 Does that gives us the burden of determining
13 whether or not they had all the facts at the time and
14 whether or not, with what they had, they made a proper
15 determination. I know there are cases that say the County
16 Council, they shouldn't be subpoenaed or --
17 MR. ZIMMERMAN: Let me shortcut this. I will
18 withdraw my objection, preserving the opportunity to argue
19 the weight or significance.
20 This is not a subpoena and it is not an
21 involuntary act, apparently, on the part of the

1 councilman, since it is a letter that he wrote.
2 I think I probably would be better advised to
3 withdraw the objection, but I still have a concern which I
4 will express in closing argument about the weight of it
5 and whether or not a subsequent thought such as this, what
6 weight it has, or significance. I think that's probably
7 the better -- I was not expecting this to be introduced.
8 THE CHAIRMAN: Well, anything that can help us in
9 this determination which we must make is going to be
10 useful. You know, I think the three of us would like to
11 see it. All right. Let's go ahead.
12 MR. HOFFMAN: Thank you.
13 Q. Mr. Long, is that a copy? You have the original?
14 A. This is the original, so it doesn't matter to me,
15 I can keep a copy and give you the original for the Board.
16 Doesn't matter.
17 But it is the letter from Brian T. McIntire, the
18 councilman for the Third Councilmanic District, directed
19 to the office of planning, Pat Keller, and a letter that
20 was certainly shared with us early in the process as we
21 were developing our staff position on this.

1 Clearly, this indicates that the councilman did
2 not know at the time that he made his decision in this
3 matter -- in his words -- there were severe environmental
4 restraints -- I'm sure he means constraints -- which
5 divides the property into two developable portions.
6 I spoke with Bill Hughey, we had the discussion
7 with Bill Hughey, who was the Third District planner, and
8 he indicated to me he did not know of any environmental
9 constraints at the time that the staff recommendation was
10 developed, and he had no conversations with the councilman
11 that would indicate that the councilman was aware if there
12 were any environmental constraints on the property.
13 MR. HOFFMAN: I would offer that as petitioner's
14 next exhibit, the original letter, and I thank you for --
15 that one has the stamp that came into the planning office,
16 Petitioner's No. 7.
17 THE CHAIRMAN: Accepted.
18 Q. Mr. Long, based upon all the facts that you have
19 gathered, which are contained in your report which is
20 Petitioner's No. 5, and now Petitioner's 7 with the letter
21 from the councilman, do you have an opinion to whether or

1 not the current classification is in error?
2 A. Yes. With the letter, it's probably never been
3 or as stands as clear in my mind the fact there was an
4 error. The councilman did make his decision based on
5 information that was not available to him at the time.
6 And if he had known those facts, then the
7 decision would have been different.
8 And based on what I have heard here today, given
9 the environmental constraints, the proximity of the
10 property to Owings Mills Boulevard and the adjacent
11 development to the west, it is my opinion that D.R. 16
12 zoning as proposed is appropriate for this property.
13 MR. HOFFMAN: Thank you. No further questions.
14 THE CHAIRMAN: Mr. Zimmerman.
15 MR. ZIMMERMAN: Yes.
16 CROSS EXAMINATION
17 BY MR. ZIMMERMAN:
18 Q. You didn't speak personally with the councilman
19 in reference to his letter, did you?
20 A. I did not.
21 Q. Do you know who may have brought to his attention

1 the matter of severe, quote, unquote, severe environmental
2 constraints?
3 A. I can only --
4 Q. Who would that be?
5 A. I can only assume that matter was brought to his
6 attention after the decision was made, and probably
7 brought to his attention by the impacted folks, the
8 property owners.
9 Q. Do you know whether or not there would have been
10 any conferences, meetings, or hearings to allow citizens
11 to give their point of view about the impact of the
12 environmental constraints, or anything like that?
13 A. Yes, there was a hearing.
14 Q. In front of the County Council?
15 A. In front of the Baltimore County planning board,
16 and no one attended that hearing to express any concern at
17 all regarding the proposed zoning change.
18 There was a public hearing before the planning
19 board on this matter.
20 Q. That wasn't what I meant by my question, but
21 maybe it was imperfectly worded.

an orphans' court from which an appeal will lie under Code (1924) § 64]. *Rowe Co. v. Rowe,* 154 Md. 599, 604." The order found to be interlocutory overruled objections by caveators to the court's jurisdiction to determine whether other parties were such parties in interest that they could intervene as caveatees.[11] We believe this to be materially different from a determination that the court has jurisdiction to entertain probate of a will and appoint a personal representative. The effect of the order in the case before us brought the same result as the order in *Pattison,* namely, the refusal by an orphans' court of a request that it not assume jurisdiction over an estate because of the decedent's non-residence.

As to the order of 9 April 1974: parts 1 and 2 affirmed; appeal as to part 3 dismissed; case remanded for further proceedings in accordance with this opinion; costs to be paid by appellant.

DOROTHY COPPOLINO ET AL. v. COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

* * *

JOHN L. ASKEW ET AL. v. COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

[No. 67, September Term, 1974.]

Decided November 18, 1974.

ZONING — *Alleged Error In Comprehensive Zoning — Scope Of Judicial Review — Applicable Test — Question On Review Is Whether Or Not Such Action Was Arbitrary And Discriminatory Or Fairly Debatable — Strong*

11. *Rowe Co. v. Rowe, supra,* the case cited as authority for the conclusion in *Collins,* held that an order directing an executrix to intervene as a defendant in an equity proceeding to compel issuance of stock was "interlocutory, not final in its nature, and is, therefore, not appealable."

Evidence Of Mistake In Original Comprehensive Rezoning Or Evidence Of Substantial Change In Character Of Neighborhood Must Be Established. p. 367

ZONING — *Comprehensive Rezoning — Change Or Mistake In — Change Or Mistake Rule Not Controlling In Cases Involving Comprehensive Rezoning — Comprehensive Rezoning To Be Valid Must Bear Substantial Relationship To Public Health, Comfort, Safety, Convenience, Morals And General Welfare — Under Cyclical Zoning Process Established By Particular County Change Or Mistake Rule Not Controlling And Absence Of Showing Of Either Change Or Mistake Prior To Comprehensive Rezoning Does Not Constitute Error.* pp. 369-370

ZONING — *Expert Opinion — To Establish Error — Unconstitutional Confiscation — Opinion, Even Of Expert, Not Evidence Strong Or Substantial Enough To Show Error In Comprehensive Rezoning Or Confiscation Unless Reasons Given As Basis Of Opinion Or Other Supporting Facts Relied Upon Are Themselves Substantial And Strong Enough To Do So — Applicant Claiming Rezoning On Basis Of Unconstitutional Confiscation Must Establish That He Has Been Deprived Of All Reasonable Use Of His Property And It Cannot Be Used For Any Of Permitted Uses In Existing Zone — Expert Testimony In Present Case Insufficient To Meet Criteria Necessary To Establish That Zoning Was Confiscatory In Nature.* pp. 371-372

ZONING — *Error — As Applicable To Zoning Law — Does Include Failure To Take Into Account Projects Or Trends Reasonably Foreseeable Of Fruition In Future — Evidence Necessary To Establish Error Must Show That Developments Were Not, In Fact, Or Could Not Have Been Taken Into Account So That Decision Of Board Was Premised On A Misapprehension — In Case At Bar, Nothing In Record Supported Inference That At Time Of Comprehensive Rezoning Council Was Unaware Of Planned Construction Of Certain Roadway Hence, There Was Insufficient Evidence To Make Fairly Debatable The Question Of Whether Council Erred In Failing To Consider Effect Of Proposed Construction Of Roadway.* pp. 372-373

ZONING — *Comprehensive Zoning — Recommendations Of Planning Body — Not Binding On Legislative Body — Recommendations Of Planning Staff And Board Without Articulated Reasons So Justifying Position Insufficient To Make Issue Of Mistake Or Confiscation Fairly Debatable — Trial Court Erroneous In Affirming Portion Of Board's Order Granting Partial Reclassification Of Subject Property For Evidence Was Insufficient To Establish Mistake In Comprehensive Rezoning Or That Classification Constituted A Confiscatory Action.* p. 374

H. E. F.

Two appeals in one record from the Circuit Court for Baltimore County (MacDaniel, J.).

Madeline Myers and the executors and trustees of the estate of Harvey S. Myers titleholders of certain property in Baltimore County petitioned for zoning reclassification. From an order affirming the Appeals Board's decision granting in part and denying in part the zoning reclassification sought of the subject property, petitioners and protestants appeal.

Order affirmed in part and reversed in part. Case remanded for the entry of an order in accordance with this opinion. Costs to be paid by appellant owners.

The cause was argued before Morton, Davidson and Lowe, JJ.

Harry S. Swartzwelder, Jr., for appellants Dorothy Coppolino et al.

James D. Nolan and *Newton A. Williams*, with whom were *Nolan, Plumhoff & Williams* on the brief, for appellants John L. Askew et al.

No appearance for appellee, County Board of Appeals of Baltimore County.

Davidson, J., *delivered the opinion of the Court.*

This case presents the narrow question of whether the County Council of Baltimore County (Council) committed basic and actual "mistake", as that term is used in zoning law, when on 24 March 1971 it adopted a comprehensive zoning map on which the subject property, consisting of 32.907 ± acres, was classified as D.R.-5.5 (Density Residential, 5.5 dwelling units per acre).

Most of the facts are not in dispute. The subject property, roughly rectangular in shape, lies in an area bounded by Belair Road on the west, Joppa Road on the north and Ebenezer Road on the south. All of the land lying within this area was classified in the D.R.-5.5 zone by the comprehensive

zoning map adopted by the Council on 24 March 1971. The subject property fronts on the north side of Ebenezer Road and lies approximately one mile to the east of its intersection with Belair Road. It is bounded on the east by a relatively large expanse of land zoned D.R.-5.5 which is developed with single family residences. On the north, the subject property adjoins land zoned D.R.-5.5 which is essentially undeveloped. On the west, the subject property is bounded by a relatively large expanse of land zoned D.R.-5.5 which is developed with single family residences and which, in turn, is bounded by land upon which the Perry Hall Elementary and Junior High Schools are located. The Perry Hall High School, located on the south side of Ebenezer Road, confronts the subject property on the south. The elementary school is operating at near capacity while the junior and senior high schools are over capacity. Several additions to existing school facilities and some new schools are being planned.

The subject property is unimproved and heavily wooded. The eastern portion of its frontage reaches an elevation of 190 feet, an elevation approximately 35 feet above that of Ebenezer Road. The property falls from the 190 foot elevation at its southeast corner to a 120 foot elevation at its northwest corner. A large stream and flood plain runs along a portion of the western boundary of the subject property and then cuts across its northern corner. Test borings made in the flood plain indicate that below the earth's surface there is rock which reaches a depth of approximately four feet and a visual inspection has revealed rock outcroppings all along the stream.

Since at least 1966 a new road, Perry Hall Boulevard, with a right-of-way of 110 feet, has been proposed to be located along a portion of the western boundary of the subject property. While the alignment and grade of this road already has been delineated, its actual design has not yet been developed. The Capital Budget indicates that Perry Hall Boulevard will not be constructed until FY 77-78. Until this road is built, all access to the subject property is via the intersection of Ebenezer and Belair Roads. Traffic at this

intersection is at or over capacity so that an extensive delay occurs during peak hours. The construction of Perry Hall Boulevard should alleviate traffic congestion at this intersection.

Originally, the subject property consisted of three separate parcels of land. Parcel "A", containing approximately 16 acres, was "L" shaped, with the east-west leg of the "L" being a rectangle containing all of the 1900 foot frontage along Ebenezer Road and the north-south leg of the "L" being a rectangle containing the southwestern portion of the tract. Parcel "B", containing about four acres of land, was roughly triangular in shape and adjoined the northern boundary of the north-south leg of the "L". It comprised the northwestern portion of the subject property. Parcel "C", containing about 12 acres of land, also an essentially rectangular piece of property, adjoined the eastern boundary of the north-south leg of the "L" and the northern boundary of the east-west leg of the "L". It contained all of the eastern portion of the property other than the rectangle of land comprising the east-west leg of the "L". When the three parcels are united into one, as in this application, they form, as noted earlier, an approximate rectangle.

Parcel "A" was classified in the R.A. zone (Residential-Apartments) by the comprehensive zoning map adopted by the Council in August, 1966. The same comprehensive zoning map classified both parcels "B" and "C" in the R.-6 zone (Residence, one or two family, lot area 6000 square feet). In 1967 a petition was filed requesting reclassification of Parcel "B" from the R.-6 zone to the R.A. zone. The petition alleged that the comprehensive zoning map was in error with respect to Parcel "B". In a report dated 20 December 1967, the planning staff of the Office of Planning and Zoning (Planning Staff) said:

> "We regard the requested rezoning as a logical but minor consequence of an adjusted alignment for Perry Hall Boulevard, and we thus have no objection to the reclassification. We do not believe that the reclassification should be regarded as a change which in itself would justify further rezoning in this area in the future."

The Zoning Commissioner (Commissioner) granted the requested reclassification of Parcel "B" to the R.A. zone on 3 January 1968. No appeal was taken.

On 3 August 1970 the Council amended the Baltimore County Zoning Regulations,[1] such provisions to take effect 19 September 1970. By virtue of § 100.3A, which created a new set of zoning classifications, the classification of parcels "A" and "B", formerly R.A., was redesignated D.R.-16 (Density-Residential, 16.0 density units per acre) while that of parcel "C" was changed from R.-6 to D.R.-5.5.

On a proposed zoning map dated 10 September 1970, prepared by the Planning Staff and approved for public hearing by the Baltimore County Planning Board (Planning Board), the entire 32 ± acre subject property was assigned a D.R.-16 zoning classification. On a subsequent zoning map, dated 24 November 1970, recommended to the Council by the Planning Board, following its "second round" of public hearings, the 32 acre tract was again designated in the D.R.-16 zone. No reasons for these designations appear in the record. On 24 March 1971 the Council, after holding numerous public hearings, adopted a comprehensive zoning map for the area. The subject property, as a whole, was classified in the D.R.-5.5 zone. Thus, the recommendation of the Planning Staff and the Planning Board to extend D.R.-16 zoning to that portion of the subject property which was formerly parcel "C" was rejected. Moreover, those parts of the subject property originally parcels "A" and "B", both recommended by the Planning Staff and the Planning Board for retention in the D.R.-16 zone, were "downshifted" to the D.R.-5.5 zone. Several other properties lying on the south side of Ebenezer Road, previously classified as D.R.-16 and recommended for retention in that zone, were also

1. These amendments were approved by the County Executive and officially enacted on 5 August 1970.

"downshifted" to D.R.-5.5. The reasons for these actions do not appear in the record.

Within three weeks of the adoption of the comprehensive zoning map [2] the legal owners of the property petitioned the Commissioner for a reclassification of the subject property to the D.R.-16 zone, alleging that there was error in the comprehensive zoning map with respect to the subject property. In its report concerning this petition the Planning Board noted that the intersection of Ebenezer and Belair Roads was operating at capacity; that the grant of the requested reclassification could change trip density from 1,650 trips per day to 4,000 trips per day; and that there were no plans in the Capital Budget through 1977 for the construction of Perry Hall Boulevard. The Board went on to say:

> "The tract is surrounded on three sides by single-family houses, or vacant land for such use. The tract could be developed in apartments at D.R.-5.5 density.[3] D.R.-16 zoning in the middle of the single-family development would constitute spot zoning. Furthermore, after reconsidering the Council's actions not only on this property but in "downshifting" other properties from D.R.-16 to D.R.-5.5 on Perry Hall Boulevard, the petitioners' proposal for D.R.-16 represents an intrusion into a moderate density neighborhood."

The Board reversed the position it had taken prior to the adoption of the 1971 comprehensive rezoning map and recommended that the subject property be retained in the

2. The date upon which the zoning application was filed does not appear in the record. The provisions of Baltimore County Code (1972 Cum. Supp.) §§ 22-22 (c) and (d) support an inference that the application was filed prior to 16 April 1971.

3. *See* Baltimore County Zoning Regulations (1970) § 1B01 1A. Among the permitted uses in D.R. zones are the following: one-family detached houses, one-family semi-detached houses, one-family group houses, two-family houses, town-house apartment buildings, garden apartments, other apartment buildings; and churches, hospitals, schools and research institutes. Section 1B01.1B sets forth certain restrictions on these permitted uses.

D.R.-5.5 classification. After a hearing the Commissioner found that the subject property could be developed in the D.R.-5.5 classification; that the land surrounding the subject property on three sides was zoned D.R.-5.5, and that the development of the subject property in the D.R.-16 zone would generate a trip density which the intersection of Ebenezer and Belair Roads "could not handle." He concluded that the comprehensive zoning map was not in error in classifying the subject property in the D.R.-5.5 zone. On 22 March 1972 he denied the request for reclassification to the D.R.-16 zone.

An appeal was taken to the Board of Appeals (Board). The recommendation of the Planning Board was included as a part of the file. In addition a number of experts testified on behalf of the owners that the topography of the subject property, the presence of rock, drainage difficulties and other physical characteristics, all of which would entail prohibitive development costs, as well as the proximity of Ebenezer Road and Perry Hall Boulevard made the subject property unsuitable for development in the D.R.-5.5 zone. In contrast they testified that all of these factors combined with the availability of water and sewer, the location of minimal but adequate shopping facilities and a social and recreational center (Perry Hall High School) in close proximity to the subject property, made the tract eminently fitted for development in the D.R.-16 zone. Moreover, they said that the grant of the requested reclassification would not depreciate property values. They further stated that any adverse effect on traffic would be minimal and temporary and would be eliminated by the construction of Perry Hall Boulevard. Schools would not be over-burdened, they maintained, because the number of school children generated by the 524 apartment units permitted in the D.R.-16 zone would be less than that generated by the 181 single family units permitted in the D.R.-5.5 zone. They concluded that the Planning Board recommendation for D.R.-16 zoning on the entire tract, made prior to the adoption of the 1971 map, was correct and that the Council was in error in designating the subject property in the D.R.-5.5 zone on that map.

The protestants, neighboring homeowners, pointed to a report of the Planning Board issued during the October to April Cycle 1971-72[4] which indicated that as a result of the comprehensive rezoning of 1971 the county's inventory of vacant land zoned D.R.-16 was increased from 3,200 acres to 3,700 acres; that that inventory could house two and one-half times the population anticipated by 1975; and, consequently, that such inventory would satisfy the need for apartment development until 1975 by which time the Planning Board would be planning for the comprehensive zoning of 1976.[5] They offered testimony that the requested reclassification would have an adverse effect on the value of their properties; would exacerbate existing flooding problems on their properties; would aggravate already existing traffic congestion; and would place an additional burden on already over-capacitated schools.

On 17 July 1973 the action of the Commissioner was reversed in part and affirmed in part by the majority of the three member Board which felt that the Council's action was "clearly in error and confiscatory in nature," and that the petitioners "should at least be returned to the status which existed prior to the adoption of the 1971 comprehensive zoning map." Accordingly, the Board granted reclassification of 20 ± acres of the subject property (former parcels "A" and "B") to D.R.-16 and retained the remaining 12 ± acres (former parcel "C") in the D.R.-5.5 zone.

Two appeals were filed in the Circuit Court for Baltimore County, one by the protestants who appealed from that portion of the order which reclassified former parcels "A" and "B" to the D.R.-16 zone, and the other by the owners of

4. *See* Baltimore County Code (1972 Cum. Supp.) § 22-22 (c). This section establishes a schedule of semiannual recurring periods for the purpose of considering contemporaneous zoning reclassification petitions.

5. *See* Baltimore County Code (1972 Cum. Supp.) § 22-20 (d). This section requires the Planning Board to recommend to the Council a complete countywide zoning map within the one-year period immediately preceding April 16, 1976, and within the one-year period immediately preceding every fourth year thereafter. The provisions of this section are mandatory. Code § 22.21.1 requires the Council to adopt a countywide zoning map before October 16, 1976 and before October 16 of each of the later years in which the Planning Board is required to submit a recommended countywide map.

the subject property who appealed from that portion of the order which retained former parcel "C" in the D.R.-5.5 zone. On 25 January 1974 Judge H. Kemp MacDaniel found that the issues before the Board were "fairly debatable" and affirmed the decision of the Board. Both the protestants and the owners appealed to this Court.[6]

The applicable test for determining the scope of judicial review in a zoning case alleging error in a comprehensive rezoning has recently been restated in *Trainer v. Lipchin*, 269 Md. 667 (1973), in which the Court of Appeals, quoting from *Stratakis v. Beauchamp*, 268 Md. 643, 652-53 (1973), said:

> "' . . . Where a legislative body, or a board of county officials, pursuant to authority conferred upon it, has granted a rezoning of property, the question on judicial review is whether or not such action is arbitrary and discriminatory or fairly debatable, *Montgomery County v. Pleasants*, 266 Md. 462, 295 A. 2d 216 (1972); *Himmelheber v. Charnock*, 258 Md. 636, 267 A. 2d 179 (1970); *Chevy Chase Village v. Mont. Co.*, 258 Md. 27, 264 A. 2d 861 (1970); *Smith v. Co. Comm'rs of Howard Co.*, 252 Md. 280, 249 A. 2d 708 (1969). We shall follow that test in considering this appeal.
>
> "While, in recent years, we have had occasion to enunciate a number of important principles applicable to the law of zoning, perhaps none is more rudimentary than the strong presumption of the correctness of original zoning and of comprehensive rezoning. To sustain a piecemeal change in circumstances such as those present here, *strong* evidence of mistake in the original zoning or comprehensive rezoning or evidence of substantial change in the character of the neighborhood must be produced, *Rockville v. Henley*, 268 Md. 469, 302 A. 2d 45 (1973); *Heller v. Prince George's Co.*, 264

6. Baltimore County did not appear in the proceedings either before the Circuit Court or before this Court.

> Md. 410, 412, 286 A. 2d 772 (1972); *Creswell v. Baltimore Aviation*, 257 Md. 712, 721, 264 A. 2d 838 (1970). Since, as we have also said, this burden is onerous, *Cabin John Ltd. v. Montgomery Co.*, 259 Md. 661, 271 A. 2d 174 (1970); *Creswell v. Baltimore Aviation, supra; Wells v. Pierpont*, 253 Md. 554, 253 A. 2d 749 (1969), the task confronting appellants [appellees], whose application followed the comprehensive rezoning by merely four months, is manifestly a difficult one.' " (emphasis in original) 269 Md. at 672-73.

We find that the owners have failed to meet that test.

The owners initially contend that there was error in the 1971 comprehensive zoning map which "downshifted" former parcels "A" and "B" to the D.R.-5.5 zone. They maintain that the then equivalent of the D.R.-16 classification, R.A. (hereinafter referred to as D.R.-16), assigned to former parcel "A" by the comprehensive rezoning of 1966, is presumed to be correct; that the correctness of this action was reaffirmed in 1968 when the Commissioner granted reclassification of former parcel "B" to the D.R.-16 zone, and was again reaffirmed when the Planning Staff and the Planning Board recommended in 1970 not only that former parcels "A" and "B" should be retained in the D.R.-16 zone but also that former parcel "C" should be reclassified to the D.R.-16 zone. The owners maintain that the then existing zoning of the subject property could not properly be altered by the Council unless there was evidence of error in the D.R.-16 classification assigned in 1966 or change in the character of the neighborhood subsequent to the assignment of that classification.

In support of this position the owners point out that Baltimore County Code (1972 Cum. Supp.) §§ 22-20 and 22.22.1 now require that a comprehensive rezoning of the entire county take place at least once in every four years.[7]

7. *See* note 5, *supra*.

They argue that the frequent use of the comprehensive rezoning technique, absent the "change or mistake" rule, will permit arbitrary and capricious action on the part of the Council, which will undermine the permanence and stability of zoning classifications intended to be protected by the presumption of validity accorded comprehensive rezoning.

The Court of Appeals and this Court have consistently held that the "change or mistake" rule is not controlling in cases involving comprehensive rezoning. *Scull v. Coleman*, 251 Md. 6, 12 (1968); *Trustees v. Baltimore County*, 221 Md. 550, 560-61 (1960); *McBee v. Baltimore County*, 221 Md. 312, 316-17 (1960); *Roberts v. Grant*, 20 Md. App. 247, 253 (1974). The reason for this rule was set forth cogently in *McBee, supra*, at 316-17, where the Court of Appeals pointed out that:

> "Where the matter is studied comprehensively, the inquiry into time and space with respect to change is naturally more extensive than on a single application. In short, the County Commissioners were here exercising a plenary power, delegated by the General Assembly, to legislate a new zoning for the whole County. The new map reflects changes occurring over a wide area, and takes into account future public needs and purposes. Hence, the legislative body is not confined to a consideration of changes in the immediate neighborhood. The so-called "change or mistake" rule applicable to piecemeal rezoning cases as stated in *N.W. Merchants Term. v. O'Rourke*, 191 Md. 171, 191, is not controlling here, because the new legislation is itself a comprehensive plan designed to cover a substantial area and to supersede the old zoning throughout that area. When such a new map is adopted, it is entitled to the same presumption that it is correct as is an original zoning."

We see nothing in the "cyclical" zoning scheme adopted by the Council which impels a modification of this rule. The fact that comprehensive rezoning may occur in Baltimore

County with greater frequency than has been the case in the past does not alter the fact that it will result from careful study of changes occurring in wide areas and an assessment of future public needs and purposes. Indeed, in our view, the system will enhance the stability and permanence of zoning classifications by assuring that the majority of zoning classifications are determined in accordance with a carefully considered integrated plan of development, based upon a full understanding of the present and future needs of a broad area, rather than upon a piecemeal review of limited scope. In any event, arbitrary and capricious action by the Council is prevented, and stability and permanence assured by the requirement that a comprehensive rezoning, in order to be valid, must bear a substantial relationship to the public health, comfort, order, safety, convenience, morals, and general welfare. *Norbeck v. Montgomery County*, 254 Md. 59, 66 (1969). Accordingly, we hold that under the cyclical zoning process established by Baltimore County the "change or mistake" rule is not controlling and that the absence of a showing of either change or mistake prior to a comprehensive rezoning does not constitute error.

The owners next complain that the Council erred in assigning the D.R.-5.5 classification to the subject property in that the subject property is unsuited for development in that zone. Indeed, the Board found the evidence before it sufficient not only to establish "error" but also to establish that the D.R.-5.5 zoning was "confiscatory in nature." In our view the evidence presented was not sufficient to establish either "mistake" or an "unconstitutional confiscation" or, indeed, even to make those issues fairly debatable.

A number of expert witnesses expressed the opinion that the subject property was "unsuitable" for development in the D.R.-5.5 zone because of its topography, rock outcroppings, and proximity to Ebenezer Road and the proposed Perry Hall Boulevard. Yet they themselves conceded that single-family houses could be developed on the subject property, although there was doubt as to whether the maximum permitted density of 181 units could be achieved. They admitted that no details concerning

development costs of single-family homes had been "worked up," making it impossible to know whether that type of development would result in a profit or a loss. Furthermore, they acknowledged that single-family houses have been built on land adjoining the subject property on the east and west, some of which had topography similar to that of the subject property, and some of which fronted along Ebenezer Road. Thus, the basis of the experts' opinion that the subject property was unsuitable for D.R.-5.5 development was confined exclusively to a consideration of the tract's development for single-family use. There was not an iota of evidence presented to show that the maximum 181 dwelling units permitted in the D.R.-5.5 zone could not be developed successfully in some manner other than detached homes on the subject tract.[8] In addition, there was no evidence presented to show that the subject property was unsuitable for development by way of special exception uses.[9] Thus, the expert opinions that the subject property was not suitable for development in the D.R.-5.5 zone were totally unsupported by facts.

The Court of Appeals and this Court have stated that an opinion, even that of an expert, is not evidence strong or

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8. In their brief the owners assert that the flexibility allowed by the present D.R.-5.5 zoning classification was not available to them because much of the subject property falls within a residential transition area. Consequently, the tract is confined to single-family use. *See* Baltimore County Zoning Regulations (1970) § 1B01.1B. Section 1B01.1B.1.a. defines a residential transition area as:

> "any D.R.-1, D.R.-2, D.R.-3.5, D.R.-5.5, or D.R.-10.5 zone or part thereof which lies (a) within 300 feet of any point on a dwelling other than an apartment building, or (b) within 250 feet of any point lying within a vacant lot of record which is itself wholly or partially classified as D.R. and which is two acres or less in area."

Section 1B01.1B.1.b., which sets forth the use restrictions in such transition areas, would limit those portions of the subject property lying within a residential transition area to single-family development.

The contention in the brief is unsupported by the evidence. Accordingly, we cannot consider this factor on appeal. Md. Rule 1085.

9. *See* Baltimore County Zoning Regulations § 1B01.1C, which establishes the following uses, among others, as permitted by way of special exception: conservatories for music or other arts; convalescent homes, community buildings, swimming pools, golf courses, country clubs, or other, similar civic, social, recreational or educational uses; and private colleges

substantial enough to show error in the comprehensive rezoning or confiscation unless the reasons given by the expert as the basis for his opinion, or other supporting facts relied upon by him, are themselves substantial and strong enough to do so. *Stratakis v. Beauchamp, supra,* at 643, 655 (1973); *Westview Park v. Hayes,* 256 Md. 575, 582 (1970); *Smith v. Co. Comm'rs of Howard County,* 252 Md. 280, 284 (1969); *Iverson v. Zoning Board,* 22 Md. App. 265, 270 (1974). Moreover, the Court of Appeals has repeatedly held that in order to obtain a rezoning on the basis of an unconstitutional confiscation, an applicant must show that he has been deprived of all reasonable use of his property and that it cannot be used for any of the permitted uses in the existing zone. *Rockville v. Stone,* 271 Md. 655, 662-64, 319 A. 2d 536 (1974); *Trainer v. Lipchin, supra,* at 675-76; *Stratakis, supra,* at 654; *Mayor and Council of Rockville v. Henley,* 268 Md. 469, 477 (1973); *Cabin John Ltd. v. Montgomery Co.,* 259 Md. 661, 670 (1970); *Montgomery Co. Council v. Kacur,* 253 Md. 220, 229 (1969). Viewed in this light the expert testimony presented here does not pass muster.

The owners additionally assert that the Council erred because it failed to take into account the fact that Perry Hall Boulevard was to be constructed in FY 1977-78. Experts presented by the owners conceded that the intersection of Ebenezer and Belair Roads was overburdened at least in the evening peak hours. Nonetheless, they maintained that this problem was temporary in nature and would be alleviated when the proposed Perry Hall Boulevard was constructed.

The term error, as it is used in zoning law, does include the failure to take into account projects or trends reasonably foreseeable of fruition in the future. But in order to establish error there must be evidence to show that such developments were not, in fact, or could not have been, taken into account so that the Council's action was premised on a misapprehension. *Jobar Corp. v. Rodgers Forge,* 236 Md. 106, 112 (1964); *Rohde v. County Board,* 234 Md. 259, 267-68 (1964); *Pressman v. Baltimore,* 222 Md. 330, 338-39 (1960); *see Miller v. Abrahams,* 239 Md. 263, 268, 272-274 (1965). Here the record shows that the construction of Perry

Hall Boulevard was planned as long ago as 1966; that in 1967 the Council granted reclassification to former parcel "B" because of a readjustment of that road; and that the Council had, in its Capital Budget, included money for the construction of that road in FY 1977-78. All of this evidence supports an inference that at the time of the comprehensive rezoning in 1971, the Council was aware of the proposed construction of Perry Hall Boulevard and the consequent possible improvement in the flow of traffic through the Ebenezer-Belair Road intersection. This inference is buttressed by the fact that it was reasonable for the Council, armed with such an awareness, to conclude it to be in the public interest to prevent the intensification of the then existing congestion problem, at least until 1976 when another comprehensive rezoning, based on then current traffic studies, would be undertaken. In contrast, there is nothing in the record to support an inference that at the time of the comprehensive rezoning in 1971 the Council was unaware of the planned construction of Perry Hall Boulevard. Consequently, there is insufficient evidence to make fairly debatable the question of whether the Council erred in failing to consider the effect of the proposed construction of Perry Hall Boulevard.

Finally, the owners contend that the Council erred in failing to follow the recommendations of the Planning Staff and the Planning Board made prior to the comprehensive rezoning of 1971. Several expert witnesses testified that, in their opinions, the D.R.-16 classification assigned to former parcel "A" by the comprehensive rezoning of 1966 was correct; that the D.R.-16 classification recommended by the Planning Board and assigned to former parcel "B" by the grant of an individual map amendment in 1968 was correct; and that the recommendation of the Planning Staff and the Planning Board that former parcels "A" and "B" be retained in the D.R.-16 zone and former parcel "C" be placed in the D.R.-16 zone were correct. Consequently, they concluded that the Council erred by failing to follow such recommendations in assigning a D.R.-5.5 classification to the subject property.

The Court of Appeals and this Court have recognized that the recommendations of a planning body with respect to a comprehensive rezoning are not binding upon the legislative body. *Nottingham Village v. Balto. Co.*, 266 Md. 339, 354 (1972); *Miller, supra*, at 272; *Iverson, supra*, at 269. Moreover, the Planning Staff and the Planning Board recommendations for D.R.-16 zoning were made in the form of a map with no reasons articulated for the D.R.-16 classification proposed. Such recommendations, even though emanating from the Planning Staff and the Planning Board, are insufficient to make the issue of mistake or confiscation "fairly debatable." *Cf. Stratakis, supra*, at 656-57; *Heller v. Prince George's Co.*, 264 Md. 410, 418-19 (1972); *Habliston v. City of Salisbury*, 258 Md. 350, 361-62 (1970).

Under all of these circumstances the evidence before the Board that there was a mistake in the comprehensive rezoning or that the classification of the subject property in the D.R.-5.5 zone constituted a confiscatory action, was insufficient to make either of these issues fairly debatable. The judge below was not correct in affirming that portion of the Board's order which granted reclassification of the 20 ± acres, formerly comprising parcels "A" and "B", to the D.R.-16 zone. Accordingly, that portion of the order will be reversed.

The Board denied reclassification of former parcel "C" from the D.R.-5.5 zone to the D.R.-16 zone. In order for the requested reclassification to have been granted it was necessary for the owners, among other things, to establish by strong and convincing evidence, that the D.R.-5.5 classification assigned by the comprehensive rezoning of 1971 was erroneous. The evidence of error with respect to former parcel "C" was weaker than that presented with respect to former parcels "A" and "B". Whereas former parcels "A" and "B" had been zoned D.R.-16 before the adoption of the 1971 comprehensive rezoning, former parcel "C" had been classified in the D.R.-5.5 zone since 1966. Weaker evidence than that which we have found to be insufficient to make the question of error as to former parcels "A" and "B" fairly debatable, manifestly, is

insufficient to constitute the strong and convincing evidence of error required to be shown before a reclassification of former parcel "C" could be granted. On the basis of the evidence presented, the Board could not have properly granted the requested reclassification. Its decision to retain the 12 ± acres, formerly comprising parcel "C", in the D.R.-5.5 zone was correct and the judge below properly affirmed that portion of the Board's decision. Accordingly, that portion of the order will be affirmed.

Order affirmed in part and reversed in part.
Case remanded for the entry of an order in accordance with this opinion.
Costs to be paid by appellant owners.

ALAN FEDDER ET UX. v. COMPONENT STRUCTURES CORPORATION ET AL.

[No. 79, September Term, 1974.]

Decided November 18, 1974.

EASEMENTS — *Right-Of-Way — County Take-Over — While Easement Acquired By Express Grant Depends On Construction Of Deed Conveying It, Where Its Purpose, Use And Extent Are Not Readily Discernible From That Document, Courts Must Give Effect To Intention Of Parties At Time Contract Was Made — While Deed Here Provided For Right-Of-Way And Did Not Elaborate On Its Intended Extent And Use, Sales Contract In Providing For Right-Of-Way Indicated Parties Contemplated It Would Eventually Be Converted To Public Road — Parol Evidence May Be Given Of Collateral And Independent Facts Tending To Support Deed, Provided It's Not Offered To Vary Agreement And Is Consistent With Deed — Circumstances Surrounding Reservation Of Right-Of-Way Here, Including Reference To Minimum Specifications For New County Roads, Anticipated County Take-Over.* pp. 379-381

TRESPASS — *Right-Of-Way — Evidence Of Damages — Utility Lines — Surface Water Drainage — Where Anyone Unlawfully Obstructs Easement, Person Whose Rights Are Interfered With Need Not Resort To*

an allegation of delinquency and shall be so advised." Appellant was not so advised and was called upon to answer questions put to him by the court. The court's use of the Answers to find the commission of a delinquent act was based upon appellant's indication that he had made the admissions therein.

Pleading in an Adjudicatory Delinquency Hearing

As we have indicated, both appellant and the State on appeal interpret what went on at the adjudicatory hearing as a plea of guilty by appellant which was accepted by the court. Appellant goes on to argue that the acceptance of the plea was ineffective because it did not meet constitutional requirements. The State claims that the "hearing conducted by the trial judge in accepting the juvenile's guilty plea measured up to the essentials of due process and fair treatment." Although we have determined the appeal on another point, again we believe that some comment should be made.

The Rules pertaining to juvenile causes make no provision for pleas such as may be made in criminal causes. Rules 720-724. The only reference to a response to the petition is in Rule 904, which, as we have indicated, provides: "A party may file a pleading denying or admitting all a part of the facts alleged or a motion raising preliminary objection." The Rule continues: "If no pleading is filed, the parties are deemed to have denied the allegations." The Rule makes no distinction between delinquency cases and other juvenile cases, even though, as we have pointed out, a delinquency proceeding has many of the incidents of a criminal proceeding, and ordinarily requires proof of the commission of a crime by the juvenile. But even if there is no authorization for a plea of guilty in a delinquency proceeding, if admissions by the juvenile by answer or in open court have, in fact, the effect of a guilty plea, we believe the affirmative acceptance by the court should be required under the constitutional guidelines applicable to a plea of guilty in a criminal case. In other words, such admissions may be effectively accepted and considered by

the court only under the standard applicable to waiver of constitutional rights as explicated by us in *Williams v. State*, 10 Md. App. 570.[15]

Judgment reversed; case remanded for a new adjudicatory hearing; a new disposition hearing to abide the result.

WILLIAM W. BOYCE ET AL. v. BERTHA SEMBLY ET AL.

[No. 153, September Term, 1974.]

Decided March 7, 1975.

ZONING — *Test For Determining Scope Of Judicial Review In Case Alleging Error In Comprehensive Rezoning Is Whether Or Not Decision Is Arbitrary And Discriminatory Or Fairly Debatable — Strong Evidence Of Mistake In Original Zoning Or Comprehensive Rezoning Or Evidence Of Substantial Change In Character Of Neighborhood Must Be Produced, And Unless Such Strong Evidence Is Presented Action Granting Reclassification Is Arbitrary And Capricious — Specific Physical Facts Not Readily Visible Or Discernible At Time Of Comprehensive Zoning Are Sufficient To Establish Error And Overcome Presumption Of Validity Of Comprehensive Zoning — Opinion Or Conclusion Of Expert Or Lay Witness Is Of No Greater Probative Value Than Warranted By Soundness Of His Underlying Reasons Or Facts — At Time Of Comprehensive Rezoning, Council Is Required To Take Into Account Only Existing Facts and Projects Or Trends Reasonably Probable Of Fruition In Foreseeable Future — Record Totally Devoid Of Evidence Council Failed To Take Into Account Any Facts Or Circumstances Existing At Time Of Comprehensive Zoning Relevant To Subject Property And Its Environs To Show Its Initial Assumptions And Premises In Determining Appropriate Classification Were Erroneous — Nor Any Events Subsequent To Time Of Comprehensive Rezoning To Show Council's Assumptions And Premises At Time Of Comprehensive Rezoning Proved Invalid By Passage Of Time — Presumption Of Validity Accorded Comprehensive Rezoning Not Overcome And Question Of Error*

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15. It may be advisable for the Standing Committee on Rules of Practice and Procedure to review Rule 918 in the light of Courts Art. § 3-830 (d) and Rule 719, § c, and also to consider expansion of Rule 904 to cover specifically the area of pleas in delinquency proceedings.

Or Mistake In Comprehensive Zoning Of Subject Property Not Fairly Debatable. pp. 44-60

J. A. R.

Appeal from the Circuit Court for Baltimore County (BARRETT, C. J.).

The Zoning Commissioner granted a petition by William W. Boyce, Jr., and P. H. Walker Construction Corp. a business roadside zoning classification, and, on appeal by protestants, the Board of Appeals ordered part of the subject property classified and zoned business and the remainder residential. On appeal by the protestants the Circuit Court ordered the entire tract classified and zoned density residential. The owners of the subject property appeal.

Order affirmed. Costs to be paid by appellants.

The cause was argued before THOMPSON, DAVIDSON and LOWE, JJ.

Ernest C. Trimble, with whom were *Whiteford, Taylor, Preston, Trimble & Johnston* on the brief, for appellants.

Anne Kay Kramer for appellees.

DAVIDSON, J., delivered the opinion of the Court. LOWE, J., concurs in the result and filed a concurring opinion at page 62 *infra.*

This case presents the narrow question of whether the County Council of Baltimore County (Council) committed basic and actual "mistake" or "error" as those interchangeable terms are used in zoning law, when on 24 March 1971 it adopted a comprehensive zoning map on which the subject property, consisting of 5.84 ± acres, was classified as D.R.-5.5 (Density Residential, 5.5 dwelling units per acre).

Most of the facts are not in dispute. The subject property, located in a community known as Lutherville, lies in an area bounded by Seminary Avenue on the north, the Harrisburg Expressway on the west, and the Baltimore Beltway on the

south. (See location map attached hereto.) It is roughly triangular in shape and fronts on the west side of Railroad Avenue approximately 480 feet south of its intersection with Seminary Avenue.

On the west side of Railroad Avenue, approximately 250 feet north of the subject property, there is a relatively small parcel of land, located at the corner of the southwest quadrant of the intersection of Railroad Avenue and Seminary Avenue, which was reclassified to the B.L. zone (Business, Local) by a local map amendment adopted subsequent to 1955, on which a Citgo service station has long been and still is in operation. In the northwest quadrant of the intersection there is also a comparatively small parcel of land zoned B.L. upon a portion of which a refinishing shop, called The Wood Butcher, was developed around 1960. A furniture store known as Leers, containing about 15,000 square feet, is presently under construction on the remaining portion of that B.L. zoned land. At the corner of the southeast quadrant of the intersection there exists still another relatively small parcel of land which was classified in the B.L. zone in 1955, upon a portion of which a small grocery store has been located for many years. Subsequent to 1955 a relatively small parcel of land adjoining this B.L. zoned tract on the south was reclassified from the then R.-10 zone (Residence, one or two family, lot area 10,000 square feet) to the B.L. zone. An office building has been developed on this B.L. zoned tract. Adjoining this B.L. zoned parcel on its south is a tract of land zoned D.R.-3.5 (Density Residential, 3.5 dwelling units per acre), a portion of which confronts the northern portion of the subject property.[1]

Moving south along the east side of Railroad Avenue and confronting the southern portion of the subject property there is a parcel of land which, subsequent to 1955, was reclassified by a local map amendment from the then R.-10 zone to the D.R.-16 zone (Density Residential, 16 dwelling units per acre). An apartment complex known as the Cardiff of Charles Apartments, consisting of 160 units, has

1. The record is devoid of any evidence showing the development, if any, existing on this parcel.

been developed on a portion of that tract. Lying between this D.R.-16 parcel and the Beltway, on the east side of the railroad right-of-way, there is a relatively large tract of land which, subsequent to 1955, was reclassified by a local map amendment from the then R.-10 zone to the B.R. zone (Business, Roadside). "Warehouse office storage"-type buildings have been developed on this parcel. The record further shows that the Lutherville Supply & Equipment Company, which sells heavy machinery, earth-movers and cranes, is also located on the land east of the subject property and across the railroad track. It is unclear, however, whether this business enterprise is located on the D.R.-16 zoned land or the B.R. zoned land.

The subject property, which is fairly level, has a low elevation lying approximately 15 to 20 feet below the roadbed of the Northern Central Railway, which adjoins Railroad Avenue on the east. It is bisected by the Roland Run Stream which traverses the subject property from north to south. That portion of the subject property lying to the west of Roland Run Stream is further bisected by a tributary of the Roland Run Stream which passes through that portion of the subject property from west to east. Parallel to Roland Run and its tributaries· there are 10-foot-wide easements for utilities and sewers.

For 60 years a building materials and lumber supply yard, located on the southeastern sèctcr of the subject property, has been in operation. This nonconforming use is still being carried on, with annual sales in 1971 of $1.5 million. At present, there are five frame buildings located on the southeastern portion of the subject property, all of which are 50 to 60 years old and in a "bad state of repair." Their utility for operation as a modern-day lumberyard is substantially impaired because none of them is designed to accommodate forklift trucks, necessitating the piling of lumber by hand. At one time a residence and a shed had been located on the southwestern portion of the subject property, but those buildings have been razed. Currently, that portion of the tract has no development upon it.

At present, access to the subject property is limited to

Railroad Avenue, which runs along a small portion of the northeastern sector of the subject property and then deadends. That street has a 20-foot right-of-way and a paved width of 15 feet. The Northern Central Railway right-of-way which adjoins Railroad Avenue on the east, as well as a portion of the southeastern sector of the subject property, contains one railroad track over which two to four freight trains travel daily. School Lane appears to provide access to the northwestern section of the subject property. The 20-foot-wide pavement of that road ends, however, 60 feet from the northern boundary of the subject property.

The subject property was classified in the R.-6 zone (Residence, one or two family, lot area 6,000 square feet), which was the then equivalent of the D.R.-5.5 zone, by the comprehensive zoning map which preceded that of 1971. On 10 September 1970 the Zoning Commissioner (Commissioner) of Baltimore County granted an application requesting reclassification of the subject property to the B.R. zone. An appeal was taken to the Board of Appeals (Board). While that appeal was pending, the Council was considering the adoption of a new comprehensive zoning map. The Log of Issues and Recommendations to the Council, Relative to the Central Sector, used at the public hearing preceding adoption of the 1971 comprehensive zoning map, indicates that the existing zoning of the subject property was R.-6; that the Planning Board recommended that the subject property be designated D.R.-5.5; that the property owner was requesting a B.R. zoning classification in a local map amendment case then pending; and that a proposed Council resolution recommended D.R.-16 zoning for the subject tract. On 24 March 1971 the Council adopted a comprehensive zoning map on which the subject property was classified in the D.R.-5.5 zone.

Within three weeks of the adoption of the comprehensive zoning map [2] the owner of the property and the contract

2. The date upon which the zoning application was filed does not appear in the record. Provisions of Baltimore County Code (1972 Cum. Supp.) § 22-22(c) and (d) support an inference that the application was filed prior to 16 April 1971.

purchaser of the tract [hereinafter called applicants] petitioned the Commissioner for a reclassification of the subject property to the B.R. zone, alleging that there was error in the comprehensive zoning map with respect to the subject property. After a hearing the Commissioner concluded that the comprehensive zoning map was in error in classifying the subject property in the D.R.-5.5 zone. On 8 February 1972 he granted the requested reclassification to the B.R. zone. An appeal was taken to the Board and, on 6 September 1972, the action of the Commissioner was reversed in part and affirmed in part by the Board which believed that the applicants had "met the burden of proof in showing error in original zoning on that portion of the petitioned tract southeastwardly of the stream, but not on that portion northwestwardly of the stream." Accordingly, the Board granted reclassification of the 2.3 ± acres of the subject property, which lie on the southeast side of the center line of Roland Run to the B.R. zone, and retained the remaining 3.54 ± acres of the subject property, which lie on the northwest side of the center line of Roland Run, in the D.R.-5.5 zone.

The protestants, neighboring property owners, filed an appeal in the Circuit Court for Baltimore County from that portion of the order which reclassified the southeastern portion of the tract to the B.R. zone. On 29 January 1974 Judge Lester Barrett found that "[t]he testimony of the Protestants in this case supported the correctness of the County Council's comprehensive zoning of March 1971" and that "the testimony produced by the Petitioner-Appellee is not sufficient to overcome the presumption of correctness which attaches with the adoption of a comprehensive zoning map by the County Council." An order was entered reversing that portion of the Board's order which had reclassified the 2.3 ± acres lying on the southeastern portion of the subject property to the B.R. zone. It is from this order that the applicants appeal.

The applicants initially contend that the trial court applied an improper standard in determining whether the action of the Board should be reversed. They point out that

while the trial court found the evidence adduced by the protestants supported the correctness of the 1971 comprehensive zoning and that the evidence adduced by the applicants was insufficient to overcome the presumption of correctness which attaches to a comprehensive rezoning, it did not determine whether the action of the Board was arbitrary and discriminatory or "fairly debatable." The applicants conclude that under these circumstances the trial court impermissibly weighed the evidence and substituted its judgment for that of the Board. We do not agree.

The applicable test for determining the scope of judicial review in a zoning case alleging error in a comprehensive rezoning has recently been restated in *Trainer v. Lipchin*, 269 Md. 667, 672-73, 309 A. 2d 471, 474 (1973), in which the Court of Appeals, quoting from *Stratakis v. Beauchamp*, 268 Md. 643, 652-53, 304 A. 2d 244, 249 (1973), said:

> " '. . . Where a legislative body, or a board of county officials, pursuant to authority conferred upon it, has granted a rezoning of property, the question on judicial review is whether or not such action is arbitrary and discriminatory or fairly debatable. We shall follow that test in considering this appeal.
>
> " 'While, in recent years, we have had occasion to enunciate a number of important principles applicable to the law of zoning, perhaps none is more rudimentary than the strong presumption of the correctness of original zoning and of comprehensive rezoning. To sustain a piecemeal change in circumstances such as those present here, *strong* evidence of mistake in the original zoning or comprehensive rezoning or evidence of substantial change in the character of the neighborhood must be produced. Since, as we have also said, this burden is onerous, the task confronting appellants [appellees], whose application followed the comprehensive rezoning by merely four months, is manifestly a difficult one.' " (Emphasis in original.) (Citations omitted.)

Under this test "strong evidence" of error is required to make the issue of mistake in comprehensive zoning fairly debatable and unless such strong evidence is presented by the applicant, the action of the Board in granting a reclassification is arbitrary and capricious.

Here, the trial court's finding that the "testimony produced by the Petitioner-Appellee is not sufficient to overcome the presumption of correctness which attaches with the adoption of a comprehensive zoning map by the County Council" is, in essence, a determination that there was not evidence of mistake in the comprehensive zoning strong and substantial enough to make that issue fairly debatable and that, consequently, the action of the Board in granting the reclassification was arbitrary and capricious. The trial court's further finding that the evidence adduced by the protestants supported the correctness of the 1971 comprehensive zoning, while correct, was not required for a resolution of the issue in this case. Until the presumed validity of the comprehensive zoning map has been overcome, evidence supporting its correctness is immaterial. Thus, while the trial court made a gratuitous finding, he applied the appropriate standard for judicial review. He neither weighed the evidence nor substituted his judgment for that of the Board.

Secondly the applicants contend that the Council erred in placing the subject property in the D.R.-5.5 zone because, at the time of the adoption of the 1971 comprehensive zoning map, it failed to take certain facts into account.

In this case, in order to grant the requested reclassification, the Board needed strong and substantial probative evidence that there was "mistake" or "error" in the comprehensive zoning of 1971. In order to assess the evidence before the Board, it is necessary to understand the inherent nature of the terms "mistake" or "error" as they are used in zoning law. A perusal of cases, particularly those in which a finding of error was upheld, indicates that the presumption of validity accorded to a comprehensive zoning is overcome and error or mistake is established when there is probative evidence to show that the assumptions or

premises relied upon by the Council at the time of the comprehensive rezoning were invalid. Error can be established by showing that at the time of the comprehensive zoning the Council failed to take into account then existing facts, or projects or trends which were reasonably foreseeable of fruition in the future, so that the Council's action was premised initially on a misapprehension. *Bonnie View Club v. Glass*, 242 Md. 46, 52-53, 217 A. 2d 647, 651 (1966); *Jobar Corp. v. Rodgers Forge Community Ass'n.*, 236 Md. 106, 112, 116-18, 121-22, 202 A. 2d 612, 615, 617-18, 620-21 (1964); *Overton v. County Commissioners*, 225 Md. 212, 216-17, 170 A.2d 172, 174-76 (1961); *see Rohde v. County Board of Appeals*, 234 Md. 259, 267-68, 199 A. 2d 216, 218-19 (1964). Error or mistake may also be established by showing that events occurring subsequent to the comprehensive zoning have proven that the Council's initial premises were incorrect. As the Court of Appeals said in *Rockville v. Stone*, 271 Md. 655, 662, 319 A. 2d 536, 541 (1974):

> "On the question of original mistake, this Court has held that when the assumption upon which a particular use is predicated proves, with the passage of time, to be erroneous, this is sufficient to authorize a rezoning."

See Rohde, supra, at 234 Md. 267-68, 199 A. 2d 220-21; *England v. Rockville*, 230 Md. 43, 45-47, 185 A. 2d 378, 379-80 (1962); *Pressman v. Baltimore*, 222 Md. 330, 338-39, 160 A. 2d 379, 383 (1960); *White v. County Board of Appeals*, 219 Md. 136, 144, 148 A. 2d 420, 423-24 (1959); *cf. Dill v. The Jobar Corp.*, 242 Md. 16, 20-21, 24, 217 A. 2d 564, 567-68 (1966); *Marcus v. Montgomery County Council*, 235 Md. 535, 540-41, 201 A. 2d 777, 780 (1964); *Offutt v. Board of Zoning Appeals*, 204 Md. 551, 558, 105 A. 2d 219, 221-22 (1954); *Wakefield v. Kraft*, 202 Md. 136, 144-45, 149, 96 A. 2d 27, 30 (1953); *Hoffman v. City of Baltimore*, 197 Md. 294, 307, 79 A. 2d 367, 373-74 (1951).

It is presumed, as part of the presumption of validity accorded comprehensive zoning, that at the time of the

adoption of the map the Council had before it and did, in fact, consider all of the relevant facts and circumstances then existing. Thus, in order to establish error based upon a failure to take existing facts or events reasonably foreseeable of fruition into account, it is necessary not only to show the facts that existed at the time of the comprehensive zoning but also which, if any, of those facts were not actually considered by the Council. This evidentiary burden can be accomplished by showing that specific physical facts were not readily visible or discernible at the time of the comprehensive zoning, *Bonnie View Club, supra,* at 242 Md. 48-49, 52, 217 A. 2d 649, 651 (mineshaft and subsurface rock formation); by adducing testimony on the part of those preparing the plan that then existing facts were not taken into account, *Overton, supra,* at 225 Md. 216-17, 170 A. 2d 174-75 (topography); or by producing evidence that the Council failed to make any provision to accommodate a project, trend or need which it, itself, recognized as existing at the time of the comprehensive zoning, *Jobar Corp., supra,* at 236 Md. 116-17, 202 A. 2d 617-18 (need for apartments). *See Rohde, supra,* at 234 Md. 267-68, 199 A. 2d 221. Because facts occurring subsequent to a comprehensive zoning were not in existence at the time, and, therefore could not have been considered, there is no necessity to present evidence that such facts were not taken into account by the Council at the time of the comprehensive zoning. Thus, unless there is probative evidence to show that there were then existing facts which the Council, in fact, failed to take into account, or subsequently occurring events which the Council could not have taken into account, the presumption of validity accorded to comprehensive zoning is not overcome and the question of error is not "fairly debatable." [3]

3. In applying the change-mistake rule to test the validity of comprehensive rezoning, the Court of Appeals has long recognized the inherent difficulty in attempting to distinguish between "error" and "change" and has frequently found it unimportant to differentiate between the two. *See, e.g.,* Rohde, *supra,* at 234 Md. 267, 199 A. 2d 221; Pressman, *supra,* at 222 Md. 339, 160 A. 2d 383; White, *supra,* at 219 Md. 144, 148 A. 2d 423-24. The fact of the matter is that "error" and "change" are opposite sides of the same coin. On the one hand there can be a change in conditions so pervasive as to constitute a change in the character of the neighborhood which demonstrates that the Council's initial assumptions as to the character of the neighborhood were incorrect. In such cases it has been held that evidence of change in the character of the neighborhood is substantial enough to overcome the presumption of validity ordinarily accorded to a comprehensive rezoning. *See, e.g.,* Rockville v. Stone, *supra,* at 271 Md. 661-62, 319 A. 2d 540; Himmelheber v. Charnock, 258 Md. 636, 641-42, 267 A. 2d 179, 182 (1970); Wier v. Witney Land Co., 257 Md. 600, 614-15, 263 A. 2d 833, 840-41 (1970). On the other hand there can be less significant changes, such as the construction of sewers or roads, which may also indicate that certain other initial assumptions of the Council were incorrect. In such cases it has been held that evidence of change is sufficiently strong to establish error in the comprehensive rezoning so that the presumption of validity generally accorded is overcome. *See, e.g.,* Rockville v. Stone, *supra,* at 271 Md. 662, 319 A. 2d 541; Rohde, *supra,* at 234 Md. 267-68, 199 A. 2d 221; White, *supra,* at 219 Md. 144, 148 A. 2d 422-23. In either event, because the evidence of change demonstrates that the initial premises of the Council were invalid, the presumption of validity accorded to comprehensive rezoning vanishes. Thus, whether the evidence of change is viewed as establishing "change in the character of the neighborhood" or "error in comprehensive rezoning" the result is the same. When subsequent events demonstrate that any significant assumption made by the Council at the time of the comprehensive rezoning was invalid, the presumption of validity accorded to the comprehensive rezoning is overcome.

Moreover, in reviewing the evidence before the Board, it must also be noted that the opinion or conclusion of an expert or lay witness is of no greater probative value than that warranted by the soundness of his underlying reasons or facts. *Surkovich v. Doub,* 258 Md. 263, 272, 265 A. 2d 447, 451 (1970); *Anderson v. Sawyer,* 23 Md. App. 612, 618, 329 A. 2d 716, 720. The Court of Appeals and this Court have stated that an opinion, even that of an expert, is not evidence strong or substantial enough to show error in a comprehensive rezoning unless the reasons given by the witness as the basis for his opinion, or other supporting facts relied upon by him, are themselves substantial and strong enough to do so. *Stratakis, supra,* at 268 Md. 655, 304 A. 2d 250; *Coppolino v. County Board of Appeals of Baltimore County,* 23 Md. App. 358, 371-72, 328 A. 2d 55, 62 (1974). Viewed in the light of the principles applicable to "error" or "mistake" the testimony presented here does not pass muster.

The applicants contend that at the time of the comprehensive rezoning of 1971 the Council erred in placing the subject property in the D.R.-5.5 zone because they failed to take into account the fact that the subject property was

then unsuitable for residential development.[4] A witness qualified in the fields of real estate and real estate appraisal and the contract purchaser of the subject property testified that it was "unsuitable" for residential development because of its physical characteristics and its proximity to the railroad tracks. They stated that much of the land in the western sector of the subject property lay in the flood plain, and was not usable for any purpose; that in order to provide access to the western portion of the tract it would be necessary to bridge Roland Run Stream at great expense; and that, in any event, the maximum permitted density of 35 units could not be achieved either by single-family residential development or apartment development because the eastern portion of the subject property, adjoining the railroad right-of-way, was undesirable for residential development while the western portion contained insufficient usable land for the construction of 35 units. They concluded that residential development on the subject property would be economically unfeasible and that the only reasonable use which could be made of it consisted of commercial use on the eastern portion of the tract with off-street parking located on the western portion. They acknowledged that the subject property presently contains a profitable nonconforming use and that a single-family residence had been located on the western portion of the tract. They further conceded that the subject property was adjoined on the west and north by land upon which single-family development had taken place; that single-family development presently existed along the right-of-way of the railroad on land adjoining or lying in close proximity to the subject property; and that single-family residential development had recently occurred on land adjoining the railroad right-of-way in other communities located near Lutherville. There were no facts presented to show how much of the land contained in the total tract was unusable; how many units physically could

4. The applicants do not contend that the assignment of a residential classification, D.R.-5.5, to the subject property constituted impermissible confiscation.

be located on the tract; or how much it would cost to bridge Roland Run in order to provide access to the western portion of the subject property. Moreover, there was no explanation as to why it would be impossible to provide access for residential development via School Lane; or why it was any more undesirable here to locate residential units next to the right-of-way of the Northern Central Railroad than it had been to locate residential units next to the railroad within the same and neighboring communities.

This evidence was insufficient to make the question of "error" or "mistake" fairly debatable for two reasons. First, because the conclusion that the subject property was unsuitable for residential development was not supported by adequate reasons or facts, it was entitled to little if any probative value. It was not sufficiently strong and substantial to overcome the presumption of validity of the comprehensive zoning. Secondly, there was no evidence to show that at the time of the comprehensive zoning the Council was unaware of the readily visible physical characteristics and location of the subject property and failed, in fact, to take them into account. Indeed, the existence of easements for public sanitary sewers supports an inference that the Council was, in fact, aware of the physical characteristics of the subject property. Thus, there was no evidence to show that the initial premises of the Council with respect to the subject property were incorrect and that consequently the classification assigned at the time of the comprehensive rezoning was improper.

The applicants next contend that at the time of the comprehensive zoning of 1971 the Council erred in failing to take into account various physical changes which had occurred in the area between the adoption of the 1955 comprehensive zoning map and the 1971 comprehensive zoning map. These changes included the development of a large furniture store on land in the northwest quadrant of the intersection of Railroad Avenue and Seminary Avenue on land zoned as commercial by the 1955 comprehensive zoning map and the development of extensive commercial and apartment uses on land, in close proximity to the

subject property, which had been reclassified from single-family residential zones to commercial and apartment zones after the adoption of the 1955 comprehensive zoning map. The zoning map shows that none of the changes in zoning classification or development have occurred in the area bounded by the Harrisburg Expressway on the west, Seminary Avenue on the north, Railroad Avenue on the east, and the Beltway on the south. Thus, the immediate neighborhood within which the subject property lies has been left essentially unchanged and contains no land classified in the commercial zone other than that at the intersection of Railroad Avenue and Seminary Road, which has been so classified since 1955. Moreover, the zoning map shows that all of the commercial uses existing in a much broader area are located at road intersections. There is not an iota of evidence in the record to indicate that at the time of the comprehensive zoning of the subject property the Council was unaware of either the zoning reclassifications or development which had taken place between 1955 and 1971. Indeed, the presumption that the Council was aware of these occurrences is buttressed by the fact that it was reasonable for the Council, cognizant that commercial uses had already been extended at various road intersections in the area, to conclude that the intrusion of additional commercial zoning into the area at a location other than a road intersection, was contrary to the public interest. Consequently, there is insufficient evidence to make fairly debatable the question of whether the Council erred in failing to consider the effect of the zoning and development which had taken place between 1955 and 1971.

The applicants additionally contend that the Council erred in failing to take into account the projected widening of the Harrisburg Expressway and the Beltway interchange as well as the extension of Charles Street. The only evidence presented as to the impact of these roads on the subject property was that of the applicants' expert, qualified as an expert in real estate and real estate appraisal. He testified that the Beltway interchange requires a "lot of bridgework" and "will go way up in the air," so that it might be seen from

the subject property in the wintertime when the trees are barren of leaves. He conceded, however, that at the time of the comprehensive zoning map, the Council anticipated the widening of the Harrisburg Expressway and the Beltway interchange. Moreover, he acknowledged that even at the time of the Council hearing no plan for an extension of Charles Street had been finalized, making uncertain when, if at all, such an extension might take place. The evidence with regard to widening of the Harrisburg Expressway and the Beltway interchange is insufficient to establish either error or mistake because it supports, rather than rebuts, the presumption that at the time of the comprehensive zoning the Council was aware of the fact that those roads were to be widened. The evidence with respect to the proposed extension of Charles Street is insufficient because it is too speculative in nature to have properly been considered. At the time of comprehensive rezoning, the Council is required to take into account only existing facts and those projects or trends which are reasonably probable of fruition in the foreseeable future. *Hunter v. County Commissioners*, 252 Md. 305, 310, 250 A. 2d 81, 84 (1969) *see Chapman v. Montgomery County*, 259 Md. 641, 649-50, 271 A. 2d 156, 160-61 (1970); *Jobar Corp., supra*, at 236 Md. 112, 202 A. 2d 615; *Rohde, supra*, at 234 Md. 264, 199 A. 2d 218-19; *Trustees of McDonogh Educational Fund and Institute*, 221 Md. 550, 570-71, 158 A. 2d 637, 648 (1960).

The applicants also contend that the Council erred because it failed to take into account the B.R. zoning classification of the subject property, which they assert existed at the time of the comprehensive rezoning, and further failed to take into account the fact that the property owner was seeking a commercial classification for his property. They maintain that at the time of the comprehensive rezoning the Council considered only the possibility of reclassifying the subject property from the R.-6 zone to the D.R.-16 zone. In support of this position they rely on the Log of Issues and Recommendations to the Baltimore County Council, Relative to the Central Sector, used at the public hearing preceding adoption of the 1971 comprehensive zoning map.

This log indicates that the then existing zoning of the subject property was R.-6; that the Planning Board recommended that the subject property be designated D.R.-5.5, the new equivalent of R.-6; that the property owner was requesting a B.R. zoning classification in a local map amendment case then pending; and that a proposed Council resolution recommended D.R.-16 zoning for the subject tract. This evidence, rather than overcoming the presumption that the Council was aware of all of the relevant existing facts at the time of the comprehensive rezoning, supports it.

The record clearly shows that at the time of the comprehensive zoning the subject property had been reclassified to the B.R. zone by the Zoning Commissioner but that that action by the Commissioner was then pending on appeal. Because an appeal was pending, the reclassification granted by the Zoning Commissioner was deprived of the force and effect of law.[5] Consequently, the existing classification of the subject property was properly reflected in the log as R.-6. Moreover, the log patently indicates that a request for reclassification to the B.R. zone was then pending, thus putting the Council on notice of the property owner's desire to have the subject property placed in that classification. Under these circumstances there can be no doubt that the Council was aware of the facts as they then existed, and in particular, of the classification sought by the property owner. Accordingly, its decision to place the subject property in the D.R.-5.5 zone was not premised on a misapprehension.

Finally, the applicants contend that the Council erred in failing to take into account the fact that their property had been utilized for the past 60 years as a building materials and lumber supply yard; that this nonconforming use had always been compatible with the adjoining residential uses; that this nonconforming use could be continued even if the

5. Baltimore County Zoning Regulations (Interim ed. 1971) § 500.3a provides:

> "Any such reclassification when granted by the Zoning Commissioner shall in the absence of an appeal, have the force and effect of law."

requested reclassification were denied; and that the requested reclassification was sought only for the purpose of permitting the owner to update and improve his present facilities and to protect his right to continue that business in the event that the building should be destroyed by fire.[6]

This contention is without merit for several reasons. There is no evidence to indicate that the Council was unaware of this nonconforming use which had been in existence for 60 years. Moreover, nonconforming uses are by definition inherently incompatible with permitted uses in a zone.[7] Indeed, it is public policy in Baltimore County to drive such nonconforming uses out of permanent existence by preventing the expansion of such uses or their restoration if substantial damages are incurred.[8] Finally, in response to the applicants' argument that they were seeking B.R. zoning solely as "insurance" to guarantee the right to rebuild the present use in the event of casualty, it need only be noted, as the applicants conceded, that once the reclassification was granted, nothing could prevent the development of any of the uses permitted in the B.R. zone on the subject property.[9] Consequently, the evidence again was insufficient to make the question of error fairly debatable.

6. Baltimore County Zoning Regulations (Interim ed. 1971) § 104 provides, in pertinent part:

> " . . . in case any nonconforming business of manufacturing structure shall be damaged by fire or other casualty to the extent of seventy-five (75) per cent of its replacement cost at the time of such loss, the right to continue or resume such nonconforming use shall terminate."

Baltimore County Zoning Regulations (Interim ed. 1971) § 253.1A (29) classifies a lumberyard as a permissible use in a manufacturing zone, thus presumably designating such use as a manufacturing one.

7. *See* Baltimore County Zoning Regulations (Interim ed. 1971) § 101, which defines a nonconforming use as:

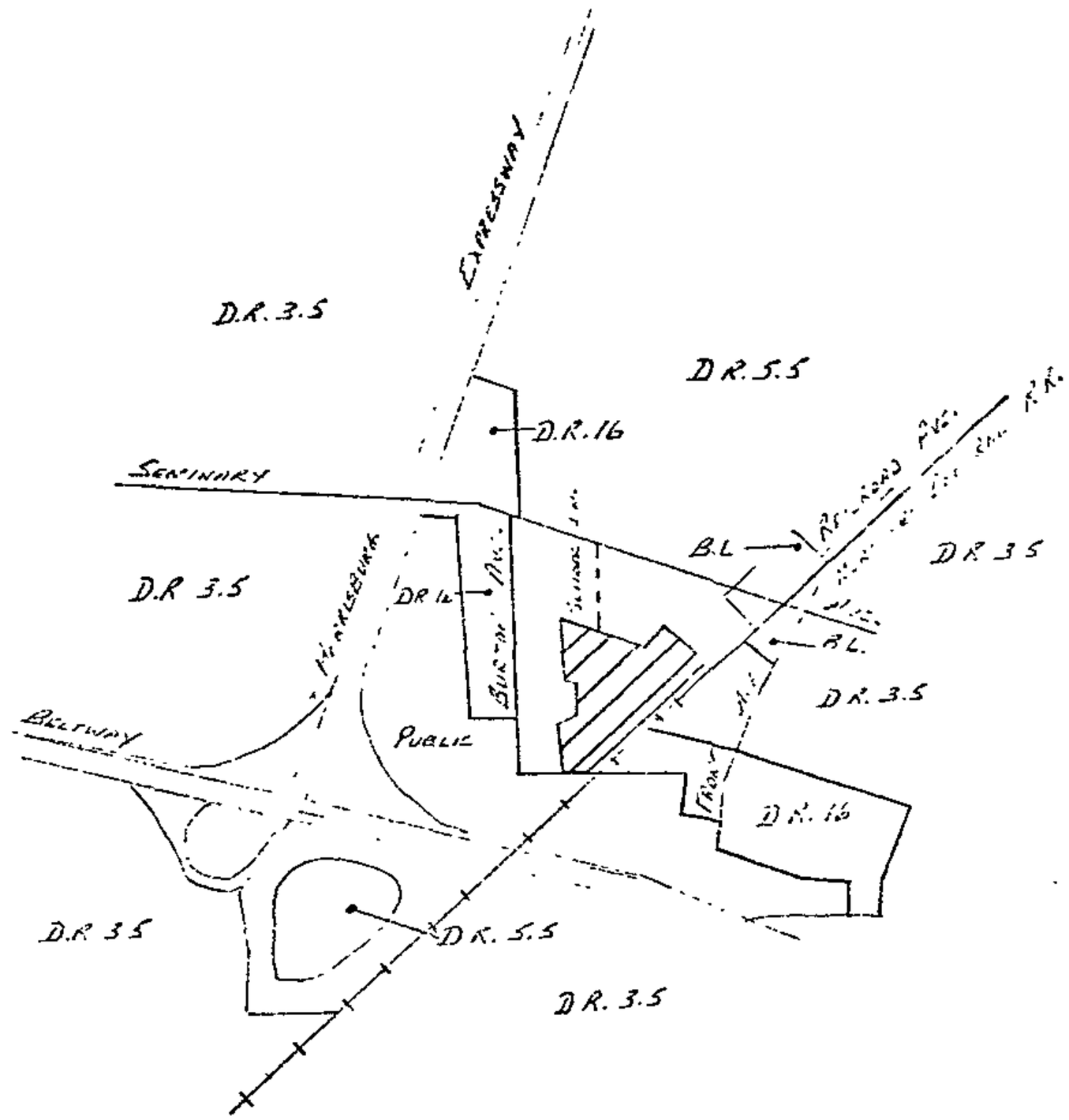
> "A legal use of a building or of land that antedates the adoption of these regulations and does not conform to the use regulations for the zone in which it is located."

8. *See* note 6, *supra*.

9. These uses include, among others, the following: restaurants, office buildings, bakeries, department stores, food stores, laundromats, automobile sales rooms, bowling alleys, night clubs, warehouses, laboratories, kennels, farm implement stores, and stone or monument works Baltimore County Zoning Regulations (Interim ed. 1971) § 236.

When all is said and done, this record is totally devoid of any evidence to show that at the time of the comprehensive zoning of the subject property the Council failed to take into account any facts or circumstances then existing relevant to the subject property and its environs so that its initial assumptions and premises in determining the appropriate classification for the subject property were erroneous. Nor was there any evidence of any events occurring subsequent to the time of the comprehensive rezoning, which would show that the Council's assumptions and premises at the time of the comprehensive rezoning had been proved invalid by the passage of time. Under all of the circumstances in this case the presumption of validity accorded to the comprehensive rezoning was not overcome and the question of "error" or "mistake" in the comprehensive zoning of the subject property was not "fairly debatable." The trial court was correct in reversing that portion of the Board's order which granted reclassification to the B.R. zone of the 2.3 ± acres of the subject property which lie on the southeastern side of the center line of Roland Run Stream. Accordingly, the order of the trial court will be affirmed.

Order affirmed.
Costs to be paid by appellants.



Lowe, J., Concurring:

I agree with the result in this case, and with the reasoning, but I feel that we are making more and more complicated, a rule which should and could be kept simple.

A presumption of correctness and validity attaches to the assignment of a zoning classification to any parcel of land, whether by the adoption of a comprehensive zoning map, or, though perhaps with less force, by an individual map amendment.

When a board or other governmental body exercising the zoning function is called upon to decide whether to change a zoning classification, it must determine either whether there was a mistake in the existing zoning, or whether the character of the neighborhood has changed to such an extent that reclassification should be granted.

Judicial review of the action of a board exercising zoning authority is confined within narrow limits. If the evidence before the board is so strong, or conversely so weak, that it does not raise a fairly debatable issue, the board's action must conform to that evidence. If it does not conform, the action is arbitrary, capricious, discriminatory, or illegal, and the court will declare it so. But if the evidence on an issue falls within that broad range that makes the issue fairly debatable, then it is the function of the legislative body, not of a court, to make a finding on that issue.

The dual and not always separable issue has been called the "change-mistake rule". In *Muhly v. County Council*, 218 Md. 543, 147 A. 2d 735 (1959), the Court of Appeals referred to the rule when it said, at 545-46:

> "The chancellor dismissed the bill, on the ground that the question was fairly debatable, and stated that there was evidence before the Council to support a finding that there was either a mistake in the original zoning or that the character of the neighborhood had changed to such an extent that reclassification should be granted."

The Court said further, at 547:

> "But zoning can never be completely permanent, and reclassification which finds support in a genuine change in conditions, or clear evidence of mistake, should not be stricken down, even if the reviewing court would have reached a different conclusion."

In *White v. Board of Appeals*, 219 Md. 136, 148 A. 2d 420 (1959), the Court quoted from *Muhly, supra*, and went on to say, at 144:

> "As must appear from the resumé of the facts, the case is at least fairly debatable on all issues. The Zoning Commissioner found a change of conditions and a mistake in the original zoning. The County Board of Appeals seems to have based its action on changed conditions, and the Circuit Court certainly did. Actually, there can be said to be aspects of both original error and change. * * * We think it is not important which view is taken for under either, or a combination of the two, the presumption as to the correctness of the 1955 zoning vanishes."

Appellants in *Pressman v. Baltimore*, 222 Md. 330, 160 A. 2d 379 (1960), who protested below against three ordinances rezoning certain tracts of land, contended on appeal, *inter alia*, "that all three ordinances are invalid because there has been no showing of error in the original zoning plan or of such change in conditions as would warrant a departure from it". I note that neither the appellants there nor the Court considered it necessary to consider mistake and change as separate concepts. The Court said, at 339:

> "However desirable commercial strip zoning along arterial highways may have appeared in 1931, there is ample evidence in this case to support the view that it has not stood the test of time and experience. Whether this should be regarded as an error in original zoning or the result of changed conditions may be a matter of a choice of words or of

approach. In either event, a contention that the action of the legislative body in rezoning these properties is devoid of support, simply cannot be sustained."

When their rezoning application was denied by the Mayor and Council of Rockville, there being no statutory appeal procedure, appellants in *England v. Rockville*, 230 Md. 43, 185 A. 2d 378 (1962), alleged that the denial was arbitrary and confiscatory. The court below denied relief, but the Court of Appeal reversed. It said, at 46-47:

"There was clear evidence of original mistake or change of condition, in addition to the evidence of practical inability to improve the lots for residential use, and that the granting of the application would conform the use to the recommended future use of the whole area, as set out in the proposed comprehensive plan. * * * There was not sufficient evidence to the contrary to make the issue fairly debatable."

In *Overton v. County Commissioners*, 225 Md. 212, 170 A. 2d 172 (1961), a zoning reclassification was opposed by protesting neighbors. The rezoning was granted by the governing body, affirmed by the Circuit Court, and affirmed by the Court of Appeals. One of the contentions on appeal was the combined allegation

"that there was no substantial evidence of a basic mistake in the original zoning or of a substantial change in the character of the neighborhood to warrant the reclassification."

The planning staff had recommended the rezoning on the ground that there was a mistake in the original classification. The governing board found that there had been a mistake. The lower court and the Court of Appeals said the issue was fairly debatable. The Court of Appeals, quoting from *West Ridge, Inc. v. McNamara*, 222 Md. 448, 160 A. 2d 907 (1960), and referring to its decisions there cited, said, in part, at 218-19:

"These cases recognize the familiar rules that in the case of piecemeal rezoning, there must be a showing of either an error in original comprehensive zoning or such a change in conditions as to warrant rezoning, that if either of these is shown, or if there are facts from which the legislative body could reasonably have made such a finding (*i.e.*, that the matter is at least fairly debatable), the courts may not interfere with the legislative action * * *."

The Court in *Overton* confined its decision to the question of whether a mistake was made in the original classification, and said that there was ample evidence before the legislative body from which it could find mistake in the original comprehensive zoning.

In *Rohde v. County Board*, 234 Md. 259, 199 A. 2d 216 (1964), the Court of Appeals affirmed a circuit court order affirming the County Board of Appeals in granting an application for rezoning. The Court said, at 267-68:

"To warrant piecemeal rezoning, there must be a showing of error in the comprehensive rezoning when made or a subsequent change of conditions, or both. It is sometimes difficult to say whether some evidence shows original error or a change in conditions, and it may not be necessary to resolve the question. *Pressman v. City of Baltimore*, 222 Md. 330, 160 A. 2d 379. That, we think, is the situation here. The applicant produced considerable expert testimony to show that either as a result of lack of anticipation of trends of development in 1955 or as a result of changes in trend which have occurred since then, whether anticipated or not, the existing zoning was in error at the time of the hearing."

After commenting that a comprehensive zoning map was entitled to a presumption of correctness, and the burden was on the applicants for reclassification to show an error in the map or a change of conditions in the neighborhood, the

Court of Appeals held in *Jobar Corp. v. Rodgers Forge*, 236 Md. 106, 202 A. 2d 612 (1964), that a Board's decision was not in accordance with law when it declined to permit evidence of projects which were reasonably probable of fruition in the foreseeable future. It said in effect that the Board was wrong when it felt that it was limited to a consideration of evidence of the situation existent at the time of the hearing, and no potential, even though imminent, future changes in that situation or future needs of the public could be considered. On the original appeal to the circuit court, that court had remanded the case to the Board for further hearing. Upon further hearing, the Board found both original error and change, and granted the rezoning. When that order was appealed, the circuit court reversed. The Court of Appeals reversed the lower court, and held that the evidence before the Board at the second hearing made both original error and change fairly debatable issues, and that the Board's grant of the rezoning should not be disturbed by the courts.

In the very recent zoning case of *Rockville v. Stone*, 271 Md. 655, 319 A. 2d 536 (1974), the Court of Appeals observed that, "despite the intriguing factual and procedural posture present here, there is really very little new under the sun in this State as far as zoning cases are concerned". One element of the factual posture was that the rezoning involved was a down zoning, applied for by the City of Rockville Planning Commission, granted by the City over the opposition of the landowners, reversed by the circuit court, and reinstated by the Court of Appeals. The down zoning nullified a piecemeal rezoning which the City had previously granted. The Court of Appeals concluded that the evidence before the legislative body made each of the issues of change and of mistake fairly debatable. It commented that the original mistake was an assumption which proved, with the passage of time, to be erroneous.

It seems to me that the failure of an expected change to take place could be characterized, with equal effect, as a change, negative in nature, or as a mistake in making the assumption in the first place. But an assumption may be

sound at the time it is made, even though subsequent events do not bear it out.

The dilemma is one of words, not principles. This is why I urge simplicity, not proliferating complexity, in expressing the legal requirement for a zoning change. I think we should make it clear that whether we say "mistake" or "error" in the original zoning, we mean exactly the same thing. I think we should make it clear that whether we say "change in the character of the neighborhood", or "change in conditions", or "change in circumstances", we mean exactly the same thing. A change in "conditions" or a "change in circumstances", which affects the "character of the neighborhood" obviously indicates a "change in the character of the neighborhood", and any attempt to give different meanings to these phrases is a distinction without a difference. A change of "conditions" or of "circumstances" which does not affect the character of the neighborhood is irrelevant in any event.

I see no significance in attempting to put on a different basis, a failure to consider facts in existence at the time of zoning, or a failure to foresee a future which was foreseeable at the time of zoning, or a failure to foresee a future which was not foreseeable at the time of zoning.

The cases I have cited, and from which I have quoted, are not intended to show that I disagree with the law which governs the outcome of the case now before us. The cases are cited to show that in no case has there been a significant distinction among "mistake", "error", or "change". In no case has there been a significant distinction based on whether known facts were overlooked, foreseeable facts were not foreseen, or unforeseeable changes later occurred. Rarely has the Court even treated mistake and change as separate concepts.

I believe that the majority opinion in this case unnecessarily takes the long way around. I prefer the short way around, expressed by Chief Judge Brune for the Court in *Rohde v. County Board, supra*, when he said:

> "The applicant produced considerable expert testimony to show that either as a result of lack of

anticipation of trends of development in 1955 or as a result of changes in trend which have occurred since then, whether anticipated or not, the existing zoning was in error at the time of the hearing."

The test that the courts should apply in any review of legislative action on a rezoning request is this: Did the applicant produce evidence sufficient to overcome the presumption of correctness of the existing zoning, and to make fairly debatable the issue of whether the existing zoning was in error at the time of the hearing.

LOUISE G. DAVIS ET AL. v. FREDERICK COUNTY BOARD OF COUNTY COMMISSIONERS ET AL.

[No. 148, September Term, 1974.]

Decided March 12, 1975.

RES JUDICATA—ESTOPPEL—*Cause Of Action—Doctrine Of Res Judicata Is Designed To Insure End Of Litigation And Harassment Of Adversary By Multitude Of Actions — Direct Estoppel By Judgment And Collateral Estoppel By Judgment — Contention That Two Suits Herein Involved Were Based Upon Same Cause Of Action, And Doctrine Of Direct Estoppel By Judgment Is Applicable, Upheld — Cause Of Action Is Violation Of One Right By Single Legal Wrong For Purposes Of Res Judicata — Number And Variety Of Facts Alleged Do Not Establish More Than One Cause Of Action So Long As Result, Whether Considered Severally Or In Combination, Is In Violation Of But One Right By Single Legal Wrong — Suits In Ordinance Case At Bar, Whether Considered Separately Or In Combination, Ultimately Sought Redress For Single Violation Of Single Right By Distinct Acts, Either Separately Or In Combination, Resulted In Single Wrong — Cause Of Action In Both Suits Being Same, Doctrine Of Direct Estoppel By Judgment Applicable Here.* pp. 73-84

J. A. R.

Appeal from the Circuit Court for Frederick County (BARRICK, J.).

Louise G. Davis and other homeowners filed a bill of complaint against the Frederick County Board of County Commissioners and the owners and developers of property to rescind an ordinance with respect to a planned unit land

development. From an order granting a motion by the respondents for summary judgment, the complainants appeal.

Judgment affirmed. Costs to be paid by appellants.*

The cause was argued before ORTH, C. J. and POWERS and DAVIDSON, JJ.

Herbert D. Morrison, with whom was *W. Milnor Roberts* on the brief, for appellants.

Joseph S. Kaufman, with whom were *Ralph D. Gastley* and *Peter Max Zimmerman* on the brief, for appellees.

DAVIDSON, J., delivered the opinion of the Court.

Justice Benjamin N. Cardozo wrote in *United States v. Memphis Cotton Oil Co.*, 288 U. S. 62, 67-68, 53 S. Ct. 278, 280 (1933) that:

> "A 'cause of action' may mean one thing for one purpose and something different for another. It may mean one thing when the question is whether it is good upon demurrer, and something different when there is a question of the amendment of a pleading or of the application of the principle of res judicata. . . . At times and in certain contexts, it is identified with the infringement of a right or the violation of a duty. At other times and in other contexts, it is a concept of the law of remedies, the identity of the cause being then dependent on that of the form of action or the writ. Another aspect reveals it as something separate from writs and remedies, the group of operative facts out of which a grievance has developed. This Court has not committed itself to the view that the phrase is susceptible of any single definition that will be independent of the context or of the relation to be governed." (Citations and footnotes omitted.)

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* Note: *Certiorari* denied, Court of Appeals of Maryland, June 25, 1975

Baltimore County and require that further proceedings be conducted in accordance with this opinion. See *Wiener v. State*, 290 Md. 425, 437-38, 430 A.2d 588, 595-96 (1981).

Judgment of the Court of Special Appeals vacated.

Case remanded to that Court with instructions to vacate the probation revocation order entered by the Circuit Court for Baltimore County and direct that Court to conduct a further hearing in accordance with this opinion.

Pursuant to Maryland Rule 882f costs are not reallocated as part of the judgment of this Court.

Cole, J., dissenting:

I dissent. I think the special condition of probation was invalid and I would, therefore, reverse the judgment and reinstate the probation.

HOWARD COUNTY, MARYLAND ET AL. v. WILLIAM P. DORSEY

[No. 73, September Term, 1980.]

Decided January 6, 1982.

ZONING — *Reclassification — There Is Strong Presumption Of Correctness Of Original Zoning And Comprehensive Rezoning — Strong Evidence Of Error Is Required To Overcome Presumption — Mistake In Original Zoning Or Comprehensive Rezoning Or Substantial Change In Character Of Neighborhood Must Be Shown To Sustain Piecemeal Zoning Reclassification.* pp. 355-356

ZONING — *Reclassification — Mistake In Original Zoning Or Comprehensive Rezoning — "Mistake" Is Shown Where Assumptions And Premises Relied Upon By Zoning Authority To Establish Comprehensive Zoning Are Incorrect Or That Existing Relevant Facts Were Not Considered By Zoning Authority — Mere Opinion Of Expert That There Is Error In Comprehensive Zoning Is Insufficient To Establish "Mistake."* pp. 356-359

ZONING — *Reclassification — In Order To Establish "Error" Or "Mistake" In Zoning, It Is Necessary To Establish Mistake In Original Zoning Or Comprehensive Rezoning, Not In Master Plan — Comprehensive Rezoning Distinguished From Master Plan.* Where record showed only evidence that subject property was erroneously designated as part of residential neighborhood by 1976 amendment to County General Plan, the Court *held* that such evidence of mistake in the General Plan was insufficient to establish a mistake in zoning of subject property as R-12 in 1977 comprehensive rezoning. pp. 359-362

ZONING — *Master Plan Distinguished From Comprehensive Rezoning — Formulation And Adoption Of Master Plan Is Planning Function, Proposing Goals For Orderly Growth And Development — Zoning Function Essentially Is Limited To Establishing Land Use Districts — Designation Of Neighborhood Boundaries Is Not Involved In Comprehensive Rezoning.* pp. 361-362

ZONING — *Comprehensive Rezoning Need Not Conform To Recommendations Of Master Plan — Comprehensive Rezoning Must Bear Substantial Relationship To Public Health, Safety And Welfare, Must Be Product Of Careful Consideration And Extensive Study And Must Be Designed To Accomplish Appropriate Land Uses Consistent With Public Interest And*

Interests Of Property Owners. Where as a result of careful study and public hearings, zoning authority determined that in order to avoid adverse effects upon surrounding properties and the general area through closing an existing school, and the encroachment of industrial uses, it was necessary to rezone subject property R-12, as part of comprehensive rezoning, the Court *held* that there was no "error" or "mistake" in the comprehensive rezoning, which would compel rezoning the subject property to a manufacturing zone. pp. 362-364

ZONING — *Reclassification — "Mistake" In Comprehensive Rezoning — Unsuitability Of Property For Development Under Existing Zoning — Sufficiency Of Evidence — Unsupported Statements That Land Can Not Be Utilized Under Existing Zoning Are Insufficient To Overcome Presumptive Validity Of Comprehensive Rezoning.* pp. 364-366

J. A. A.

Certiorari to the Court of Special Appeals. (Circuit Court for Howard County, Cicone, J.).

William P. Dorsey appealed to the Circuit Court for Howard County from a decision of the Howard County Zoning Board denying Dorsey's request to reclassify the zoning of his land from R-12 (residential) to M-1 (manufacturing). The circuit court reversed the order of the Board, and ordered reclassification of the property to M-1. The Board appealed to the Court of Special Appeals which *affirmed. Howard County v. Dorsey,* 45 Md. App. 692, 416 A.2d 23 (1980). The Court granted certiorari.

Judgment of the Court of Special Appeals reversed. Case remanded to that court with directions to reverse the judgment of the Circuit Court for Howard County and to remand the case to that court for entry of an order affirming the order of the Howard County Zoning Board. Costs to be paid by respondent.

The cause was argued before MURPHY, C. J., and SMITH, DIGGES, ELDRIDGE, COLE, DAVIDSON and RODOWSKY, JJ.

Carol B. O'Keeffe, Assistant County Solicitor, with whom was *Timothy E. Welsh, County Solicitor,* on the brief, for appellants.

Rebecca A. Bryant and *Bernard F. Goldberg* for appellee.

DAVIDSON, J., delivered the opinion of the Court.

This case presents the question whether the County Council of Howard County (Council) [1] committed basic and actual "mistake" or "error" as those interchangeable terms are used in zoning law, when it adopted a comprehensive zoning map amendment.

The subject property, owned by William P. Dorsey (owner), is located within an area of land bounded on the north by Snowden River Parkway, on the east by Oakland Mills Road, and on the southwest by the Baltimore and Ohio railroad tracks. The railroad tracks run through the northern portion of an area known as Guilford.

The subject property, consisting of 4.76 acres, is bounded on the north by Berger Road and on the east by Oakland Mills Road. It is presently zoned R-12 (Residential-Single 12,000 square foot minimum lot size). A single-family dwelling located at the northeast corner of the subject property and fronting on the south side of Berger Road is the only development existing on the subject property. On the west it is bounded by approximately six acres of land, zoned R-12, upon which approximately four or five dwellings are developed, one of which is used as commercial office space. Confronting the western portion of the subject property on the north and across Berger Road is a parcel of land, consisting of approximately three acres, that is zoned R-12 and is improved by a single-family dwelling. The approximately 15 acres of residentially zoned land of which the subject property is a part are surrounded by land zoned NT (New Town), most of which is developed or being developed for industrial use.

1. Sections 16.200 and 16.201 of the Howard County Code provide that the zoning authority of Howard County "shall be the Howard County Zoning Board" and "shall consist of the members of the County Council." Throughout the text of this opinion, the term "Council" refers interchangeably to either the County Council of Howard County or the Howard County Zoning Board.

The subject property was classified in the R-20 zone (Residential-Single 20,000 square foot minimum lot size) by the comprehensive zoning map which preceded that of 1977. On 3 October 1977, the Council adopted a comprehensive zoning map amendment that reclassified the subject property to the R-12 zone.

Within five months of the adoption of the comprehensive zoning map amendment, the owner petitioned the Council for a piecemeal reclassification of the subject property to the M-1 zone (Manufacturing-Light), alleging, in essence, that there was an error in the comprehensive zoning with respect to the subject property. After a hearing, the Council concluded that the comprehensive zoning was not in error in reclassifying the subject property to the R-12 zone. In its opinion, the Council said in pertinent part:

> "1. That the Board had considered the subject parcel in the course of its deliberations in formulating the comprehensive zoning map, a part of the Comprehensive Zoning Plan adopted October 3, 1977, held a specific public hearing thereon and at that time the parcel had been reclassified from an R-20 to an R-12 residential classification.
>
> "2. The Board further finds that there was no mistake in placing this parcel in the R-12 zoning classification at that time.
>
> "3. The Board agrees with the finding of the Department of Planning and Zoning of Howard County that the proposed zoning change is not in accordance or in harmony with the land use as shown on the Howard County General Plan adopted December 6, 1971, as amended on August 2, 1976. All as shown on protestants' exhibit #1, filed in the case."

Accordingly, the Council denied the requested reclassification to the M-1 zone.

On 2 October 1978, the owner appealed to the Circuit Court for Howard County. On 17 September 1979, a decision

and order was filed indicating that there was error in the comprehensive zoning, reversing the order of the Council, and ordering the reclassification of the subject property to the M-1 zone. The Council appealed to the Court of Special Appeals which affirmed the decision of the Circuit Court. *Howard County, Maryland v. Dorsey*, 45 Md. App. 692, 416 A.2d 23 (1980). The Council filed a petition for a writ of certiorari that we granted. We shall reverse the judgment of the Court of Special Appeals.

This Court has repeatedly recognized that there is a strong presumption of the correctness of original zoning and of comprehensive rezoning, and that "strong evidence" of error is required to overcome that presumption. *Pattey v. Board of County Comm'rs for Worcester County*, 271 Md. 352, 359, 317 A.2d 142, 146 (1974); *Wakefield v. Kraft*, 202 Md. 136, 141-42, 96 A.2d 27, 29 (1953). In *Trainer v. Lipchin*, 269 Md. 667, 672-73, 309 A.2d 471, 474 (1973), this Court, quoting from *Stratakis v. Beauchamp*, 268 Md. 643, 652-53, 304 A.2d 244, 249 (1973), said:

> "'. . . Where a legislative body, or a board of county officials, pursuant to authority conferred upon it, has granted a rezoning of property, the question on judicial review is whether or not such action is arbitrary and discriminatory or fairly debatable. We shall follow that test in considering this appeal.
>
> "'While, in recent years, we have had occasion to enunciate a number of important principles applicable to the law of zoning, perhaps none is more rudimentary than the strong presumption of the correctness of original zoning and of comprehensive rezoning. To sustain a piecemeal change in circumstances such as those present here, *strong* evidence of mistake in the original zoning or comprehensive rezoning or evidence of substantial change in the character of the neighborhood must be produced. Since, as we have also said, this burden is onerous, the task confronting appellants [appellees], whose application followed the compre-

hensive rezoning by merely four months, is manifestly a difficult one.'" (Emphasis in original.) (Citations omitted.)

See also Pattey, 271 Md. at 359-60, 317 A.2d at 146. Because under this test "strong evidence" of error is required to make the issue of mistake in comprehensive zoning fairly debatable, it is only if such strong evidence is presented by the applicant that property can be reclassified.

Here the Council found that the evidence adduced by the owner was insufficient to overcome the presumption of correctness which attached to the 1977 comprehensive zoning map amendment that reclassified the subject property to the R-12 zone. It concluded that the owner failed to establish that there was "mistake" or "error" in the comprehensive zoning map amendment of 1977 and, therefore, refused to reclassify the subject property to the M-1 zone. The trial court and the Court of Special Appeals disagreed. They determined that the evidence was sufficient and ordered the subject property to be reclassified to the M-1 zone.

In order to assess the evidence before the Council, it is necessary to understand the inherent nature of the terms "mistake" or "error" as they are used in zoning law. In considering that question, the Court of Special Appeals in *Boyce v. Sembly*, 25 Md. App. 43, 50-53, 334 A.2d 137, 142-43 (1975), said:

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

Council's action was premised initially on a misapprehension. *Bonnie View Club v. Glass*, 242 Md. 46, 52-53, 217 A.2d 647, 651 (1966); *Jobar Corp. v. Rodgers Forge Community Ass'n.*, 236 Md. 106, 112, 116-18, 121-22, 202 A.2d 612, 615, 617-18, 620-21 (1964); *Overton v. County Commissioners*, 225 Md. 212, 216-17, 170 A.2d 172, 174-76 (1961); *see Rohde v. County Board of Appeals*, 234 Md. 259, 267-68, 199 A.2d 216, 218-19 (1964). Error or mistake may also be established by showing that events occurring subsequent to the comprehensive zoning have proven that the Council's initial premises were incorrect. As the Court of Appeals said in *Rockville v. Stone*, 271 Md. 655, 662, 319 A.2d 536, 541 (1974):

> 'On the question of original mistake, this Court has held that when the assumption upon which a particular use is predicated proves, with the passage of time, to be erroneous, this is sufficient to authorize a rezoning.'

See Rohde, supra, at 234 Md. 267-68, 199 A.2d 220-21; *England v. Rockville*, 230 Md. 43, 45-47, 185 A.2d 378, 379-80 (1962); *Pressman v. Baltimore*, 222 Md. 330, 338-39, 160 A.2d 379, 383 (1960); *White v. County Board of Appeals*, 219 Md. 136, 144, 148 A.2d 420, 423-24 (1959); *cf. Dill v. The Jobar Corp.*, 242 Md. 16, 20-21, 24, 217 A.2d 564, 567-68 (1966); *Marcus v. Montgomery County Council*, 235 Md. 535, 540-41, 201 A.2d 777, 780 (1964); *Offutt v. Board of Zoning Appeals*, 204 Md. 551, 558, 105 A.2d 219, 221-22 (1954); *Wakefield v. Kraft*, 202 Md. 136, 144-45, 149, 96 A.2d 27, 30 (1953); *Hoffman v. City of Baltimore*, 197 Md. 294, 307, 79 A.2d 367, 373-74 (1951).

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

facts and circumstances then existing. Thus, in order to establish error based upon a failure to take existing facts or events reasonably foreseeable of fruition into account, it is necessary not only to show [1] *the facts that existed at the time of the comprehensive zoning but also* [2] *which, if any, of those facts were not actually considered by the Council.* This evidentiary burden can be accomplished by showing that specific physical facts were not readily visible or discernible at the time of the comprehensive zoning, *Bonnie View Club, supra,* at 242 Md. 48-49, 52, 217 A.2d 649, 651 (mineshaft and subsurface rock formation); by adducing testimony on the part of those preparing the plan that then existing facts were not taken into account, *Overton, supra,* at 225 Md. 216-17, 170 A.2d 174-75 (topography); or by producing evidence that the Council failed to make any provision to accommodate a project, trend or need which it, itself, recognized as existing at the time of the comprehensive zoning, *Jobar Corp., supra,* at 236 Md. 116-17, 202 A.2d 617-18 (need for apartments). *See Rohde, supra,* at 234 Md. 267-68, 199 A.2d 221. Because facts occurring subsequent to a comprehensive zoning were not in existence at the time, and, therefore could not have been considered, there is no necessity to present evidence that such facts were not taken into account by the Council at the time of the comprehensive zoning. Thus, unless there is probative evidence to show that there were then existing facts which the Council, in fact, failed to take into account, or subsequently occurring events which the Council could not have taken into account, the presumption of validity accorded to comprehensive zoning is not overcome and the question of error is not 'fairly debatable.'

"Moreover, in reviewing the evidence before the Board, it must also be noted that the opinion or conclusion of an expert or lay witness is of no

greater probative value than that warranted by the soundness of his underlying reasons or facts. *Surkovich v. Doub,* 258 Md. 263, 272, 265 A.2d 447, 451 (1970); *Anderson v. Sawyer,* 23 Md. App. 612, 618, 329 A.2d 716, 720. The Court of Appeals and this Court have stated that an opinion, even that of an expert, is not evidence strong or substantial enough to show error in a comprehensive rezoning unless the reasons given by the witness as the basis for his opinion, or other supporting facts relied upon by him, are themselves substantial and strong enough to do so. *Stratakis, supra,* at 268 Md. 655, 304 A.2d 250; *Coppolino v. County Board of Appeals of Baltimore County,* 23 Md. App. 358, 371-72, 328 A.2d 55, 62 (1974)." (Emphasis added) (footnote omitted).

We believe these principles are applicable here.

The owner initially contends that the Council erred because it failed to take into account the fact that the subject property had not been designated, and indeed could not have been designated, as a part of the Guilford neighborhood on the 1971 General Plan for Howard County (1971 Plan) as amended. The owner asserts that unless the subject property "is an official part of the Guilford neighborhood, it may not be utilized for the benefit of that neighborhood at the Appellee's expense." The owner points out that the Council's primary reason for retaining the subject property in a residential classification was to facilitate the continued operation of the Guilford neighborhood school. The owner concludes that as a result of the Council's mistaken notion that the subject property was a part of the Guilford neighborhood, it erred in utilizing the subject property for the benefit of that adjacent neighborhood.

Here the record shows that the 1971 Plan did not designate the subject property as part of the Guilford

neighborhood. Nevertheless, the subject property was designated as a stable residential area.[2]

In 1974, the Office of Planning and Zoning conducted a study of the Guilford neighborhood.[3] Among the problems considered was the fact that surrounding industrial uses were beginning to encroach upon that rural residential community and the fact that the existing population of the neighborhood was so low that the existing neighborhood school might not be able to remain operational. It was recognized that the 15-acre residential area of which the subject property is a part and which lay in close proximity to the Guilford neighborhood, contained an existing and potential population necessary to the continued operation of the school. Accordingly, the study recommended that the 15-acre residential area of which the subject property is a part be included in the service area of the school. In addition, it was recognized that its retention as a stable residential area would be consonant with the goal of halting further encroachment of industrial uses in the community. Accordingly, the study recommended that the 15-acre residential area of which the subject property is a part be continued as a stable residential area.

2. The text of the 1971 Plan defines stable areas as follows:

"These are areas in which development already exists and is not expected to change in nature for the period of the Plan. . . ."

3. The text of the 1971 Plan describes a "neighborhood" as follows:

"The basic element used in identifying an existing neighborhood and in planning new ones is the service area of an elementary school. . . . *The control imposed by the size of the elementary school and the size of the population required to serve it is basic to the structuring of neighborhoods throughout the County.*

"Although the service area of an elementary school is the most convenient framework for determining the size and extent of a neighborhood, it cannot be indiscriminately applied. Each of the proposed neighborhoods shown in the General Plan has been delineated on the basis of the availability of existing and programmed public facilities such as water and sewer lines, roads, and existing residential, commercial and industrial development, and on the basis of a number of environmental factors such as topography, stream valleys, slopes, drainage, flood protection, and the preservation of important natural settings. The planned neighborhoods were organized on the basis of their relation to each other and to the development framework of the County." (Emphasis added.)

On 2 August 1976, the Council adopted an amendment to the 1971 Plan consisting, in essence, of a land use plan that designated the subject property as part of the "Guilford Community." The subject property remained designated, as it had been in the 1971 Plan, as a stable residential area.

Whether the subject property was or could have been designated as part of the Guilford neighborhood by the 1976 amendment to the 1971 Plan is immaterial. In order to establish "error" or "mistake" as those terms are used in zoning law, it is necessary to establish a mistake in the comprehensive rezoning and not in a master plan.

There is a distinction between a master plan and a comprehensive zoning or rezoning that results from a distinction between the planning function and zoning function. In *Board of County Commissioners of Carroll County v. Stephans,* 286 Md. 384, 389, 408 A.2d 1017, 1019 (1979), this Court said:

> "[S]ome confusion exists relative to the terms planning and zoning, which are not synonymous. Zoning is concerned with the use of property but planning is broader in its concept. 1 E. Yokley, *Zoning Law and Practice* § 1-2 (4th Ed. 1978) comments:
>
> > 'Expressing the matter in another way, let us say that zoning is almost exclusively concerned with use regulation, whereas planning is a broader term and indicates the development of a community, not only with respect to the uses of lands and buildings, but also with respect to streets, parks, civic beauty, industrial and commercial undertakings, residential developments and such other matters affecting the public convenience and welfare as may be properly embraced within the police power.' "

The end product of the planning function is the production of a master plan that embodies recommendations for an area's development based on predictions of needs and

resources for an estimated future period. It proposes goals for orderly growth and development including the establishment of viable neighborhoods for which it delineates appropriate boundaries. In addition, it suggests methods for implementation and achievement of those goals, including proposals for future land use and zoning classifications. The end product of the comprehensive zoning function is a comprehensive zoning map that establishes, through zoning classifications, the way in which land may presently be utilized and developed. The zoning function is essentially limited to the establishment of land use districts through the imposition of zoning classifications. Thus, while recommendations with respect to the delineation of the neighborhood boundaries constitute appropriate considerations in the development of a master plan, the designation of neighborhood boundaries is not involved in a comprehensive zoning or rezoning.[4] *See Stephans,* 286 Md. at 388-90, 408 A.2d at 1019; *Pattey,* 271 Md. at 360-61, 317 A.2d at 147; *Board of County Comm'rs for Prince George's County v. Edmonds,* 240 Md. 680, 685, 215 A.2d 209, 213 (1965).

Here the record shows that the owner produced some evidence to demonstrate that the subject property was not designated as part of the Guilford neighborhood on the 1971 Plan as amended. Because this evidence at best established a mistake in the Plan and not in the comprehensive rezoning, it is irrelevant and, therefore, insufficient to establish "error" or "mistake" as those terms are used in zoning law.

In addition, the record unequivocally shows that the Council was engaged in the comprehensive rezoning function when, in 1977, it reclassified the subject property to the R-12 zone. The broad test of the validity of a comprehensive rezoning is whether it bears a substantial relationship to the

4. We note that in piecemeal rezonings, in which reclassification is sought on the basis of change in the character of the neighborhood, the applicant must prove and the zoning authority must determine the area that reasonably constitutes the "neighborhood" of the subject property. Mayor of Rockville v. Henley, 268 Md. 469, 473, 302 A.2d 45, 47, (1973); Montgomery v. Board of County Comm'rs for Prince George's County, 256 Md. 597, 602, 261 A.2d 447, 450 (1970).

public health, comfort, order, safety, convenience, morals and general welfare. *Norbeck Village Joint Venture v. Montgomery County Council,* 254 Md. 59, 66, 254 A.2d 700, 704-05 (1969). Comprehensive zoning or rezoning must be well thought out, the product of careful consideration and extensive study, and based upon considerations concerning the common needs of a particular area. In addition, the comprehensive zoning or rezoning must be designed to accomplish so far as possible the most appropriate uses of land consistent with the public interest and the safeguarding of the interests of the individual property owners. *Mraz v. County Comm'rs of Cecil County,* 291 Md. 81, 88, 433 A.2d 771, 776 (1981); *Montgomery County v. Woodward & Lothrop, Inc.,* 280 Md. 686, 702, 706-07, 376 A.2d 483, 492-93, 495 (1977), *cert. denied sub nom. Funger v. Montgomery County,* 434 U.S. 1067, 98 S.Ct. 1245 (1978). Because there is no requirement that a comprehensive zoning plan must conform to the recommendations of an applicable master plan, the needs of the particular area considered need not necessarily be a neighborhood delineated in an applicable master plan. *Woodard & Lothrop, Inc.,* 280 Md. at 704-05, 376 A.2d at 493; *Nottingham Village, Inc. v. Baltimore County,* 266 Md. 339, 353-54, 292 A.2d 680, 687-88 (1972). Moreover, zoning regulations which facilitate the adequate provision of schools and orderly development are in the public interest and constitute a proper exercise of the police power.[5]

Here the planning history of the Guilford area shows that when the Council enacted the 1977 comprehensive zoning, it considered the common needs of the area designated as the Guilford Community in the 1971 Plan as amended. Whether the area considered was designated as a neighborhood in the 1971 Plan as amended is immaterial. What is of significance

5. Section 4.03 provides in pertinent part:

> "[Zoning] regulations shall be made in accordance with the plan and designed . . . to facilitate the adequate provision of transportation, water, sewerage, *schools,* recreation, parks and other public requirements. Such regulations shall be made . . . encouraging the *orderly development* and the most appropriate use of land throughout the jurisdiction." (Emphasis added.)

is that the 15-acre residential area of which the subject property is a part was designated as a stable residential area in the 1971 Plan as amended.

The Council's 1977 comprehensive zoning was given careful consideration and adopted only after extensive study and public participation. As a result of its study, the Council determined that in order to avoid adverse effects upon the surrounding properties and the general area through the closing of an existing school, and the encroachment of industrial uses, it was necessary to retain the subject property in a residential zone. The Council's designation of the subject property in the R-12 zone was in accordance with the comprehensive plan that not only took into account future public needs and purposes, but also was designed to provide an adequate potential for orderly growth in the future, and to control and direct the use of land and buildings so as to accomplish the most appropriate uses of land, consistent with the public interest and the safeguarding of the interests of the individual property owners. *Woodward & Lothrop, Inc.*, 280 Md. at 706, 376 A.2d at 494. Under the circumstances here, the Council did not err.

The owner next contends that at the time of the 1977 comprehensive zoning, the Council erred in placing the subject property in the R-12 zone because it failed to take into account the fact that the subject property was then unsuitable for residential development. Some of the evidence adduced to show that the subject property was not suitable for residential development is to be found in the recommendation of the Planning Board of Howard County. That Board was "of the opinion that the parcel in question probably should have been zoned in [an industrial] classification" because "the parcel in question is practically surrounded by industrial zoning classifications." This was the only reason offered to support this conclusion. In addition, the owner testified that the subject property was unsuitable for residential development because of its physical location. He offered no other reason for his conclusion. A witness qualified in the field of planning, after describing the subject property and its environs, testified that it was a

mistake to classify the subject property in the R-12 zone because "the property is surrounded by industrial." This was the only reason offered to support his conclusion.[6]

The evidence adduced was insufficient to make the question of "error" or "mistake" fairly debatable for two reasons. First, because the conclusion that the subject property was unsuitable for residential development was not supported by adequate reasons or facts, it was entitled to little if any probative value. It was not sufficiently strong and substantial to overcome the presumption of validity of the comprehensive zoning. Secondly, there was no evidence to show that at the time of the comprehensive zoning the Council was unaware of the readily visible physical characteristics and location of the subject property and failed, in fact, to take them into account. Thus, there was no evidence to show that the initial premises of the Council with respect to the subject property were incorrect and that consequently the classification assigned at the time of the comprehensive rezoning was improper.

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

6. The owner's contention that as a result of the Council's refusal to reclassify the subject property he was deprived of all reasonable use of the land is unsupported by the record. The planner testified that there was no reasonable use that could be made of the subject property in the R-12 zone because the approximately 15 acres of R-12 zoned land of which the subject property is a part "is fifteen acres in a sea of hundreds and hundreds of acres of industrially zoned land — so no its not viable." This was the only reason offered to support his conclusion.

The record shows, however, that there was a reasonable use for the subject property in the R-12 zone. Woodward & Lothrop, Inc., 280 Md. at 723-24, 376 A.2d at 503; Mayor of Rockville v. Stone, 271 Md. 655, 662-64, 319 A.2d 536, 541-42 (1974); Walker v. Board of County Comm'rs of Talbot County, 208 Md. 72, 94-95, 116 A.2d 393, 405 (1955). Both the planner and the owner acknowledged that the subject property presently contains a single-family residence, that it was adjoined on the west and confronted on the north by R-12 zoned land upon which single-family development had taken place and presently existed, and that, under R-12 zoning, three units per acre could be developed.

classification for the subject property were erroneous. Nor was there any probative evidence of any events occurring subsequent to the time of the comprehensive zoning, which would show that the Council's assumptions and premises at the time of the comprehensive zoning had been proved invalid by the passage of time. Under all of the circumstances in this case the presumption of validity accorded to the comprehensive rezoning was not overcome and the question of "error" or "mistake" in the comprehensive zoning of the subject property was not "fairly debatable." Accordingly, we shall reverse the judgment of the Court of Special Appeals.

Judgment of the Court of Special Appeals reversed.

Case remanded to that Court with directions to reverse the judgment of the Circuit Court for Howard County and to remand the case to that Court for entry of an order affirming the order of the Howard County Zoning Board.

Costs to be paid by respondent.

292 Md Rpts-80-13-37-2646

FREDERICK HUTCHINSON v. STATE OF MARYLAND

[No. 76, September Term, 1981.]

Decided January 6, 1982.

CRIMINAL LAW — *Revocation Of Probation — Trial Judge May Revoke Probation Based Solely Upon Evidence Of Conviction Of Subsequent Crime Which Is Pending On Appeal.* pp. 369-370

CRIMINAL LAW — *Revocation Of Probation — State Must Prove, To Reasonable Satisfaction Of Trial Judge, That Probationer Has Not Complied With Lawful Condition Of Probation.* p. 369

CRIMINAL LAW — *Revocation Of Probation — Evidence — Non-Final Conviction Is Admissible In Proceeding To Revoke Probation — Code (1980 Repl. Vol.) § 10-905 (a) Applies To Impeaching Credibility Of Witnesses — Section Does Not Apply To Proof Sufficient To Revoke Probation.* pp. 370-371

J. A. A.

Certiorari to the Court of Special Appeals. (Criminal Court of Baltimore, Greenfeld, J.).

Frederick Hutchinson was found guilty of violating probation and was sentenced to a term of imprisonment. On appeal, the Court of Special Appeals *affirmed* in an unreported opinion. (No. 1580, September Term, 1980, decided June 22, 1981). The Court granted certiorari to consider whether the law of Maryland permits a trial judge to revoke an order of probation based solely upon evidence of a conviction of a subsequent crime which is pending on appeal.

Judgment affirmed, with costs.

The cause was argued before MURPHY, C. J., and SMITH, DIGGES, ELDRIDGE, COLE, DAVIDSON and RODOWSKY, JJ.

Michael R. Braudes, Assistant Public Defender, with whom was *Alan H. Murrell, Public Defender,* on the brief, for appellant.

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 221,

September Term, 1987

BANCROFT HOMES, INC.,
et al.

-v-

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY

Weant,
Garrity,
Bloom,
JJ.

PER CURIAM

Filed: November 10, 1987

Appellants, Bancroft Homes, Inc., et al., are the "contract purchasers" and sellers of an undeveloped 34-acre tract of land in Baltimore County. The land is located near the Baltimore City line, north of Mt. Washington. The tract was zoned in 1984 by the Baltimore County Council to allow 5.5 dwelling units per acre (DR-5.5) and appellants claim that the county council made a mistake by zoning the land with that classification.

The tract lies between Smith Avenue and Old Pimlico Road. It is roughly rectangular and is bordered by an apartment complex on the east, a golf course on the south and west, and a cliff-like drop that overlooks a canyon full of townhouses on the north.

In 1985 appellants filed with Board of Appeals a petition for reclassification of zoning presumably pursuant to Balto. Co. Code § 2-58.1(b). Appellants wanted the tract to be reclassified from DR-5.5 to a classification in which 16 dwelling units per acre (DR-16) are permitted. Appellants claimed that the county council made an error when, on 13 November 1984, that legislative body passed a law adopting zoning maps that designate the tract as DR-5.5.

Appellee, People's Counsel for Baltimore County, opposed Bancroft Homes' attempt at reclassification. The Board of Appeals held a three-day hearing and decided that the county council committed error. The board granted Bancroft Homes' petition.

Appellee appealed the board's decision to the Circuit

Court for Baltimore County and that court reversed the board's decision. The circuit court held that the board's decision was arbitrary because appellants had not produced the requisite strong evidence of error that would overcome a presumption of correctness in the county council's 1984 legislation.

Appellants presents us with these questions:

> I. Did the lower court err in reversing the decision of the Board of Appeals that the zoning classification of the Broadview tract was adopted in error:
>
> A) Where evidence before the Board was uncontroverted that the 1984 zoning of the Broadview tract violated accepted principles of sound land use planning, and the decision of the Board based thereon was at least fairly debatable, and
>
> B) Where the Board's decision was fairly debatable and the lower court substituted its judgment for that of the Board?
>
> II. Did the lower court err in rejecting the evidence of zoning error presented to the Board, even though such evidence clearly met the standard for proof of such error?

Scope of Review

The scope of judicial review in a zoning case in which a party has alleged error in the comprehensive zoning of a tract has been explained by the Court of Appeals and this Court many times in recent years. See Trainer v. Lipchin, 269 Md. 667 (1973); Stratakis v. Beachamp, 268 Md. 643 (1973); Boyce v. Sembly, 25 Md. App. 43 (1975); Coppolino v. County Board of Appeals, 23 Md. App. 358 (1974).

> Where a legislative body, or a board of county officials, pursuant to authority conferred upon it, has granted a rezoning of property the question on judicial review is whether or not such action is arbitrary and discriminatory or fairly debatable.

Stratakis, 268 Md. at 652.

We note that the questioned zoning bill enacted by the county council carries with it a "strong presumption of correctness." Id. at 652. Although the board's decision to reclassify the property is also presumed to be correct, the presumption of correctness that attaches to the county council's legislation is a stronger one. Bonnie View Club v. Glass, 242 Md. 46, 52 (1966).

In order for a reclassification by the board to be deemed "fairly debatable" (not arbitrary) petitioners before the board must have first produced "strong evidence of error." Stratakis, 268 Md. at 653. The board's decision whether to reclassify a property is, therefore, always a two-step process. A threshold decision for the board is whether petitioners have presented "strong evidence of error" in the zoning legislation. See Stratakis, 268 Md. at 653. "'Strong evidence' of error is required to make the issue of mistake in comprehensive zoning fairly debatable and unless such strong evidence is presented by the applicant, the action of the board in granting a reclassification is arbitrary and capricious." Boyce, 25 Md. App. at 50. Once the board decides that there is "strong evidence of error," as that term of art is used, then the board can properly decide, weighing evidence of the opposing parties,

whether there is "basic and actual" error in the county council's legislation. See Stratakis, 268 Md. at 653; see also Pulley v. Board of County Commissioners, 271 Md. 352, 361 (1974).

Because the burden is so heavy to establish "strong evidence of error," the task confronting a person petitioning for a zoning reclassification "is manifestly a difficult one." Stratakis, 268 Md. 653. "Strong evidence of error" is, as a matter of law, evidence that clearly overcomes the presumption of validity accorded a comprehensive zoning law. See Miller v. Abrahams, 239 Md. 263, 269 (1965) (wherein the Court required "clear and sufficient showing of mistake); Boyce, 25 Md. App. 50-51. "Strong evidence of error" establishes that the council's action was premised initially on misapprehension. Id.

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

Boyce, 25 Md. App. 43, 52.

A reviewing court, therefore, in deciding whether the board's decision is arbitrary or fairly debatable, must determine, among other things, whether the petitioners presented "strong evidence of error."

I.

Board of Appeals' Decision

Appellants contend that the board's decision was fairly debatable and should have been sustained. Appellants produced information to the board attempting to show that before passing the questioned legislation, the county council failed to consider:

1) the tract is located in a place where a four lane "collector" road is proposed and to allow only a medium density zone around the proposed section of roadway violates principles of sound land use,

2) the possibility of more jobs than originally expected at the newly established USF & G facilities in Mt. Washington (when that company transfers employees from its Baltimore City facilities) could increase the demand for housing in the area, and

3) the tract is considered an in-fill parcel by the county's office of Planning and Zoning.

Appellants structured their case before the board in an attempt to duplicate the evidence of error produced by petitioners in Jobar Corp. v. Rodgers Forge Community Association, 236 Md. 106 (1966). The Jobar case involved questions of both mistake and change in the neighborhood. In the instant case we are only dealing with mistake. See Miller, 239 Md. at 273.

The Board of Appeals ultimately decided that the county council erred when it zoned the property. The board stated in its opinion,

> Simply, we believe that the County Council did err by not zoning the subject site DR-16.
>
> We do not believe [appellee's contention] that because [the] existing zoning classification provides for a reasonable use, that [sic] error may not have occurred. Certainly, in the case at bar the subject property can be reasonably developed within its existing zone, however, we do not believe it feasible to superimpose a lower density zoning upon a higher density zoning.

The board also said that it believed the county council failed to consider impact of the proposed collector road and impact of the USF & G facility in Mt. Washington.

The board recognized the burden upon appellants to present strong evidence of error; however, relying on dicta in Missouri Realty v. Ramer, 216 Md. 442 (1958), the board decided "to apply a more liberal standard when addressing petitions for Reclassification from one use to a similar use." By stating that interpretation of the Missouri Realty case, the board virtually admitted that the evidence presented did not meet the requisites of "strong evidence of error." Moreover, the Missouri Realty case does not recognize a "more liberal standard" in determining whether the county council erred; it addresses, among other things, scope of the presumption of validity that a petitioner must overcome by presenting strong evidence of error.

The passage that the board relied upon from the Missouri Realty case has caused much unnecessary confusion. It discusses differences in the portions of the presumption of

validity of a zoning law that must be overcome when a petitioner attacks a zoning law's subclassification as opposed to the law's entire use classification. The passage in question is dicta and states:

> It should be noted here that this case involves an application for reclassification from one residential sub-category to another; not the removal of the land from the use category in which it was placed when originally zoned, as was the situation in many of the cases presented to this Court. In this respect, the situation is, to a certain degree, different from the application to reclassify property zoned as residential to commercial or industrial. The change involved here is the difference between permitting the erection of approximately 7.5 houses per acre and/or 6 houses per acre. There was testimony that a better and more economical dwelling-unit could be achieved by the group housing than by the cottage type home.

Missouri Realty, 216 Md. 442, 449.

Discussing the passage in Chapman v. Montgomery Council, 259 Md. 641, 648 (1970), the Court of Appeals held, "[T]his Court has recognized in the past that there was a difference to be observed in the treatment of 'reclassification from one residential sub-category to another...." as opposed to reclassification from one use category to another. Among other authorities, the Court cites a comment in 26 Md. L.Rev. 48, 51 (1966) in which the writer concludes that the Court of Appeals adopted a "more liberal attitude" when reviewing amendments from one sub classification to another. In Tennison v. Shomette, 38 Md. App. 1, 5 (1977), this Court interpreted the

passage by saying, "In considering whether this presumption has been overcome a more liberal standard is applied when property is being reclassified from one commercial subcategory to another than is applied when the reclassification involves a change from one use category to another."

From our reading of the original passage in the Missouri Realty case, we conclude that Judge Prescott was merely stating the obvious. If a petitioner is merely attempting to show that a part of the county council's legislation was premised on an initial misapprehension, then the petitioner does not have to overcome the presumption of validity that attaches to the whole law. The petitioner still must show "strong evidence of error" but only the presumption of validity attached to the portion of the law that is challenged needs to be overcome. If we picture three concentric circles as the presumption of validity attached to a zoning law, the concept can be clearly illustrated. The outer circle represents the use category; the middle circle represents the general density category (high, medium, or low), and the inner circle represents the specific number of dwellings permitted per acre. If a petitioner wants to show that the use category was enacted in error, he must overcome with strong evidence of error the presumption of validity represented by all three circles. If a petitioner wants to shows that only the general density and number of dwellings permitted were enacted in error (as in the case at bar), then

he needs only to rebut with strong evidence of error the presumption of validity represented by the two inner circles. If a petitioner wants only to show that the number of units per acre was enacted in error then he needs only to overcome with strong evidence of error a narrow presumption of validity represented by the inner circle. Naturally, in order to rebut a narrow presumption of validity a petitioner needs to produce only strong evidence of error that relates to that narrow aspect of the zoning enactment. It is not less convincing evidence that is called for by Judge Prescott's passage, but strong evidence that addresses a less comprehensive presumption of validity in the zoning law.

In the case at bar appellants had to produce strong evidence of error in the legislation to rebut the presumption that the parcel was correctly zoned for medium density and that the parcel was correctly zoned for 5.5 dwelling units per acre. Appellants did not need to rebut the presumption of validity attached to the residential use classification.

Circuit Court's Decision

The circuit court reviewing the board's action said it need to determine if 1) "strong and substantial probative evidence" of error was properly found by the board and if 2) there actually occurred substantial change or error warranting the reclassification. The court held that there was not the requisite "strong evidence of mistake," as a matter of law, and because the presumption of validity of the council's

legislation was not initially overcome, the board's decision was not "fairly debatable."

Review of Circuit Court's Decision

Holding

We agree with the circuit court that the board's decision was not fairly debatable. The Board of Appeals did not have the "strong evidence of error" before it which would in turn allow the board to decide without being arbitrary whether there was actual error in the county council's action. Appellants' information concerning a proposed collector road and some nebulous, sound-land-use principles that favor high density zoning along the road (if that road is ever built) is no evidence that the county council made a mistake by zoning the land DR-5.5. We also note several collector roads in the area of the subject parcel that break appellants' sound-land-use principles because the land along those roads is zoned DR-5.5 or DR-2 at the entrance or exit of housing developments.

Appellants' contention that the county council failed to consider the possibility of 3,000 jobs being located on the USF & G parcel near the subject property is likewise insufficient evidence of error on the part of the county council. See France v. Shapiro, 248 Md. 335, 345 (1968). There was no marketing data introduced to the board to indicate that any USF & G personnel to be transferred from its Baltimore City facilities would want to move into the high density neighborhood. There was no demographic information correlating salary levels with housing prices and lifestyle in the area.

There was no data to show that any of those employees would ever be in the housing market. There was no evidence introduced to show that the USF & G was actually planning to transfer 3,000 people to the Mt. Washington facility. Appellant's housing-demand evidence at the board hearing boiled down to: the county council failed to consider that the USF & G might transfer 3,000 jobs to the Mt. Washington facilities and some of those 3,000 persons might want to buy density housing nearby. Basically, there was no evidence to show the zoning of the USF & G parcel would effect the subject property or that the county council could have foreseen that data but failed to consider it.

Appellants also contend that the Office of Planning and Zoning considered the tract an in-fill parcel. That evidence in itself is not evidence that the county council failed to consider any recommendations made to it. The Court of Appeals has held that the recommendations of a technical staff to the board authorized to amend the zoning laws, when accompanied with a reasoned report, can constitute probative evidence to support validity of county councils' legislation in a hearing for an application of reclassification and that the staff's evidence can be sufficient to make the issue fairly debatable. See Montgomery County Council v. Shiental, et ux., 249 Md. 194, 199 (1968). In the instant case, however, evidence before the board was that the Office of Planning and

Zoning told the county council that it preferred a higher density. As we see it, the board had evidence that the county council received a bald recommendation. Certainly that is not strong evidence that the council based its decision on a mistake. Contrary to appellant's contentions, the county council's choice of a DR-5.5 zone for the subject parcel, despite the recommendations from the Office of Planning and Zoning, seems to be a decision made with much consideration because the tract is surrounded on two sides by DR-3.5 and on two sides by DR-16. A medium density zoning on that particular parcel tends to suggest the council considered local residents' recommendations as well as those of the Office of Planning and Zoning.

In our view, the evidence produced by appellants at the board's hearing did not clearly show that the council's legislation "was premised initially on a misapprehension." Boyce, 25 Md. App. at 51; see also Jobar Corp., 236 Md. at 134-35 (J. Hammond dissenting). Although the record made before the board is replete with opinions and theories about sound-land-use principles, it is virtually "devoid of substantial, supporting facts" showing reasons that the county council might have based its legislation on a misapprehension. See Miller, 239 Md. at 274 (wherein the Court said that reasons supporting an expert's opinion must be sound and substantial in order for the board's decision to be fairly debatable); Bonnie View Club, 242 Md. at 52. On this point appellee argued to the circuit

court,

> ... the question still is whether the evidence is of the weight and strength that can support a claim of error. As has been stated in many cases, an expert's testimony has to be evaluated based on the reasons and strength of what he states, and even if we assume for the sake of argument that a planner said this and a Public Work's man said this, if you examine each of the statements that they make, they really don't tell what the County Council considered or didn't consider.

Without strong evidence of error the board's decision could not have been fairly debatable. Stratakis, 268 Md. at 653.

It is clear that the board misapplied the law when it relied on its interpretation of Missouri Realty, 216 Md. at 442. The board wrongly applied a liberal standard requiring less convincing evidence of error with which it concluded that the county council had erred when it zoned the subject parcel. Even if the board had applied the correct standard to decide whether strong evidence of error was presented, the evidence in the record is not "strong evidence of error" as a matter of law. The board's ruling was therefore arbitrary and was properly reversed by the circuit court. See Stratakis, 268 Md. at 657-58.

II.

Appellants complain that the circuit court erred by rejecting evidence of zoning error presented to the board. Our reading of the circuit court's opinion reveals that the circuit court considered all of appellants' evidence but found that, taken as a whole, the evidence was not the "strong evidence of

error" required to overcome the presumption of validity in the county council's legislation.

Appellants further argue that the evidence of future events and needs produced at the board's hearing by the Office of Planning and Zoning were reasonably foreseeable by the county council. They argue that, because those trends were foreseeable, and not considered, there was error in the zoning. We disagree. The county council is not required to be a band of fortune tellers; nor is it required to pour through the latest planning data before it passes legislation. Trends that might be reasonably foreseeable to an employee of the Office of Planning and Zoning are not necessarily reasonably foreseeable to the county council. By the same token, the county council might have considered aspects of the property that the Office of Planning and Zoning did not. It is clear that a petitioner for reclassification has the burden to show by strong evidence that the council did not consider some important aspect of the parcel, existing or foreseeable. We agree with the circuit court that the necessary showing was not made.

JUDGMENT AFFIRMED.

COSTS TO BE PAID BY APPELLANTS.

7/26/96

IN THE MATTER OF THE APPLICATION OF TOLL HOUSE, INC. (HAYFIELD, INC.) FOR A ZONING RECLASSIFICATION FROM R.C. 2 TO R.C. 4 ON PROPERTY LOCATED ON THE NORTH SIDE OF SHAWAN ROAD, WEST OF WESTERN RUN ROAD (HAYFIELDS) 301 WESTERN RUN ROAD, 8TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY MARYLAND CASE NO: 95 CV 08791

* * * * * * * * * * * * *

MEMORANDUM OPINION AND ORDER

This case is before the Court on appeal from an order of the County Board of Appeals of Baltimore County ("Board") denying Hayfield Inc's ("Petitioner/Appellant") Petition for Reclassification of approximately seventy (70) acres from Resource Conservation 2 ("R.C.2") to Resource Conservation 4 ("R.C.4"). The Board may grant a reclassification of zoning on property if a petitioner can show either substantial change in the character of the neighborhood where the property is located or that the last classification was established in error. Baltimore County Code § 2-356(j)(1)-(2). The issue before the Board was whether the Baltimore County Council ("County Council") erred during the 1992 Comprehensive Zoning Map Process ("CZMP"). This Court has examined the record and written briefs submitted by counsel, and both sides were afforded the opportunity to be heard at oral argument on March 27, 1996.

Background

Appellant is a family-owned commercial development and construction company. The subject property, known as "Hayfields

evidence suggests that the Council was aware of the Bill, and further, there is no reason why the Council could not have considered the Bill had they felt it was appropriate.

Appellant argues that the Board was wrong in rejecting the testimony of former Councilman Melvin Mintz. The Board, however, has the discretion to determine how much weight to give to the testimony of each witness. Here, the Board gave more weight to the testimony of Mr. Dillon and less weight to the testimony of Mr. Mintz. The Board is free to believe one witness over another. The Board's decision to rely on Mr. Dillon's testimony is understandable. Mr. Dillon was an area planner for the Third Councilmanic District, the same district where Hayfields is located. During the 1984, 1988, and 1992 map processes, Mr. Dillon was involved with Hayfield issues. June 14, 1995, T. at 162. On the other hand, Mr. Mintz was a councilman from December 1986 to December 1994 for the Second Councilmanic District of Baltimore County. Board's Op. at 4. Further, whether Mr. Mintz's testimony is even admissible evidence is questionable.

"...[I]ndividual council members and other city officials may not testify as to the motives actuating council action..." Montgomery County Council v. District Land Corp., 274 Md. 691, 704-05 (1975) (quoting C. Rhyne, Municipal Law § 9-4 at 229 (1957); See also Montgomery County v. Schooley, 97 Md. App. 107, 114-19.

Appellant makes the argument that considering Mr. Dillon's testimony is an invasion into the legislative process. Mr.

P.C. #1 NW 9 I 2C

MAP 24

Joins Map 16 76°47'30" 860,000 FT

850,000 FT

580,000 FT

570,000 FT

MD GRID 560,000 FT

39°25'30"

39°22'30"

Joins Map 23

Joins Map 32 76°47'30" 860,000 FT

SOLDIERS DELIGHT NATURAL ENVIRONMENT AREA

NORTHWEST REGIONAL PARK

OWINGS MILLS

Owings Mills HS

Owings Mills ES

Mt Pleasant

Pleasant Hill

Baltimore City Police Acad

ROSEWOOD STATE CENTER

Rosewood Center

Ruxton County

Saint Thomas

Owings Mills Co 310 & Rescue

Harrison Forest

Garrison Forest

Owings Mills Town Center

Owings Mills

Owings Mills INDUSTRIAL PARK

WCBM Tower

Saint Thomas Shop Ctr

Valley Center Shop Ctr

OWINGS MILLS CORPORATE CAMPUS

Painters Mill ES, MS, HS (Site)

Happy Acres

McDonogh

Deer Park ES

Deer Park MS

Horsehead

FOXRIDGE

WHISPERING MEADOWS

Randallstown HS

Wildwood Park

Randall Ridge ES (Site)

Winands Road

WBAL Tower

DEER PARK CTR

Holy Family Cath & Sch

Colonial Bapt

Carriage Hill Park

RANDALLSTOWN

Randallstown Plaza

Randallstown Synagogue Center

Liberty Plaza

Randallstown Co 18 & Rescue

Brenbrook Plaza

Liberty Court Shop Ctr

Mt Olive

Randallstown Union Bethel

Northwest Plaza Ctr

Scotts Level

Church Lane ES

Crowns Fstg

Liberty Road Co 46 & Rescue

Kings Point Square Shop Ctr

Beth El Mem

Liberty Park

Randallstown ES

Randallstown Branch

Mardella Jr Branch

Joins Map 32

28 © ALEXANDRIA DRAFTING CO

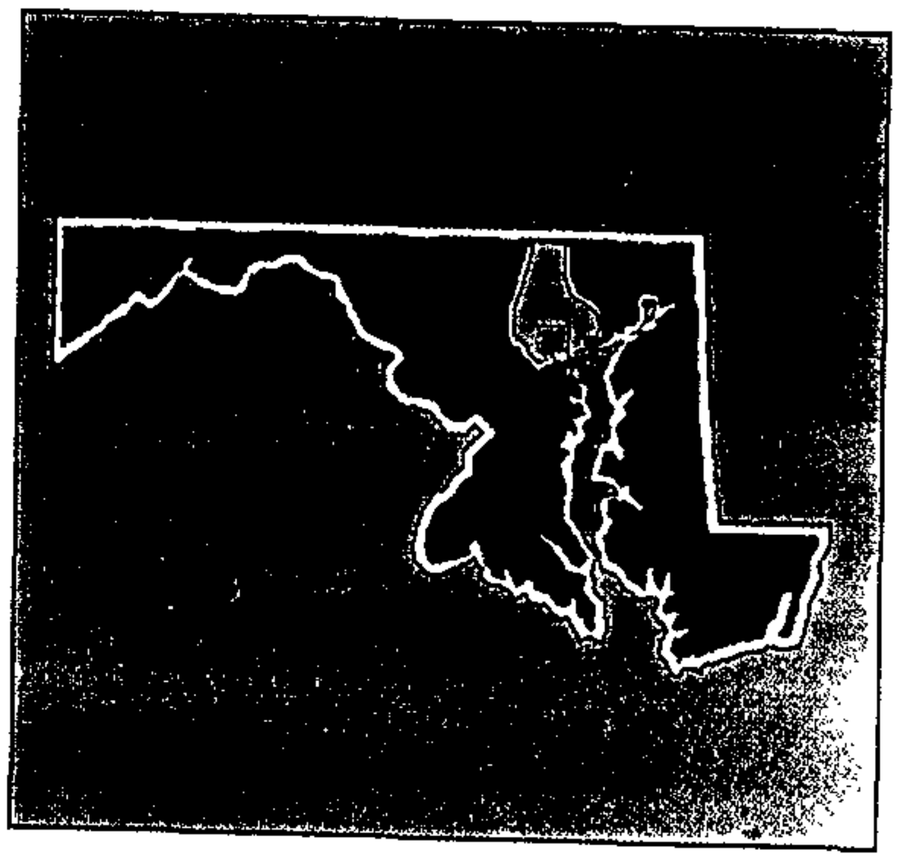
GRID 850,000 FT

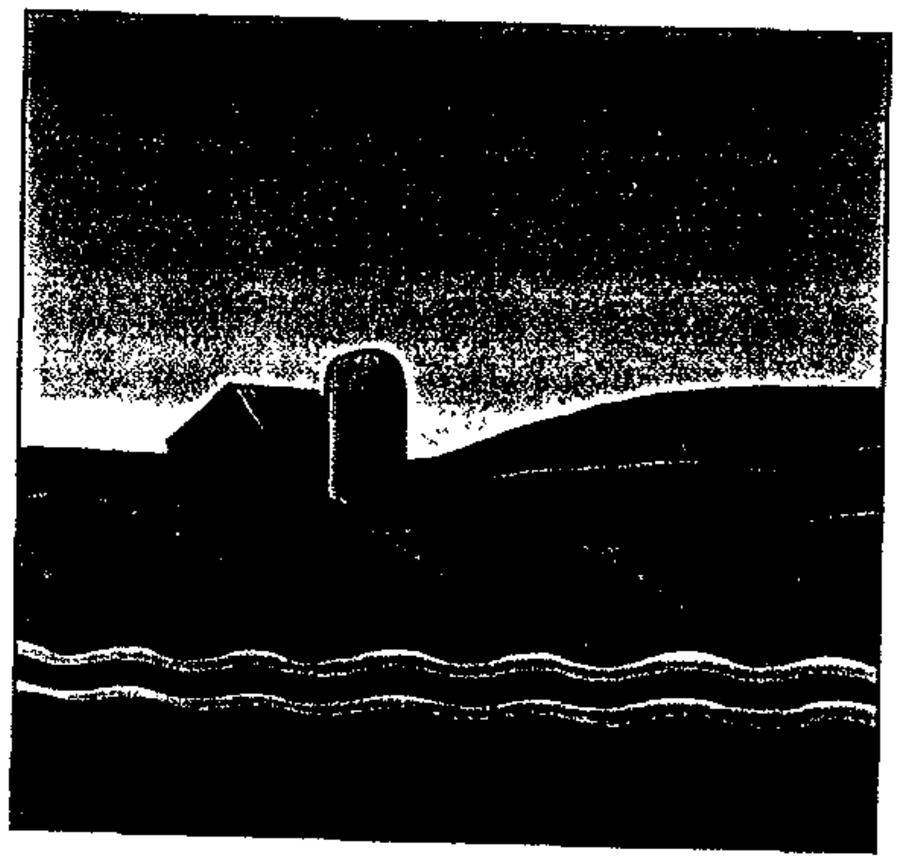
8-20500

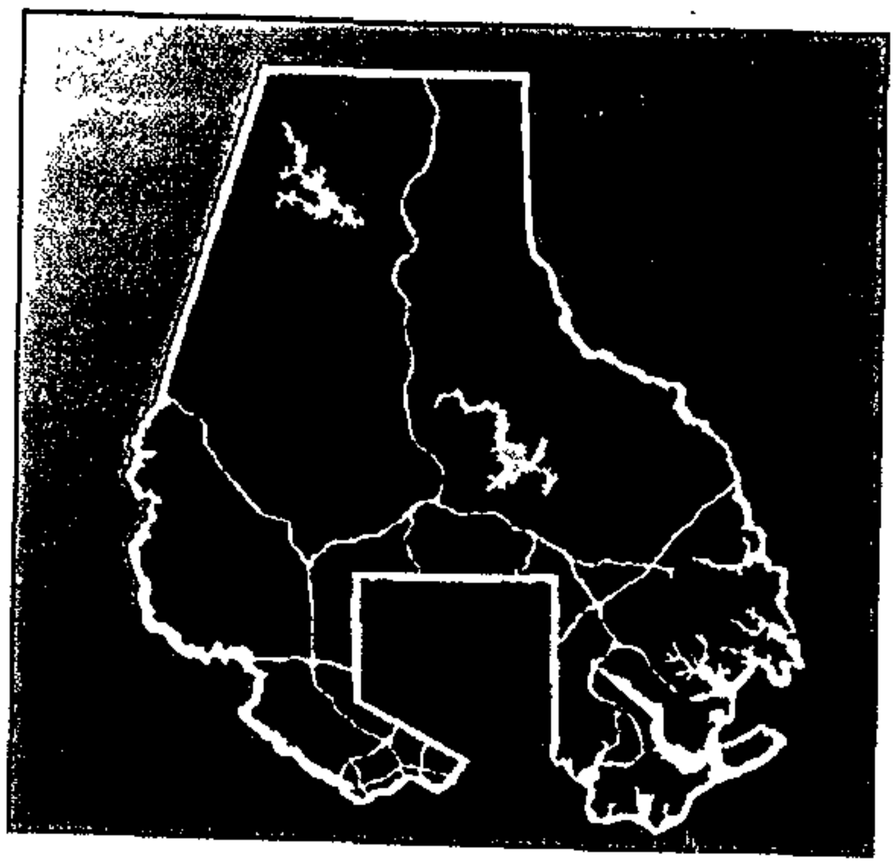
P.C. #2

MASTERPLAN 2010

BALTIMORE COUNTY, MARYLAND







AS ADOPTED BY BALTIMORE COUNTY COUNCIL

FEBRUARY 22, 2000

- Promote the growth areas as preferred locations for industrial and office development.
- Concentrate new non-auxiliary retail and service business in the established retail areas.
- Resist zoning changes and development that would reduce the limited inventory of land available for employment-intensive manufacturing and office uses.
- Provide public facilities and services in a timely manner to support planned growth.
- Create a diversified transportation system that includes effective transit and pedestrian connections.
- Maintain high-quality design, development, and landscaping.
- Foster a high-quality corporate image for the employment areas.
- Protect community conservation and sensitive environmental areas near the growth areas from the possible detrimental effects of increased urbanization.

OWINGS MILLS GROWTH AREA

The Owings Mills Growth Area is located in the northwestern part of Baltimore County (Map 24). It is approximately 13,000 acres in size. It was designated as a growth area because of its proximity to a planned regional transportation network. In 1984, the county adopted the *Plan for Owings Mills, Maryland*, and established zoning for the growth area during the comprehensive zoning map process.

SINCE THE COMPLETION OF INTERSTATE 795 AND THE METRO RAIL SYSTEM IN 1986, THE PACE OF DEVELOPMENT HAS BEEN BRISK.

The Owings Mills plan designated five separate land use areas within the growth area:

- Owings Mills Town Center, which includes Owings Mills Mall and the 37-acre Metro rail station
- Owings Mills Corporate Campus
- Northern Employment Corridor
- Red Run Employment Corridor
- Residential areas, including Owings Mills New Town

Since the completion of I-795 and the Metro rail system in 1986, the pace of development has been brisk. More than 5.6 million square feet of non-residential development consisting of retail, office, research and development, office-warehouse "flex," and industrial space has been developed. Over 6,100 residential units have been constructed, consisting of a broad mix of

custom single family homes, townhomes, condominiums, and apartments. When the Owings Mills growth area is fully developed it will be home to a projected 44,000 residents and provide jobs for approximately 32,000 employees.

ISSUES AND ACTIONS

Issue: Promoting Economic Development

Economic development and the creation of new employment opportunities were critical components of the 1984 plan for Owings Mills. The business community that is developing is extremely diverse. Several companies have established new headquarters and regional operations centers in Owings Mills, taking advantage of the area's well educated, highly skilled work force. The Owings Mills Corporate Campus, which is almost fully developed, has attracted businesses seeking high quality office development in a campus-style environment.

The Red Run Employment Corridor will provide 700 acres for four million square feet of office, flex, and light industrial. This corridor has been designated as another premier corporate office area for high quality, campus-style, office/flex development. Like the corporate campus, it should project a positive corporate image in order to attract wealth-producing national and regional serving companies. To reinforce the plans for the Red Run Employment Corridor, the county has also designated it as a "PUD-C Growth Area Corporate Center." PUD-C (planned unit development commercial) is a zoning overlay designation that allows for mixed use development in accordance with specific requirements and guidelines, and with special approval based on a detailed plan. The corporate center designation calls for well-designed and landscaped pedestrian-oriented development. It also prohibits non-auxiliary commercial retail projects.

The Northern Employment Corridor consists of two areas, one south of Reisterstown Road, and the other east of Owings Mills Boulevard. The latter area is comprised, in part, of parcels determined to be surplus by the Rosewood State Center, a large medical institution. It has begun to develop with flex warehouses along Crondall Lane and should continue to develop as an employment-intensive area. The area south of Reisterstown Road consists of mixed zoning with both retail and industrial development. This area, too, should continue to emphasize employment-oriented development.

Several companies have established new headquarters and regional operations centers in Owings Mills, taking advantage of the area's well educated, highly skilled work force.

Actions

1. Ensure that the Red Run Employment Corridor is developed for corporate office and employment uses and that the Northern Employment Corridor is developed for flex/industrial use.
2. Maintain the PUD-C corporate center designation in the Red Run Employment Corridor and in a portion of the Northern Employment Corridor.
3. Continue to work with the Maryland Economic Development Corporation to develop a master plan for employment-intensive uses on surplus parcels at the Rosewood State Center.

Issue: Balancing Retail and Employment-Intensive Land Uses

The 1984 plan envisioned retail opportunities at the Owings Mills Mall, within the Owings Mills New Town PUD, and at the intersection of Lakeside Boulevard and Samuel Owings Drive. According to the plan, larger region-serving retail services would be provided along Reisterstown Road and Liberty Road. Nevertheless, there has been continuous pressure to convert employment designated areas into region-serving retail development, particularly in the Northern Employment Corridor. Because of the large parcels of utility-served land that will soon be available in the Red Run Employment Corridor, this area has become attractive to developers for regional retail development. Substantial retail development in these areas would not only deplete the supply of land for employment-intensive uses, but would also detract from the vitality of the nearby, established commercial corridors and planned commercial nodes.

THERE HAS BEEN CONTINUOUS PRESSURE TO CONVERT EMPLOYMENT DESIGNATED AREA SITES INTO REGION-SERVING RETAIL DEVELOPMENT.

Actions

1. Discourage additional retail development, including personal storage warehouses, in the Northern Employment Corridor, and particularly along Owings Mills Boulevard.
2. Direct any new development of large scale, off-price, "big-box" retail uses to Reisterstown Road or Liberty Road.
3. Limit retail development in the Red Run Employment Corridor to auxiliary retail that is scaled to serve customers who are employed in the corridor.

Issue: Developing the Owings Mills Town Center

The town center, which is also the terminus of the Metro rail line, should be developed as an intense mix of retail, service, office, and residential uses. Making use of structured parking, the Metro site can provide opportunities

for high density retail and employment development, public facilities, housing, and transit oriented uses. A study has been undertaken to determine possible uses. It should consider economic feasibility, design plans, and a public use component such as a center for higher education, and/or a library. Bicycle and pedestrian access to the town center should be facilitated.

Actions

1. Complete the study for the Metro site.
2. Promote a concentration of high-quality mixed use development at the mall site.
3. Increase the vitality of the town center by encouraging more diverse non-retail uses such as full service restaurants, entertainment, or recreational uses.
4. Study and implement feasible mechanisms to make the Owings Mills Town Center accessible to bicyclists and pedestrians.

Issue: Achieving a Balanced Mix of Housing

The mix of housing types has not been as balanced between single family and multi-family units as originally envisioned. A combination of housing market forces has resulted in a predominance of townhouses, condominiums, and apartments.

Actions

1. Promote a mix of housing that emphasizes single family detached homes.
2. Evaluate the development potential and density of vacant parcels zoned DR10.5, DR16, RAE, and OT to determine appropriate land use and modify zoning as needed.

Issue: Providing Appropriate and Adequate Utilities

The capacity of the Patapsco Waste Water Treatment Plant must be monitored as Owings Mills develops to ensure that the plant will be able to support future growth. Limited areas in Owings Mills will continue to rely on private wells and septic systems. The URDL should be adjusted to reflect existing and planned water and sewer service areas, zoning, and land management area designations.

Actions

1. Monitor the capacity and efficiency of the treatment plant and address any anticipated or actual deficiencies.
2. Evaluate and complete minor adjustments to the URDL.

A combination of housing market forces has resulted in a predominance of townhouses, condominiums, and apartments in Owings Mills.

Issue: Providing a Functional and Attractive Transportation Network

The Owings Mills transportation network has essentially remained unchanged since the 1984 plan. The overall network, although currently adequate to serve the area, needs to be reevaluated in light of several unanticipated conditions. First, the overall number of employees per square foot of building has increased because of the national trend towards smaller offices, which is partly related to computerization. The larger number of employees has resulted in more automobile trips using the Owings Mills network. Second, the rate of residential growth has accelerated in recent years, exceeding projections. The actual density of the residential areas is less than zoning allows; however, the rate of growth is greater than anticipated. Finally, with the advent of environmental regulations, obtaining road alignments and expanded rights-of-way has been difficult (Map 25).

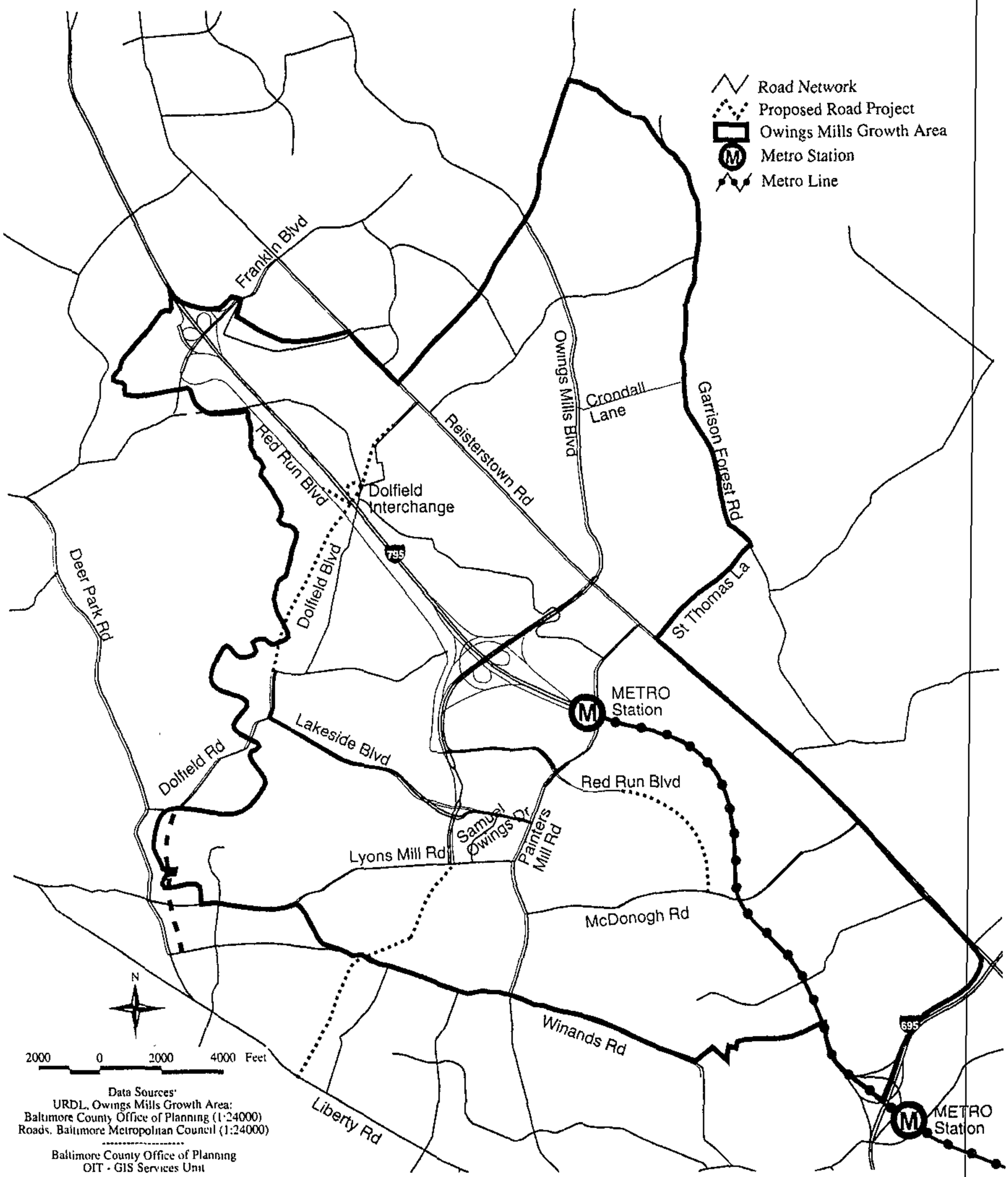
As the roadway network is expanded, design aesthetics should be consistently applied in both private and public projects to assure high visual quality. The privately developed Owings Mills New Town provides a good example of landscaped medians and tree-lined rights-of-way with good pedestrian access. Similar design features should be considered for the remainder of the Owings Mills roadway network.

Because of its concentration of mixed uses, the Owings Mills Growth Area offers the potential for reducing local automobile dependence and thus traffic congestion. A comprehensive bicycle and pedestrian network would assist Smart Growth initiatives and enhance the quality of life.

The privately developed Owings Mills New Town provides a good example of landscaped medians and tree-lined rights-of-way with good pedestrian access.

Actions

1. Construct the Dolfield Boulevard and I-795 interchange.
2. Evaluate the feasibility of completing the unfinished portions of the road network impacted by environmental regulations.
3. Develop facilities for pedestrians and commuters where appropriate. Evaluate pedestrian and public transit linkages, including MTA shuttle service, between the Corporate Campus and the Metro station, and make needed improvements.
4. Upgrade McDonogh Road from Painters Mill Road to Reisterstown Road.
5. Determine whether Red Run Boulevard should be extended to McDonogh Road.



MAP 25
OWINGS MILLS GROWTH AREA TRANSPORTATION NETWORK

6. Consider extending Dolfield Boulevard from I-795 to Reisterstown Road.
7. Construct the extension of Owings Mills Boulevard south to Winands Road and Liberty Road.
8. Study and implement feasible mechanisms to provide a comprehensive bicycle and pedestrian network within the Owings Mills Growth Area.

Issue: Providing Parks and Recreation Facilities

The provision of recreational facilities and open space is one of the key elements in the development of Owings Mills as a desirable, attractive, and healthy place to live and work. The existing *Owings Mills Open Space Plan* adopted by the Baltimore County Council in 1995, remains valid. It provides for an extensive stream valley park along Red Run accessed by a system of pedestrian paths and bikeways. A proposed native species arboretum replaces the originally proposed Red Run Lake as the centerpiece of the park.

Many of the active recreational needs of the citizens of the Owings Mills area will be met through recreation programs at local school recreation centers, including proposed sites. However, it is necessary to supplement these sites with a variety of parklands that can provide a wide range of recreational opportunity. Two recent acquisitions, the 240- acre Northwest Regional Park site and the 80-acre former Associated Jewish Charities property, will greatly assist in meeting the recreational needs of the area's residents.

RECREATIONAL FACILITIES AND OPEN SPACE ARE KEY ELEMENTS IN THE DEVELOPMENT OF OWINGS MILLS AS A DESIRABLE, ATTRACTIVE, AND HEALTHY PLACE TO LIVE AND WORK.

Actions

1. Plan and develop the Northwest Area Park with a mix of passive and active recreational amenities.
2. Develop the Red Run Stream Valley Park. Incorporate land dedicated by the Owings Mills New Town as well as the abandoned Old Dolfield Road right-of-way.
3. Obtain community input before approving and constructing neighborhood pathways. Open spaces that are not conducive to monitoring should be dedicated to homeowner associations or remain as natural areas.
4. Continue to involve the community in the park planning process.
5. Continue to use school properties to provide recreational opportunities for the surrounding community.

Issue: Meeting Educational Needs

Baltimore County has continuously acknowledged and supported the need for community-based schools in the Owings Mills and Reisterstown areas. The county has demonstrated its commitment to area schools by:

- Expanding the programmed New Town Elementary to 750 seats;
- Adding 600 seats to Franklin High School and 400 seats to Franklin Middle School;
- Adding 200 seats to Deer Park Middle School and 100 seats to Deer Park Elementary School; and
- Including funds for a New Town Middle and High School in the 1998 Bond Referendum.

Action

Continue to monitor residential growth and plan for necessary school facilities.

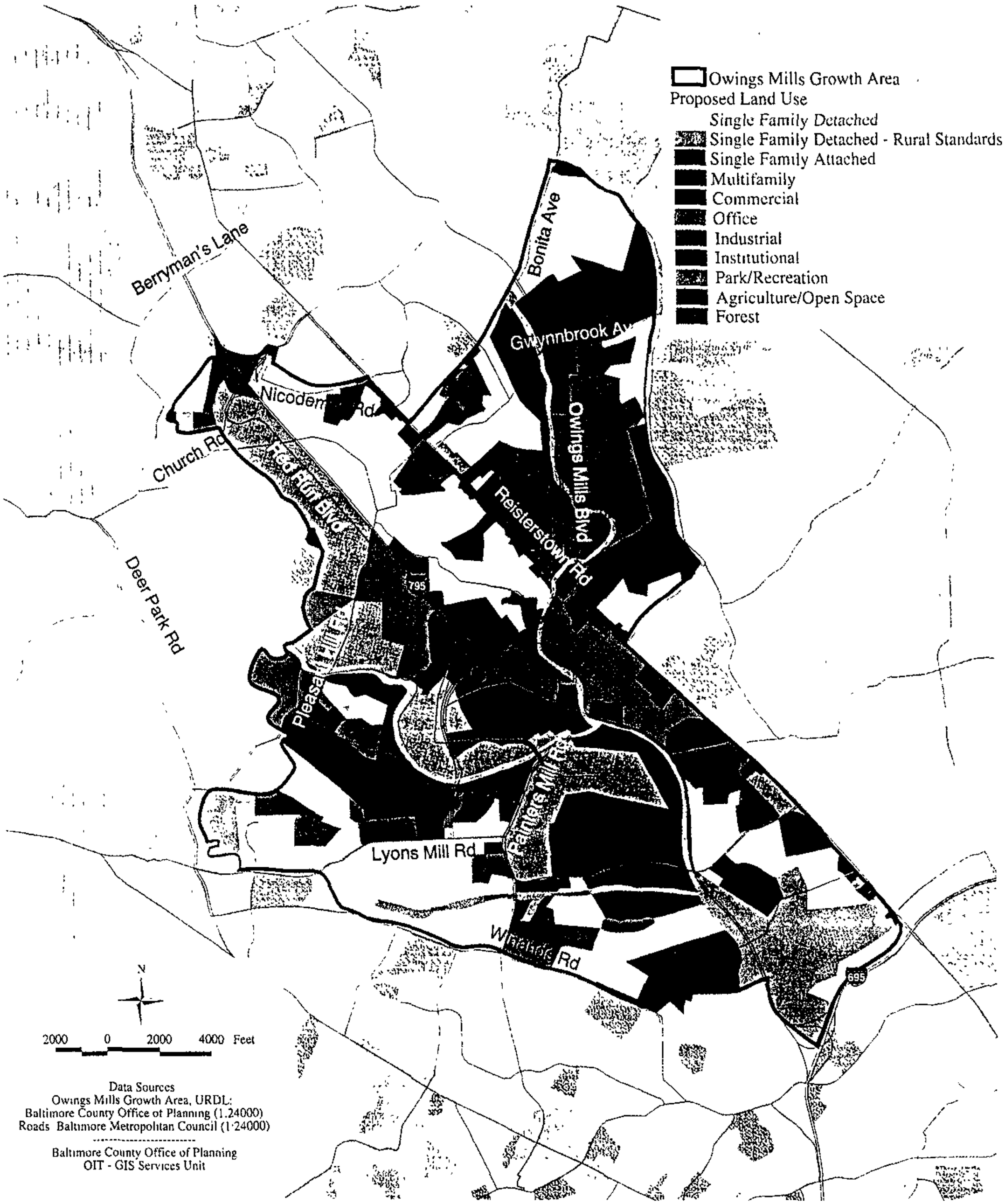
Issue: Ensuring Development Quality

Development has taken place in Owings Mills without the benefit of an overall design model. While the quality of non-residential design has been good, the quality of design in residential developments has been inconsistent. The design objectives for Owings Mills are to create an attractive, well-functioning physical environment; to project a positive image of the growth area; and to define a clear sense of place. Landscaping, signs, and exterior materials can serve as unifying elements to support the community identity of Owings Mills. Design elements such as planted medians, street trees, and wide sidewalks can contribute to the community's attractive visual appearance and livability.

Actions

1. Develop standards for new private and public development to provide high quality and uniformity.
2. Devise mechanisms to ensure that the standards are followed consistently, such as through covenants, an overlay district, or a special review process.
3. Provide for wide sidewalks and bikeways along the existing and proposed road network.
4. Review boundaries of the Owings Mills Growth Area and assess extending boundaries across roads in those instances where roads are used as boundaries.

THE DESIGN OBJECTIVES FOR OWINGS MILLS INCLUDE CREATING AN ATTRACTIVE, WELL-FUNCTIONING PHYSICAL ENVIRONMENT AND DEFINING A CLEAR SENSE OF PLACE.



MAP 26
OWINGS MILLS GROWTH AREA PROPOSED LAND USE

COMPREHENSIVE ZONING MAP PROCESS

P.C. #3

EVERY FOUR YEARS, AS REQUIRED BY THE BALTIMORE COUNTY CODE, THE COUNTY COUNCIL REVIEWS AND REVISES THE COUNTY'S COMPREHENSIVE ZONING MAPS

FILING PERIODS

August 2, 1999 through January 18, 2000

Baltimore County law provides that, during the OPEN FILING PERIOD [August 2, to November 1], any person, association, corporation, County agency or other entity may, upon payment of the specified fee, file a petition for zoning reclassification on any property in the County. Certain information must be filed with the petition, all of which becomes a matter of public record identified by an Issue Number. From November 1 through November 30 additional Issues can be raised, but only by the members of the Baltimore County Planning Board. From December 1, 1999 through January 18, 2000, Issues may be raised only by the members of the County Council.

LOG OF ISSUES – PRELIMINARY RECOMMENDATIONS

January 18 through March 31, 2000

Each of the Issues raised during the filing periods is analyzed by County staff. Summary data about each Issue, along with the *preliminary* staff recommendations, are published in the "Log of Issues." The Log and accompanying maps comprise a report by the County Planning Board for the purpose of public hearings in April. Also during this period, notice is mailed to the owners of those properties which are listed in the log but which were not filed by the owner or the owner's agent.

PLANNING BOARD PUBLIC HEARINGS

April 3 through April 28, 2000

The Baltimore County Planning Board schedules a public hearing in each Councilmanic District during the month of April. Testimony is limited to those Issues within the district for which the hearing is held.

PLANNING BOARD REVIEW AND RECOMMENDATIONS

May 1 through June 30, 2000

At a series of work sessions, open to the public, the Planning Board reviews and discusses the various Issues. A recommendation on each Issue must be formally adopted by the Planning Board before June 30.

TRANSMITTAL PERIOD

July, 2000

The Planning Board's recommendations on each Issue must be transmitted to the County Council within 20 days after the Board's vote. A revised edition of the Log of Issues is published to serve as the basis for the Council's public hearings in September.

COUNTY COUNCIL REVIEW

August, 2000

The County Council has sole authority to determine the final zoning on each property. The Council may accept, reject, or modify the recommendations of the Planning Board. These options include retaining the existing zoning or applying to a property any zone or combination of zones.

COUNTY COUNCIL PUBLIC HEARINGS

September, 2000

The County Council schedules a public hearing in each Councilmanic District during the month of September. Testimony is limited to those Issues within the district for which the hearing is held.

COUNTY COUNCIL DECISIONS

October, 2000

The County Council vote on each Issue must occur before October 16, 2000. As adopted by legislative action of the County Council, the revised Comprehensive Zoning Map takes effect 45 days after being signed into law by the County Executive.

FINAL LOG AND MAPS

November, 2000

After the Council's vote, the Office of Planning prepares the final official amended Zoning maps and publishes the final edition of the Log of Issues containing all of the decisions of the County Council.

* * * * * * * * * *

For additional information, please contact the Baltimore County Office of Planning, County Courts Building, Room 406, Towson, Maryland 21204

410-887-3480
website:www.co.ba.md.us.

P.C. #4

Baltimore County
2000 Comprehensive Zoning Map Process

Task	Aug-99	Sep-99	Oct-99	Nov-99	Dec-99	Jan-00	Feb-00	Mar-00	Apr-00	May-00	Jun-00	Jul-00	Aug-00	Sep-00	Oct-00	Nov-00
Open Filing Period (8/2/99-11/1/99)				Log 1 11/22												
Planning Board Filing Period (11/1/99-11/30/99)					Log 2 12/20											
County Council Filing Period (12/1/99-1/18/00)							Log 3 2/1									
Planning Board Public Hearings (4/1/00-4/30/00)								Log 4 3/6								
Planning Board Review And Recommendations (5/1/00-6/30/00)												Log 5 7/17				
Transmittal Period (7/1/00-7/31/00)																
County Council Public Hearings (9/1/00-9/30/00)																
County Council Adoption of Maps (Before 10/16/00)																Log 6 11/20

P.C. #5

2000 COMPREHENSIVE ZONING MAP PROCESS APPLICATION

This form and the required materials must be presented in person

Baltimore County Office of Planning
401 Bosley Avenue, Suite 406
Towson Maryland 21204
410-887-3480
www.co ba md.us

OFFICE USE ONLY

Issue No. 3-136
Council District 3rd
Planner Dlugley

Received on 11/30/99
Fee (non-refundable)
Receipt No.

APPLICANT INFORMATION

Planning Staff
1. Name

6. Attorney or Representative

2. Organization (if applicable)

Firm Name (if applicable)

3. Mailing Address

Address

4. City, State, Zip Code

City, State, Zip Code

5. Home Phone

Business Phone

5a. Business Phone

PROPERTY INFORMATION

PAINTERS MILL VENTURE
7. Property Owner's Name

8. Property Street Address

56.20 ac
9. Total Acreage of Property

North Side Lyons Mill Rd, West of Owings
10. Distance to nearest street/intersection (give name)

02 02 02 00 30 60
11. Property Tax Number (12 Digits)

Map 67, P. 19
12. Tax Map Number / Parcel Number

Property Tax Number

Tax Map Number / Parcel Number

Property Tax Number

Tax Map Number / Parcel Number

RECLASSIFICATION INFORMATION

26.5 ac±
13. Acreage of land requested for rezoning

NW 9, 10 I
14. 1000' scale zoning map no.
200' scale zoning map no.

26.5 ac DR 16
15. Existing zoning (acres per zone)

26.5 ac DR 16, DR 5.5 OR I
16. Requested zoning (acres per zone)

Vacant
17. Existing use of parcel

Residential
18. Proposed use of parcel

19. Zoning history (issue/case no., year, type)

THE INFORMATION SHOWN ON THIS FORM IS ACCURATE AND COMPLETE TO THE BEST OF MY KNOWLEDGE

(SIGNATURE)

Date

OWNER ACKNOWLEDGEMENT: Are you the owner of the property? No___ Yes___ If you are the owner, review and sign below.

1. I hereby grant permission to Baltimore County for any required inspections of my property in regard to this subject-zoning request.
2. I hereby acknowledge that if any rezoning occurs, a change in the property tax assessment and /or transfer taxes may result for which the property owner would be responsible. Further, I understand that if this zoning request is granted, it does not guarantee the issuance of plan approval or building permit. At the time of development processing, all county, state, and federal requirements in effect at that time must be satisfied.
3. I hereby acknowledge that the County Council may apply any zoning classification on the subject property upon adoption of the comprehensive zoning maps.

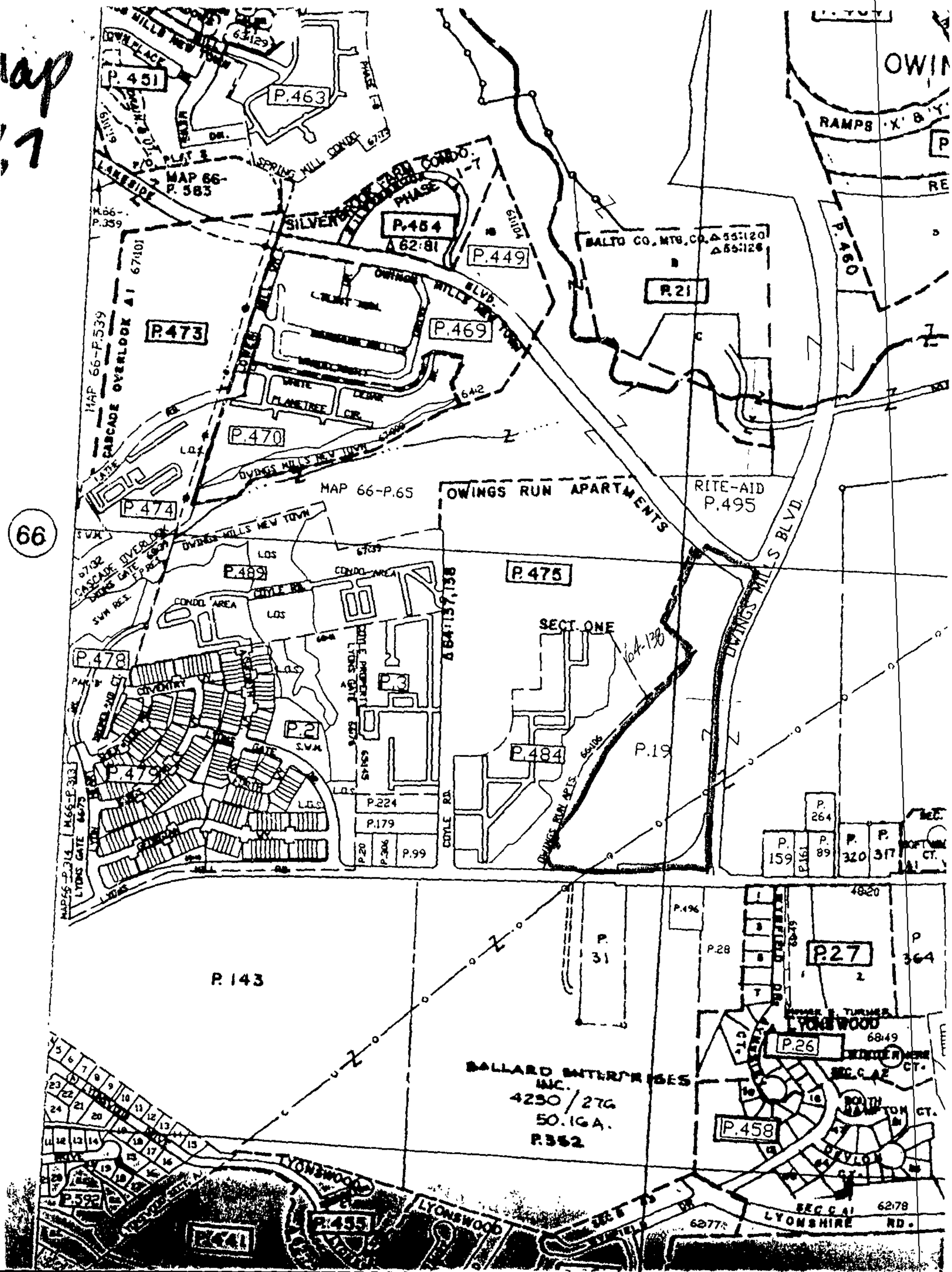
Owner's Name (Please Print)

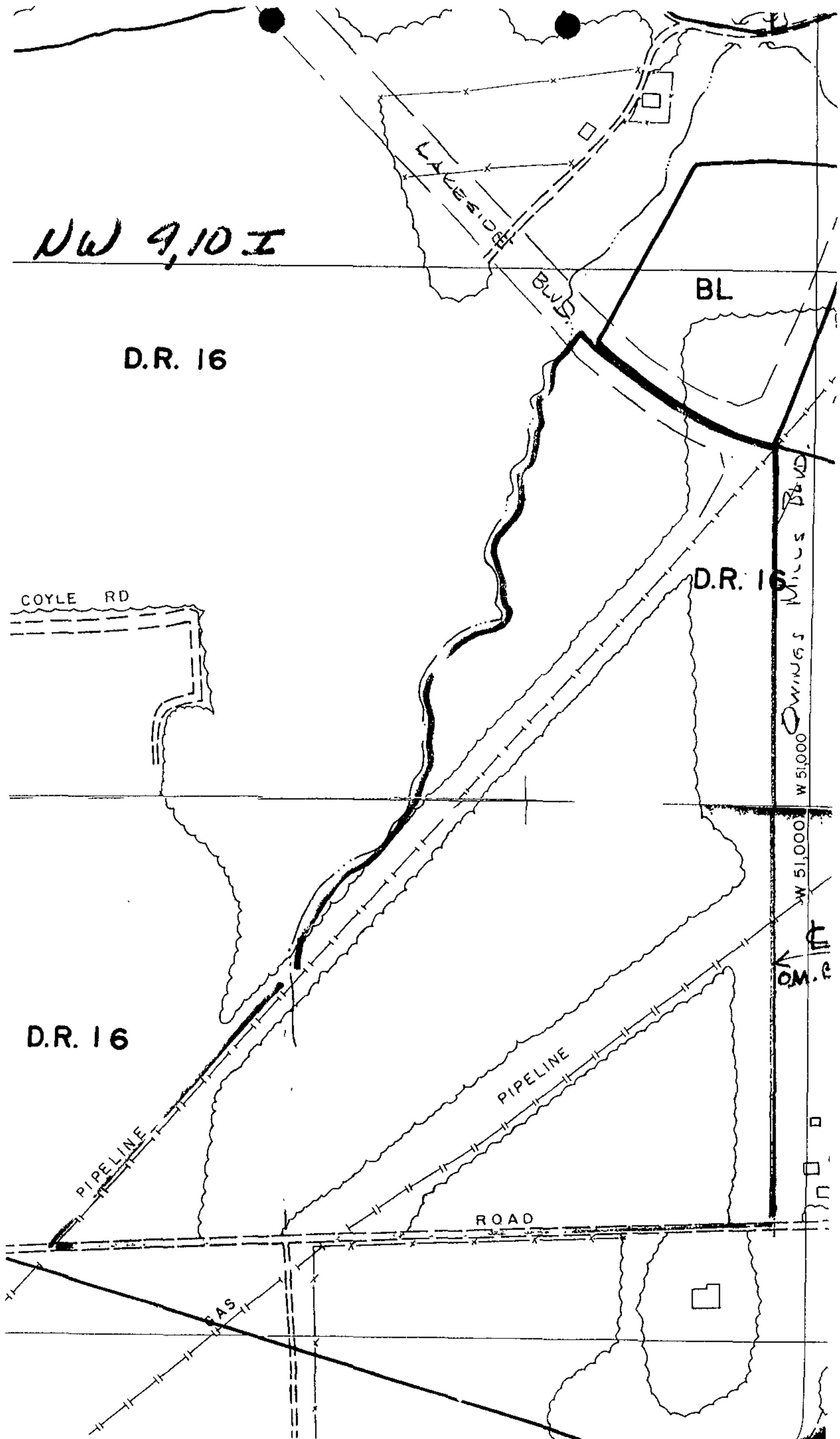
Signature

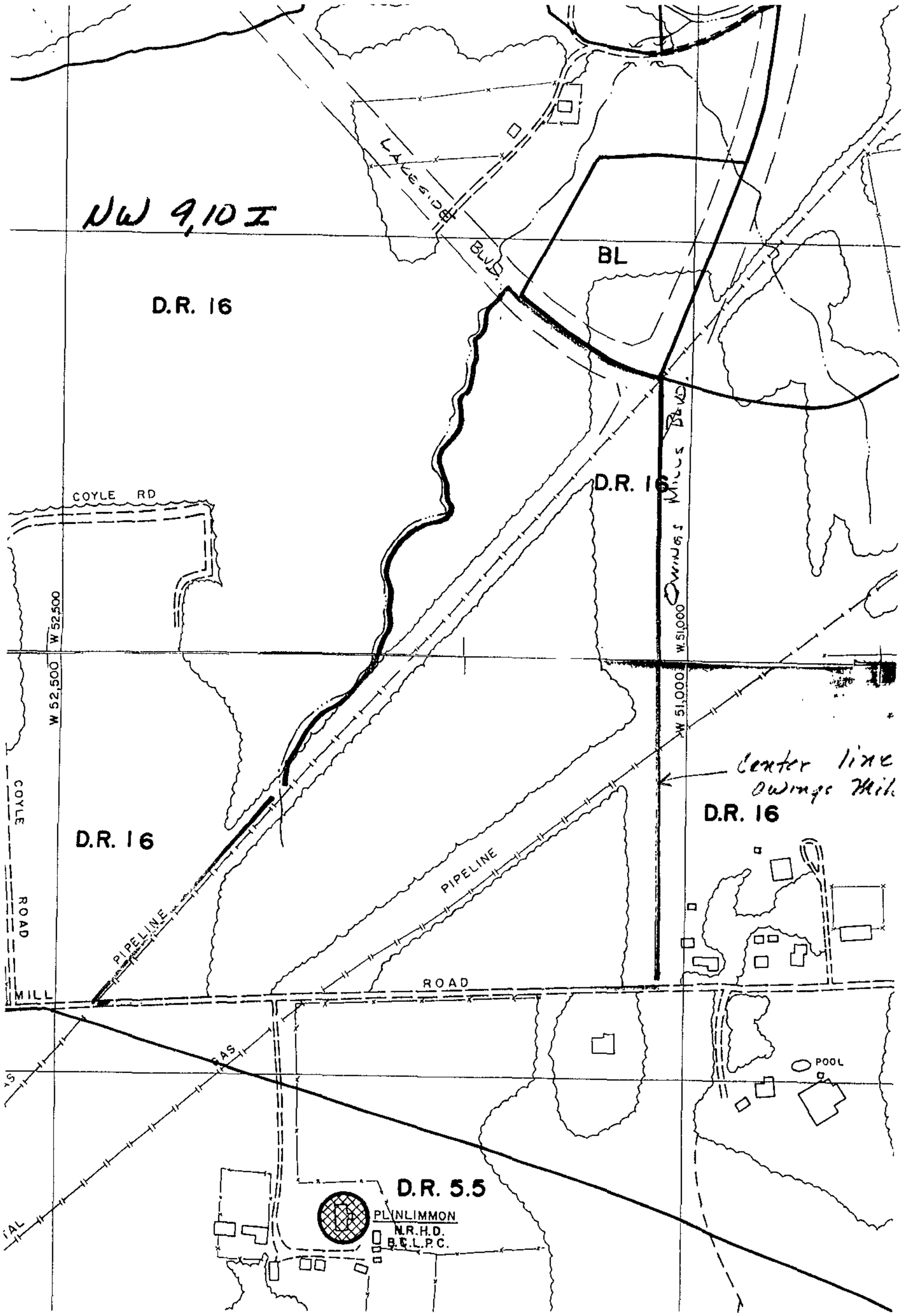
Date

Map
7

66


P.451
P.463
MAP 66-P.583
SILVER
P.454
P.449
P.21
P.460
P.473
P.469
P.470
P.474
MAP 66-P.65
OWINGS RUN APARTMENTS
RITE-AID
P.495
P.489
P.475
SECT. ONE
P.478
P.3
P.2
P.479
P.484
P.19
P.224
P.179
P.99
P.143
P.31
P.28
P.27
P.364
P.26
P.458
P.592
P.455
P.441
BALLARD ENTERPRISES INC.
4230/276
50.16 A.
P.352
LYONSWOOD
LYONSHIRE RD.
OWINGS MILLS BLVD.
COYLE RD.
RAMPS 'X' & 'Y'


NW 9,10 I
LAKESIDE
BLVD.
BL
D.R. 16
D.R. 16
COYLE RD
W 51,000
W 51,000
D.R. 16
PIPELINE
PIPELINE
ROAD
GAS


NW 9,10 I
LAKESIDE BLVD.
BL
D.R. 16
COYLE RD
D.R. 16
OWINGS MILLS BLVD.
W 52,500
W 52,500
W 51,000
W 51,000
Center line
Owings Mill
D.R. 16
COYLE ROAD
D.R. 16
PIPELINE
PIPELINE
MILL ROAD
GAS
POOL
D.R. 5.5
PLINLIMMON
N.R.H.D.
B.C.L.P.C.

Betty Sherman - Email From Website

From: "Ernestine Durham" <durhame@home.com>
To: <planning@co.ba.md.us>, <baltcc@home.com>
Date: 09/19/2000 10:07 PM
Subject: Email From Website

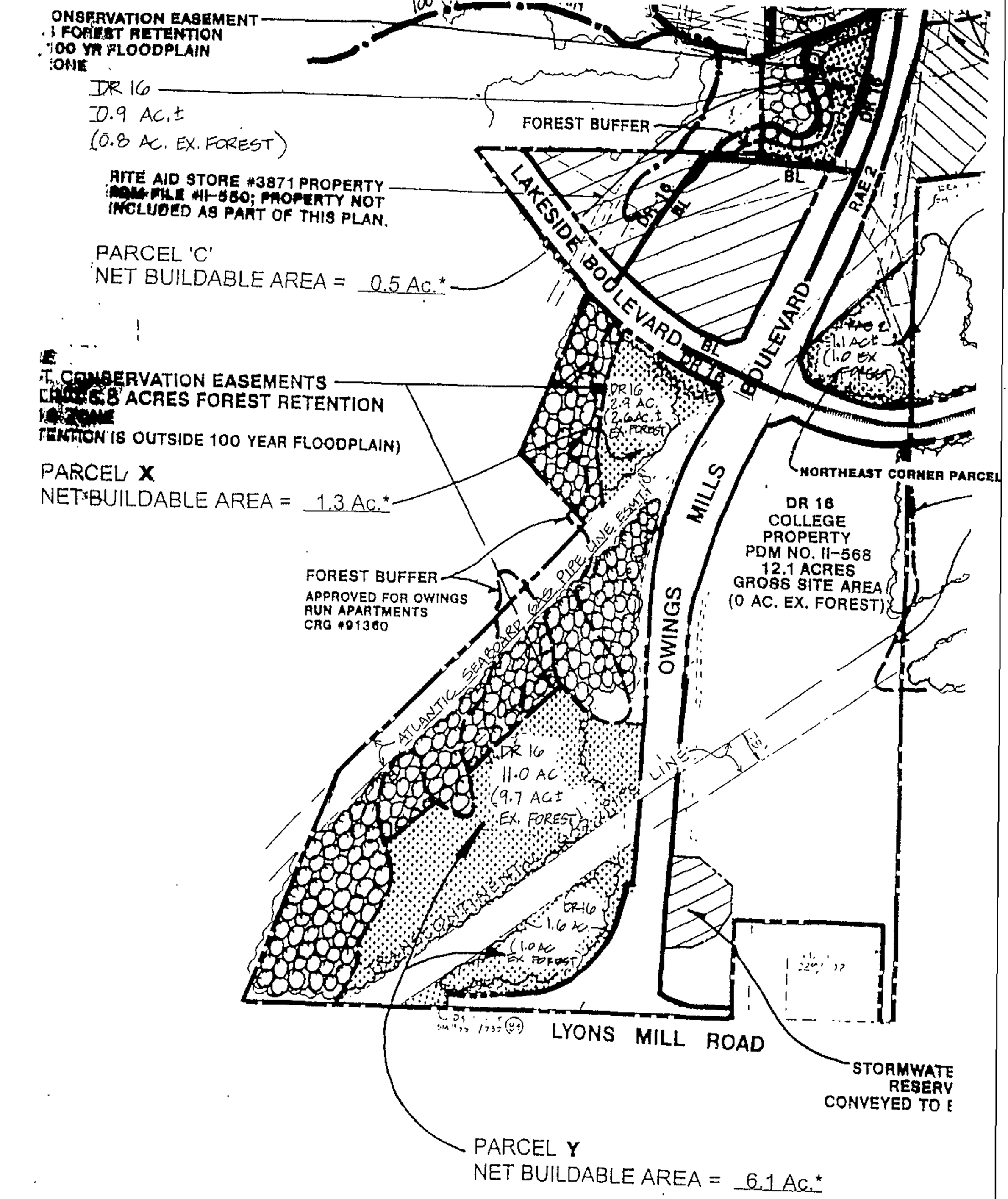
TO: Planning Board
Councilman Bryan McIntire

I writing regarding the zoning recommendation for items 3-136, 3-137 and 3-143 and on behalf of the Lyonswood Community. I attended both 3rd District hearings on the 2000 zoning proposals/recommendations. At the initial hearing we spoke in support of the preliminary recommendations by the Planning Board. At the 9/6 hearing we were surprised to discover that the Board's recommendation had been revised and that they are now recommending no change to the current zoning. As stated at the 9/6 meeting, for the following reasons we oppose the recommendations as stated in the 6/15/00 2000 Comprehensive Zoning Map Issues:

- Increased traffic
- Overcrowding of schools
- Lack of adequate water and sewage systems
- Environmental Issues (wildlife)
- Overall quality of life for the residents surrounding these area

We respectfully request that you stick with the preliminary recommendations of the Board. They properly recognized the problems with the current zoning. The new proposals only benefit developers and is not consistent with Smart Growth.

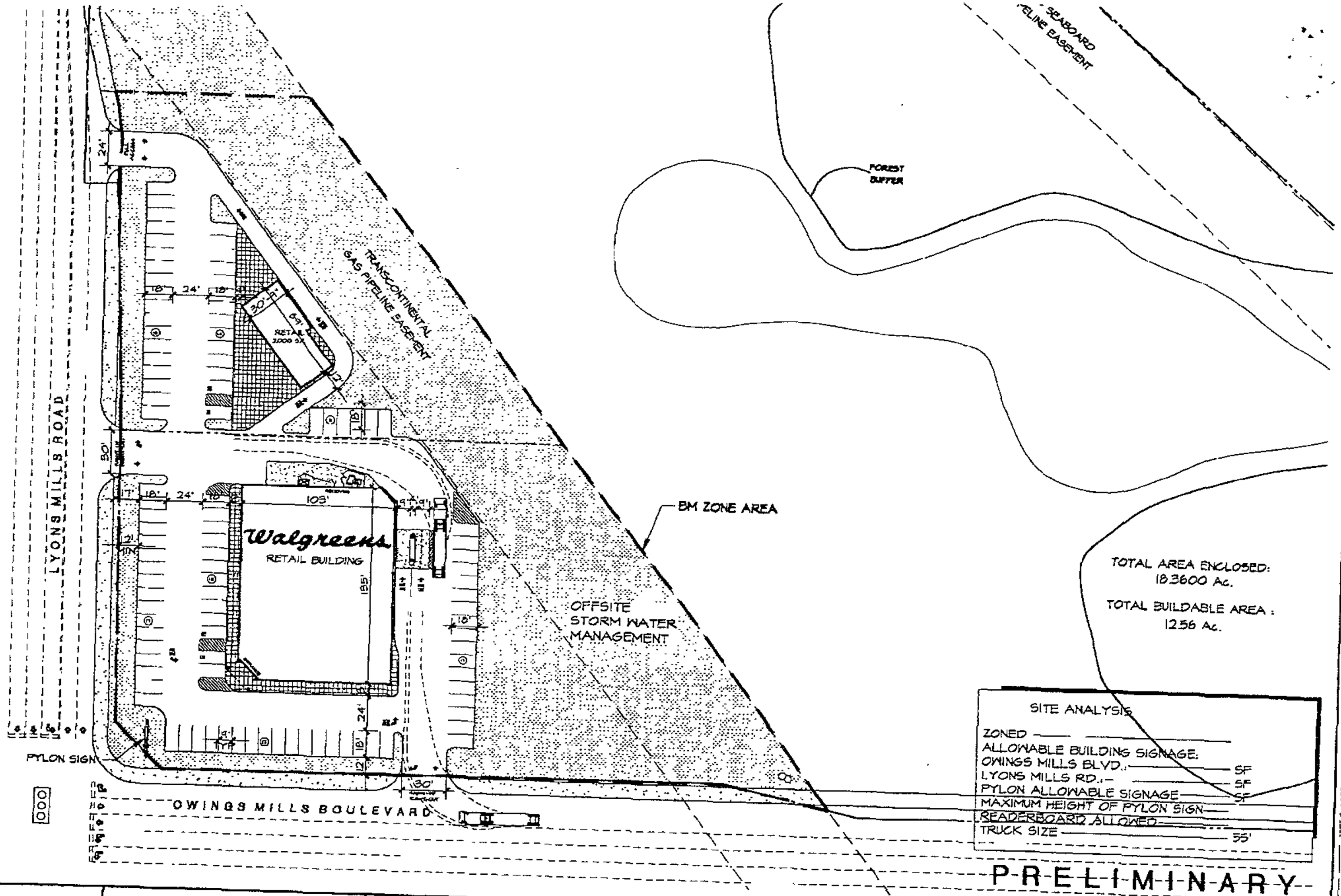
Ernestine Durham
HOA Board of Directors
Lyonswood Community



MRA

MORRIS & RITCHIE
ASSOCIATES, INC.

EXHIBIT ONE



VILLAGE PROPERTIES

JMD ARCHITECTURE
582 MISSION STREET, SUITE 201
SAN FRANCISCO, CA 94105

Owings Mills Blvd. & Lyons Mills Rd.
BALITMORE COUNTY MARYLAND

BUILDING SIZE — 103'X135'
BUILDING AREA — 13,805 SQ. FT.
SITE AREA — ± SQ. FT.
WG PARKING STALLS — 64
RETAIL PARKING STALLS — 38

SITE PLAN DIMENSIONS ARE BASED ON AVAILABLE REAL ESTATE TAX MAPS. SITE PROPERTY LINES AND DIMENSION ARE APPROXIMATE AND SUBJECT TO ALIGNING ALL LOCATIONS, DIMENSIONS AND AREAS OF PROPERTY LINES SHOWN ON THIS PLAN MAY CHANGE SUBJECT TO FINAL SITE SURVEY.

0' 45' 90' 120'
1"=90'

N W E S

SP-000908A

RR

P.C. #6

BALTIMORE COUNTY
COMPREHENSIVE ZONING MAP

Final Log of Issues

Adopted October 10, 2000

2000 CZMP Map Issues: District 3

Councilmanic District
Secondary Roads
Major Roads
Map Issues

N
W E
S

BALTIMORE COUNTY MARYLAND

3

BALTIMORE CITY

Councilmanic Districts

1 inch = 3 miles

3 0 3 6 Miles

1:190080

Prepared by Baltimore County Office of Planning
OIT GIS Services Unit January 2000

Sources: Roads and Councilmanic District, Baltimore Metropolitan Council 1999 1:24000
CZMP issues Baltimore County Office of Planning Digitized from 1996 Tax Maps 1:2,200

Issues as of January 18, 2000
This map is for display purposes only. Land use decisions involving zoning designations should be verified with the zoning office.

Baltimore County 2000 Comprehensive Zoning Map Issues

Issue Number	Owner, Petitioner	Location	Existing Zoning and Acres	Requested Zoning and Acres	Planning Board Recommendations	County Council Decisions	Comments
3-001	Staff	North side of Westminster Pike 1430' northwest of Main St	BL 1.0 Total 1.0	MLR 1.0 Total 1.0	MLR 1.0 Total 1.0	MLR 1.0 Total 1.0	See Issues 3-002, 3-012
3-002	Staff	North side of Westminster Pike, 200' west of Wolf Ave	BL 0.5 Total 0.5	DR 3.5 or ML 0.5 Total 0.5	ML 0.5 Total 0.5	ML 0.5 Total 0.5	See Issue 3-001
3-003	Staff	South side Glyndon Dr, 400' east of Main St	DR 16 8.7 Total 8.7	DR 3.5 8.7 Total 8.7	DR 3.5 8.7 Total 8.7	DR 3.5 8.7 Total 8.7	
3-004	Staff	8 Hillside Ave, 200' east of York Rd	BL AS 0.2 Total 0.2	DR 3.5 0.2 Total 0.2	DR 3.5 0.2 Total 0.2	DR 3.5 0.2 Total 0.2	
3-005	Staff	East & west side Deer Park Rd at Lyons Mill Rd	RC 5 130.0 DR 3.5 113.0 Total 243.0	RC 4 111.0 DR 1 132.0 Total 243.0	RC 4 111.0 DR 1 132.0 Total 243.0	RC 5 111.0 DR 1 132.0 Total 243.0	See Issues 3-024, 3-025, 3-026 *Overlay Adopted*
3-006	Staff	North side of Mt. Carmel Rd east of Falls Rd	BL CR 1.3 Total 1.3	RC 2 1.3 Total 1.3	RC 2 1.3 Total 1.3	RC 2 1.3 Total 1.3	See Issue 3-048
3-007	Staff	18817, 18823, 18825 Falls Rd, 1500' south of Beckleysville Rd	RC 5 9.9 Total 9.9	RC 2 9.9 Total 9.9	RC 2 9.9 Total 9.9	RC 2 9.9 Total 9.9	
3-008	Staff	14212, 14214 Jarrettsville Pk, west side of Jarrettsville Pk 1200' south of Paper Mill Rd	RO CR 1.8 Total 1.8	ROA 1.8 Total 1.8	ROA 1.8 Total 1.8	ROA 1.8 Total 1.8	See Jacksonville Community Plan
3-009	William Nash	5307-5311 Emory Rd, 213' east of MD Route 30	RO CR 0.6 BR CR 0.2 RC 2 0.9 Total 1.7	RC 5 1.7 Total 1.7	RC 5 1.7 Total 1.7	RC 5 1.7 Total 1.7	

Baltimore County 2000 Comprehensive Zoning Map Issues

Issue Number	Owner, Petitioner	Location	Existing Zoning and Acres	Requested Zoning and Acres	Planning Board Recommendations	County Council Decisions	Comments
3-010	Whitman Property	11534 Garrison Forest Rd, 30' from Carroll Ave	DR 1 7.4 Total 7.4	ML IM 7.4 Total 7.4	DR 1 2.1 ML IM 5.3 Total 7.4	DR 1 2.1 ML IM 5.3 Total 7.4	Overlay Adopted
3-011	Sylvan L. Cornblatt	1 Montrose Ave; 200' east of Reisterstown Rd	DR 3.5 0.3 Total 0.3	BL 0.3 Total 0.3	DR 3.5 0.3 Total 0.3	DR 3.5 0.3 Total 0.3	
3-012	Ann Horvath	Southwest Westminster Pike east of I-795	OR 1 2.5 Total 2.5	ML 2.5 Total 2.5	ML 2.5 Total 2.5	ML 2.5 Total 2.5	See Issue 3-001
3-013	Susan Blavatt	9804 Reisterstown Rd, 2350' south of Garrison View Rd	MLR IM 4.2 Total 4.2	BR 4.2 Total 4.2	BR 4.2 Total 4.2	MLR IM 4.2 Total 4.2	
3-014	George W. Knouse	16208 Hanover Pike, 146' north of Lees Mill Rd	RC 2 0.6 Total 0.6	BL CR 0.6 Total 0.6	RC 2 0.6 Total 0.6	RC 2 0.6 Total 0.6	See Hanover Pike Corridor Study
3-015	KA Real Estate Associates, LLC	10324 South Dolfield Rd at New Plant Court	ML IM 2.0 Total 2.0	BR 2.0 Total 2.0	ML 2.0 Total 2.0	ML IM 2.0 Total 2.0	
3-016	Alfred M. and Shirley S. Paul	10810 Reisterstown Rd, 1320' south of Pleasant Hill Rd	RO 0.6 Total 0.6	BL 0.6 Total 0.6	BL 0.6 Total 0.6	BL 0.6 Total 0.6	
3-017	Joseph Wilder	Southeast corner of Gwynnbrook Ave and Reisterstown Rd	OR 2 8.4 Total 8.4	BR or BM 8.4 Total 8.4	OR 2 8.4 Total 8.4	OR 2 8.4 Total 8.4	See Issues 3-111, 3-112, 3-113, 3-114, 3-115, 3-116, 3-151
3-018	Deborah Ann Cleaver	56 Ashland Dr, east of York Rd	RC 4 1.0 Total 1.0	RO 1.0 Total 1.0	ROA 1.0 Total 1.0	RC 4 1.0 Total 1.0	

Baltimore County 2000 Comprehensive Zoning Map Issues

Issue Number	Owner, Petitioner	Location	Existing Zoning and Acres	Requested Zoning and Acres	Planning Board Recommendations	County Council Decisions	Comments
3-019	Carole Bognanni Sacra	635 Main St	RO 0.1 Total 0.1	BL 0.1 Total 0.1	CB 0.1 Total 0.1	CB 0.1 Total 0.1	Covenant Agreement
3-020	Thaddeus & Virginia Cox	2108 Freeland Rd, north of Middletown Rd	RC 2 5.3 Total 5.3	RC 5 5.3 Total 5.3	RC 2 5.3 Total 5.3	RC 2 5.3 Total 5.3	
3-021	Kent-Mar Corporation	2580 Dolfield Rd, northwest corner of Dolfield Rd and Pleasant Hill Rd	DR 10.5 7.0 OT 6.7 RC 5 25.9 Total 39.6	ML IM 39.6 Total 39.6	RC 5 25.9 ML 13.7 Total 39.6	DR 10.5 7.1 ML 6.6 RC 5 25.9 Total 39.6	Overlay Adopted
3-022	August Piccinini	Nicodemus Rd, 325' east of Berrymans Ln	RC 5 52.8 RO 1.6 Total 54.4	SE 54.4 Total 54.4	RC 5 52.8 RO 1.6 Total 54.4	DR 3.5 54.4 Total 54.4	Covenant Agreement
3-023	Dr & Mrs. James Ryan	North side Sherwood Rd, 600' east of Tyrie Rd	DR 2 9.0 RC 4 10.9 Total 19.9	RC 5 19.9 Total 19.9	DR 2 9.0 RC 4 10.9 Total 19.9	RC 5 19.9 Total 19.9	See Issue 3-040
3-024	Ryland Homes	Dolfield Rd, 1700' northeast of Dolfield Rd and Deer Park Rd	RC 5 16.2 DR 5.5 0.5 Total 16.7	DR 3.5 16.7 Total 16.7	RC 5 16.2 DR 5.5 0.5 Total 16.7	RC 5 16.2 DR 5.5 0.5 Total 16.7	See Issues 3-005, 3-025, 3-026, 3-079
3-025	Ryland Homes	1300' east of Deer Park Rd and Dolfield Rd	DR 3.5 9.1 DR 5.5 0.1 Total 9.2	DR 5.5 9.2 Total 9.2	DR 3.5 9.1 DR 5.5 0.1 Total 9.2	DR 3.5 9.1 DR 5.5 0.1 Total 9.2	See Issues 3-005, 3-024, 3-026, 3-079 Withdrawn by Petitioner 6/23/00

Baltimore County 2000 Comprehensive Zoning Map Issues

Issue Number	Owner, Petitioner	Location	Existing Zoning and Acres		Requested Zoning and Acres		Planning Board Recommendations		County Council Decisions		Comments
3-026	Ryland Homes	Dolfield Rd, 2200' east of Dolfield Rd and Deer Park Rd									See Issues 3-005, 3-024, 3-025, 3-079
			DR 5 5	0 3	DR 3.5	16 7	DR 5 5	0 3	DR 5 5	0.3	
			RC 5	16 4	Total	16 7	RC 5	16 4	RC 5	16.4	
			Total	16 7			Total	16.7	Total	16.7	
3-027	Craig Whitcraft	605 Main St, southeast of Chartley Dr									
			O 3	1.3	BM	1.3	DR 3 5	0 3	O 3	1.3	
			Total	1.3	Total	1 3	BL	1.0	Total	1.3	
							Total	1.3			
3-028	Sarah Sartipy	9925 Reisterstown Rd, southeast corner of Reisterstown Rd and Olive Ln									See Issues 3-086, 3-087, 3-088, 3-089, 3-090
			DR 16	0.2	BL	0 8	CB	0.8	DR 16	0 2	
			DR 1	0.2	Total	0 8	Total	0.8	DR 1	0.2	
			RO	0.4					RO	0.4	
			Total	0.8					Total	0.8	
3-029	Meadows of Greenspring Homeowners Assoc.	Greenspring Station, Joppa Rd at Falls Rd									See Issue 3-085 Overlay Adopted
			DR 16	1 8	O 3	45 3	BM* and		BM* and		*BM ground floor only
			BL	13 5	Total	45.3	O 3	8.3	O 3	8.3	
			OR 1	13.0			O 3	36.2	O 3	36.2	
			BM	17 0			BM	0.8	BM	0.8	
			Total	45.3			Total	45.3	Total	45.3	
3-030	Bosworth Properties, Inc	11024 Reisterstown Rd, north of Pleasant Hill Rd									See Issue 3-071
			OR 1	4 8	BM	4 8	OR 1	4.8	OR 1	4 8	
			Total	4.8	Total	4 8	Total	4.8	Total	4.8	
3-031	Questar Properties Inc	218 International Circle									See Issue 3-146 Covenant Agreement Overlay Adopted
			MLR	17 6	RAE 1 or		RAE 1	11.8	RAE 1	12.2	
			Total	17 6	DR 16	17 6	DR 16	5.8	DR 16	5.4	
					Total	17.6	Total	17.6	Total	17.6	

Baltimore County 2000 Compr ensive Zoning Map Issues

Issue Number	Owner, Petitioner	Location	Existing Zoning and Acres	Requested Zoning and Acres	Planning Board Recommendations	County Council Decisions	Comments
3-032	Security Management Corp	South east corner of York Rd and Phoenix Rd	RC 4 150 0 Total 150 0	DR 1 150.0 Total 150 0	RC 4 150 0 Total 150 0	RC 4 150.0 Total 150.0	
3-033	Harold Burton	118 Mt. Carmel Rd, 1500' west of York Rd	RC 5 CR 0 4 BL CR 6 2 Total 6 6	BL 6 6 Total 6.6	BL CR 6 6 Total 6.6	BL CR 6.6 Total 6.6	See Hereford Plan
3-034	Paul W. Botzler	16924 York Rd, 350' north of Everett Ave	RC 5 1 7 Total 1 7	BM CR 1 7 Total 1 7	RC 5 1.1 BM CR 0 6 Total 1 7	BM CR 1.7 Total 1.7	See Issue 3-035 Covenant Agreement
3-035	Paul W. Botzler	16918 York Rd, 200' north of Everett Ave	RC 5 0.8 Total 0.8	BM CR 0.8 Total 0.8	RC 5 0.5 BM CR 0 3 Total 0.8	RC 5 0.5 BM CR 0.3 Total 0 8	See Issue 3-034 Covenant Agreement Overlay Adopted
3-036	Stewart Sachs	1 East Cherry Hill Rd, north side of Reisterstown Rd at East Cherry Hill Rd	RO 0 3 Total 0 3	BL 0 3 Total 0 3	RO 0.3 Total 0.3	RO 0 3 Total 0.3	See Issues 3-094, 3-096, 3-097, 3-098, 3-099, 3-100
3-037	Donald E. Warrener, Jr	20227 Old York Rd, 70' south of West Liberty Rd	RC 2 0 6 Total 0 6	BL CR 0 6 Total 0 6	RC 2 0.6 Total 0 6	RC 2 0.6 Total 0 6	
3-038	Janet & Vasilios Alibrandis	21320 Old York Rd	RC 5 1 1 Total 1 1	BL CR 1 1 Total 1.1	RC 5 1.1 Total 1.1	RC 5 1 1 Total 1.1	
3-039	Knollbrook Community Assembly, Inc	North side of Oakknoll Rd, 100' east of Cedarknoll Rd	DR 3 5 6 0 Total 6 0	RC 2 6.0 Total 6.0	DR 1 6.0 Total 6 0	DR 1 6.0 Total 6 0	See Issue 3-040

Baltimore County 2000 Comprehensive Zoning Map Issues

Issue Number	Owner, Petitioner	Location	Existing Zoning and Acres	Requested Zoning and Acres	Planning Board Recommendations	County Council Decisions	Comments
3-040	Sherwood Hill Improvement Association	North & south side of Sherwood Rd, 900' east of York Rd	DR 3.5 33.5 DR 2 92.7 Total 126.2	RC 5 48.6 DR 2 8 5 DR 1 69.1 Total 126.2	DR 2 92.7 DR 3 5 33.5 Total 126.2	DR 1 110.0 DR 2 8.1 RC 5 8.1 Total 126.2	See Issues 3-023, 3-039 Overlay Adopted
3-041	William H. Norris	17010 York Rd, north of Mt. Carmel Rd	RC 5 0.5 Total 0 5	BL CR 0 5 Total 0.5	BL CR 0.5 Total 0.5	BL CR 0.5 Total 0.5	See Hereford Plan
3-042	Louis Mangione	Painters Mill Rd 750' southwest of Music Fair Rd	ML IM 36.9 Total 36 9	BM 36 9 Total 36.9	ML 36.9 Total 36 9	ML IM 36.9 Total 36.9	See Issue 3-075
3-043	Gustine Properties, Inc	10620 Reisterstown Rd	DR 3.5 1.3 RO 1.2 Total 2.5	BM AS 2.5 Total 2.5	DR 3.5 1.3 RO 1.2 Total 2.5	DR 3.5 1.3 RO 1.2 Total 2.5	
3-044	Stonehenge LLC	Shawan Plaza, intersection of Shawan Rd and York Rd	RC 4 3 3 Total 3.3	BR 3 3 Total 3.3	RC 4 3.3 Total 3.3	RC 4 3.3 Total 3.3	
3-045	John T Gosnell	18 & 20 Warren Rd, 400' east of York Rd	RO 0.3 DR 3.5 0 3 Total 0.6	RO 0.3 BR 0 3 Total 0.6	RO 0.3 DR 3 5 0.3 Total 0.6	RO 0.3 DR 3.5 0.3 Total 0.6	
3-046	McDonogh School, Inc	Southeast corner of Painters Mill Rd and Lyons Mill Rd	OR 2 7.5 Total 7.5	BL AS 7.5 Total 7 5	OR 2 7.5 Total 7.5	OR 2 7.5 Total 7 5	Withdrawn by Petitioner 7/10/00
3-047	Taylor Technologies	West side of York Rd south of Phoenix Rd	RC 4 3.0 ML 3 1 Total 6 1	RC 4 3.1 ML 3 0 Total 6.1	RC 4 3.1 ML 3.0 Total 6.1	RC 4 3.1 ML 3.0 Total 6.1	

Baltimore County 2000 Comprehensive Zoning Map Issues

Issue Number	Owner, Petitioner	Location	Existing Zoning and Acres	Requested Zoning and Acres	Planning Board Recommendations	County Council Decisions	Comments
3-048	Loring T Sparks	17422 Falls Rd, northwest corner of Falls Rd and Mt. Carmel Rd	RC 2 1.0 Total 1.0	BL CR 1.0 Total 1.0	BL CR 1.0 Total 1.0	BL CR 1.0 Total 1.0	See Issue 3-006 Covenant Agreement
3-049	Dellcrest Realty Company	10117 York Rd, east side of York Rd 250' north of Halesworth Rd	ML AS 6.7 Total 6.7	BM AS 6.7 Total 6.7	ML AS 6.7 Total 6.7	ML IM 6.7 Total 6.7	
3-050	John & Carolyn Jackson	11416 Reisterstown Rd	DR 3.5 2.0 Total 2.0	BM 2.0 Total 2.0	DR 3.5 2.0 Total 2.0	DR 3.5 2.0 Total 2.0	See Issue 3-064
3-051	Alvin B Krongard	1400 West Seminary Ave, northeast corner of West Seminary Ave and Mays Chapel Rd	RC 5 34.3 Total 34.3	DR 1 34.3 Total 34.3	RC 5 34.3 Total 34.3	DR 1 34.3 Total 34.3	See Issue 3-145 Covenant Agreement
3-052	Cloverland Farms Dairy, Inc	10515 Reistertown Rd, north of Dolfield Ave	BL 1.4 Total 1.4	BL AS 1.4 Total 1.4	BL 1.4 Total 1.4	BL 1.4 Total 1.4	
3-053	North County Coalition	18429 Middletown Rd, east and west side of I-83 at Middletown Rd	RC 5 63.0 RC 4 122.0 Total 185.0	RC 2 185.0 Total 185.0	RC 5 63.0 RC 4 122.0 Total 185.0	RC 4 185.0 Total 185.0	
3-054	North County Coalition	700' north of Dairy Rd and York Rd	RC 5 79.7 Total 79.7	RC 2 79.7 Total 79.7	RC 4 79.7 Total 79.7	RC 5 57.5 RC 4 22.2 Total 79.7	See Issue 3-123 Overlay Adopted

Baltimore County 2000 Comprehensive Zoning Map Issues

Issue Number	Owner, Petitioner	Location	Existing Zoning and Acres	Requested Zoning and Acres	Planning Board Recommendations	County Council Decisions	Comments
3-055	Maryland Line Area Association, Inc	North and south side of Walker Rd at Rayville Rd	RC 4 171.6 RC 5 173.8 Total 345.4	RC 2 345.4 Total 345.4	RC 4 345.4 Total 345.4	RC 4 91.0 RC 5 28.0 RC 2 226.4 Total 345.4	Overlay Adopted
3-056	Maryland Line Area Association, Inc	19919 Cameron Mill Rd, 2200' north of Walker Rd	RC 4 240.4 Total 240.4	RC 2 240.4 Total 240.4	RC 4 240.4 Total 240.4	RC 2 240.4 Total 240.4	
3-057	Mr. & Mrs. Wallace White	101 Meadow Ln, west of the intersection of Meadow Ln and Red Run Blvd	RAE 2 1.1 Total 1.1	BL 1.1 Total 1.1	RO 1.1 Total 1.1	RAE 2 1.1 Total 1.1	
3-058	Dr. & Mrs. Ronald Pomykala	1400 Greenspring Valley Rd, 1000' west of the intersection of Greenspring Valley Rd and Greenspring Ave	RC 2 7.7 Total 7.7	BM 7.7 Total 7.7	RC 2 7.7 Total 7.7	RC 2 7.7 Total 7.7	Withdrawn by Petitioner 4/11/00
3-059	Susanne Walper Watson	10807 & 10809 Reisterstown Rd, south of Enchanted Hills Rd	DR 16 0.2 OR 1 0.2 Total 0.4	BR 0.4 Total 0.4	BL 0.4 Total 0.4	OR 2 0.4 Total 0.4	See Issues 3-134, 3-135
3-060	Spellman, Larson & Associates	16950 York Rd at Mt. Carmel Rd	RO CR 0.1 RC 5 CR 0.5 Total 0.6	BM CR 0.6 Total 0.6	RO CR 0.1 RC 5 CR 0.5 Total 0.6	RO CR 0.1 RC 5 CR 0.5 Total 0.6	See Hereford Plan
3-061	Paul M. Fabiszak	12047 Falls Rd, 1000' north of Greenway Rd	RC 5 1.2 RC 4 7.4 Total 8.6	ML 8.6 Total 8.6	RC 5 1.2 RC 4 7.4 Total 8.6	RC 5 1.2 RC 4 7.4 Total 8.6	See Issue 3-108

Baltimore County 2000 Comprehensive Zoning Map Issues

Issue Number	Owner, Petitioner	Location	Existing Zoning and Acres	Requested Zoning and Acres	Planning Board Recommendations	County Council Decisions	Comments
3-062	*Consolidated Falls, LLC*	10829 Falls Rd, 650' north of Greenspring Valley Rd	OR 1 0.2 RC 5 0.3 Total 0.5	RC 5 0.1 OR 1 0.2 OR 2 0.2 Total 0.5	O 3 0.5 Total 0.5	O 3 0.5 Total 0.5	See Issues 3-029, 3-085
3-063	Staff	Church Rd at Red Run Blvd	OR 2 26.3 Total 26.3	ML IM 26.3 Total 26.3	OR 2 26.3 Total 26.3	O 3 26.3 Total 26.3	See Issue 3-155
3-064	Ambler M. Blick & Robert McDaniel	11422-11426 Reisterstown Rd, south of Sunset Rd	DR 3.5 0.2 RO 0.9 Total 1.1	BM 1.1 Total 1.1	DR 3.5 0.2 RO 0.9 Total 1.1	BM 1.1 Total 1.1	See Issues 3-050, 3-093
3-065	James Reter & Calvin Reter	4825 Butler Rd at Railroad Ave	CB 2.1 Total 2.1	BL 2.1 Total 2.1	CB 2.1 Total 2.1	CB 2.1 Total 2.1	See Issues 3-081, 3-141
3-066	Pleasant Hill LLLP	Northeast corner of Red Run Blvd and Pleasant Hill Rd	ML IM 2.3 Total 2.3	BL AS 2.3 Total 2.3	BL AS 2.3 Total 2.3	ML IM 2.3 Total 2.3	See Issue 3-067
3-067	Pleasant Hill LLLP	Southeast corner of Red Run Blvd and Pleasant Hill Rd	ML IM 4.0 Total 4.0	BL 4.0 Total 4.0	ML IM 4.0 Total 4.0	ML IM 4.0 Total 4.0	See Issue 3-066
3-068	James V. Hottes & Marjorie H. Casey	10615 York Rd, northeast corner of York Rd and Matthews Ave	RO 0.3 Total 0.3	BL 0.3 Total 0.3	RO 0.3 Total 0.3	RO 0.3 Total 0.3	
3-069	Worthington-Woodsyde Association	2907 Walnut Ave, at Greenspring Ave	RC 5 17.8 Total 17.8	RC 2 17.8 Total 17.8	RC 5 17.8 Total 17.8	RC 5 17.8 Total 17.8	

Baltimore County 2000 Comprehensive Zoning Map Issues

Issue Number	Owner, Petitioner	Location	Existing Zoning and Acres	Requested Zoning and Acres	Planning Board Recommendations	County Council Decisions	Comments
3-070	Worthington-Woodsyde Association	12425 Greenspring Ave	RC 5 107.4 Total 107.4	RC 2 107.4 Total 107.4	RC 5 107.4 Total 107.4	RC 5 107.4 Total 107.4	See Issue 3-108
3-071	Marc Berman	11020 Reisterstown Rd, north of Pleasant Hill Rd	OR 1 0.6 Total 0.6	BL 0.6 Total 0.6	OR 1 0.6 Total 0.6	OR 1 0.6 Total 0.6	See Issue 3-030
3-072	Noxell Corporation	Northwest corner of York Rd and Wight Ave	ML IM 25.1 Total 25.1	BR IM 25.1 Total 25.1	ML IM 25.1 Total 25.1	ML IM 25.1 Total 25.1	
3-073	Sweetheart Cup Company, Inc	10100 Reisterstown Rd, southwest corner of Reisterstown Rd and Painters Mill Rd	MLR IM 13.9 ML IM 39.4 Total 53.3	BM IM 53.3 Total 53.3	MLR IM 13.9 ML IM 39.4 Total 53.3	MLR IM 13.9 ML IM 39.4 Total 53.3	See Issue 3-074
3-074	Sweetheart Holdings inc	Southwest side of Reisterstown Rd 3970' southeast of Painters Mill Rd	ML IM 21.0 MLR IM 0.9 Total 21.9	BM IM 21.9 Total 21.9	BM 21.9 Total 21.9	BM 21.9 Total 21.9	See Issues 3-073, 3-109 Covenant Agreement
3-075	BJ's Wholesale Club, Inc	55 Music Fair Rd, 2000' southeast of Painters Mill Rd	BM 10.5 Total 10.5	BM IM 10.5 Total 10.5	BM 10.5 Total 10.5	BM 10.5 Total 10.5	See Issue 3-042
3-076	Elias Rizakos & Jim Vangelakos	60 & 61 Main St, 200' to northeast corner of Main St and Chatsworth Ct	DR 3.5 6.2 BL 1.4 Total 7.6	DR 3.5 4.4 BL CCC 3.2 Total 7.6	DR 3.5 6.2 BL 1.4 Total 7.6	DR 3.5 6.2 BL 1.4 Total 7.6	
3-077	Parkway Village LP	East side of Beaver Dam Rd, north of Padonia Rd	ML IM 13.4 Total 13.4	BM IM 13.4 Total 13.4	ML IM 13.4 Total 13.4	ML IM 13.4 Total 13.4	

Baltimore County 2000 Comp ıensive Zoning Map Issues

Issue Number	Owner, Petitioner	Location	Existing Zoning and Acres	Requested Zoning and Acres	Planning Board Recommendations	County Council Decisions	Comment
3-078	Quest International Flavors	10 Painters Mill Rd, southwest of Reisterstown Rd	ML IM 6 7 BM 0.5 Total 7 2	BM IM 7.2 Total 7.2	ML IM 6 7 BM 0.5 Total 7.2	ML IM 6 7 BM 0 5 Total 7.2	
3-079	Lisa Figgs	Dolfield Rd, north of Lakeside Dr	DR 5 5 1.9 RC 5 4.2 Total 6 1	DR 3 5 6 1 Total 6.1	DR 5.5 1.9 RC 5 4.2 Total 6 1	DR 5.5 1.9 RC 5 4.2 Total 6.1	See Issues 3-024, 3-025, 3-026
3-080	James & Sandra Howdyshell	New Hanover Rd, 1850' from Butler Rd	RC 2 8 8 Total 8.8	ML 8 8 Total 8.8	RC 2 8 8 Total 8 8	RC 2 8.8 Total 8.8	See Issues 3-101, 3-102, 3-103, 3-104 See Hanover Pike Corridor Study
3-081	Glyndon Community Association	Butler Rd and Railroad Ave	BL 4 2 ML 17 1 Total 21.3	CB 5 9 MR 15 4 Total 21.3	BL 4 2 CB 1 7 ML 15.4 Total 21.3	DR 2 5.9 BL 4 2 CB 1.4 ML 9.8 Total 21.3	See Issues 3-141, 3-065 Overlay Adopted
3-082	Glyndon Community Association	18609 Insulin Ln	DR 2 107 4 RC 5 40 3 Total 147 7	DR 1 107 4 RC 4 40.3 Total 147 7	DR 2 107 4 RC 4 40 3 Total 147.7	DR 1 105.3 DR 2 2.1 RC 4 40 3 Total 147 7	Overlay Adopted
3-083	Falls Road Community Association	South of Padonia Rd, west of Jenifer Rd	RC 5 196 1 Total 196 1	RC 4 196 1 Total 196 1	RC 5 196 1 Total 196 1	RC 5 196 1 Total 196.1	See Issue 3-108

Baltimore County 2000 Comprehensive Zoning Map Issues

Issue Number	Owner, Petitioner	Location	Existing Zoning and Acres	Requested Zoning and Acres	Planning Board Recommendations	County Council Decisions	Comments
3-084	Hampton-Reisterstown LLC	West side of Reisterstown Rd, southwest of Glyndon Ave	RO 0.4 Total 0.4	BL 0.4 Total 0.4	RO 0.4 Total 0.4	RO 0.4 Total 0.4	
3-085	Foxleigh Enterprises, Inc	East side of Falls Rd at Greenspring Valley Rd	OR 1 0.4 BM 11.2 Total 11.6	BM 11.6 Total 11.6	BM* and O 3 8.3 O 3 3.3 Total 11.6	BM* and O 3 11.6 Total 11.6	See Issues 3-029, 3-062 Overlay Adopted *BM ground floor only
3-086	William Monk	9919 Reisterstown Rd, 260' to Olive Ln	RO 0.5 Total 0.5	BL 0.5 Total 0.5	RO 0.5 Total 0.5	RO 0.5 Total 0.5	See Issues 3-028, 3-087, 3-088, 3-089, 3-090
3-087	William Monk	9915 Reisterstown Rd, 430' to Olive Ln	RO 0.3 Total 0.3	BL 0.3 Total 0.3	RO 0.3 Total 0.3	RO 0.3 Total 0.3	See Issues 3-028, 3-086, 3-088, 3-089, 3-090
3-088	William Monk	9921 Reisterstown Rd, 195' to Olive Ln	RO 0.5 Total 0.5	BL 0.5 Total 0.5	RO 0.5 Total 0.5	RO 0.5 Total 0.5	See Issues 3-028, 3-086, 3-087, 3-089, 3-090
3-089	William Monk	9917 Reisterstown Rd, 350' to Olive Ln	RO 0.3 Total 0.3	BL 0.3 Total 0.3	RO 0.3 Total 0.3	RO 0.3 Total 0.3	See Issues 3-028, 3-086, 3-087, 3-088, 3-090
3-090	William Monk	9913 Reisterstown Rd, 500' to Olive Ln	RO 0.3 Total 0.3	BL 0.3 Total 0.3	RO 0.3 Total 0.3	RO 0.3 Total 0.3	See Issues 3-028, 3-086, 3-087, 3-088, 3-089
3-091	Jon & Laura Meadowcroft	20228 Middletown Rd, 1360' north west of Beckleysville Rd	RC 2 0.2 Total 0.2	BL CR 0.2 Total 0.2	BL CR 0.2 Total 0.2	BL CR 0.2 Total 0.2	

Baltimore County 2000 Comprehensive Zoning Map Issues

Issue Number	Owner Petitioner	Location	Existing Zoning and Acres		Requested Zoning and Acres		Planning Board Recommendations		County Council Decisions		Comments
3-092	Gerald R. Veydt	4 Prairie Ct	RC 4	4.6	RC 5	4.6	RC 4	4.6	RC 4	4.6	
			Total	4.6	Total	4.6	Total	4.6	Total	4.6	
3-093	David B. Shapiro	11501 Reisterstown Rd 450' south east of Timber Grove Rd	RO	0.6	BL	0.6	RO	0.6	RO	0.6	See Issue 3-064
			Total	0.6	Total	0.6	Total	0.6	Total	0.6	
3-094	Robert L. & Mary Carolyn Miller, Jr	11825 Reisterstown Rd, 100' south of Cherry Hill Rd	DR 3.5	0.1	BL	0.4	DR 3.5	0.1	DR 3.5	0.1	See Issues 3-036, 3-096, 3-097, 3-098, 3-099, 3-100
			RO	0.3	Total	0.4	RO	0.3	RO	0.3	
			Total	0.4			Total	0.4	Total	0.4	
3-095	Stanley C. Dillon	9530-9534 Lyons Mill Rd, west of Lyons Heart Rd	DR 5.5	7.0	DR 16	7.0	DR 5.5	7.0	DR 5.5	7.0	
			Total	7.0	Total	7.0	Total	7.0	Total	7.0	
3-096	Village Builders 98 LLC	11823 Reisterstown Rd, 200' south of Cherry Hill Rd	DR 3.5	0.1	BL	0.3	DR 3.5	0.1	DR 3.5	0.1	See Issues 3-036, 3-094, 3-097, 3-098, 3-099, 3-100
			RO	0.2	Total	0.3	RO	0.2	RO	0.2	
			Total	0.3			Total	0.3	Total	0.3	
3-097	Village Builders 98 LLC	11825 Reisterstown Rd, 130' south of Cherry Hill Rd	RO	0.3	BL	0.4	RO	0.3	RO	0.3	See Issues 3-036, 3-094, 3-096, 3-098, 3-099, 3-100
			DR 3.5	0.1	Total	0.4	DR 3.5	0.1	DR 3.5	0.1	
			Total	0.4			Total	0.4	Total	0.4	
3-098	Village Builders 98 LLC	1 E. Cherry Hill Rd, southeast corner of Reisterstown Rd and Cherry Hill Rd	RO	0.3	BL	0.3	RO	0.3	RO	0.3	See Issues 3-036, 3-094, 3-096, 3-097, 3-099, 3-100
			Total	0.3	Total	0.3	Total	0.3	Total	0.3	
3-099	Village Builders 98 LLC	3 E. Cherry Hill Rd, 220' northeast of Reisterstown Rd	DR 3.5	0.3	BL	0.3	DR 3.5	0.3	DR 3.5	0.3	See Issues 3-036, 3-094, 3-096, 3-097, 3-098, 3-100
			Total	0.3	Total	0.3	Total	0.3	Total	0.3	

Baltimore County 2000 Comprehensive Zoning Map Issues

Issue Number	Owner, Petitioner	Location	Existing Zoning and Acres		Requested Zoning and Acres		Planning Board Recommendations		County Council Decisions		Comments
3-100	Village Builders 98 LLC	5 Cherry Hill Rd, 285' northeast of Reisterstown Rd									See Issues 3-036, 3-094, 3-096, 3-097, 3-098, 3-099
			DR 3.5	0.3	BL	0.3	DR 3.5	0.3	DR 3.5	0.3	
			Total	0.3	Total	0.3	Total	0.3	Total	0.3	
3-101	Ward Development Co	West side of Hanover Pk, north of Butler Rd									See Issues 3-080, 3-102, 3-103, 3-104 See Hanover Pike Corridor Study
			BR CR	0.6	ML	9.5	BR CR	0.6	BR CR	0.6	
			RC 2	8.9	Total	9.5	RC 2	8.9	RC 2	8.9	
			Total	9.5			Total	9.5	Total	9.5	
3-102	Ward Development Co	West side of Hanover Pk, north of Butler Rd									See Issues 3-080, 3-101, 3-103, 3-104 See Hanover Pike Corridor Study
			RC 2	10.0	ML	10.0	RC 2	10.0	RC 2	10.0	
			Total	10.0	Total	10.0	Total	10.0	Total	10.0	
3-103	Ward Development Co	West side of Hanover Pk, north of Butler Rd									See Issues 3-080, 3-101, 3-102, 3-104 See Hanover Pike Corridor Study
			RC 2	62.7	ML	62.7	RC 2	62.7	RC 2	62.7	
			Total	62.7	Total	62.7	Total	62.7	Total	62.7	
3-104	Ward Development Co	13302 Hanover Pk									See Issues 3-080, 3-101, 3-102, 3-103 See Hanover Pike Corridor Study
			RC 4	2.0	RC 5	101.1	RC 4	2.0	RC 4	2.0	
			RC 2	99.1	Total	101.1	RC 2	99.1	RC 2	99.1	
			Total	101.1			Total	101.1	Total	101.1	
3-105	Summit Capital LLC	4508 Painters Mill Rd, 450' north of Lyons Mill Rd									See Issue 3-106 Covenant Agreement
			RAE 1	2.0	BL	2.0	OR 2	2.0	OR 2	2.0	
			Total	2.0	Total	2.0	Total	2.0	Total	2.0	

Baltimore County 2000 Comprehensive Zoning Map Issues

Issue Number	Owner, Petitioner	Location	Existing Zoning and Acres	Requested Zoning and Acres	Planning Board Recommendations	County Council Decisions	Comments
3-106	Summit Capital, LLC	4514 Painters Mill Rd, 700' northeast of Lyons Mill Rd	RAE 1 1.5 Total 1.5	BL 1.5 Total 1.5	OR 2 1.5 Total 1.5	OR 2 1.5 Total 1.5	See Issue 3-105 Covenant Agreement
3-107	Gunpowder Valley Conservancy	16351 Matthews Rd	RC 5 58.5 Total 58.5	RC 4 58.5 Total 58.5	RC 2 or RC 7 58.5 Total 58.5	RC 7 58.5 Total 58.5	See Issue 3-128
3-108	Falls Road Community Association	Beaver Dam Run Watershed Area	RC 5 2,440.0 Total 2,440.0	RC 4 2,440.0 Total 2,440.0	RC 5 2,440.0 Total 2,440.0	RC 4 1,364.0 RC 5 1,076.0 Total 2,440.0	See Issues 3-061, 3-070, 3-083, 3-159 Overlay Adopted
3-109	Garrison Realty Investors, LLC	North side of Reisterstown Rd, 1100' northwest of Greenspring Valley Rd	ML IM 0.1 Total 0.1	BM IM 0.1 Total 0.1	BM 0.1 Total 0.1	BM 0.1 Total 0.1	See Issue 3-074
3-110	James L. Rouse	3012 & 3016 Anderson Rd, 750' to Zelda Ct	RC 2 26.3 Total 26.3	RC 4 26.3 Total 26.3	RC 2 26.3 Total 26.3	RC 2 26.3 Total 26.3	
3-111	Harrison & Grass	15 Gwynnbrook Ave, southeast corner of Walk Ave and Gwynnbrook Ave	DR 3.5 0.3 Total 0.3	BM 0.3 Total 0.3	DR 3.5 0.3 Total 0.3	DR 3.5 0.3 Total 0.3	See Issues 3-017, 3-112, 3-113, 3-114, 3-115, 3-116, 3-151
3-112	Harrison & Grass	12 Walk Ave, west side of Walk Ave 400' south of Gwynnbrook Ave	DR 3.5 0.6 Total 0.6	BM 0.6 Total 0.6	DR 3.5 0.6 Total 0.6	DR 3.5 0.6 Total 0.6	See Issues 3-017, 3-111, 3-113, 3-114, 3-115, 3-116, 3-151
3-113	Harrison & Grass	6 Walk Ave, west side of Walk Ave 200' south of Gwynnbrook Ave	DR 3.5 0.5 Total 0.5	BM 0.5 Total 0.5	DR 3.5 0.5 Total 0.5	DR 3.5 0.5 Total 0.5	See Issues 3-017, 3-111, 3-112, 3-114, 3-115, 3-116, 3-151

Baltimore County 2000 Comprehensive Zoning Map Issues

Issue Number	Owner, Petitioner	Location	Existing Zoning and Acres	Requested Zoning and Acres	Planning Board Recommendations	County Council Decisions	Comments
3-114	Harrison & Grass	11123 Reisterstown Rd, east side of Reisterstown Rd 416' south of Gwynnbrook Ave	OR 2 1.0 Total 1.0	BM 1.0 Total 1.0	OR 2 1.0 Total 1.0	OR 2 1.0 Total 1.0	See Issues 3-017, 3-111, 3-112, 3-113, 3-115, 3-116, 3-151
3-115	Harrison & Grass	11117 Reisterstown Rd, east side of Reisterstown Rd 695' south of Gwynnbrook Ave	OR 2 0.5 Total 0.5	BM 0.5 Total 0.5	OR 2 0.5 Total 0.5	OR 2 0.5 Total 0.5	See Issues 3-017, 3-111, 3-112, 3-113, 3-114, 3-116, 3-151
3-116	Harrison & Grass	11115 Reisterstown Rd, north side of Reisterstown Rd 700' south of Gwynnbrook Ave	OR 2 0.5 Total 0.5	BM 0.5 Total 0.5	OR 2 0.5 Total 0.5	OR 2 0.5 Total 0.5	See Issues 3-017, 3-111, 3-112, 3-113, 3-114, 3-115, 3-151
3-117	Craig Piette	400 Delight Meadows Rd	DR 1 13.9 Total 13.9	RC 4 RC 5 or 13.9 Total 13.9	DR 1 13.9 Total 13.9	RC 5 13.9 Total 13.9	
3-118	John Owings Jr	10728 Reisterstown Rd	DR 3.5 0.7 BL 1.1 Total 1.8	BM 1.8 Total 1.8	DR 3.5 0.7 BL 1.1 Total 1.8	BM 1.8 Total 1.8	
3-119	John Owings Jr	West Cherry Hill Rd and Tarragon Rd, 30' to Franklin Blvd	DR 16 0.5 Total 0.5	DR 5.5 0.5 Total 0.5	DR 5.5 0.5 Total 0.5	DR 5.5 0.5 Total 0.5	
3-120	703 Ventures LLC	703 Main St, 50' to Walstan Rd	RO 0.3 Total 0.3	CB 0.3 Total 0.3	CB 0.3 Total 0.3	CB 0.3 Total 0.3	Covenant Agreement
3-121	Staff	East side of Slab Bridge Rd, north of Flintstone Rd	RC 4 646.0 Total 646.0	RC 2 646.0 Total 646.0	RC 2 646.0 Total 646.0	RC 4 646.0 Total 646.0	
3-122	Staff	Between Millers Mill Rd and South Ruhl Rd, north of Freeland Rd	RC 4 580.0 Total 580.0	RC 2 580.0 Total 580.0	RC 2 580.0 Total 580.0	RC 4 580.0 Total 580.0	

Baltimore County 2000 Comprehensive Zoning Map Issues

	Owner, Petitioner	Location	Existing Zoning and Acres	Requested Zoning and Acres	Planning Board Recommendations	County Council Decisions	Comments
3-123	Thomas Rafailides	York Rd @ I-83	BL CR 7.1 Total 7.1	BL 7.1 Total 7.1	BL CR 7.1 Total 7.1	RC 4 7.1 Total 7.1	See Issue 3-054
3-124	SJS Development Company	10995 Owings Mills Blvd opposite Groffs Ln	ML IM 10.0 Total 10.0	BM IM 10.0 Total 10.0	ML IM 10.0 Total 10.0	ML IM 10.0 Total 10.0	
3-125	Robert G. Holt	317 Nicodemus Rd, 315' to Foxhaven Ct	DR 2 4.9 Total 4.9	DR 5.5 4.9 Total 4.9	DR 3.5 4.9 Total 4.9	DR 2 4.9 Total 4.9	
3-126	Charles & Shirley Murray	520 Main St, 150' to Stocksdale Rd	DR 3.5 0.2 Total 0.2	BR AS 0.2 Total 0.2	DR 3.5 0.2 Total 0.2	BR 0.1 DR 3.5 0.1 Total 0.2	Overlay Adopted
3-127	Planning Board	East side of Old York Rd, south side of Openshaw Rd	RCC 2.1 Total 2.1	RCC 2.1 Total 2.1	RCC 2.1 Total 2.1	RCC 2.1 Total 2.1	
3-128	Planning Board	North and south side of Corbett Rd, west of Gunpowder Falls	BL 1.4 RC 5 1,897.0 RC 4 1,873.0 Total 3,771.4	RC 2 3,771.4 Total 3,771.4	BL CR 1.4 RC 4 469.0 RC 5 845.0 RC 4 or RC 6 1,052.0 RC 2 or RC 7 1,404.0 Total 3,771.4	RC 2 383.0 RC 5 65.5 RC 7 3,168.5 RC 4 153.0 BL CR 1.4 Total 3,771.4	See Issue 3-107 Overlay Adopted
3-129	Planning Board	North of Quaker Bottom Rd, between I-83 and York Rd	BL CR 3.0 RC 5 909.0 RC 4 280.0 RC 2 482.0 Total 1,674.0	RC 2 1,674.0 Total 1,674.0	BL CR 3.0 RC 2 1,610.0 RC 5 61.0 Total 1,674.0	BL CR 3.0 RC 2 670.3 RC 4 356.6 RC 5 644.1 Total 1,674.0	Overlay Adopted

Issue Number	Owner, Petitioner	Location	Existing Zoning and Acres		Requested Zoning and Acres		Planning Board Recommendations		County Council Decisions		Comments
3-130	Staff	North side of Garrett Rd, west of Vernon Rd									
			RC 4	84.0	RC 2 or	84.0	RC 2	84.0	RC 2	84.0	
			Total	84.0	RC 4		Total	84.0	Total	84.0	
					Total	84.0					
3-131	Staff	North of Stablersville Rd, west of Downes Rd									
			RC 4	121.0	RC 2 or	121.0	RC 2	121.0	RC 2	121.0	
			Total	121.0	RC 4		Total	121.0	Total	121.0	
					Total	121.0					
3-132	Staff	North and south side of Harris Mill Rd at Deer Creek									
			RC 4	807.0	RC 2	807.0	RC 2	807.0	RC 7	807.0	
			Total	807.0	Total	807.0	Total	807.0	Total	807.0	
3-133	Staff	East side of Reisterstown Rd, south of Groffs Mill Rd									
			DR 16	6.0	DR 1	6.0	ML	6.0	DR 16	6.0	
			Total	6.0	Total	6.0	Total	6.0	Total	6.0	
3-134	Staff	East side of Reisterstown Rd, north of Pleasant Ridge Rd									See Issues 3-059, 3-135
			DR 16	13.9	DR 16	13.9	O 3	13.9	O 3	13.9	
			Total	13.9	Total	13.9	Total	13.9	Total	13.9	
3-135	Staff	East side of Reisterstown Rd, 950' south of Enchanted Hills Rd									See Issues 3-059, 3-134
			OR 1	1.3	OR 1	1.3	BL	1.3	BL	1.3	
			Total	1.3	Total	1.3	Total	1.3	Total	1.3	
3-136	Staff	North side of Lyons Mill Rd, west of Owings Mills Blvd									
			DR 16	26.5	DR 3.5 or	26.5	DR 16	26.5	DR 5.5	26.5	
			Total	26.5	DR 5.5		Total	26.5	Total	26.5	
					DR 16						
					Total	26.5					
3-137	Staff	South side of Lyons Mill Rd, west side of Painters Mill Blvd									See Issue 3-143
			DR 16	64.8	DR 2 or	64.8	DR 16	64.8	DR 16	64.8	
			Total	64.8	DR 3.5		Total	64.8	Total	64.8	
					Total	64.8					
3-138	Staff	South side of Dolfield Rd, east of Red Run Stream									
			RAE 2	16.4	ML IM	16.4	RAE 2	16.4	ML	16.4	
			Total	16.4	Total	16.4	Total	16.4	Total	16.4	

Baltimore County 2000 Comprehensive Zoning Map Issues

Number	Owner, Petitioner	Location	Existing Zoning and Acres	Requested Zoning and Acres	Planning Board Recommendations	County Council Decisions	Comments
3-139	Staff	West side of Garrison Forest Rd, south of Crondall Ln	DR 1 269.0 Total 269.0	MLR or DR 1 269.0 Total 269.0	DR 1 269.0 Total 269.0	DR 1 269.0 Total 269.0	
3-140	Staff	North side of Westminster Pike, west side of Hanover Pike	BL AS 2.8 Total 2.8	BL 2.8 Total 2.8	BL AS 1.8 BL CCC 1.0 Total 2.8	BL AS 1.8 BL CCC 1.0 Total 2.8	Overlay Adopted
3-141	Staff	North side of Butler Rd, east side of railroad	RC 5 38.2 Total 38.2	RC 5 38.2 Total 38.2	RC 5 38.2 Total 38.2	RC 5 38.2 Total 38.2	See Issues 3-065, 3-081
3-142	Staff	East side of Hanover Pike, 250' north of Mt. Gilead Rd	BL CR 2.1 Total 2.1	BL CR 2.1 Total 2.1	RC 2 0.6 BL CR 1.5 Total 2.1	RC 2 2.1 Total 2.1	
3-143	County Council	South side of Lyons Mill Rd, west of Owings Mills Blvd	DR 5.5 99.3 Total 99.3	DR 3.5 99.3 Total 99.3	DR 5.5 99.3 Total 99.3	DR 3.5 99.3 Total 99.3	See Issue 3-137
3-144	County Council	East and west sides of Stevenson Rd, north of Hillside Rd	BL 10.5 Total 10.5	BL CR 10.5 Total 10.5	BL 10.5 Total 10.5	BL 10.5 Total 10.5	
3-145	County Council	North side of Seminary Ave, east of Mays Chapel Rd	RC 5 18.1 Total 18.1	RC 5 18.1 Total 18.1	RC 5 18.1 Total 18.1	DR 1 18.1 Total 18.1	See Issue 3-051 Covenant Agreement
3-146	County Council	North side of Shawan Rd, west of York Rd	BM 95.2 Total 95.2	BM CCC 95.2 Total 95.2	BM CCC 95.2 Total 95.2	BM 93.8 BM CCC 1.4 Total 95.2	See Issue 3-031 Overlay Adopted
3-147	County Council	South side of Ashland Rd, east of York Rd	DR 3.5 31.3 Total 31.3	DR 3.5 31.3 Total 31.3	DR 2 31.3 Total 31.3	RC 4 31.3 Total 31.3	

Baltimore County 2000 Comprehensive Zoning Map Issues

Issue Number	Owner, Petitioner	Location	Existing Zoning and Acres		Requested Zoning and Acres		Planning Board Recommendations		County Council Decisions		Comments
3-148	County Council	24 Old Tollgate Rd. north side of Old Tollgate Rd at Tollgate Rd									
			DR 3 5	14.0	DR 3 5	14.0	DR 3 5	14 0	DR 3.5	14.0	
			Total	14 0	Total	14 0	Total	14 0	Total	14.0	
3-149	County Council	East and west side of Franklin Blvd, south of Nicodemus Rd									See Issue 3-155
			BM	18 0	BM	18 0	BM	18.0	BM	18 0	
			OR 2	9.0	OR 2	9 0	OR 2	9.0	OR 2	9 0	
			DR 16	16.0	DR 16	16.0	DR 16	16.0	DR 16	16.0	
			DR 3.5	30 0	DR 3 5	30.0	DR 3.5	30 0	DR 3.5	30.0	
			OR 1	6.3	OR 1	6 3	OR 1	6 3	OR 1	6.3	
			DR 10.5	13.0	DR 10.5	13.0	DR 10.5	13.0	DR 10.5	13.0	
			DR 1	32.7	DR 1	32.7	DR 1	32.7	DR 1	32.7	
			Total	125 0	Total	125 0	Total	125 0	Total	125.0	
3-150	County Council	11245 Greenspring Ave, east side of Greenspring Ave at West Spring Way									
			RC 5	112.0	RC 5	112.0	RC 5	112.0	RC 5	112.0	
			Total	112.0	Total	112.0	Total	112.0	Total	112.0	
3-151	County Council	11117 Reisterstown Rd, east side of Reisterstown Rd, 695' south of Gwynnbrook Rd									See Issues 3-017, 3-111, 3-112, 3-113, 3-114, 3-115, 3-116
			OR 2	0.4	BM	0.4	OR 2	0.4	OR 2	0.4	
			Total	0.4	Total	0.4	Total	0.4	Total	0.4	
3-152	County Council	East and west side of Owings Mills Blvd at Gwynnbrook Ave									
			DR 1	19 0	DR 1	19.0	DR 1	19.0	DR 1	19.0	
			DR 2	92 0	DR 2	92.0	DR 2	92 0	DR 2	92.0	
			ML IM	114 0	ML IM	114 0	ML IM	114 0	ML IM	114.0	
			DR 3 5	120 0	DR 3 5	120 0	DR 3.5	120.0	DR 3.5	120.0	
			Total	345.0	Total	345.0	Total	345.0	Total	345.0	
3-153	County Council	1601 Nicodemus Rd, at Ivy Mill Rd									
			RC 4	126 6	RC 4	126.6	RC 4	126 6	RC 2	126.6	
			Total	126.6	Total	126 6	Total	126.6	Total	126.6	
3-154	County Council	108 Main St, west side of Reisterstown Rd at Chatsworth Ave									
			DR 3.5	0 3	DR 3.5	0 3	BL	1.0	BL	1.0	
			BL	0.7	BL	0.7	Total	1.0	Total	1 0	
			Total	1.0	Total	1.0					

Baltimore County 2000 Comprehensive Zoning Map Issues

Issue Number	Owner, Petitioner	Location	Existing Zoning and Acres		Requested Zoning and Acres		Planning Board Recommendations		County Council Decisions		Comments
3-155	County Council	North side of Church Rd at West Cherry Hill Rd									See Issues 3-063, 3-149
			OR 1	64 0	O 3	64 0	OR 1	64 0	OR 1	64 0	
			Total	64 0	Total	64 0	Total	64 0	Total	64.0	
3-156	County Council	East side of I-795 at Berrymans Ln									
			DR 2	7 8	DR 2	7 8	DR 2	7 8	DR 2	7 8	
			DR 5 5	9 9	DR 5 5	9 9	DR 5 5	9.9	DR 5.5	9 9	
			DR 3.5	51 5	DR 3.5	51 5	DR 3.5	51.5	DR 3 5	51.5	
			Total	69 2	Total	69 2	Total	69 2	Total	69 2	
3-157	County Council	North side of Reisterstown Rd, 1300' west of Greenspring Valley Rd									Overlay Adopted
			DR 3.5	6 1	BM	6 1	DR 3.5	1 2	DR 3.5	1 2	
			Total	6.1	Total	6.1	BM	4 9	BM	4 9	
							Total	6 1	Total	6 1	
3-158	County Council	4 Gwynnbrook Ave, north side Gwynnbrook Ave at Reisterstown Rd									
			DR 16	0 7	BM	2 0	DR 16	0 7	DR 16	0.7	
			DR 3.5	1.3	Total	2.0	DR 3 5	1.3	DR 3 5	1.3	
			Total	2.0			Total	2 0	Total	2.0	
3-159	County Council	13015 Beaver Dam Rd, south side of Beaver Dam Rd, west of I-83									
			RC 4	22.7	RC 5	22 7	RC 4	22 7	RC 4	22.7	
			Total	22 7	Total	22 7	Total	22.7	Total	22.7	
3-160	County Council	North side of Baublitz Rd, east of Greenspring Ave									See Issue 3-108 Overlay Adopted
			RC 5	526 0	RC 4	526 0	RC 5	526 0	RC 5	245 0	
			Total	526.0	Total	526 0	Total	526.0	RC 4	281.0	
									Total	526 0	
3-161	County Council	15225 Tanyard Rd, east side of Tanyard Rd at Pearces Ln									
			RC 2	141 4	RC 2	141.4	RC 2	141 4	RC 2	141 4	
			Total	141.4	Total	141 4	Total	141.4	Total	141 4	
3-162	County Council	403 Falls Rd, south side of Falls Rd, 350' west of Old Barn Rd									
			RC 4	2 1	RC 2	2.1	RC 2	2 1	RC 2	2 1	
			Total	2 1	Total	2 1	Total	2 1	Total	2.1	

Issue Number	Owner, Petitioner	Location	Existing Zoning and Acres		Requested Zoning and Acres		Planning Board Recommendations		County Council Decisions		Comments
3-163	County Council	5425 Mt. Gilead Rd, west side of Mt. Gilead Rd west of Hanover Pike									
			RC 4	77 0	RC 2	77 0	RC 4	77.0	RC 4	77.0	
			Total	77 0	Total	77.0	Total	77 0	Total	77.0	
3-164	County Council	East and west side of York Rd, 1300' south of Everett Rd									
			RC 5	277 0	RC 2	277.0	RC 5	277.0	RC 5	277.0	
			Total	277 0	Total	277.0	Total	277 0	Total	277.0	

P.C. #7

People's Counsel - Zoning Reclassification Hearing R-01-435

From: "Perry, Hazel" <Hazel.Perry@ssa.gov>
To: '"peoplescounsel@co.ba.md.us"'
Date: 9/26/01 3:00 PM
Subject: Zoning Reclassification Hearing R-01-435

Mr. Zimmerman,

I contacted your office this morning about the zoning hearing being held for the property located on Lyons Mill Road and Owings Mills Boulevard (Adjacent to my property). I would like to protest the building of more apartments in this area. A new apartment complex is under construction on property less than a quarter of a mile on Lyons Mill Road. The increased traffic from that complex alone will make it difficult for the Lyonswood Community to get on to Lyons Mill Road and then Owings Mill Boulevard to 795.

I would like to see the County make walking trails, picnic areas, a water fall/pond or something that will add to the quality of life in the area. If you take a look at Columbia, MD, they have all of the things I've listed throughout their entire community and more. Please be reminded that the Elementary School that opened this fall is already overcrowded.

I explained to your Secretary that the sign to announce the hearing was located so far back on the property that it was impossible for anyone to read it without parking the vehicle and walking through the heavy weeding to secure information. I would have expected to see something that important more accessible to the community.

I would like for my comments to be considered during the hearing being held today.

Thank you,
Hazel L. Perry
4424 Wynfield Drive
Owings Mills, MD 21117
(410) 902-7768

P.C. #8

People's Counsel - Re: Zoning reclassification hearing - Painters Mill Venture, CaseNo. R-01-435

From: "Ernestine Durham" <durhame@home.com>
To: "People's Counsel" <peoplescounsel@co.ba.md.us>
Date: 9/25/01 9:59 PM
Subject: Re: Zoning reclassification hearing - Painters Mill Venture, CaseNo. R-01-
CC: <GenePBS@aol.com>

Mr. Zimmerman, thank you for alerting me to the hearing, but unfortunately I will not be able to attend. But, I am as is the Lyonswood Community very much interested in the zoning issue. I will call you tomorrow morning to discuss.

If the zoning issue is to increase the homes per acre then we would oppose it for the following reasons: There are two new apartments complexes that have just begin construction within 1.5 miles of this property not to mention the ongoing building in the back of this property and across the street. The area schools are already overcrowded. The wildlife will further be displaced. Traffic at the intersection is already a problem with people trying to get on Owings Mills Blvd to get to 795. I would also suggest that the environmental impact from the increased noise and traffic would affect the quality of life for Lyonswood as well as surrounding communities.

I'm not sure if any of the residents from Lyonswood will be at the hearing since the sign is not placed in a very visible spot for residents. Actually, the sign is partially hid by the tall grass and set so far off the road that you have to go pass our community, through the light and look very carefully to your right. One would then have to park their car and walk back to the sign in order to read it. It also can not be seem from Owings Mills Blvd, even if one was sitting at the light.

I hope these comments will be taken in consideration prior to any decision being made and as stated earlier in this message, I'll call you on Wednesday morning.

Ernestine Durham /s/

---- Original Message ----
From: "People's Counsel" <peoplescounsel@co.ba.md.us>
To: <durhame@home.com>
Sent: Tuesday, September 25, 2001 12:03 PM
Subject: Zoning reclassification hearing - Painters Mill Venture, CaseNo. R-01-435

Dear Ms. Durham,

A review of the Comprehensive Zoning Maps issue files showed you were an interested party in the rezoning of Painters Mill Venture's property at Lyons Mill Road and Owings Mill Boulevard.

Please be advised there is a cycle zoning reclassification hearing scheduled on this property for Wednesday, September 26, 2001 at 10:00 a.m. before the Baltimore County Board of Appeals, Old Courthouse, Room 49, 400 Washington Avenue, Towson, MD 21204. If you receive this email or our telephone message prior to the hearing please call me to discuss at 410-887-2188.

Peter Max Zimmerman
People's Counsel for Baltimore County
410-887-2188

P.C. #9

9/17/01
WCR
for file

9506 Lyonswood Drive
Owings Mills, Maryland 21117
September 13, 2001

Mr. Arnold Jablon
Director
Department PDM
Baltimore County
111 W. Chesapeake Avenue
Room 111
Towson, Maryland 21204

RE: CASE # R-01-435

Dear Mr. Jablon:

With regard to the hearing scheduled for September 26, 2001, referencing the above captioned case, I oppose the granting of a change in zoning to increase the zoning from DR 5.5 to DR 16. I feel that such a change will adversely impact our community.

Thank you.

Yours truly,

Yazmin R. Bell

Yazmin R. Bell

m

01-3185

9506 Lyonswood Drive
Owings Mills, Maryland 21117
September 13, 2001

Mr. Arnold Jablon
Director
Department PDM
Baltimore County
111 W. Chesapeake Avenue
Room 111
Towson, Maryland 21204

RE: CASE # R-01-435

Dear Mr. Jablon:

With regard to the hearing scheduled for September 26, 2001, referencing the above captioned case, I oppose the granting of a change in zoning to increase the zoning from DR 5.5 to DR 16. I feel that such a change will adversely impact our community.

Thank you.

Yours truly,

Dominique H. Bell

m

9506 Lyonswood Drive
Owings Mills, Maryland 21117
September 13, 2001

Mr. Arnold Jablon
Director
Department PDM
Baltimore County
111 W. Chesapeake Avenue
Room 111
Towson, Maryland 21204

RE: CASE # R-01-435

Dear Mr. Jablon:

With regard to the hearing scheduled for September 26, 2001, referencing the above captioned case, I oppose the granting of a change in zoning to increase the zoning from DR 5.5 to DR 16. I feel that such a change will adversely impact our community.

Thank you.

Yours truly,

Sparky Hayley Bell

Sparky Hayley. Bell

m

9506 Lyonswood Drive
Owings Mills, Maryland 21117
September 13, 2001

Mr. Arnold Jablon
Director
Department PDM
Baltimore County
111 W. Chesapeake Avenue
Room 111
Towson, Maryland 21204

RE: CASE # R-01-435

Dear Mr. Jablon:

With regard to the hearing scheduled for September 26, 2001, referencing the above captioned case, I oppose the granting of a change in zoning to increase the zoning from DR 5.5 to DR 16. I feel that such a change will adversely impact our community.

Thank you.

Yours truly,

Deborah Ward Bell

m

9506 Lyonswood Drive
Owings Mills, Maryland 21117
September 13, 2001

Mr. Arnold Jablon
Director
Department PDM
Baltimore County
111 W. Chesapeake Avenue
Room 111
Towson, Maryland 21204

RE: CASE # R-01-435

Dear Mr. Jablon:

With regard to the hearing scheduled for September 26, 2001, referencing the above captioned case, I oppose the granting of a change in zoning to increase the zoning from DR 5.5 to DR 16. I feel that such a change will adversely impact our community.

Thank you.

Yours truly,

Alexandro N. Bell

m

P. C. #10

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits & Development Mgmt.

DATE: June 27, 2001

FROM: Robert W. Bowling, Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For The Zoning Reclassification Cycle I
April 2001 – October 2001
Item Nos. 2, 3, 7

The Bureau of Development Plans Review has reviewed the subject zoning items, and we have no comments.

RWB:HJO:jrb

cc: File

Pet. #4

TIMOTHY F. MADDEN, ASLA, AICP
Principal

Project Assignment:

Principal-In-Charge, Land Use Planning, Zoning, Landscape Architecture, and Environmental Design

Years of Experience:

MRA:	10
Other Firms:	14

Education:

B.L.A., Environmental Design, 1977

Active Registration:

Certified Planner, AICP, 1984
Maryland, Landscape Architect, 1979, #406
Delaware, Landscape Architect, 1986, #154 (Inactive)
Virginia, Landscape Architect, 1982, #00124
North Carolina, Landscape Architect, 1990, #724 (Inactive)

Professional Affiliations:

Annapolis & Anne Arundel County Chamber of Commerce, Inc.
Anne Arundel County Chapter, Home Builders Association of Maryland

MRA

MORRIS & RITCHIE ASSOCIATES, INC.

Qualifications:

Mr. Madden is Principal-in-Charge of MRA's Baltimore Washington corridor office. He is also the Director of Land Planning and Landscape Architecture Services for the firm. In this capacity, Mr. Madden is responsible for the preparation of Land Use Plans, Reports, Zoning Studies, Environmental Effects Reports, Forest Stand Delineations, Forest Conservation Program, Site Feasibility Studies, Concept Plans, Development Plans and Land Use Planning. He also provides consultation and expert witness testimony for projects on an as needed basis.

Mr. Madden has lengthy experience in providing master planning and site design services associated with institutional, industrial, residential, commercial, and mixed-use sites. His project experience also includes adaptive reuse of existing structures and urban streetscape design.

Mr. Madden's military master planning experience has made him familiar with requirements for the preparation of future development and mobilization TAB's in accordance with the new AR 21-0-20 and AR 210-23. He has also utilized AR 200-1, AR 420-40, TM 5-803-4, and CEMOPS documents in the course of his military master planning work.

Projects Mr. Madden has successfully managed include:

AUTOMOTIVE

Carmax Auto Superstore, White Marsh, Maryland - Principal-In-Charge for comprehensive rezoning, site design, public utility and road design (extension of Campbell Blvd.), and construction phase services for a 22-acre reclaimed surface mine wash pond site.

Chesapeake Cadillac/Jaguar, Baltimore County, Maryland - Assisted the client in the rezoning of this property for an automotive dealership. Provided land planning and landscape architecture for the 30,000 SF building on a 4-acre site.

Thompson Dodge Service Center, Dundalk, Maryland - Principal-In-Charge responsible for assisting the client with pre-acquisition services by determining that the half-acre lot was suitable for the development of a 12,000 SF automotive service center and support facilities. After development feasibility was established, provided project management as part of a design-build team for demolition of an existing car wash facility and construction of a new auto service center and associated parking. Furthermore, oversaw all review and permit facilitation services.

Thompson Lincoln Mercury Auto Body Shop, Dundalk, Maryland - Principal-In-Charge responsible for civil engineering and landscape architectural services for the development of a new 20,000 SF Body Shop building on the existing Lincoln Mercury dealership property. The project included zoning analysis, CRG refinement, and forest buffer variance processing, as well as site and grading plans.

Continued on the next page . . .

* Indicates that the project is also listed under another category.

Heritage Auto Park Expansion, Owings Mills, Maryland - Principal-In-Charge site planning design and zoning analysis for redevelopment of a dealership site into a multi-franchise complex.

Frankel Cadillac - Range Rover Dealership Expansion, Pikesville, Maryland - Bob Frankel's Automobile Dealership had seemingly outgrown its urban location on Reisterstown Road, near the City line. After reviewing the site conditions and zoning regulations, Mr. Madden figured out how the dealership operations could be improved and enhanced, with minimal costs.

Beaver Court Auto Body, Baltimore, Maryland - Assisted the client in obtaining the necessary special exception approval for the new 7,500 SF building and site improvements.

GMC Pontiac Dealership, Owings Mills, Maryland - Provided zoning analysis for a new 15,000 SF automotive dealership.

BANKING & FINANCIAL

Fullerton Federal Savings Association, Expansion Study and Design for new Bank Site, Baltimore, Maryland - Principal-In-Charge of study, concept, development, and construction plans for a demolition of existing bank and design of new 6,000 SF bank in Perry Hall.

Baltimore County Savings Bank, Timonium Branch Site Feasibility Analysis Baltimore County, Maryland - Principal-In-Charge for demolition to existing BCSC bank connected to retail stores and building of new freestanding banking facility.

Baltimore County Savings Bank, Perry Hall Branch Feasibility Study, Baltimore County, Maryland - Feasibility study for adding a drive through facility to existing bank located in an office building.

Baltimore County Savings Bank, Site Feasibility Analysis for a New Standalone Bank in Towson, Baltimore County, Maryland

Farm Credit Bank of Baltimore Property, Feasibility Study, Baltimore County, Maryland - Feasibility study of property owned by Farm Credit Bank of Baltimore for marketing purposes.

Chevy Chase Bank, Signage Upgrades, Multiple Locations, Maryland Zoning code review and variance appeals for signage upgrades to various commercial locations.

BUSINESS / INDUSTRIAL PARK PROJECTS

Prologis Park at Troyhill, Howard County, Maryland - Site planning, engineering, construction stakeout, and fast-track processing for a 40-acre development consisting of 482,000 SF of flex distribution space in three buildings. This location includes the new eastern distribution center for Mack Trucks.

Opus Arundel Six, Anne Arundel County, Odenton Town Center, Maryland - Site planning and engineering for the 80,000 SF Domino's Pizza distribution center.

Airport Square Technology Park, Anne Arundel County, Maryland - U.S. Army Corps of Engineers Section 404 nationwide permit processing for a 65-acre office and industrial distribution center near BWI Airport. Services included site design, landscape design, and wetland delineation, alternative studies, impact assessment, and permit processing.

* Indicates that the project is also listed under another category.

Columbia Gateway Industrial Park, Columbia, Maryland - Provided wetland creation design for approximately 4-acres of wetland impacts for the 400-acre office technology center.

Red Run Corporate Center, Owings Mills, Maryland - This is the site of a 60-acre business community master planned by Tim Madden. The high-end corporate community includes a Hilton Hotel, a revitalized farmhouse conversion, and linkage to the future Owings Mills Arboretum Park.

AAI Corporation Building 100, Hunt Valley, Maryland - Part of the effort to reposition the owners' land holdings included the renovation and parking structure addition to the former headquarters building. After all the design services were completed by MRA including civil, structural, architectural and landscape architectural, the building was sold to another entity. Mr. Madden managed the entire conversion process from rezoning to property settlement.

Riparius Center, Owings Mills, Maryland - Master planning for the 162-acre office park in light of current market and space needs. Sensitive management, forest buffer and wetland mitigation issues were addressed and reviewed by a Joint Agency Review Group (J.A.R.G.) of local, state, and federal agencies. Approximately 1.5 million SF of office buildings will occupy the site.

COMMERCIAL/RETAIL

Golden Ring Center Expansion, Baltimore County, Maryland - Developed a plan for the expansion of the existing Circuit City Store and addition of new retail use. Processed the amended plan through the Baltimore County "DRC" process.

Circuit City Stores, Site Feasibility Analysis, Baltimore County, Maryland - Developed a plan for the expansion "of the existing Circuit City Store and processed the amended plan through the Baltimore County "DRC" process.

Industry Lane Commercial Center, Baltimore, Maryland - Provided site planning, zoning analysis, and development feasibility study.

Ravenwood Shopping Center Redevelopment, Towson, Maryland - Provided site planning, and zoning analysis.

Governor's Court Flex Site, Baltimore, Maryland - Provided site planning, zoning analysis, and feasibility study.

Chartley Park Shopping Center, Baltimore, Maryland - Performed alternative site plan studies of options for expansion of the existing Super Fresh store and improvements to the loading and delivery operations.

* **Hyde Park Shopping Center, Baltimore County, Maryland** - Consulted on revisions to the site plan for a 70,000 SF shopping center in eastern Baltimore County. Provided expert witness testimony in support of the plan's approval. Worked with client to site specific users on pad sites, and processed plans through the County's plan refinement process.

* **The Shops at Monocacy Plaza, Frederick (North Frederick Commercial Center), Maryland** - Site planning for design of a 54,000 SF retail and 52,000 SF super market on a 10-acre parcel.

Painters Mill Shopping Center Expansion, Owings Mills, Maryland - Site planning and landscape architectural design revitalization of property and expansion of existing 17,000 SF retail center into a 20,600 SF facility.

* Indicates that the project is also listed under another category.

Southdale Shopping Center Expansion, Anne Arundel County, Maryland - Site planning and landscape architectural design services for the addition of one restaurant pad site. Performed a study to determine the feasibility of a 2,000 SF addition to the current in-line retail space. Also performed a study for the feasibility of adding another restaurant pad site, and re-use of the vacant Hechingers' space in the shopping center.

Metro Square at Reisterstown Road, Owings Mills, Maryland - Principal-In-Charge of the Metro Square project which involved site selection, re-zoning, and site plan development for 58,200 SF of food store and 13,300 SF of collateral retail space. Site features include extensive retaining walls, sound minimization fence, forest conservation plantings, as well as major road and landscape improvements.

Walgreen's at Liberty and Offutt Road, Baltimore County, Maryland - Principal-In-Charge for site assessment, recommendations, conceptual plan, zoning variances and waiver of standards, and site design for a new Walgreen's store.

Walgreen's at Baltimore-Annapolis Boulevard, Anne Arundel County, Maryland - Principal-In-Charge of site assessment services and preliminary design for the property.

Walgreen's at Martin Boulevard and Compass Road, Baltimore County, Maryland - Principal-In-Charge of site investigation and feasibility study for demolishing a portion of the center and then building a new Walgreen's store. Based upon the concept for revitalization, plans were prepared and approved for construction of a Walgreen's store, and renovations to the balance of the Victory Villa Shopping Center.

Walgreen's, Site Search and Selection Work, Baltimore, Anne Arundel, Howard, and Montgomery Counties.

Walgreen's at Reisterstown and Slade, Baltimore County, Maryland - Principal-In-Charge of a comprehensive rezoning issue and a site assessment study for the assembly of six residential properties to be rezoned to 'BL' and developed into a free standing 15,000 SF Walgreen's drugstore.

Wal-Mart at Parole, Anne Arundel County, Maryland - Principal-In-Charge of site planning and civil engineering for a 134,000+ SF Wal-Mart Store on an existing paved shopping center lot.

Target Store, Owings Mills, Maryland - Site and development plans for a new 100,000 SF retail store on a 12.5-acre site.

Safeway Building Expansion Study, Montgomery County, Maryland - Land planning and development processing for an addition to the existing grocery store in Silver Spring.

Safeway Building Expansion Study, Fairfax, County, Virginia - Land planning and development processing for an addition to the existing grocery store.

Kleins Supermarket at Paper Mill Village, Baltimore County, Maryland - Principal-In-Charge responsible for re-zoning of the property for use as a 44,000 SF Kleins Food Store and new post office in Jacksonville.

Food Lion Store #1412, Baltimore, Maryland - Provided site revitalization design.

Old North Point Commercial Center, Dundalk, Maryland - Provided site revitalization design.

Romano's Macaroni Grill, Cockeysville, Maryland - Principal-In-Charge for planning, engineering and surveying for a 3,600 SF restaurant. The site was reclaimed from a previous rock quarry operation constructed in coordination with New Beaver Dam Road. Site development required the design of an extensive retaining wall as well as zoning and Environmental Protection waivers.

* Indicates that the project is also listed under another category.

* **Exxon Fuel Service Stations and Tiger Marts in Various Maryland Locations** - Provided site planning, zoning analysis, and expert witness testimony for new and retro-fit locations in Anne Arundel County, Baltimore County, and Baltimore City. Signage work was also included.

* **Wawa Food Stores in Various Maryland Locations** - Provided site planning, zoning anaylsis, and expert witness testimony for new locations and building additions in Anne Arundel and Baltimore Counties. Signage work was also included.

COMMUNITY CENTERS

Penn-Mar Organization Community Care Center Facility Expansion Study, Maryland Line, Maryland - Land planning and development processing for a 32,000 SF institutional facility on a 6-acre site located in Baltimore County.

HOUSING PROJECTS

Apartments / Condominiums

Owings Run Apartments, Owings Mills, Maryland

Worthington Place Condominiums, Owings Mills, Maryland - Site planning, landscape design, wetlands delineation and report, Section 404 permit application and processing, stormwater management design, wetland mitigation design, and construction review services for a multi-site condominium project.

Hotels/ Motels/ Inns

Staybridge Hotels (Holiday Inn), Site Feasibility Analysis, Multiple Sites in Maryland

Hilton Garden Inn, Owings Mills, Maryland - Principal-In-Charge for site planning and civil engineering services for the 220-room luxury hotel in the Owings Mills Town Center.

Extended Stay America Hotel, Owings Mills, Maryland - Site and development plans for a 122-room hotel.

Extended Stay America Hotel, Perry Hall, Maryland - Site and development plans for a 122-room hotel.

Extended Stay America Hotel, Cockeysville, Maryland - Site and development plans for a 122-room hotel.

Residential Communities

Eckers Hollow, Columbia, Maryland - Provided site planning and project management of a 102-lot single-family subdivision.

Windsor Commons Residential Community, Catonsville, Maryland

Starwood Townhomes, Owings Mills, Maryland

Winding Ridge, Frederick County, Maryland - 79-lot single-family home development.

* Indicates that the project is also listed under another category.

North Crossing, City of Frederick, Maryland - Layout grading and site plans for a residential community in the City of Frederick comprised of 137 single-family homes and 360 townhouse units.

Wellington Trace, Frederick County, Maryland - 800-unit Planned Unit Development's rezoning and construction document preparation.

Glyndon Meadows, Baltimore County, Maryland - *Principal-In-Charge of planning and site engineering for 58 single* family homes on 67 acres. The mixture of lot types includes a section of compact, rear service lots as long as Butler Road that are designed in compatibility with the architectural and streetscape themes of Victorian Glyndon. Existing forest and hedgerow are preserved to provide natural separation between homes.

Area 3C/3D Land Use Plan and Construction Plans for the Owings Mills New Town Planned Unit Development, Owings Mills, Maryland - Principal-In-Charge of planning and site engineering for this area of 3 housing types, including mid-rise condominiums, townhomes, and patio homes.

Area 5 CRG and Construction Plan for the Owings Mills New Town, Owings Mills, Maryland - Provided site planning services for this area of a planned unit development that included more than 800 townhomes.

Sandy Oaks Planned Urban Development, Anne Arundel County, Maryland - Site design, landscape design, and environmental planning for a 110-acre, 102-unit single family development located in northern Anne Arundel County, Maryland. The site was bisected by a stream/wetland association. Services included wetland delineation, 404/401 permits, wetland disturbance mitigation design, stormwater quality enhancement design, wetland management program, and construction review/monitoring.

Cedarday Estates, Harford County, Maryland - USACE Section 404 permits for stream crossings and stormwater management facilities on a 450-lot, 450-acre development. Services included wetland delineation, alternative and minimization studies, permit processing, and mitigation design.

Red Fox Farm Subdivision, Baltimore County, Maryland - Wetland delineation and report, permit application, water quality enhancement design, slope reforestation, stream restoration, wetland creation, and permit processing.

Retirement Communities / Life Care Communities

Atrium Village, Baltimore County, Maryland - Project manager responsible for planning, landscape architecture, and site engineering for a new senior living community in Owings Mills. The 276-unit high-rise facility is located on a 7-acre lot and incorporates independent living, assisted care and dementia patient services. A variety of recreational opportunities, gardens, walkways, and support services are provided on campus.

Strawberry Estates, Montgomery County, Maryland - Master planning and site design for a 450-unit private life care facility.

Leonard's Freehold, Leonardtown, Maryland - Mr. Madden's responsibilities included project management, local zoning liaison, site design, and construction review services for this new 68-bed care facility.

* Indicates that the project is also listed under another category.

EDUCATIONAL FACILITIES

University of Maryland College Park, Computer Science Building Site Work, College Park, Maryland - Site design work associated with the replacement of coolant lines for the computer science building.

University of Maryland Research Facility, Solomons Island, Maryland - Provided shoreline protection design and site planning for a new research facility.

Loyola College Master Plan, Baltimore, Maryland - Master planning for additional buildings, new roads, upgraded utilities and other site functions for a city of Baltimore institution. Four new residence halls were included on the master plan.

Hood College Master Plan, Frederick, Maryland - Master planning for additional buildings and upgrades to the campus of a small private college in Maryland.

UMAB, School of Social Work, Redwood Street Pedestrian Improvements, Baltimore, Maryland - Project elements included a new entrance, new lighting, protection of existing underground utilities, accessibility design, special paving, signage, plantings, new road surfacing and reconstruction of a BGE utility vault. Work was performed under two contracts. Coordination between city agencies and two clients (UMAB and UMMS) was Mr. Madden's responsibility. This design work was performed in accordance with the UMMS Facilities Master Plans and Streetscape Design Guidelines.

ENVIRONMENTAL PLANNING AND DESIGN / WETLAND MITIGATION

Mr. Madden's past environmental design experience includes parks and recreation facility design, streetscape design, site planning, and design for adaptive use of historic sites and structures, housing developments, and other types of development projects. He has designed and/or managed *many important projects, including:*

Patapsco Greenway Project, Anne Arundel County, Maryland - Site design, landscape design and wetland mitigation planning for the a major State Cabinet Level development effort along the Lower Patapsco River. Consultant to Walmsley & Co., Inc., Planners.

Chestnut Hill Farm, Anne Arundel County, Maryland - Site design, landscape design, wetland assessment, and environmental analysis for a 320-acre undeveloped site owned by Baltimore Gas & Electric Company. Services included wetland delineation and mapping as well as the preparation of an Environmental Impact report.

UMBC Research Park Master Plan, Baltimore County, Maryland - Master planning services for the development of an 80-acre campus-type research facility. Sensitive community issues, environmental conditions, and archeological resources were successfully dealt with in the context of integrating nine new buildings into an existing campus facility.

* **Sandy Oaks Planned Unit Development, Anne Arundel County, Maryland** - Environmental planning for a 110-acre, 102-unit single-family development. The site was bisected by a stream/wetland association. Services included wetland delineation, 404/401 permits, wetland disturbance mitigation design, stormwater quality enhancement design, wetland management program, and construction review/monitoring.

* **Red Fox Farm Subdivision, Baltimore County, Maryland** - Wetland delineation and report, permit application, water quality enhancement design, slope reforestation, stream restoration, wetland creation, and permit processing.

* Indicates that the project is also listed under another category.

* **Airport Square Technology Park, Anne Arundel County, Maryland** - U.S. Army Corps of Engineers (USACE) Section 404 nationwide permit processing for a 65-acre office and industrial distribution center near BWI Airport. Services included wetland delineation, alternative studies, impact assessment, and permit processing.

* **Highway Roadside Landscaping, Annapolis, Maryland** - Slope stabilization, sound alteration barriers, reforestation, and wetlands mitigation for the relocation of Winchester Road at U.S. Route 50. Work was performed for the Maryland State Highway Administration under an "on-call" services contract.

* **Cedarday Estates, Harford County, Maryland** - USACE Section 404 permits for stream crossings and stormwater management facilities on a 450-lot, 450-acre development. Services included wetland delineation, alternative and minimization studies, permit processing, and mitigation design.

* **Chestnut Hill Farm, Anne Arundel County, Maryland** - Wetland assessment and environmental analysis for a 320-acre undeveloped site owned by Baltimore Gas & Electric Company. Services included wetland delineation and mapping as well as the preparation of an Environmental Impact report.

* **Columbia Gateway Industrial Park, Columbia, Maryland** - Wetland creation design.

* **Worthington Place Condominiums, Owings Mills, Maryland** - Site planning, landscape design, wetlands delineation and report, Section 404 permit application and processing, stormwater management design, wetland mitigation design, and construction review services for a multi-site condominium project.

* **Pine Ridge Golf Course, Baltimore County, Maryland** - Wetland delineation and water quality assessment for a planned 18-hole expansion of Pine Ridge Golf Course next to Loch Raven Reservoir.

EXPERT WITNESS

With more than twenty-four years experience in land planning and landscape architecture, Mr. Madden has managed environmental reclamation, land development, industrial, commercial, office, institutional, golf course development, recreational, and residential projects. He has provided testimony in many zoning and site plan review hearings and court cases. Mr. Madden has testified as an expert witness in Anne Arundel County Circuit Court as well as testifying before the Planning Commissions of Charles County, Howard County, Calvert County, Anne Arundel County, Baltimore County, Carroll County, Prince George's County, Montgomery County, and the Board of Zoning and Municipal Appeals in Baltimore City. He has also worked for the Maryland Department of Natural Resources and is a past President of the Maryland Chapter, American Society of Landscape Architects. His experience includes testimony before the Zoning Hearing Examiner of Harford County, the Howard County Board of Zoning Appeals, the Prince George's County Planning Board, and the Baltimore County Board of Zoning Appeals concerning CRG, Development Plan and Zoning Variance Appeals.

Lafarge Churchville Quarry, Harford County, Maryland - Expert witness testimony before the Harford County Zoning Hearing Examiner in support of the Special Exception Petition to expand the LaFarge Churchville quarry.

Hyde Park Shopping Center, Baltimore County, Maryland - Consulted on revisions to the site plan for a 70,000 SF shopping center in eastern Baltimore County. Provided expert witness testimony in support of the plan's approval. Worked with client to site specific users on pad sites, and processed plans through the County's plan refinement process.

Early Learning Daycare Center, Manassas, Virginia - Special exception testimony and site planning design.

* Indicates that the project is also listed under another category.

Flint Hill Office Park, Fairfax County, Virginia - Provided site planning, landscape architectural design and expert witness land use services for the development of this property. Preservation of mature trees, use of specialty paving, and an internalized running/walking path system are notable features of this successful business park.

Lucky's Convenience Food Stores in Various Maryland Locations - Expert witness testimony for granting of special exceptions and zoning variances.

Carroll Community Church - Expert witness testimony for Special Exception Hearing and Board of Appeals Hearing.

Exxon Fuel Service Stations and Tiger Marts in Various Maryland Locations - Provided site planning, zoning analysis, and expert witness testimony for new and retro-fit locations in Anne Arundel County, Baltimore County, and Baltimore City. Signage work was also included.

Wawa Food Stores in Various Maryland Locations - Provided site planning, zoning anaylsis, and expert witness testimony for new locations and building additions in Anne Arundel and Baltimore Counties. Signage work was also included.

AA&T Telecommunication Tower in Parkton, Baltimore County, Maryland - Performed environmental impact assessment, and expert testimony at zoning hearing.

BGE Tower Site, Baltimore County, Maryland - Performed environmental impact assessment, and expert testimony at zoning hearing.

Verizon Wireless, Zoning Hearings, Maryland - Various zoning hearings for Verizon Wireless Cellular Tower sites.

Cellular One, Elibank Drive Site, Howard County, Maryland - Board of Zoning Appeals case for special exception.

40 York Road Office/Commercial Center, Baltimore County, Maryland - Testimony before the Baltimore County Deputy Zoning Commissioner regarding zoning variances and a special exception to permit the development of the project.

"Baylin et al vs. Maryland SHA" - Preparation of case exhibits and testimony before the Circuit Court for condemnation proceedings. Consultant to Baylin et al.

"Lonas vs. Gibson Island Homeowners Association" - Expert witness testimony regarding view obstruction and value of existing vegetation - Anne Arundel County Equity Court.

"Annapolis City Marina" Annapolic, Maryland - Expert witness testimony for the granting of various zoning variances (setbacks) and a special exception (to permit offices and a restaurant in a Maritime District) in the City of Annapolis, Maryland for a mixed use development.

Leonard's Freehold Housing, Leonardtown, Maryland - Site planning and rezoning application followed by testimony at Public & Commission Board hearings.

"Hutzler vs. Baltimore County" Baltimore County, Maryland - Preparation of case exhibits and testimony before the Circuit Court for condemnation proceedings. Consultant to Baltimore County.

* Indicates that the project is also listed under another category.

FEASIBILITY STUDIES

Opus South Corporation, Site Feasibility Analysis, Multiple Sites in Maryland

Trammel Crow Company, Site Feasibility Analysis, Multiple Sites in Maryland

* **Fullerton Federal Savings Association, Expansion Study and Design for new Bank Site, Baltimore, Maryland** - Principal-In-Charge of study, concept, development, and construction plans for a demolition of existing bank and design of new 6,000 SF bank in Perry Hall.

* **Baltimore County Savings Bank, Timonium Branch Site Feasibility Analysis Baltimore County, Maryland** - Principal-In-Charge for demolition to existing BCSC bank connected to retail stores and building of new freestanding banking facility.

* **Baltimore County Savings Bank, Perry Hall Branch Feasibility Study, Baltimore County, Maryland** - Feasibility study for adding a drive through facility to existing bank located in an office building.

* **Baltimore County Savings Bank, Site Feasibility Analysis for a New Standalone Bank in Towson, Baltimore County, Maryland**

* **Farm Credit Bank of Baltimore Property, Feasibility Study, Baltimore County, Maryland** - Feasibility study of property owned by Farm Credit Bank of Baltimore for marketing purposes.

* **Walgreen's, Site Search and Selection Work, Multiple Sites in Maryland**

* **Circuit City Stores, Site Feasibility Analysis, Multiple Sites in Maryland**

* **Staybridge Hotels (Holiday Inn), Site Feasibility Analysis, Multiple Sites in Maryland**

* **Extended Stay America Hotels, Site Feasibility Analysis, Multiple Sites in Maryland and Virginia**

* **Penn-Mar Organization Community Care Center Facility Expansion Study, Maryland Line, Maryland** - Land planning and development processing for a 32,000 SF institutional facility on a 6-acre site located in Baltimore County.

FEDERAL INSTALLATIONS

Ft. Meade Re-use Study, Phase I, Odenton, Maryland - Mr. Madden served as joint project manager of four-consultant team for the USACE Baltimore District. Mr. Madden's responsibilities included environmental constraints analysis, infrastructure analysis, analysis of local planning and zoning issues, cost estimating, and land use planning. The study involved detailed work on 9,000-acre track of land slated for closure and sale by Congress.

U.S. Army Corps of Engineers, Aberdeen Proving Ground, Update of Existing Condition Maps, Harford County, Maryland - Project manager for the update of over 200 composite overlay maps in accordance with the U.S. Army's TB ENG 353 manual entitled, "The Overlay Composite Method of Master Plan Preparation." Mr. Madden's work received an "excellent" evaluation rating from the Baltimore District of the U.S. Army Corps of Engineers.

Base Housing Study in Bangor, Maine, for U.S. Navy, Philadelphia Navy Yard

* Indicates that the project is also listed under another category.

National Arboretum - Various Projects - Washington, D.C. - Responsible for the following projects from 1988 through 1991, for the Agricultural Research Service (ARS) in support of the Arboretum's renovation and expansion:

- Environmental Assessment Report for the National Arboretum Master Plan (1989).
- Preliminary design for the Brickyard Garden and Visitor Center.
- Final design and construction monitoring for the New York Avenue entrance improvements and new visitor parking lot.
- Comprehensive study of the water distribution system.
- Environmental assessment component of a study of existing conditions and improvements to access roads, bridges, and parking areas at the Arboretum.

HISTORIC BUILDINGS

Beltsville Agricultural Research Center, Site Improvements to the Log Lodge Visitors Center, Beltsville, Maryland - Site design, environmental assessment, landscape design for functional and aesthetic improvements to the grounds of this historic structure.

Dickey Mill Project, Oella, Maryland - Site design of adaptive reuse of a historic mill.

MASTER PLANNING

Master Plan Update for the U.S. National Arboretum, Washington, D.C. - Project manager for development of a comprehensive master plan update for this 446-acre site for the U.S. Dept. of Agriculture/Agricultural Research Service. The master plan update addressed environmental impacts, historical significance, and development planning for the Arboretum's expansion of facilities in support of the USDA's objective to develop an international botanical research, education, and exhibition facility. Work included a complete Section 106 Preservation Review.

Master Plan Update, Town of Bel Air, Maryland - Project Manager for the update of Bel Air's Master Plan and Unified Development Ordinance. Signage, streetscape standards and historic preservation components were included in both documents.

* ***Loyola College Master Plan, Baltimore, Maryland*** - Master planning for additional buildings, new roads, upgraded utilities and other site functions for a city of Baltimore institution. Four new residence halls were included on the master plan.

* **Hood College Master Plan, Frederick, Maryland** --Master planning for additional buildings and upgrades to the campus of a small private college in Maryland.

* **UMBC Research Park Master Plan, Baltimore County, Maryland** - Master planning services for the development of an 80-acre campus-type research facility. Sensitive community issues, environmental conditions, and archeological resources were successfully dealt with in the context of integrating nine new buildings into an existing campus facility.

* **Perryville Revitalization Master Planning and Study, Perryville, Maryland** - This revitalization master plan and study included a 20-block area of the town, the MARC station and public shoreline amenities. Scope of work included concept plans, studies, graphics, public participation workshops, and presentations for a revitalization of a small town central business district.

* Indicates that the project is also listed under another category.

Bryan Park Improvement Plan, City of Richmond, Virginia - Mr. Madden developed a master plan for expansion of buildings and recreation facilities for a city park. Two of the buildings and the stone gate piers were of historical significance. Mr. Madden worked closely with the project architects to develop an historically sensitive plan.

Preparation for Planned Unit Development Documents, South Point, Virginia - A planned community development located on the Chincoteague Bay in Virginia.

Friendship Technology Park, Hagerstown, Maryland - Project manager for the site analysis and master planning effort for a 195-acre site owned by the Potomac Edison Company. A unique and multifaceted research/business park is now being developed.

MEDICAL FACILITIES

Greater Baltimore Medical Center, Physicians Pavilion II, Baltimore, Maryland - Site planning and landscape architectural design for a 128,000 SF, 7-story medical / surgical office building on a steeply sloping, wooded, two-acre site.

MUSEUM PROJECTS

Calvert Marine Museum Expansion, Solomons Island, Maryland - Mr. Madden provided site design and landscape architectural services for additions to the existing museum buildings and grounds. Outdoor exhibit areas, parking, pedestrian furnishings and landscaping were also designed by Mr. Madden.

OFFICE PROJECTS

The Bowman Green Office Park, Reston, Virginia - Site of a historic mansion. Mr. Madden provided landscape architectural services as part of a team of professionals who converted the grounds surrounding the mansion into an office park.

Automated Data Processing, Owings Mills, Maryland - Principal-In-Charge of site planning, engineering, and surveying.

Loveton Center, Sparks, Maryland - Provided zoning and site planning services on a variety of office and industrial sites within this 250-acre mixed-use development.

C&P Fairland Office Center, Silver Spring, Maryland - Performed landscape architectural work on the grounds for a 750,000 SF office building in Montgomery County.

* **Flint Hill Office Park, Fairfax County, Virginia** - Provided site planning, landscape architectural design and expert witness land use services for the development of this property. Preservation of mature trees, use of specialty paving, and an internalized running/walking path system are notable features of this successful business park.

* Indicates that the project is also listed under another category.

QUARRY / LANDFILL PROJECTS

Redland Genstar Texas Quarry, Baltimore County, Maryland - Land use planning for future reclamation and development of land parcels in the Texas Quarry holdings of Genstar Stone Products Company near Cockeysville, Maryland.

Gwynns Falls Quarry, Baltimore City, Maryland - Land planning and mine reclamation design associated with the re-use of the Gwynns Falls Quarry in Baltimore City, under application of the "Planned Development" provisions of the Zoning Ordinance.

Genstar Churchville Quarry Reclamation Plan, Harford County, Maryland

Redland Genstar Davidsonville Quarry Reclamation Study, Anne Arundel County, Maryland

Redland Genstar White Marsh Quarry Land Redevelopment, White Marsh Plant, Baltimore County, Maryland

* **Carmax Auto Superstore, White Marsh, Maryland** - Principal-In-Charge for comprehensive rezoning, site design, public utility and road design (extension of Campbell Blvd.), and construction phase services for a 22-acre reclaimed surface mine wash pond site.

RECREATIONAL FACILITIES

Pine Ridge Golf Course, Baltimore County, Maryland - Wetland delineation and water quality assessment for a planned 18-hole expansion of Pine Ridge Golf Course next to Loch Raven Reservoir.

White Plains Golf Course, Charles County, Maryland - Redesign of 3 holes of an existing 18-hole course to permit construction of a new clubhouse and a new maintenance shop, practice green, and driving range.

Forest Park Golf Course, Baltimore, Maryland - Redesign of the 18th hole from a par 3 to par 4 hole with extensive bunkers and preservation of existing trees.

Towson Golf and Country Club, Towson, Maryland - Improvements and support facilities design.

EIG Property Site Feasibility Study, Montgomery County, Maryland - Analysis of the former Washingtonian Country Club property to develop various alternatives for golf course layouts after the bifurcation of the property for extension of the Great Seneca Highway.

Cove Point Park, Lusby, Maryland - Recreation planning and design.

Outdoor Recreation Master Plan, Queen Anne's County, Maryland - Recreation programming and planning.

Ruth B. Swann Memorial Park, Charles County, Maryland - Site inventory analysis, recreation planning design and nature interpretive programming.

Recreation and Open Space Master Plan Study, Cecil County, Maryland - Recreation planning.

Turner's Station Park, Baltimore, Maryland

* Indicates that the project is also listed under another category.

Recreation Boating Facilities, Patuxent Naval Air Station Recreation Center, Patuxent, Maryland - Boat ramps, bulkheads, piers, etc.

Elk Neck State Park, Elk Neck, Maryland

Matapeake State Park, Kent Island, Maryland - Bulkheads, dredging, rehabilitation of existing boat docks and boat ramp.

Columbia Greenway Environmental Protection Plan for Howard Research and Development Corporation, *Howard County, Maryland*

Development of the Baltimore County Open Space Manual

RELIGIOUS FACILITIES

Church of God of Prophecy, Site Expansion Study, Montgomery County, Maryland

St. Joseph's Parish, Multipurpose Center Design, Cockeysville, Maryland - Site work for the school addition which included gymnasium, cafeteria/multipurpose area, classrooms, and office space.

Church of the Good Shepherd, Anne Arundel County, Maryland - Addition to existing church to accommodate expansion within the Chesapeake Bay Critical Areas on a 10-acre site. Scope included calculation for critical area and parking requirements, extensive landscaping and ADA-compliant access design.

Morning Star Baptist Church, Baltimore, Maryland

Prospect Hall School, Frederick, Maryland - Site work for a 31.69-acre parcel for a highest and best use analysis.

RESEARCH & DEVELOPMENT FACILITIES

Beltsville Agricultural Research Center, Boar Housing Building, Beltsville, Maryland - Environmental assessment and site design for the expansion of Building No. 203, to provide facilities for research regarding the boar population.

* **Friendship Technology Park, Hagerstown, Maryland** - Project Manager for the site analysis and master planning effort for a 195-acre site owned by the Potomac Edison Company. A unique and multifaceted research/business park is now being developed.

* **University of Maryland Research Facility, Solomons Island, Maryland** - Provided shoreline protection design and site planning for a new research facility.

ROADWAY / STREETSCAPE PROJECTS / TRANSPORTATION

Glen Burnie Streetscape, Anne Arundel County, Maryland - Design of paving, street furnishings, and planting along a state highway (Crain Highway) within the Glen Burnie Urban Renewal District.

* Indicates that the project is also listed under another category.

Silver Spring Streetscape, Silver Spring, Maryland - Design of paving, plantings, and street furnishings in an urban setting. Utility relocations, maintenance of traffic and new lighting were also included.

* **UMAB, School of Social Work, Redwood Street Pedestrian Improvements, Baltimore, Maryland** - Project elements included a new entrance, new lighting, protection of existing underground utilities, accessibility design, special paving, signage, plantings, new road surfacing and reconstruction of a BGE utility vault. Work was performed under two contracts. Coordination between city agencies and two clients (UMAB and UMMS) was Mr. Madden's responsibility. This design work was performed in accordance with the UMMS Facilities Master Plans and Streetscape Design Guidelines.

Interstate 97, Maryland - Visual analysis, earth berm & planting design for viewshed protection of historic properties adjacent to Millersville Road relocation.

Highway Roadside Landscaping, Annapolis, Maryland - Slope stabilization, sound alteration barriers, landscape design, reforestation, and wetlands mitigation for the relocation of Winchester Road at U.S. Route 50. Work was performed for the Maryland State Highway Administration under an "on-call" services contract.

Interstate 595/Interstate 97 Interchange Project, Maryland - Sound barrier placement and planting design.

Park & Ride Facilities, Parole and Oxon Hill, Maryland - Site and landscape design.

Maryland State Highway Administration, On-Call Wetlands and Stream Restoration Contract, Statewide - Statewide

Perryville Revitalization Master Planning and Study, Perryville, Maryland - This revitalization master plan and study included a 20-block area of the town, the MARC station and public shoreline amenities. Scope of work included concept plans, studies, graphics, public participation workshops, and presentations for a revitalization of a small town central business district.

MARC Commuter Stations, Frederick, Maryland - Preliminary studies and site designs for MARC commuter stations at the Shady Grove Center and the Genstar site.

SHORELINE STABILIZATION

Shoreline stabilization and revegetation for St. Clement's Island in St. Mary's County, Maryland - Design included improvements to small craft docking facilities for visitors to this historic island. Funding was provided by the Waterway Improvements Section of MD-DNR.

Calvert County Harborline Study, Calvert, Maryland - Study conditions of existing piers and bulkheads along the Solomons' harborline.

WAREHOUSES

Bare Hills Self Storage Site, Baltimore County, Maryland - Provided a feasibility study including site layouts and zoning analysis for a possible self storage facility on this site which adjoins I-83.

* Indicates that the project is also listed under another category.

WIRELESS COMMUNICATION

* **AA&T Telecommunication Tower in Parkton, Baltimore County, Maryland** - Performed environmental impact assessment, and expert testimony at zoning hearing.

* **BGE Tower Site, Baltimore County, Maryland** - Performed environmental impact assessment, and expert testimony at zoning hearing.

* **Cellular One, Elibank Drive Site, Howard County, Maryland** - Board of Zoning Appeals case for special exception.

* **Verizon Wireless, Zoning Hearings, Maryland** - Various zoning hearings for Verizon Wireless Cellular Tower sites, including:

  - **Oakington Tower Site, Aberdeen/Havre de Grace, Maryland**
  - **Perryman Tower Site, Harford County, Maryland**
  - **Banneker Tower Site, Howard County, Maryland**
  - **Delight Tower Site, Baltimore County, Maryland**
  - **Middle River Tower Site, County, Maryland**
  - **Rosewood Tower Site, Baltimore City, Maryland**
  - **Jacksonville Switch, Jacksonville, Maryland**

Verizon Wireless, Jacksonville Switch, Jacksonville, Maryland - Processed site plan as a limited exemption through the Baltimore County Development Process for a new freestanding 5000 SF switching station.

Verizon Wireless, Various Sites, Maryland, Virginia, Washington, D.C. - Provided Zoning Analysis, Environmental, and Landscape Architectural services for new and existing tower and/or roof top sites.

* Indicates that the project is also listed under another category.

R-01-435 Per. #5

Report by the
Baltimore County
Planning Board
to the
Baltimore County
Board of Appeals

ZONING RECLASSIFICATION PETITIONS

Cycle I, 2001

July 19, 2001

ZONING RECLASSIFICATION PETITIONS

Cycle I, 2001

Report by the Baltimore County
Planning Board

to the

Baltimore County
Board of Appeals

July 19, 2001

Baltimore County
Office of Planning
Towson, Maryland

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Baltimore County
Office of Planning

401 Bosley Avenue - Ste 406
Towson, Maryland 21204
410-887-3211
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E-mail: planning@co.ba.md.us

TO: Members
Baltimore County Planning Board

DATE: May 31, 2001

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

In the current cycle, the Baltimore County Board of Appeals accepted seven reclassification petitions. Please note, however, that two of the petitions–Case Numbers R-01-437 and R-01-438–have been exempted from the regular cyclical procedure of Section 2-356(c) through (h), inclusive, of the Baltimore County Code. In compliance with the Baltimore County Code, recommendations on the remaining petitions are submitted in the attached report.

The Planning Board is scheduled to review the petitions on June 7, 2001, and to make final recommendations on July 19, 2001. The Planning Board's report must be submitted to the Baltimore County Board of Appeals no later than July 31, 2001.

The Board of Appeals has tentatively scheduled hearing dates on these petitions and will advertise these hearing as required. Hearings are set to take place during the period from September 26, 2001 through November 14, 2001.

Pat Keller

Arnold F. 'Pat' Keller, III

AFK: JL
Attachment

Printed with Soybean Ink
on Recycled Paper

Introduction

Under the provisions of Section 2-356(e) of the Baltimore County Code, 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 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 remaining in the current cycle have been reviewed by the planning staff, and the following pages report the Office of Planning'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 a review of the 2000 Comprehensive Zoning Map Process. 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 and Transportation Planning.

In reaching its decision on each petition, the Board of Appeals is required to use the standards in Section 2-356(j) of the Baltimore County Code. During the first cycle following the 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 10, 2000] was established in error."

PETITIONS FOR RECLASSIFICATION
CYCLE I, 2001

Assigned Hearing Dates
County Board of Appeals

Case No. R-01-435
Painters Mill Venture, LLP
NWC Owings Mills Blvd. & Lyons Mill Rd.
Wednesday, September 26, 2001 at 10:00 a.m.

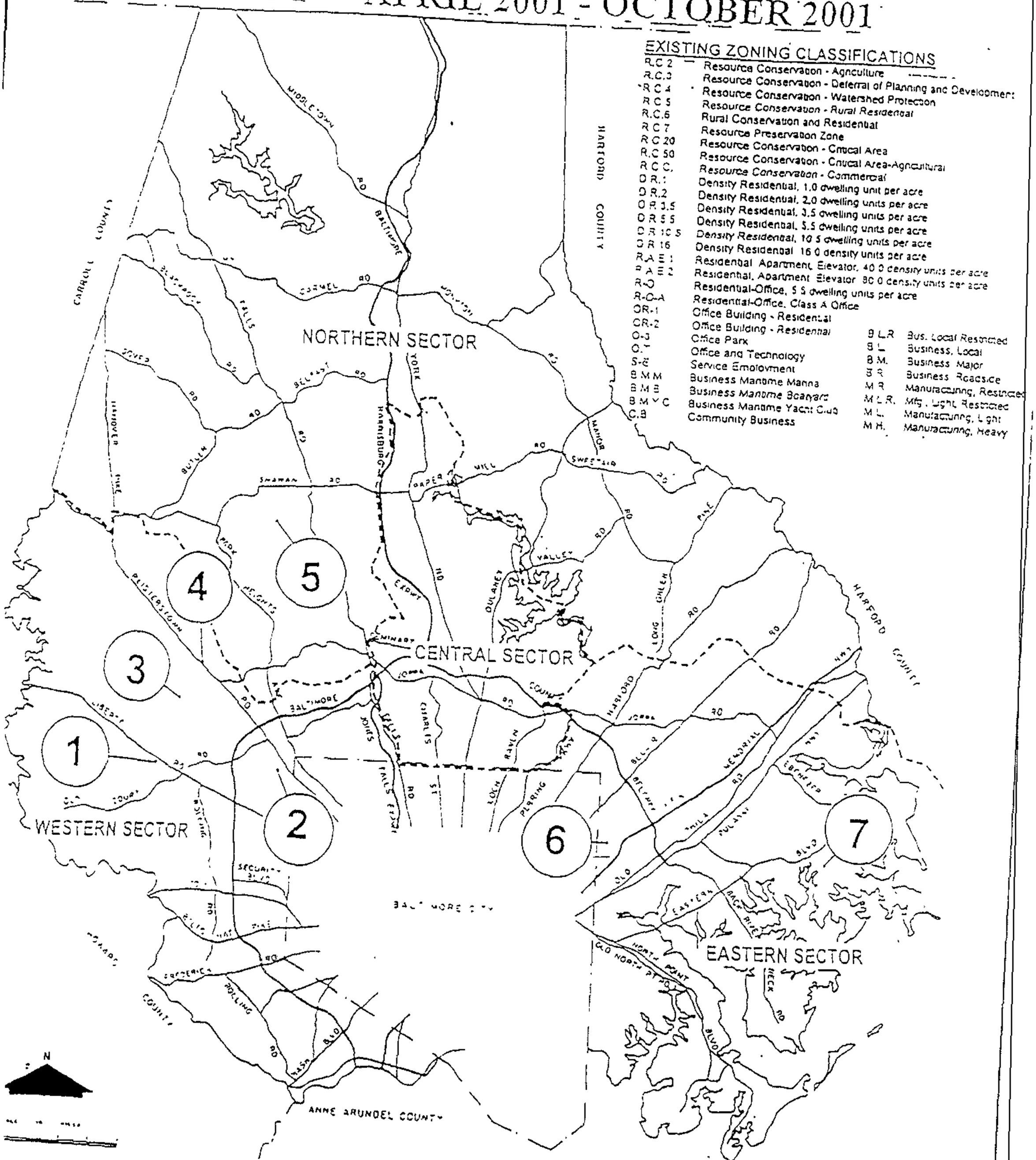
Case No. R-01-434
Balto. Co. Revenue Auth.; Paul Gourley, Ethel Smith; BP Amoco Corp (legal owner), and BP Amoco (contract purchaser)
520 Reisterstown Road, ½ Linden Terrace and 2 Linden Terrace
Wednesday, October 3, 2001 at 10:00 a.m.

Case No. R-01-439
7-Eleven, Inc.
204 Bowleys Quarters Road
Wednesday, October 17, 2001 at 10:00 a.m.

Case No. CR-01-436
Highway Realty, Inc., Eastrel, LLC, David Pisanic, Patricia Franey; Marie and Donald Haga
9913-9921 Reisterstown Rd.
Wednesday, October 24, 2001 at 10:00 a.m.

Case No. CR-01-433-X
Sohan L. Sambhi & Joginder Kaur
9217 Liberty Rd.
Wednesday, November 14, 2001 at 10:00 a.m.

LOCATIONS OF PROPERTIES UNDER PETITION
CYCLE I --- APRIL 2001 - OCTOBER 2001

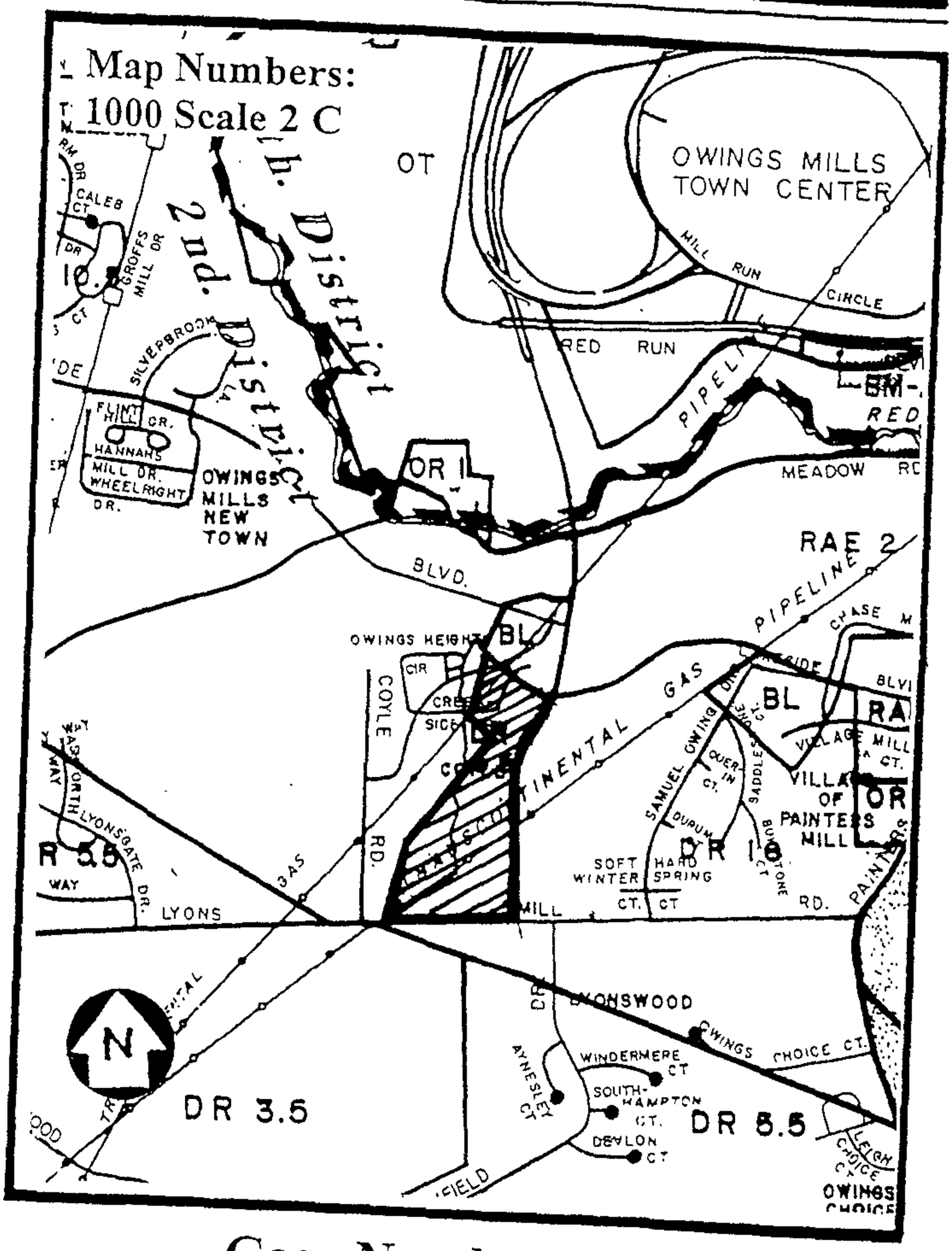


BALTIMORE COUNTY DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT/ZONING REVIEW

SOURCE MATERIAL

Recommendations for the two 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 10, 2000;
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 Number *R-01-435*

Location of Property Under Petition

Scale: 1" = 1000'

CASE NO:
R-01-435

PETITIONERS:
Painters Mill Joint Venture, LLP

REQUESTED ACTION:
Reclassification to DR 16 (Density Residential 16 Dwelling Units Per Acre)

EXISTING ZONING:
DR 5.5 (Density Residential 5.5 Dwelling Units Per Acre)

LOCATION:
North side of Lyons Mill Road, west of Owings Mills Boulevard

AREA OF SITE:
18.17 acres

ZONING OF ADJACENT PROPERTY/USE:

North:	BL	Commercial
South:	DR 16	Residential
East:	DR 16	Residential
West:	DR 16	Residential

SITE DESCRIPTION:
The petitioner's property consists of 18.3 acres of land zoned DR 16 and DR 5.5. The entire property is in forest and undeveloped with the exception of two transcontinental gas pipelines that transverse the property.

WATER AND SEWERAGE:
The site is served by public water and sewer and is designated as W-1, S-1 (existing service area) according to the Master Water and Sewer Plan.

TRAFFIC AND ROADS:
The site has direct access to Owings Mills Boulevard and Lyons Mill Road, which are classified as minor arterials.

ZONING HISTORY:
Zoning issues were filed on the property as part of the 1984 and 2000 Comprehensive Zoning Map Processes. In 1984 the County Council changed the zoning of the subject property from RC 3 to DR 16. In 2000 the County Council rezoned the property from DR 16 to DR 5.5.

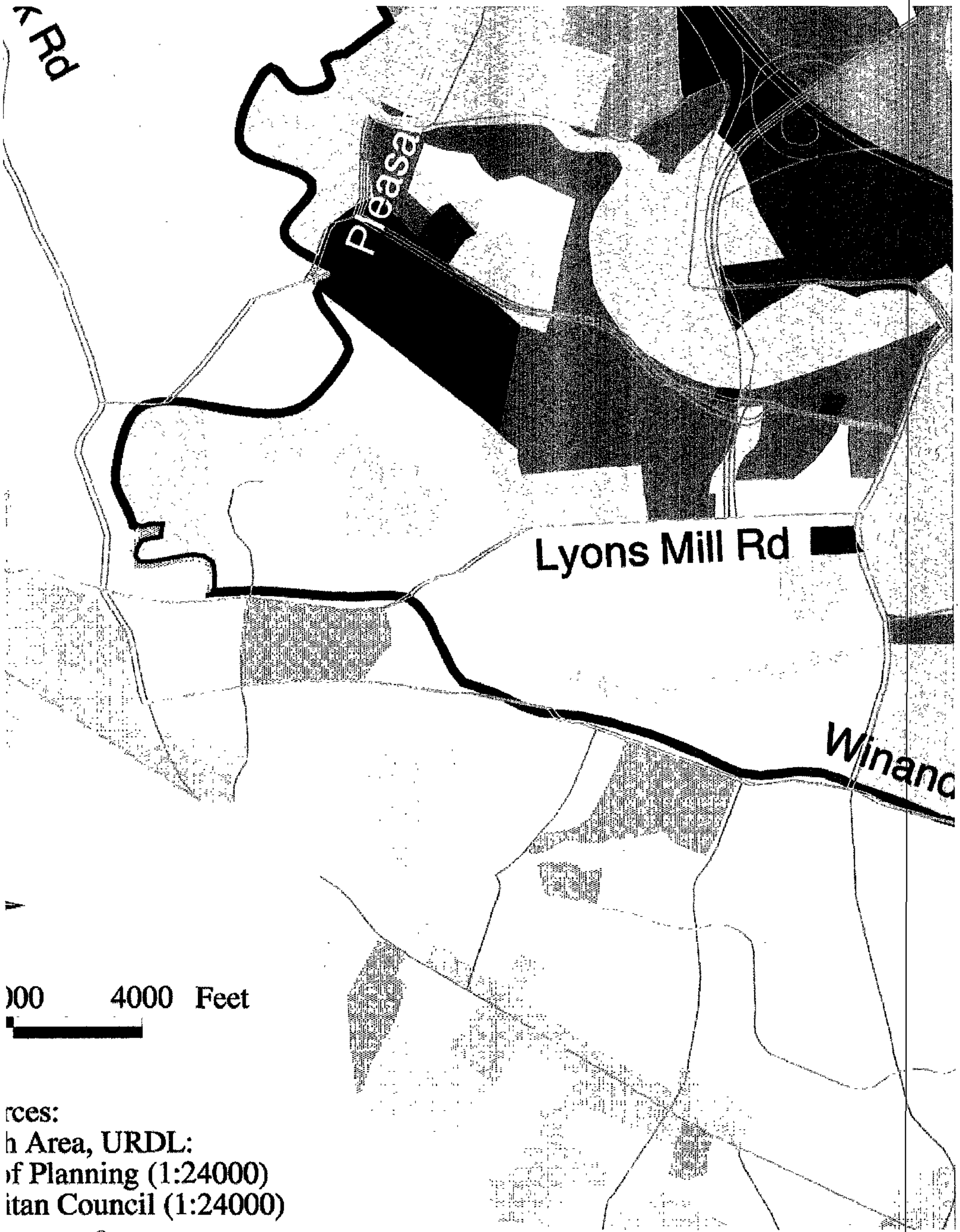
MASTER PLAN/COMMUNITY PLANS:
The proposed land use map, adopted by the County Council on February 22, 2000, indicates the site is designated for multi-family residential use.

PROPOSED vs. EXISTING ZONING:

The use regulations for the DR zones may be found in Section 1B01.1A of the Baltimore County Zoning Regulations. The DR 5.5 and DR 16 zones permit a density of 5.5 and 16 dwelling units per acre, respectively.

OFFICE OF PLANNING RECOMMENDATIONS:

Based upon the information provided and analysis conducted, the Office of Planning recommends the applicant's property be rezoned to the DR 16 classification. Staff's current recommendation is consistent with the Planning Board's zoning recommendation for this property as part of the 2000 Comprehensive Zoning Map Process. In addition, the proposed zoning would be consistent with the existing zoning of the properties located in close proximity to the subject site.



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itan Council (1:24000)

Pet. #6

IN THE MATTER OF	*	BEFORE THE
PAINTERS MILL VENTURE LLP	*	COUNTY BOARD OF APPEALS
Petitioner NW/cor Owings	*	OF
Mills Blvd & Lyons Mill Rd.	*	BALTIMORE COUNTY
2nd Election District	*	Case No. R-01-435
3rd Councilmanic District	*	September 26, 2001
	*	

* * * * *

The above-entitled matter came on hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204, at 10 o'clock a.m., September 26, 2001.

* * * * *

ORIGINAL

Reported by:

C.E. Peatt

1 BOARD MEMBERS:
2
3 LAWRENCE WESCOTT, Chairman
4 MELISSA ADAMS
5 MARGARET WORRALL
6
7
8 APPEARANCES:
ROBERT A. HOFFMAN, Esquire
9 On behalf of Petitioner
10
PETER MAX ZIMMERMAN, Esquire
11 People's Counsel
12 On behalf of Baltimore County
13
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21

1 PROCEEDINGS
2 * * * * *
3 THE CHAIRMAN: Good morning, ladies and
4 gentlemen. This is a regular meeting of the County Board
5 of Appeals of Baltimore County in Case No. R-01-435, in
6 the matter of Painters Mill Venture, LLP, petitioner,
7 northwest corner of Owings Mills Boulevard and Lyons Mill
8 Road in the 2nd Election District, 3rd Councilmanic
9 District.
10 It is for a reclassifation from D.R. 5.5 to D.R.
11 16 as shown on the plan to accompany reclassification
12 petition.
13 Will counsel state their appearances, for the
14 record, please.
15 MR. HOFFMAN: Rob Hoffman, representing the
16 property owner and applicant.
17 MR. ZIMMERMAN: Peter Max Zimmerman, People's
18 Counsel for Baltimore County.
19 THE CHAIRMAN: Thank you, Mr. Zimmerman. Okay,
20 Mr. Hoffman?
21 MR. HOFFMAN: Yes. Mr. Wescott, as you stated,

1 this is a petition for reclassification of property. It's
2 located at the intersection of Owings Mills Boulevard and
3 Lake Side Boulevard.
4 These are new roads to me. They are new roads
5 and I, quite frankly, had to go out several times and
6 drive around pretty extensively to get my bearings and
7 directions to make sure I understood where the property
8 was in relationship to things I know about, like where is
9 the mall and where's the subway stop.
10 I knew of the Newtown Development, I was aware of
11 it and the location. I was somewhat familiar with Lyons
12 Mill Road, having worked on some some other projects, but
13 I would say it's probably not that familiar to a lot of us
14 where this particular piece of property is located. And I
15 would -- well, not as part of my opening -- but I will
16 provide you with a map, a vicinity map, so hopefully we
17 can allow you to get your bearings as well.
18 THE CHAIRMAN: Is it sort of near the Ravens'
19 training camp?
20 MR. HOFFMAN: It's on the other side of
21 Reisterstown Road, so if you get -- if you take 795, get

1 off at the Owings Mills Boulevard exit, if you go right,
2 you're on Owings Mills Boulevard heading east and north,
3 more than anything else. If you take the left exit, it
4 brings you out on a ramp, you go past the mall, which
5 would be on the left. The big office building used to be
6 Alexander and Alexander, I don't know who's there now, but
7 then there's a right at Red Run and Owings Mills
8 Boulevard, and if you go through that right and turn
9 straight on Owings Mills Boulevard, pretty much west on
10 Owings Mills Boulevard at that point, the first thing you
11 would come come to on your left -- well, there's a new
12 hotel on your right, the Hilton Garden is on the right.
13 The applicant today is represented by Mr. Madden,
14 and he has an office building within an historic structure
15 sort of down in the hole on the right, and the next thing
16 you notice on your left will be some what looks like
17 enviromentally constrained areas. It's pretty low. And
18 then some apartments on the left.
19 On the right is a Rite-Aid. This property starts
20 on the same side of the street as the Rite-Aid, but across
21 Lakeside Boulevard. The Rite-Aid is at the intersection

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1 of Lakeside Boulevard and Red Run Boulevard, and the
2 property continues on Owings Mill Boulevard, that's its
3 frontage, until you hit Lyons Mill Road.
4 What you notice as you go on Owings Mills
5 Boulevard towards Lyons Mill Road, on your right, there is
6 a wooded lot, except there are two swaths that cut through
7 the property. That's the Transcontinental gas pipelines,
8 two of them, that traverse this particular property. Then
9 you hit Lyons Mill Road.
10 The property is still on your right, and if you
11 take a right, the property, for some short distance, again
12 would be on your right, so it's bounded essentially by
13 Lyons Mill Road, Owings Mills Boulevard, and Lakeside
14 Boulevard.
15 So I did a lot of this yesterday, so I am real
16 familiar with what's out there, and I really had to drive
17 around. I went the wrong way on Lakeside, even though I
18 have been there many times, I went the wrong way, went
19 down to Painters Mill Road, said, That doesn't feel right
20 to me, and I had to come around Lyons Mill again.
21 The property last was zoned, as part of the

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1 original Owings Mills town center plan, D.R. 16, and on
2 the last comprehensive zoning map the office of planning
3 identified a number of parcels in Owings Mills for
4 consideration for rezoning.
5 This property was part of what I consider to be a
6 group, call it a group of properties which were identified
7 because they were D.R. 16, or they had some high intensity
8 zoning and had not been developed as yet. At least,
9 that's my understanding. I'm sure Jeff Long, who's here,
10 maybe he could, when he testifies, could elaborate a
11 little bit on that.
12 During the 2000 comprehensive zoning map process,
13 the property was downzoned to D.R. 5.5, and our case today
14 will be to prove to you all that that rezoning was in
15 error.
16 There are a number of reasons why it is in error.
17 First of all, the property as shown on the Master Plan
18 adopted in February of 2000 indicates clearly the property
19 is slated for multi-family development, and it's part of a
20 large area of zoned property that is slated for
21 multi-family development, that the property has certain

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1 environmental constraints, which includes these
2 Transcontinental gas pipelines which don't allow
3 development, and it may not be a known fact, but you can
4 traverse them with roads, perhaps, depending on the depth
5 of the pipeline, but you cannot put structures of top of
6 them. They are rights-of-way that are owned by the
7 pipeline company, but the fee interest is owned by, at
8 least in this case, is owned by the applicant today.
9 Our witnesses will include first, and maybe he
10 would be brief, Scott Rouk, who currently works for the
11 applicant. He prepared certain exhibits. He was with
12 Morris & Ritchie Associates, the engineering and land
13 planning firm with whom Tim Madden works, my next witness.
14 He assisted in preparing the exhibit, and I would like to
15 put him on to put the exhibit in, if that's necessary, and
16 Mr. Madden will testify with regard to the requirements of
17 Section 2-356J, which are the requirements under the
18 county code for proving that an error has been made.
19 We believe that the mistake that was made by the
20 County Council was two-fold. There were certain facts and
21 circumstances that the councilmen, we believe, were not

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1 aware of at the time of the rezoning and was, therefore,
2 in error when they downzoned the property from D.R. 16 to
3 D.R. 5.5, and we believe that there are clearly facts and
4 circumstances in the case, including some of the things I
5 mentioned about the Maser Plan and the roadways, that
6 would indicate to the Board that the rezoning from D.R. 16
7 to D.R. 5.5 was in error. Thank you very much.
8 THE CHAIRMAN: Thank you. Mr. Zimmerman?
9 MR. ZIMMERMAN: Yes, Mr. Chairman. I have a map,
10 several maps, actually, showing the location, and I think
11 at this point it would be helpful to submit the ADC road
12 map excerpts.
13 MR. HOFFMAN: The approximate location is fine.
14 Why don't you just draw it over to Lakeside --
15 MR. ZIMMERMAN: It doesn't go all the way over to
16 Lakeside, not the property requested for rezoning.
17 MR. MADDEN: Yes, it does.
18 MR. ZIMMERMAN: Well, I didn't see that on the
19 planning map, but we'll see.
20 THE CHAIRMAN: The map I have in the file
21 shows --

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1 MR. HOFFMAN: It goes to Lakeside.
2 MR. ZIMMERMAN: Are there two Lakeside
3 Boulevards? Because Lakeside Boulevard shows to the north
4 above the commercially zoned property.
5 THE CHAIRMAN: This is Lakeside Drive, isn't it?
6 MR. MADDEN: It's an extension.
7 MR. ZIMMERMAN: There are two Lakeside
8 Boulevards?
9 MR. HOFFMAN: I don't think there are. You can't
10 trust this map. My experience is you can't trust the map
11 to show the current location of roadways. That's been my
12 experience, anyway.
13 MR. ZIMMERMAN: Since the record is confusing,
14 we are now looking at a zoning map at least that's that
15 part of the thousand scale zoning map.
16 MR. HOFFMAN: Our testimony is going to be the
17 property abuts Lakeside.
18 MR. ZIMMERMAN: Lakeside Drive. All right. In
19 any event, this ADC map is just to give the Board an idea
20 of the approximate location of the property, and if we can
21 mark it as People's Counsel Exhibit 1? The Board will see

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1 many other maps, I'm sure.
2 THE CHAIRMAN: I am sure we will.
3 MR. ZIMMERMAN: The major road frontage for this
4 property would be Owings Mills Boulevard on the east side
5 and Lyons Mill Road on the south side, and it would be a
6 smaller section of Lakeside Drive or Lakeside Boulevard at
7 the north end.
8 I happen to have been familiar with this area
9 because of a development case we had a year ago that
10 involved some zoning issues that never made it to the
11 Board of Appels for a hearing, so I happened to have been
12 out there to look at some property on Painters Mill Road
13 and Lyons Mill to the east.
14 I drove up and down Lyons Mill Road a year ago
15 and around Owings Mills Boulevard, and I went back again.
16 Mr. Hoffman may have also.
17 As far as the neighborhood goes, it is nowhere
18 near the Baltimore Raven training site.
19 THE CHAIRMAN: I understand that.
20 MR. ZIMMERMAN: I would call it towards the
21 fringe of the Owings Mills growth area and, in general,

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1 one can say that Owings Mills has grown from the center
2 out, but there are still areas on the fringe that are
3 undeveloped. There's a mix of zoning densities. And
4 although one generally locates Owings Mills with the town
5 center and rather intense development, I think the Board
6 is going to see the zoning in this particular section is
7 mixed, and there's a fair amount of low and mid-density,
8 3.5, 3.5 units an acre, D.R. 5.5, as well as D.R. 16.
9 And I need to state at the outside, D.R. 5.5,
10 subject to compatibility, does allow multi-family
11 townhouses, and there has been some evidence of that
12 development in the general area.
13 So, as we see it, what we are talking about in
14 this case is the County Council's judgment on what the
15 level of density or intensity of development can be.
16 That's really all we're talking about. But there
17 are D.R. 5.5 townhouse developments all over Baltimore
18 County, for example.
19 Now, to put it concisely, that kind of issue is
20 rarely, if ever, something that involves a mistake in
21 zoning. It's a judgment call in every case, and there is

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1 a very heavy presumption in favor of the Council's
2 decision, as I think the Chairman of the Board knows, and
3 the word "mistake" is a term of art that's been developed
4 in case law, a very narrow term, and I'm sure we'll get
5 into that in post-hearing argument or memoranda.
6 I want to say at the outset, although I'm the
7 only one standing here at the moment, as far as I know,
8 defending the comprehensive zoning is part of our job.
9 We have expressed interest from citizens in the
10 area. There are some letters. We expect an E-mail from
11 the Lyons Wood Community representative who could not be
12 here today, and there may be, if he can make it, a
13 representative of the community of White Hurst -- he's not
14 here yet -- but I spoke to him yesterday, and he was
15 expecting to be here, Mr. Thompson, so there's some
16 community interest as well.
17 In these rezoning cases, the first issue is
18 mistake. The second issue is, if there's a mistake, is
19 their request for zoning warranted, and that's reviewed in
20 more detail under 2-356 of the Baltimore County Code which
21 is in the Baltimore County Code book colored in black, and

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1 then, of course, the zoning regulation are in the book
2 colored in blue, which occurred to me this morning, black
3 and blue may be an appropriate combination of colors for
4 rezoning cases.
5 We often say in rezoning cases the importance of
6 defending comprehensive zoning and not allowing piecemeal
7 zoning is that the County Council doesn't look at the
8 whole picture, and if piecemeal zoning is granted, it's
9 not only this subject property that's an issue, but one
10 has to consider the implication for other properties in
11 the area in general.
12 And I just wanted to say this area is towards the
13 edge of Owings Mills, and in Owings Mills, in general,
14 there were a lot of issues in the 2000 comprehensive
15 zoning process, some quite near this one --
16 MR. HOFFMAN: Can I just ask -- this is opening
17 argument -- and there's an awful lot of testimony coming
18 in about issues that may or may not have been created.
19 Shouldn't that be the witnesses talking about
20 those things? And Mr. Zimmerman can argue after the
21 evidence how he interprets the evidence that's been

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1 presented.
2 THE CHAIRMAN: Yes. Let's stick to the issue.
3 MR. ZIMMERMAN: This is part of my introduction.
4 THE CHAIRMAN: Let's get to it.
5 MR. ZIMMERMAN: I am, in part, responding as I go
6 along. I will just be about two more minutes to what Mr.
7 Hoffman has said.
8 I think that the evidence will show that the
9 reason why this property and others were made issues or
10 among the reasons was a concern that the Owings Mills
11 growth area has been saturated and there is sufficient
12 development in that area, and that the area was
13 over-zoned, in effect.
14 And as far as the Master Plan goes, while it is
15 advisory, I think the Board is going to find the Master
16 Plan does not so clearly support this rezoning.
17 But even if the Board thinks the Master Plan does
18 recommend D.R. 16, I don't think there's any evidence to
19 that.
20 The Master Plan is advisory. As I see it, the
21 Master Plan now puts this area on a borderline between

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1 single family and multi-family, but multi-family is
2 allowed in D.R. 5.5.
3 So with all of that, I think the Board is going
4 to find that this is a classic case where the County
5 Council's judgment has to be upheld in order to preserve
6 the integrity of the property. Thank you.
7 THE CHAIRMAN: Thank you, Mr. Zimmerman. Mr.
8 Hoffman?
9 MR. HOFFMAN: Yes. Mr. Rouk.
10 S C O T T R O U K,
11 having been called as a witness, was duly sworn and
12 testified as follows.
13 DIRECT EXAMINATION.
14 BY MR. HOFFMAN:
15 Q. Mr. Rouk, would you please state your name and
16 address, for the record.
17 A. Scott Rouk. My business address is 4750 Owings
18 Mills Boulevard, Owings Mills, Maryland 21117.
19 Q. For whom did you work, currently?
20 A. I work for Chesapeake Realty and Development.
21 Q. Chesapeake Realty and Development is an entity

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1 that is controlled by the same owners of Painters Mill
2 Joint Venture property which is the subject of today's
3 hearing?
4 A. That is correct.
5 Q. And prior to that, you worked for Morris &
6 Ritchie Associates?
7 A. That's correct.
8 Q. And they are the engineers, planners and
9 surveyors who prepared, first, the open site plan which
10 was in the Board's file?
11 A. That is correct.
12 Q. Were you there at the time this was prepared?
13 A. Yes. I prepared this plan that you're holding in
14 your hand right now.
15 MR. HOFFMAN: I would submit the -- I don't know
16 if it's in the record already -- but the open site plan,
17 Petitioner's Exhibit No. 1.
18 MR. ZIMMERMAN: We have no objection.
19 Q. Mr. Rouk, if you would go to the vicinity map and
20 point out where the property is, if you could trace its
21 outline on the graphic representation as well?

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1 A. The property is shown on this vicinity map. It's
2 not clearly correct in that it's a little bit out of
3 scale.
4 The property is physically located on Owing Mills
5 Boulevard, extending up to Lakeside, down and in back to
6 Lyons Mill along the environmental area.
7 More clearly on this map, it shows Lyons Mill on
8 the bottom side of it, Owings Mills Boulevard running on
9 the eastern side, and Lakeside Boulevard on the north
10 side.
11 Q. Mr. Zimmerman is correct, the predominant road
12 frontage is Owings Mills Boulevard, and there's some more
13 on Lyons Mill than on Lakeside?
14 A. Approximately 700 feet more or less on Lyons Mill
15 Boulevard versus more than a thousand feet on Owings Mills
16 Boulevard.
17 Q. And then how much on Lakeside?
18 A. Roughly, somewhere in the neighborhood of about
19 450 feet.
20 Q. You also prepared for today's hearing some
21 additional exhibits. The first is a copy of the 200 scale

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1 comprehensive zoning map?
2 A. 2000 map.
3 Q. 2000 map, and you have outlined on it certain
4 zones that are shaded in brown and some in pink. Can you
5 just tell us what those zones are you shaded?
6 A. Sure. Briefly, the site shown here is basically
7 the green color. This portion of the site is all the D.R.
8 5.5. The D.R. 5.5 extends somewhat off the property, more
9 to the center line of the stream that we sort of abut,
10 because some portions of the stream are on other pieces of
11 property adjacent to us.
12 That is all the D.R. 5.5. Then, in the brown
13 color, I identified more of the intenser development zoned
14 D.R. 16, Owings Mill Run Apartments amd the new
15 development by Howard brown that's specifically off
16 Lakeside Boulevard, that being to the west of us.
17 To the east of us, there are several development
18 projects, one being the Villages of Painters Mill.
19 Kennsington, all zoned D.R. 16. And then the Fairfield
20 suites or units that are currently under construction
21 along Lyons Mill Boulevard is zoned D.R. 16.

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1 To the north of us, there are several parcels,
2 one of them being the community center for the PUD known
3 as Owings Mills Newtown, and several commercial pieces,
4 one being a Mobile fuel station located on Lakeside
5 Boulevard, the other being the Rite-Aid as previously
6 mentioned on Red Run Boulevard and Lakeside intersection.
7 Then, to the west of us, west and north, is the
8 apartment community previously mentioned called Briorwood,
9 and Atrium Village. It's an elderly housing that's
10 currently now open for business. Those are zoned RAE2,
11 but are a little more higher density than even the D.R.
12 16, being elderly apartments and elderly housing, five
13 story or better.
14 Q. Now, you took some photographs of some of the
15 projects that you just mentioned and those are around the
16 outside. Are they labeled on here where the photographs
17 were taken?
18 A. Basically, I have given --
19 Q. You took these?
20 A. I took these photographs to basically show some
21 of the uses and what's presently going on around the site,

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1 immediately adjacent to and leading up to the site from
2 795, and basically I kind of went around the board
3 identifying commercial uses such as the Hilton Garden Inn
4 from Owings Mills Boulevard, the Rite-Aid.
5 Q. Are all the names that are on the photographs
6 also on the plan?
7 A. They are.
8 Q. So if I look for Hilton Garden, I can see it her,
9 and I can go to the photograph, and there's --
10 A. No numbering system. Just the names of the
11 development, or the names of the project along with which
12 view the photograph is taken from.
13 Q. Okay.
14 A. The view of the Mobile station from Lakeside.
15 Some of the more intensely developed areas immediately
16 adjacent. Becket Green located right here. Owings Run
17 Apartments.
18 This specifically is, this area area right here,
19 this is a view of the intersection of Lakeside and Owings
20 Mills Boulevard which shows the Rite-Aid commercial use
21 right here and the forested area basically of our site

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1 which we are forced to protect all this forest buffer.
2 You see it in the darker green color right here.
3 And the next photo is the other corner being
4 Lyons Mill and Owings Mills Boulevard, from that
5 intersection, which shows once again some existing forest,
6 and kind of gives a brief view of that Transcontinental
7 gas line which cuts through the middle of the property
8 towards the north and west, or north and east -- excuse
9 me.
10 Here's the residential townhouse development
11 called Kennsington, and some of the Villages of Painters
12 Mill. I have also shown the Villages of Painters Mill
13 commercial center which consists of food and is currently
14 under construction, and this shows the Briorwood Apartment
15 development, and then some more intensely developed D.R.
16 16 parcel of the Villages of Painters Mill up here.
17 Once again, more photographs of the Briorwood,
18 the Atrium Village being the five or six-story structure
19 back up in here, and a view of the site from Owings Mills
20 Boulevard of the intense development of Kennsington, and
21 an Owings Mills restaurant park up at the intersection of

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1 Red Run Boulevard and Lakeside Boulevard.
2 MR. HOFFMAN: I would offer that as Exhibit 2.
3 THE CHAIRMAN: Accepted.
4 Q. Okay. Did you also prepare another exhibit, an
5 aerial photograph?
6 A. Yes. This was involved with the preparation --
7 MR. ZIMMERMAN: Can we gate the date of the map
8 used?
9 MR. HOFFMAN: It's the 2000 comprehensive zoning
10 map.
11 MR. ZIMMERMAN: Based on the aerial photography?
12 MR. HOFFMAN: I don't know when.
13 THE WITNESS: This aerial photography is from
14 previous zoning maps before which they have not filled in.
15 MR. ZIMMERMAN: I think I will have the official
16 map later. I think it was '95, but we'll have the
17 official map for the Board. Excuse me. 1996. I was
18 wrong.
19 So my point, it's not going to show the entire
20 road system on that map.
21 MR. HOFFMAN: The road system was drawn --

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1 MR. ZIMMERMAN: But not all of it. I don't
2 object, but just a caveat that there are other roads in
3 that area that have come in since that map was drawn,
4 particularly on the south side of Lyons Mill Road, for
5 example.
6 MR. HOFFMAN: Okay.
7 Q. Mr. Rouk, could you please describe where you got
8 this aerial photograph, first of all, and then what did
9 you do to it?
10 A. This is a copy of the latest county aerial which
11 I believe was flown in 1996. We purchased it from
12 Baltimore County, and because of the date of the
13 photograph, there's been an extensive amount of
14 development from '96 to now.
15 At the time these photograph were flown, Newtown
16 was still in its infancy as far as the development that
17 has occurred out here. Developments such as Red Run
18 Apartments, Cascade, Overlook, all apartment communities,
19 and Silver Brook Farms, were just completed at that time.
20 So we have come in here and physically gotten
21 copies of approved plats or plans from Baltimore County,

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1 Baltimore County records, and superimposed them on top of
2 the aerial to show the types of uses immediately adjacent
3 to the project, or to the site area, and to give an
4 overall building mass to the aerial photograph.
5 Q. Let me ask you, the things that you have, you
6 took a site plan and shrunk them down to a scale that you
7 could put it on this 200 scale?
8 A. Correct.
9 Q. It's not intended those are to the 200 scale?
10 A. They're as close to the 200 scale as they can
11 possibly be.
12 Q. By photo reduction?
13 A. By photo reductdion, yes.
14 Q. And all of these projects weren't yet built. Are
15 there any -- I believe these all or most are either either
16 built or under construction. Are there any ones that are
17 not either built or under construction?
18 A. There are several on this plan under construction
19 at the present time, or will be very shortly. This
20 project is shown right here, they have started the earth
21 work movement. Lakeside Drive have not begun building

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1 construction at this time. Becket Green is constructed.
2 This townhouse community known as Kennsington is almost
3 completed, not quite, at this time.
4 The commercial center of the Villages of Painters
5 Mill is not completed at this time, still under
6 construction. The Atrium Court, I believe, is just now
7 ready, prepared for opening, so the site work and building
8 mass is complete there.
9 Fairfield Apartments is under construction right
10 now. They have not really totally begun, and also this
11 part of the community that's down here has not begun.
12 It's just barely begun earth work movement. Everything
13 else is pretty much established.
14 Q. Pointing to the side of the exhibit, which I
15 believe will be for identification as three, this is the
16 R. Rowe Price facility?
17 A. Correct. And Mayer Suite Hotel.
18 Q. At the corner of Red Run and Painters Mill Road?
19 A. Correct.
20 Q. On the building that you can't quite see all of
21 that, the BBMC pavillon?

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1 A. Yes.
2 Q. The Corporate Campus as well?
3 A. Correct.
4 Q. Again, that's on the opposite side of the
5 Painters Mill Road from the Mayer Suite. Okay.
6 A. This map pretty much shows the property and site
7 being in the highest -- in the heart of the highest
8 density development out in Owings Mills Newtown. It's one
9 of the few remaining parcels that has not been developed.
10 Q. If you look at the zoning map compared to the
11 photograph, the Lyons Mill side, the D.R. 16 property
12 essentially ends just beyond our property line, am I
13 correct on that?
14 A. The D.R. 16 line. The D.R. 5 is basically the
15 Transcontinental gas line property line, not specifically
16 our property line, which that is the zoning line right
17 there.
18 Q. This open area is the pipe line?
19 A. That is the pipe line, yes.
20 THE CHAIRMAN: Are there two pipe lines?
21 THE WITNESS: Yes, there are two pipe lines, yes.

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1 Q. This is one and two (indicating)?
2 A. That is correct, and it extends on over towards
3 the mall, and then across.
4 Q. And this exhibit, you outlined the site, the
5 subject site in red, and you showed certain acreage. What
6 does that represent?
7 A. The acreage shown represents once you take out
8 the property, take the overall mass of the property, take
9 out the areas for the buffer and the Transcontnental gas
10 line, which we cannot build on or over, that is the
11 remaining physically developable area that is left on the
12 property.
13 Q. And the property is about eighteen acres?
14 A. It's 18.3 acres, more or less, and of that we
15 have a small parcel along Lakeside Drive that's
16 approximately 1.59 acres, and the two pieces separated by
17 the Transcontinental gas line on the southern end of the
18 property. One is 5.72 acres and one is 1.9 acres.
19 Q. So you can't even make a drive connection between
20 the 1.59 acres and the --
21 MR. ZIMMERMAN: Objection. Leading question.

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1 A. Okay. There's a forest buffer that --
2 THE CHAIRMAN: Wait.
3 Q. Let me ask a question. The environmental
4 constraints and the Transcontinental pipe line divides
5 this property into different developable areas?
6 MR. ZIMMERMAN: Objection. Still leading.
7 THE CHAIRMAN Overruled. Go ahead.
8 A. Again, the forest buffer, which prohibits any
9 type of developement or access between parcels, that
10 separates all three of these parcels, one, the first piece
11 being on Lakeside Boulevard. There's a forest buffer that
12 completely surrounds that property line prohibiting access
13 between the other areas of the site, but the two parcels
14 along Lyons Mill do have access between then because they
15 can cross over at certain intervals and distance. As long
16 as no grade is deeply disturbed, they can cross over that
17 Transcontinental gas line.
18 MR. HOFFMAN: I'd like to introduce this.
19 MR. ZIMMERMAN I have no objection.
20 THE CHAIRMAN: It will be received.
21 MR. HOFFMAN: Thank you.

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1 MR. ZIMMERMAN: That photograph was flown in
2 1999?
3 THE WITNESS: '96. There's certain periods when
4 it was '95 and '96.
5 MR. ZIMMERMAN: Shall I begin?
6 THE CHAIRMAN: yes.
7 CROSS EXAMINATION
8 BY MR. ZIMMERMAN:
9 Q. Mr. Rouk -- have I pronounced your name
10 correctly?
11 A. Yes.
12 Q. As you show the site on Petitioner's 3, the main
13 area of development would be oriented to the corner of
14 Lyons Mill Road and Owings Mills Boulevard?
15 A. That is correct.
16 Q. And one can put roads over a pipeline? That's
17 not unusual?
18 A. There's several restrictions for those roads and
19 certain access points which the gas line will establish.
20 Q. With reference to forest buffer, do you know
21 whether or not there's a potential to request a variance

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1 or waiver to allow access through a forest buffer and to
2 replant trees elsewhere? Isn't there such a process?
3 A. This property, to give you a little bit -- Mr.
4 Madden will go into it a little bit further, because he's
5 the historian on the property -- but this forest buffer is
6 approved and established, and it's physically a buffer
7 that cannot be disturbed in the eyes of DEPRM at this
8 point.
9 Q. My question is, is there a process to ask for a
10 waiver or variance from forest buffer law?
11 A. There's a process, yes.
12 Q. With reference to some of the properties you
13 mentioned -- let me strike that before I forget.
14 Assuming the forest buffer is maintained, are you
15 assuming that the section at the north end of the property
16 you have identified as 1.59 acres would still be developed
17 with orientation to Lakeside Drive, or are you assuming
18 because it's so dominated by forest, that appropriately
19 should be left environmentally protected?
20 A. I'm not assuming anything about it being
21 environmentally protected. It is a corner parcel on a

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1 highly developed street at a highly developed
2 intersection.
3 So it's development potential is limited
4 basically to the zoning.
5 Q. In any event, you identified approximately 9.2
6 acres as the major area for development of this site,
7 given particularly the forest buffer, assuming that's
8 maintained?
9 A. That is correct.
10 Q. Those trees would be obvious to anyone buying the
11 property, would they not?
12 A. Those trees are very obvious, and from the
13 photographs, as you can see.
14 Q. With reference to distance, you mentioned the
15 Hilton Garden Inn. Isn't that about 2000 feet north of
16 the north end of the property at the closest point?
17 A. More or less, yes.
18 Q. And it was a Mayer suite --
19 A. A Mayer Suite.
20 Q. -- Hotel. Isn't that about three-quarters of a
21 mile away to the east?

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1 A. That's probably very close, yes.
2 Q. If you could run through, taking Lyons Mill Road,
3 about how far to the east is the intersection of Lyons
4 Mill and Painters Mill Road?
5 A. If I had to do a judgment call, I'd say 1200
6 feet, more or less.
7 Q. I don't -- I have a ruler here. Would you like
8 to scale it?
9 A. Sure. Approximately eleven inches times that,
10 times 200, is what?
11 Q. 2200 feet, approximately?
12 A. That is correct.
13 Q. If we begin at the corner of Painters Mill and
14 Lyons Mill, what development is there at the northwest
15 corner?
16 A. That is -- this is the development that you're
17 asking?
18 Q. Right.
19 A. That's part of the Villages of Painters Mill.
20 Q. And what type of homes are in there?
21 A. There's some single family.

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1 Q. How many?
2 A. Approximately forty-five, fifty.
3 Q. How would you characterize those single family
4 homes?
5 A. They are large single family homes on small lots.
6 Q. Do you know approximately when they were
7 developed?
8 A. Approximately 1993 to 1995.
9 Q. And that occupies about how many acres, that
10 development?
11 A. The best guesstimate, I would say somewhere in
12 the neighborhood of about twenty acres.
13 Q. In addition to the forty-five single family homes
14 on the west part of the development, or is that the entire
15 development?
16 A. The Villages of Painters Mill consists of several
17 different types of uses. The single family, as you're
18 referring to, is on the eastern side. Townhouses are on
19 the western side.
20 Q. The townhouses you highlighted in white are on
21 your exhibit, correct?

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1 A. That's correct.
2 Q. The single family homes, you did not highlight?
3 A. That is correct.
4 Q. To the east of Painters Mill Village, right along
5 Painters Mill Road, what sort of development is there? So
6 we have a complete picture.
7 A. There are two different apartment uses right
8 there at the corner of Painters Mill Road, and I believe
9 the back is all apartment use.
10 Q. Those front -- those are across from the T. Rowe
11 Price development to the east, which you highighted in
12 white?
13 A. That's correct.
14 Q. Now, west of the Lyons Mill Road border of the
15 Painters Mill Village, what do we find on Lyons Mill Road?
16 A. We have some single family homes on the north
17 side. There are single family homes, specifically five in
18 this area, which I believe now are under development plan
19 for townhouses.
20 Q. You don't show Dono Hyman (phonetic) on your
21 exhibit?

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1 A. It's a recently approved development plan I have
2 not gotten my hands on.
3 Q. Let's stay on the north side of Lyons Mill Road,
4 and you could look at your zoning map as well, but as one
5 gets about 400 feet to the west, does the D.R. 5.5 zoning
6 begin on the north side of Lyons Mill Road?
7 A. It does begin in a triangular portion as shown on
8 the zoning plan. There's two different -- there's a split
9 zone development known as Lyons Gate, which is a townhouse
10 development where the zoning is. This portion of the
11 property is zoned D.R. 16, a portion D.R. 5.5.
12 Q. You don't show where Lyons Gate is on your
13 Petitioner's 3, do you?
14 A. I show the majority of it.
15 Q. Were townhomes developed on the D.R. 5.5 zoned
16 portion of Lyons Gate?
17 A. Yes, they were.
18 Q. And do you know the exact amount of acreage each
19 in the D.R. 5.5 and D.R. 16 on Lyons Gate?
20 A. I do not have any recollection.
21 Q. And beyond Lyons Gate, to the west, off the map

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1 you have shown, are there single family homes?
2 A. There's two different types of development. One
3 is the Village of Winterset, which is predominantly single
4 family. That's further beyond us. But along Lyons Mill
5 Boulevard, it's predominantly townhouses and that type
6 use.
7 Q. My question is, the Village of Winterset to the
8 west is a single family home development on D.R. 5.5
9 zoning, is that correct?
10 A. I believe the zoning does change even further
11 beyond that.
12 Q. You're not sure what the zoning is?
13 A. This Village of Winterset, it's some single
14 family on D.R. 3.5, D.R. 5.5, but it's predominantly
15 townhouses on 5.5.
16 Q. In any event, the zoning becomes lower density to
17 the west, would you agree with that?
18 A. That is correct.
19 Q. Separately, if we take the south side of Lyons
20 Mill Road in the vicinity of Owings Mills Boulevard, is
21 there a single family development?

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1 A. That is correct.
2 Q. To the south?
3 A. Yes.
4 Q. If I point it out, the access road just to the
5 east of Owings Mills Boulevard, is that the main access
6 road into that development?
7 A. Yes, it is.
8 Q. On the south side of Lyons Mill Road?
9 A. Yes.
10 Q. About how far east of Owings Mills Boulevard is
11 that access road?
12 A. More or less, 250 feet.
13 Q. Clearly, 250 feet from the corner of the subject
14 property?
15 A. That is correct.
16 Q. That is a substantial single family home
17 development, is it not?
18 A. That is correct, it is.
19 Q. And the zoning on that site would be mainly D.R.
20 3.5 with some D.R. 16 closer to the Lyons Mill Road, is
21 that correct?

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1 A. I believe that's single family predominantly 3.5
2 to the D.R. 16 line, clearly cuts across the entrance
3 road, which I believe is an access point.
4 Q. And if we looked at your Exhibit 2, that
5 basically does not show the single family home development
6 to the south?
7 A. No, it does not.
8 Q. Do you know the name of that development?
9 A. It's part of the adjacent development, Happy
10 Acres and --
11 Q. Do you know, does Lyons Wood ring a bell?
12 A. Lyons Wood is part of it, yes.
13 Q. Do you know when that was developed?
14 A. It was, I believe, started in 1994 and
15 construction went on until 1997.
16 Q. Do you know how many homes are in there?
17 A. Approximately seventy-some odd.
18 Q. And those are very nice homes, are they?
19 A. They are.
20 Q. Now, separately, to the south of the property,
21 more or less west of Lyons Gate, if you call it that,

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1 there's a cornfield?
2 A. Currently, there's a cornfield. It's in this
3 area right here.
4 Q. Do you know whether or not also there's a recent
5 development called White Hurst that comes in on the south
6 side of Lyons Mill Road?
7 A. Yes. I have seen the signs for it, yes.
8 Q. That would not show on your 1995 aerial photo?
9 A. No, it would not.
10 Q. Can you show the Board approximately where that
11 development is?
12 A. It's right in this area.
13 Q. Just to the west of the cornfield?
14 A. Just to the west of the cornfield.
15 Q. On the south side of Lyons Mill Road?
16 A. I believe that's correct.
17 Q. Again, single family houses?
18 A. Yes.
19 Q. Do you know how many?
20 A. I have no idea.
21 Q. Zoned 3.5?

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1 A. I assume the 3.5 continues on.
2 Q. Well, you have looked at the zoning map?
3 A. From recollection, I believe -- I do believe it
4 continues down, 3.5.
5 Q. And, of course, 3.5 is marked on your
6 Petitioner's Exhibit 2 on the south side of Lyons Mill
7 Road?
8 A. That is correct.
9 Q. You also marked on your Petitioner's Exhibit 2,
10 and I would think it shows on your Petitioner's 3 as well,
11 a National Register Historic District and Baltimore County
12 Landmarks site, is that correct?
13 A. There's two of those listed on that zoning map,
14 that's correct.
15 Q. One is named Flynn Limit?
16 A. That is correct.
17 Q. What is that?
18 A. It's an historic site under protection from the
19 Baltimore County Registry.
20 Q. Do you know anything about it?
21 A. Limited about it.

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1 Q. What do you know?
2 A. That Owings Mills Boulevard was originally
3 planning to go right by the site. It's been protected.
4 Owings Mills Boulevard is no longer marked to go down that
5 direction.
6 Q. What is Flynn Limited?
7 A. It's an historic home.
8 Q. Do you know anything about the history?
9 A. Very limited.
10 Q. On Lyons Mill Road to the west, are there also
11 some older established single family homes that have been
12 there a long time?
13 A. Yes, there are. That's a little further towards
14 Deer Run.
15 Q. Do you know whether or not the owner of the
16 cornfield is in the Board room?
17 A. From previous introduction, yes, I believe he is.
18 Q. Is that Mr. Ballard?
19 A. Yes.
20 MR. ZIMMERMAN: Let the record show Mr. Ballard
21 is in attendance.

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1 MR. BALLARD: I am here.
2 Q. You have been involved in development in
3 Baltimore County before, have you not?
4 A. From the past fourteen years, yes.
5 Q. You would agree with me that in D.R. 5.5 zones,
6 one can develop townhouses?
7 MR. HOFFMAN: I'm going to object. I don't think
8 this is the witness, nor did I call this witness for any
9 purpose other than to introduce the exhibits and what they
10 show.
11 THE CHAIRMAN: I think he can answer the
12 question.
13 A. With certain compatibility requirements.
14 Q. There are D.R. 5.5 townhouse development all over
15 the urban area of Baltimore County, are there not?
16 A. There are.
17 MR. ZIMMERMAN: Thank you. That's all I have,
18 Mr. Chairman.
19 THE CHAIRMAN: Anything else, Mr. Hoffman?
20 REDIRECT EXAMINATION
21 BY MR. HOFFMAN:

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1 Q. Mr. Rouk, are you aware of any D.R. 5.5 zoned
2 properties where multi-family was developed in the process
3 other than the CRG?
4 A. In the new development plan process, I personally
5 do not know of any.
6 Q. Are you aware -- well, let's talk about some of
7 these other developments. The Villages of Painters Mill,
8 that's a CRG plan?
9 A. That is correct.
10 Q. That would have been subject to the zoning
11 regulations which allowed multi-family in any zone without
12 compatibility?
13 A. That is correct, yes.
14 Q. The same would be true of the properties in Lyons
15 Wood, that's a a CRG plan?
16 A. That would be correct.
17 Q. And the properties that are developed on the
18 south side of Lyons Mill Road that are apartments, that
19 was actually a development plan?
20 A. It was a development plan.
21 Q. And --

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1 A. That's also in D.R. 16 zone.
2 Q. Newtown was a development, that was a planned
3 unit development, developed under the prior zoning
4 regulations for planned unit development?
5 A. That is correct, prior to the 1992.
6 MR. HOFFMAN: I have no other questions.
7 RECROSS EXAMINATION
8 BY MR. ZIMMERMAN:
9 Q. Mr. Rouk, compatibility standards are not
10 prohibition, they are simply standards on how the
11 buildings should be constructed to be compataible with the
12 surroundings, isn't that correct?
13 MR. HOFFMAN: Objection. Now he wants him to
14 draw a conclusion.
15 THE CHAIRMAN: Go ahead.
16 A. Is surrounding use compatibile with the
17 neighborhood?
18 Q. I'm sure you would not think townhouses on this
19 site would be incompatible with the surroundings? You
20 could put a development together, couldn't you?
21 MR. HOFFMAN: I'm going to object.

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1 THE CHAIRMAN: Well, I think that's argument. I
2 will sustain that.
3 Q. In your experience, have you been involved in any
4 development in Baltimore County which had to meet
5 compatibility standards?
6 MR. HOFFMAN: I'm going to object. It's too
7 vague. Which compatability standards?
8 MR. ZIMMERMAN: 26-282, the current compatibility
9 standards.
10 MR. HOFFMAN: That wasn't the vagueness I was
11 referring to. Throughout, there are requirements for all
12 different sorts of zones, for all different sorts of
13 housing projects.
14 I don't think this witness -- first of all, he
15 hasn't been offered for this purpose, but it's way too
16 vague.
17 THE CHAIRMAN: I'll sustain the objection.
18 MR. ZIMMERMAN: Thank you. I will stop there.
19 THE CHAIRMAN: Mr. Hoffman.
20 MR. HOFFMAN: Tim Madden.
21 TIMOTHY MADDEN,

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1 having been called as a witness, was duly sworn and
2 testified as follows.
3 DIRECT EXAMINATION.
4 BY MR. HOFFMAN:
5 Q. Mr. Madden, could you please state your name and
6 address, for the record?
7 A. Yes. My name is Timothy Francis Madden.
8 Q. Your address for whom you work?
9 A. I work -- I am a principal with the firm of
10 Morris & Ritchie Associates. I am the senior land use
11 planner and director of plan planning.
12 I am a registered landscape architect in the
13 State of Maryland as well as a certified planner through
14 the American Institute of Certified Planners, and I have
15 offices in Towson.
16 I have worked on this property for, oh, since
17 1983 with this firm, and other preceding firms.
18 MR. HOFFMAN: I have just landed a copy of Mr.
19 Madden's CV to Mr. Zimmerman, and a copy to the Board
20 which Mr. Madden provided me this morning.
21 Q. Is that a copy of your resume?

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1 A. Yes, that's a copy of my resume.
2 MR. ZIMMERMAN: I have no objection if he --
3 MR. OHFFMAN: I was going to offer him as an
4 expert in land planning and landscape architect.
5 MR. ZIMMERMAN: All right. No objection.
6 THE CHAIRMAN: He will be accepted.
7 MR. HOFFMAN Thank you. I would offer this as
8 Petitioner's Exhibit 4, this being the resume of Mr.
9 Madden.
10 THE CHAIRMAN: Accepted.
11 MR. HOFFMAN: Thank you.
12 Q. Mr. Madden, you indicated you worked on this
13 property since 1983?
14 A. That is correct.
15 Q. This subject site is part of a larger tract, is
16 it not?
17 A. Yes. It's known as the Painters Mill Venture
18 property, which is an assemblage of what was once about
19 300 acres, assembled through the fifties, the sixties, and
20 purchases in the seventies.
21 Q. Are you able to go up to the aerial photograph

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1 and show the Board approximately where Painters Mill
2 Venture property is?
3 A. I think I can, yes. Painters Mill Venture
4 property, which, again, is an assemblage of property,
5 included a lot of property under which the I-795, Owings
6 Mills Boulevard interchange now resides.
7 It includes all of the property that was sold to
8 Rouse, the developer of the mall, and it includes a
9 majority of the property that the MTA facilities were
10 constructed upon.
11 It includes the property to the western boundary,
12 being the Red Run stream, which you can see on this aerial
13 map, up to and including the property that is now the
14 State Highway Administration maintenance facility up off
15 Red Run Boulevard.
16 All the property that was acquired for Red Run
17 Boulevard was given to the county by the Painters Mill
18 Venture, and it includes the property down here that you
19 see outlined with these existing apartment developments.
20 Now, all the way down to Lyons Mill Road where
21 Coyle Road now is, and all the way down Lyons Mills Road

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1 to abut with the Villages of Painters Mill property, and
2 then the property line of Painters Mill then cuts across
3 above the Villages of Painters Mill property, including
4 the Atrium Village property, and then winds down to where
5 Red Run Boulevard is, continues over to Painters Mill
6 Road, and comes back up.
7 So that is what was the original holding known as
8 PMV, Painters Mill Venture.
9 Q. Approximately -- I know it's assembled over
10 time -- but approximately when did that entire piece come
11 together?
12 A. Sometime in the seventies, I think it all came
13 together. There were some purcahses and sales and pieces
14 that transacted after that, but the Lyset (phonetic) farm,
15 wch was the original holding, which is this, basically,
16 property here, I believe was in the late fifties, and that
17 was the first purchase. And then there were other
18 properties brought in since then.
19 So I think the point to make is that the property
20 was assembled before Baltimore County envisioned the
21 Owings Mills growth area. And if you'd like me to go into

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1 that?
2 Q. Well, the next question would be, now you've
3 identified where the property is, if you could give us a
4 brief history of how the property has come to look the way
5 it does today and how Owings Mills has come to be shaped
6 the way it is?
7 A. This is very key to the case, very important.
8 You have to understand that, in the seventies, there was a
9 lot of pressure on Baltimore County land use. It was
10 growing at a very fast pace.
11 The county was putting into place a much more
12 comprehensive planning and development review process, and
13 they were beginning to identify issues of problems they
14 wanted to address from a planning perspective.
15 One of the key problems was Reisterstown Road,
16 congestion along Reisterstown road, continuing development
17 along Reisterstown Road. That's where they worked with
18 the State Highway Administration to come up with the I-795
19 corridor, envisioning a road that would relieve
20 Reisterstown Road of traffic and open up areas for
21 development.

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1 And when discussing that matter, there was a lot
2 of feeling that that growth should not be allowed to
3 sprawl, but should be concentrated in one place. So the
4 planning staff and the planning board arrived at the
5 Owings Mills growth area concept where there would be a
6 designated towncenter, much like White Marsh, which was
7 at that point, becoming very successful in its growth and
8 development, and Towson, which was, of course, becoming
9 much more urban than it had been before, and they
10 envisioned a growth area where high density mixed uses
11 could be located, thereby relieving the more rural areas
12 of the county from the pressure of development.
13 Furthermore, it would allow the county to direct
14 its resources, construction of infrastructures, roads,
15 water, sewage, et cetera, in one area, to save a lot of
16 money, and they could direct all their planning and public
17 works infrastructure resources to that one location.
18 The big concern was they did not want to have to
19 expand their urban rural demarcation line to chew up
20 anymore ground to provide massing and land use for the
21 growing population, and they wanted to be able to get

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1 their hands on it, now envisioning the Owing Mills growth
2 area.
3 They also set forth some objectives that they
4 wanted to achieve, i.e., a higher quality of development,
5 a more formal town center approach to development, more
6 urban than rural, and they wanted to develop a sense of
7 place.
8 So, finally, through all this, the growth area
9 was designated in the 1979 Master Plan component that was
10 a document known as the Owings Mills Growth Area. It was
11 formally adopted as a component of the county Master Plan
12 in 1984. And subsequent to that, the zoning was put in
13 place to support that.
14 Now, as it relates to this property, the idea was
15 to put town centers zoning over the mall, and then have
16 rings of high density mixed uses, O.T., which is office
17 technology, and it was basically designed for Owings
18 Mills. That zoning was basically designed for this town
19 center. O.T. allows just about any use you want. It's
20 directed towards very high density, unlimited height,
21 unlimited residential density. That was placed around the

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1 mall. RAE 1 and RAE 2 was also placed in a band around
2 that. Part of the PMV property is RAE 1 and 2. D.R. 16
3 and D.R. 10.5 were bands outside of that. So the whole
4 concentric configuration of that was developed to allow
5 the density to grow in a town center and in a normal rate
6 so that the low density would not go directly into the
7 center, it would go in the appropriate place, the low
8 density housing, the commercial would be in the right
9 place, the mixes uses would be constructed around the
10 mall.
11 This piece that the subject property is part of,
12 and I will outline it, as being Coyle Road to Lakeside
13 Drive -- Owings Mills Boulevard to Lyons Mill Road was
14 known in our planning discussions with the PMV people and
15 the county people as the D.R. 16 tract, and we called it
16 that because its place in the concentric ring
17 configuration of the town center was to provide that
18 location, the appropriate location for apartments,
19 multi-family condominiums, and it worked, because you can
20 see it from a planning prospective. Owings Run
21 Apartments, which is a development that we worked on

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1 located on this property, whereas if the structure and the
2 organization of the town center were not such as it is,
3 the property closer to the mall would have been developed
4 sooner. But since that property was higher density zoned,
5 the apartments went in their right place.
6 There was a little bump in that planning in 1991,
7 '92, '93, when the market -- I don't know whether you all
8 remember, but the Baltimore County real estate market
9 really suffered a depression for three or four years and
10 there were some underdeveloped properties brought on the
11 market at that point -- but for the fact that those few
12 developments did occur during that time period, the
13 density configuration of the town center pretty much
14 stayed what with what it was proposed to do.
15 Owings Mills Newtown was supposed to be a much
16 higher density development than it has turned out to be,
17 and that is simply because of the effect on the real
18 estate market and the developers' decisions at that time
19 to develop quickly townhouses instead of multi-families.
20 The density that originally was proposed was
21 about 6500 units, and I don't know if they even achieved

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1 4000 at this point, so that's an another example, but the
2 urban growth area was pretty much designated as ending at
3 Lyons Mill Road on the south side.
4 Then you got into another planning area which was
5 known as the Horsehead Run planning area, which was
6 envisioned as a support neighborhood area to the town
7 center, much less density, lower density, more single
8 family, able to access the town center easily by the
9 connection of the road systems and, of course, after the
10 road systems, the county envisioned a transit system
11 coming in place, which is now beginning, the bus system is
12 now taking place along Owings Mills Boulevard, stops along
13 Painters Mill Road, the commercial centers, so forth,
14 feeds into the MTA stop.
15 There's been more development around the mall,
16 movie theaters and other uses. You may see in the papers
17 now they're planning to develop the air ride (phonetic) of
18 the MTA Center. They are going to build high density
19 mixed uses on top of this parking lot right here. That's
20 what the state is talking about with the county right now.
21 They have got a developer, and they are working with it.

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1 All those things are happening. They are all
2 coming into place. How this property plays in that, it is
3 part of the D.R. 16 tract.
4 The important thing is that D.R. 16 permits
5 multi-family uses as of right, versus D.R. 10.5 (sic)
6 which is not as of right. You have to prove compatibility
7 with --
8 Q. Do you mean 5.5?
9 A. 5.5. I'm sorry. You have to prove
10 compatibility. Thank you. The big difference is in the
11 market place. A multi-family developer will not take on a
12 compatibility project because of the exposure that it
13 warrants.
14 We are not so concerned about the number of
15 units. It's the type of unit that is important there,
16 because that all feeds into this entire Master Plan for
17 the growth area.
18 We are looking for multi-family type
19 opportunities for people to live in, much like what's
20 already developed by Painters Mill Venture property, being
21 Owings Mills apartments and other neighboring developers,

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1 the Cascades and Beckets Green, all these other
2 developments that have occurred, they are all multi-family
3 development over to the Villages of Painters Mill.
4 Similar things happened, except there was a bit of a blip,
5 there were more townhouses here than originally envisioned
6 because of the down market, but there's fairly high
7 density family along the north side of Lakeside Drive and
8 the commercial center is now taking place over here.
9 Fairfields Housing is developed, being
10 multi-family over here, and all these are responsive to
11 the development and quality of the development of the town
12 center, and it has been successful.
13 It has attracted such notable employment as the
14 T. Rowe Price Financial Center and the Toyota Financial
15 Center down Red Run Boulevard. This is another employment
16 corridor that has recently been opened up by Baltimore
17 County, again feeding into that same Master Plan concept.
18 MR. ZIMMERMAN: I will move to strike the
19 testimony implying compatability standards would preclude
20 development of not making the property valuable without
21 foundation, and I think contrary to law.

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1 MR. HOFFMAN: I think he laid the foundation by
2 stating his experience with the last however many years,
3 and that's his opinion.
4 MR. ZIMMERMAN: It's pure speculation, and I will
5 leave it at that.
6 THE CHAIRMAN: You can argue that later.
7 Q. Mr. Madden, in the concept of the development of
8 Owings Mills and the Painters Mill Venture property,
9 specifically, certain infrastructure improvements were
10 necessary, as you testified to?
11 A. Yes.
12 Q. What role did this property play in the
13 provisions of that infrastructure, some of which is
14 currently in place?
15 A. Certainly. First of all, it's the number I
16 recall is about two hundred million dollars of county
17 investment out here in water, sewer, roads bridges, storm
18 drainage improvements, and all of this was -- this tract
19 including the subject property was brought into the
20 metropolitan district in 1986 by petition, and that is
21 when, coincident with that date, was when water and sewer

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1 was brought into this area as well.
2 The debt service on that is supposedly based upon
3 the number of units it will eventually serve. There's
4 plenty of capacity in the water and sewer system out here
5 for this development for all of Owings Mills, and it's
6 part of that that was represented as the infrastructure
7 support.
8 The Painters Mill Venture property, when it was
9 developed, granted all this land and easements to the
10 county at no cost. The obvious reason was that they felt
11 that this part of this growth area would be achieved, you
12 know, would be a return on this investment, and it would
13 play a role in that whole piece.
14 So right away, from Lakeside, Owings Mills
15 Boulevard, the widening of Lyons Mill, the widening of
16 Coyle Road, Red Run Boulevard, and everything else that
17 came before that, was all based upon that, and water and
18 sewer had been to this property physically since about
19 1989.
20 Q. Mr. Madden, how does the provision of
21 rights-of-way and infrastructure factor into the zoning of

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1 the property and what the zoning should be?
2 A. Sure. Well, again, it's speaks a little bit to
3 hiarchy. Now that you're in a growth area, in a
4 designated growth area that's concentrically around a town
5 center, you then look at the road network.
6 That would be the first hierarchy system you look
7 at. You know that Lakeside Drive is designated as a
8 collector and Lyons Mill Road is designated as a collector
9 by public works.
10 Owings Mills Boulevard, which is the north/south
11 connection into the interchange, is a minor arterial, so
12 there's a hiarchy there. So this road (indicating) is a
13 high density site because it's along a minor arterial
14 indicating there will be more limited access onto a minor
15 arterial than on a collector. It's speaks to the density
16 and the type of housing because single family has
17 driveways and frontage along public rights-of-way.
18 Multi-families are not required to have any
19 frontage on public rights-of-way. And you will typically
20 see a multi-family housing having an entranceway into a
21 parking area that serves many, so it's a hierarchy, and

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1 the busier streets will have the higher density housing
2 because of those factors.
3 So, similarly, the closer you are to the water
4 and sewer trunk lines, the more economical it is to serve
5 those sites with the higher capacity of water and sewer
6 needs and fire protections needs that multi-family units
7 require.
8 So this house is next to, or this property
9 resides adjacent to a large water main, a large sewer
10 main. A large water main is needed because fire
11 protecton for multi-family housing is a greater demand
12 than single family.
13 Sewer, the demands are greater for multi-family
14 than single family. It would be waste of that investment
15 to put a lower density development here along where all
16 this infrastructure has been built for the higher density.
17 Q. Can you describe more fully the constraints on
18 the site, the environmental constraints? Well, I'll
19 strike that question for now.
20 Can you go to Petitioner's Exhibit No. 2 and
21 describe what the surrounding zoning is? I know you have

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1 done that in great detail using the aerial photograph, but
2 using the zoning map, could you describe the surrounding
3 zoning?
4 A. I kind of glossed over here in large perspective,
5 but I'll focus in a little bit on this map. Of course,
6 the town center being up here, like I described. Your
7 O.T. zoning goes down to the -- basically to the stream,
8 and that's the band. Now, O.T. is very high density, for
9 example, law offices, 150 foot height. It has unlimited
10 residential density and it allows ancillary commercial
11 uses within those buildings, so we're talking about high
12 density urban stuff. Okay?
13 This next line over here designates R.A.E. 2
14 zones. You'll see a lot of that One and Two zoning in
15 Towson. That's apartment elevator.
16 THE CHAIRMAN: Along "this line over here," it
17 will not show up on the record what you're talking about.
18 MR. HOFFMAN: The exhibit does indicate in brown
19 as well as on the map itself where the R.A.E. 2 is.
20 Q. It's the north side of Lakeside Boulevard?
21 A. This is overlaid on the actual zoning map so it

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1 has the designation of the zoning.
2 MR. HOFFMAN: I thought the exhibit would be
3 clear.
4 MR. ZIMMERMAN: On the other side of Owings Mills
5 Boulevard also.
6 A. Then you will see this line designation for D.R.
7 16, and there's a piece of B.L. on the corner, on the
8 northwest corner of Owings Mills Boulevard and Lakeside
9 Boulevard.
10 The D.R. 16 continues down on the opposite side.
11 D.R. 16 zoning is on both sides of Owings Mills Boulevard
12 down to Lyons Mill road.
13 So this is the D.R. 16 line that goes, turns up
14 over here, comes back around, and then comes in like that
15 and joins up with the R.A.E. 2 line, so it's R.A.E. 2 on
16 this side and sixteen on that side.
17 Q. So, for purposes of the record, the D.R. 16 zone
18 line -- you have to be careful -- I will call them
19 developmental areas that are shown -- so there is two
20 different lines?
21 A. Right.

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1 Q. So if you could maybe try and do that again?
2 A. Well, that's right, this is not the D.R. 16 line
3 (indicating.) The D.R. 16 goes all the way over here to
4 Painters Mill. So this is all D.R. 16 zoned land, and
5 immediately adjacent R.A.E. 2, and the D.R. 16 does
6 continue in this location south of Lyons Mill Road and
7 cuts across in a a triangular shape. Lyons Mill Road,
8 Painters Mill Road. So there's a D.R. 16 band here is
9 what I was talking about on the larger map. This is all
10 multi-family, higher density.
11 Q. Mr. Madden, does the subject property abut any
12 zoning other than D.R. 16 where the Quail (phonetic)
13 commercial piece is?
14 A. No. It surrounded D.R. 16 but for the B.L.
15 parcel that the Rite-Aid is residing on.
16 Q. Does that circumstance factor into any concluson
17 as to whether the current zoning is correct?
18 A. Absolutely, it does.
19 Q. How does it?
20 A. It tells me that any consideration for a
21 different zone than D.R. 16 is a piecemeal approach. If

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1 you would take this window of D.R. 16, that's floating
2 inside D.R. 16 and make it D.R. 5.5, for example, you're
3 piecemealing this parcel.
4 You're not looking at the comprehensive zoning
5 picture. That was put in place for the town center. It
6 should remain D.R. 16 because it's one side of a band of
7 D.R. 16 zoned land.
8 Q. Mr. Madden, can you now turn to the enviromental
9 constraints and describe what those constraints are?
10 A. I am going to go to Exhibit 1 for the moment.
11 One of the difficulties of developing in Owings Mills is,
12 of course, you're developing a town center within a Class
13 III watershed. You are a Class III stream. There's lot
14 of environmental considerations you have to take into
15 account.
16 They do not prevent development, but they do
17 constrain it, and you have to be aware of it. This
18 property has been analyzed in that regard, and when the
19 D.R. 16 tract went through the CRG process, it was for the
20 purposes of developing Owings Run Apartments, which is
21 west of the subject property, but still inside that D.R.

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1 16 tract.
2 At that point, the forest buffer regulations for
3 Baltimore County, which is a stream buffer regulation,
4 were relatively new. We went through the process of
5 analyzing the entire tract, not just the part that was
6 developed for Owings Run Apartments, but the entire tract
7 had to be looked at comprehensively.
8 We mapped the soils, the slopes, the transects
9 analysis that's required for the forest buffer
10 determination, and we got the delineated approved.
11 Q. Who was it approved by?
12 A. The Department of Environmental Protection and
13 Resource Management.
14 Q. What abut the Army Corps of Enginners?
15 A. The Army Corps of Engineers had to approve a
16 component of it. They had to approve the wetlands and
17 stream delineataion. That was part of that.
18 It's kind of like building blocks. You get that
19 approval and go to the next step. They were involved in
20 that, and at the time the Corps of Engineers was
21 considering a permit for the construction of roads and

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1 bridges, and they were looking at a comprehensive -- and
2 they required a comprehensive study -- so all that played
3 into that analysis.
4 The requirements on our property required a
5 variance from the regulations to develop Owings Run
6 Apartments in the manner that it is developed today.
7 At that point, DEPRM stipulated that no further
8 modification in that forest buffer would be allowed, and
9 that includes the forest buffer that's on this property.
10 And when I say modification, I mean the waiver
11 process, what you get a waiver from, the full impact of
12 the regulations, that process is now closed on this
13 property. It's been done. It's been completed. This
14 dash line you see squiggling across the property, this is
15 forest buffer associated with the stream and the wetlands.
16 This is upland. That constraint includes the wetland
17 resources, the stream resources, the buffer, and in this
18 case it also includes forest conservation.
19 Forest conservation requirements came into effect
20 in 1990, '91, and their property, we went to the county
21 with the entire holding that remained at that point and

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1 achieved approval of a comprehensive forest conservation
2 plan that seemed to make the most sense.
3 Basically, it approved the retention of forest
4 cover and the forest buffer as the way of meeting our
5 forest conservation requirements, but it did allow us to
6 do it, to bring those approvals in on a piecemeal bases as
7 the development parcels and land came in for development.
8 We would stipulate to the percentage of the total that
9 would be put in easements at that point. At this time,
10 there's a certain percentage of that land that's in
11 easement now. There's more to come as the property
12 continues its development.
13 So this will be for the forest conservation
14 easement as well as for the buffer easement, so we'll have
15 that additional environmental constraint.
16 Additionally, this property is biforcated by two
17 Transcontinental gas line easements. Within those
18 easements there are high pressure gas lines carrying
19 natural gas and other product. There are fiber optic
20 lines that cross the country and provide
21 telecommunications.

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1 They are on the property by deed restrictions.
2 There are certain things you can and cannot do. You
3 cannot build structures on them. You can cross them with
4 roads if you cross at a ninety-degree angle, and don't
5 change the grade more than two feet. Housing may or may
6 not be developed adjacent to it.
7 There are safety standards that you're bound to
8 as far as the close proximity of developments and the
9 rating of the pipe, of the various pipe line.
10 I consider them to be environmental constraints,
11 and treat them just like that, because of the
12 restrictiveness. And they do break up the property into
13 three separate parcels. You can connect them by crossing
14 a pipe line, but there are several restrictions in doing
15 so. This is not a flat piece of land. It is a rolling
16 property that rolls into the stream valley. Sometimes it
17 does not allow you to connect these pieces together.
18 Also, you have to recall that you're gaining
19 access in a limited manner via the Owings Mills Boulevard
20 to some of those parcels. You're not going to be allowed
21 to put a bunch of driveways in here. You're going to be

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1 limited to one or two access points.
2 Similarly with Lyons Mill, you're going to have
3 to access really as far away from the intersection as you
4 can, so there will be restrictions on access. Those
5 restrictions are compatible with multi-family development.
6 They are not compatible with single family or townhouse
7 development.
8 All these things kind of play together. You have
9 to look at this property, really, as three sepeate pieces.
10 We threaded them together, how could we accomplish
11 reasonably rational development.
12 Q. You have been working continuously on this
13 property since 1983?
14 A. Since 1983.
15 Q. That would include the time when the property was
16 the subject of a comprehensive rezoning request?
17 A. Yes.
18 Q. And, to your knowledge, was anyone from Baltimore
19 County including the County Council aware of these
20 constraints that you have described today?
21 MR. ZIMMERMAN: Objection. The County Council is

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1 presumed to have awareness. This would be speculating.
2 THE CHAIRMAN I am going to sustain that. It is
3 speculative.
4 MR. HOFFMAN: May I ask the Board a question on
5 that issue? One of the standards is if there were facts
6 or circumstances the Council was not aware of.
7 In order to make such a finding, I would assume
8 the Board needs to hear whether or not the Council was or
9 was not aware of certain fact, trends, circumstances, that
10 occurred either at the time of the rezoning or subsequent.
11 THE CHAIRMAN: Well, I think you can make that,
12 but I think you can ask him questions which would indicate
13 how he would know that, was he present, did he hear what
14 took place?
15 Just having him say that he feels they were not
16 aware of it, I think it's objectionable. I think you have
17 got to support it.
18 MR. HOFFMAN: Okay.
19 Q. Mr. Madden, if we could turn now to the
20 requirements of Section 2-356, that section indicates that
21 any findings of error on the comprehensive map must be

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1 supported by certain factors, consideration of certain
2 factors that are listed.
3 So let me just ask you, broadly first, do you
4 believe the current zoning of D.R. 5.5 is an error?
5 MR. ZMMERMAN: Objection.
6 THE CHAIRMAN: What is your objection?
7 MR. ZIMMERMAN: I think it's a legal conclusion.
8 I don't think there's any foundation at this point to
9 suggest he can form that kind of conclusion based on any
10 of the evidence he's given so far.
11 THE CHAIRMAN: He's asking what his conclusion
12 is. I would hope he would follow that up with why he
13 thinks that way. I will allow it.
14 Q. Mr. Madden, do you believe the current zoning
15 classification is in error?
16 A. I believe that it is.
17 Q. I know you testified extensively, but if you
18 could state broadly why you believe that, first, and then
19 I will narrow it down.
20 A. Certainly. The D.R. 16 zone was put in place
21 under comprehensive zoning with the guidance of a Master

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1 Plan component for the town center.
2 The D.R. 5.5 zoning was put in during the
3 comprehensive cycle, but in a manner which identified
4 small acreage, high density property, for consideration
5 for downzoning. That, to me, is not a comprehensive
6 approach. It is a piecemeal approach. Even though it was
7 blessed by the comprehensive zoning maps, that review that
8 was performed by the staff, I don't believe gave them the
9 opportunity to -- since there was no petitioner to
10 offer -- it did not give then the opportunity to review
11 information specific to this property about its
12 constraints and its characteristics and --
13 MR. ZIMMERMAN: I will move to strike. Is the
14 witness finished?
15 THE WITNESS: No, I'm not.
16 MR. ZIMMERMAN: When he's finished.
17 A. Furthermore, the basis for the D.R. 16 zoning
18 remains standing, all of the reasons for it, for its
19 location and its designation remain.
20 There's never been any any refute of that. There
21 has never been any re-look at the Master Plan. In fact,

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1 if you look at the master plan, you will find D.R. 5.5
2 zoning is in conflict with that. D.R. 16 zoning is
3 compatible with that.
4 Therefore, based upon those reasons, it's my
5 opinion that the D.R. 5.5 zoning was placed in error
6 without knowledge of the characteristics and conditions of
7 the site and without forethought and independent review of
8 the Master Plan.
9 MR. ZIMMERMAN I would move to strike, briefly,
10 because I think the opinion in its entirety suggests that
11 the comprehensive zoning process is piecemeal. That's
12 contrary to all zoning law. And as far as the Master Plan
13 goes, the Master Plan is advisory.
14 THE CHAIRMAN: Well, again, I think that's
15 argument. I'll let it stand.
16 MR. HOFFMAN: Thank you.
17 Q. Mr. Madden, any such finding or conclusion you've
18 reached that the zoning is in error in the current zoning
19 and the new classification that we are requesting is
20 warranted can be made only upon consideration of the
21 following factors.

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1 The first one is population trends. My question
2 would be, in reaching a conclusion that the property's
3 current zoning classification is in error, did you
4 consider population trends?
5 A. Yes.
6 Q. How did you consider population?
7 A. I considered it in several ways, again using the
8 Master Plan as a guide. This area was designated as a
9 receptor of growth for the county.
10 We were supposed to funnel the population in this
11 area. Certainly, the infrastructure and all the other
12 county resources were put in place to support a higher
13 population here than you normally find a concentration of
14 population.
15 This property is a part of that. So the
16 investment that the county has made in all those services
17 are here to support that population. That includes many
18 utilities and county services.
19 Q. I should have asked the question both ways, but
20 now I'm going to have to ask you the same question again,
21 but in a slightly different way.

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1 Did you consider the population trend when you
2 reached your conclusion that you stated the D.R. 16 zoning
3 is warranted at the site?
4 A. Yes. And, similarly, I feel that the designation
5 of D.R. 16 zoning does not adversely affect this area in
6 regard to the population because, once again, all the
7 infrastructure and the services were put in place to
8 support a high density of development for this property.
9 Q. The next factor is adequacy of present and
10 proposed transportation facilities. You testified
11 extensively on that earlier, but did you consider that as
12 a factor in reaching your conclusion that the current
13 zoning is in error and that the requested zoning is
14 warranted?
15 A. Yes, I did consider that.
16 Q. How did you consider it?
17 A. Well, the first thing I did was, of course, I
18 reviewed the road network and I talked to Mr. Webber of
19 the traffic department, and he tells me that both the
20 intersection of Lakeside Drive and Owings Mills Boulevard
21 and the intersection of Lyons Mill Road and Owings Mills

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1 Boulevard are operating at a level of Service A.
2 And level of Service A was determined after the
3 present improvements were put in place, including the more
4 recent double left turn from Lakeside on Owings Mills
5 Boulevard and the widening of Owings Mills Boulevard
6 from -- well, two pieces -- that, in total, widened it
7 from Lyons Mill Road all the way up to Red Run Boulevard.
8 That piece of Owings Mills Boulevard is a minor arterial.
9 It functions well within those parameters.
10 And both Lakeside and Lyons Mill are collectors,
11 and they function in that capacity. So there is more than
12 adequate road network and highway capacity to this
13 development proposed as D.R. 16 to support it.
14 Q. Is the existing transportion facilities geared
15 towards handling the higher densitites?
16 A. They are designed for that specifically, yes.
17 Q. And what conclusions would you draw by downzoning
18 a piece of property that fronts on these major roads that
19 have been funded at taxpayers' expense?
20 MR. ZIMMERMAN: Objection. Turns into argument,
21 and he's editorializing the question.

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1 MR. HOFFMAN: I will strike that part. That's
2 fine.
3 Q. Strike the taxpayer part of my question.
4 THE CHAIRMAN: I will allow him to answer.
5 A. What's important to review here, in answering
6 that question, is the difference in character that there
7 is in a development, how it affects a road network.
8 Again,, a higher density development is typically
9 funnelled towards fewer number of more highly developed
10 access points onto a hierarchy of road system, so that as
11 opposed to a condition that you have in a lot of Baltimore
12 County areas where roads were developed during early times
13 more as rural roads, and then they became arterials
14 because of the movement of traffic, you will see the
15 problems associated where that. A lot of driveway
16 entrances, roads -- excuse me -- houses are very close to
17 the road and everything. That's what we have been trying
18 to avoid. And the designation of a higher density zoning
19 along a road of a higher hierarchy classification allows
20 you to achieve that. It's very important to enjoin your
21 collectors and your arterials with higher density

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1 residential development, for that fact.
2 Q. With regard to Owings Mills Boulevard, does the
3 right-of-way of Owings Mills Boulevard divide what was
4 owned by Painters Mill Joint Venture into two pieces at
5 that location?
6 A. Yes, it does. The other map shows it more
7 clearly.
8 Q. The aearial photograph?
9 A. The aerial photograph, I believe, Exhibit 3.
10 Q. I think you're right.
11 A. There was a lot of discussion about the alignment
12 of Owings mills Boulevard in the mid-eighties, whether the
13 road should cross -- well, you might remember there was a
14 lake at one time proposed for Owings Mills Boulevard. The
15 lake was right here.
16 It was proposed at Red Run Boulevard across the
17 dam of the lake, and Owings Mills Boulevard would come
18 straight down and connect up to the Liberty Road corridor.
19 But the exact alignment of this road through the
20 D.R. 15 piece has taken three or four different
21 alternative routes that were studied. One of them was

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1 more in the center of the D.R. 16 tract. There have been
2 others more to the eastern side.
3 This one was selected as a compromise between a
4 lot of environmental considerations and highway
5 engineering considerations.
6 Q. Did the property owner convey the necessary
7 rights-of-way to construct certain improvements?
8 A. He offered the alignment route several times.
9 They were changed. He would offer the land for the
10 right-of-way for an alignment, and then it would be
11 changed, and he would reconsider the next proposal, and
12 eventually he lived up to his promise and dedicated the
13 entire right-of-way.
14 Q. Did Painters Mill Venture pay for certain
15 improvements in constructing the road?
16 A. Yes. As a developer of these properties, and
17 sometimes they were Painters Mill Joint Venture and
18 sometimes they were contract buyers of the property who
19 developed them, but they provided the developer's
20 component of road improvements that Baltimore County
21 typically requires, the road frontage improvements, a lane

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1 of paving, storm drainage improvements, curb and gutter,
2 sidewalk, all that are typically required, that was done
3 as well.
4 Q. Did you consider water supply -- well, I think we
5 can do these together -- water supply, sewage and solid
6 waste disposal facilities as a factor in reaching your
7 conclusion?
8 A. Yes. Again, I see that the D.R. 16 zoning is
9 supported by the water and sewer system and the solid
10 waste program that the county put in place for the Owings
11 Mills growth area.
12 Specifically, the water system, this area is
13 designated W-1 and S-1, which means there's services
14 immediately available to this property. That was done via
15 the 1986 amendment to the metropolitan district that
16 accepted these areas for public water and public sewer.
17 And once that was adopted, the county then took measures
18 to design and put in place a public water and sewer system
19 under public contracts that now serve these properties.
20 They are more than adequate to serve this
21 development at D.R. 16. There is sufficient capacity in

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1 the water supply system for this area for the growth and
2 development of the town center area.
3 And, similarly, the sewerage system which is a
4 part of the Gwynns Falls sewer trunk line that flows to
5 the Patapsco wastwater reclammation plant has adequate
6 provisions for capacity in all the lines, all the
7 distribution lines, and the wastewater treatment plant
8 itself to serve this site, as well as all of the town
9 center area.
10 Q. Let me ask you this about the facilities.
11 Similar to roads, they were designed how in terms of
12 capacity?
13 A. The road system --
14 Q. No. I'm sorry. The water, sewer?
15 A. Water and sewer was designed to the full
16 potential capacity of the entire town center. Now, since
17 Newtown was, I think, originally slated for 6500 units and
18 did not achieve that, to me, that's kind of a built-in
19 reserve capacity, because that was through -- in the
20 figures used for the design of the sewer and water
21 systems.

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1 Q. Would full capacity include the subject site at
2 D.R. 16?
3 A. Absolutely. This was envisioned as such.
4 Q. Did you consider schools?
5 A. Yes.
6 Q. When you drew your conclusion, how did you
7 consider schools?
8 A. We considered -- I considered schools from the
9 standpoint of, again, the county's plan was to put in
10 place new school facilities that would serve this
11 property, and it was done with the clear vision this
12 property would be zoned D.R. 16.
13 As a side note, the proposed type of unit that's
14 found in D.R. 16 multi-family units generates fewer school
15 children at the elementary, middle school and high school
16 categories per unit than single family does.
17 And my analysis shows that there would be fewer
18 children generated from this property if it was zoned --
19 if it was developed as multi-family than if it were
20 developed single family or townhouse, based upon the
21 factors that the Baltimore County uses.

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1 Q. Did you consider recreational facilities in
2 drawing your conclusion?
3 A. Yes. Once again, Baltimore County has done an
4 excellent job of putting in place a comprehensive
5 recreation and open space plan for this area.
6 They are in the final construction phases of
7 developing Northwest Regional Park just west of this
8 property, down Lyons Mill Road, which is going to be an
9 excellent facility for active recreation, ballfields, also
10 play areas, all kinds of recreational experiences that
11 this property will be serviced by, as well as other open
12 space areas, and the entire Red Run greenway system will
13 provide linear recreational opportunities for these
14 residents.
15 So, in in my opinion, all those facilities have
16 been put in place to support this property as zoned D.R.
17 16, and that rezoning this property back to D.R. 16 will
18 not have any negative impact on those services and
19 facilities.
20 Q. Are there any other public facilities that you're
21 aware of that you considered?

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1 A. Sure. Fire and rescue is a very important public
2 facility. Again, the county has taken great pains to put
3 in place an adequate communication system, an adequate
4 service area, distribution system and equipment and
5 manpower to provide adequate fire and rescue services,
6 library facilities. Again, they are being upgraded to
7 provide those services to this area.
8 Q. Did you consider compatibility of uses generally
9 allowable under the prospective D.R. 16 classification
10 with the present and projected development or character of
11 the surrounding area?
12 A. Yes, I did. And, again, I looked --
13 Q. Would you explain? I'm sorry.
14 A. I looked at the adjacent properties and the
15 design qualities that are inherent in multi-family
16 development, and that's compatible with this area.
17 This site wants to be developed multi-family
18 because of that response to the design quality standards.
19 And because of all the development that's
20 occurring around it at that density, this property will be
21 compatible, and it will be the part of the town center,

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1 part of the community that it has always been planned as
2 being if it is zoned D.R. 16.
3 Q. D.R. 5.5, now, is that consistent or compatible
4 with the present and projected development or character of
5 the area, in your opinion?
6 A. In my opinion, I do not believe it is compatible.
7 I believe that D.R. 5.5 development belongs in the
8 Horsehead watershed, further away from the site.
9 I think that it would be out of character with
10 this area. I have seen what happens when you put lower
11 density development in a higher density area, and it does
12 not work well.
13 In my professional opinion, it would be
14 incompatible along this minor arterial roadside adjacent
15 to multi-family apartments and condominiums in the area.
16 Q. Did you consider the recommendations of the
17 office of planning and the planning board?
18 A. Yes.
19 Q. Are you aware of them?
20 A. Yes. I reviewed them the other day. I am aware
21 they support the rezoning request, and I considered that,

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1 again, a verification of the analysis that myself and my
2 office have performed.
3 Q. Mr. Madden, can you tell me if this is the report
4 of the planning board for this case?
5 A. Yes, dated July 19th.
6 Q. If you would, could you flip through each page?
7 A. The exhibit, the various exhibits, so forth, and
8 the introductory letter from Mr. Keller --
9 MR. ZIMMERMAN: The report speaks for itself. We
10 have no objection to it.
11 MR. HOFFMAN: I just didn't know if you were
12 going to object.
13 Q. Does the package include the recommendation for
14 this particular site?
15 A. Yes, it does.
16 Q. Could you read the office of planning and
17 planning board's recommendation, please?
18 A. Based upon the information provided and analysis
19 conducted, the office of planning recommends the
20 applicant's property be rezoned to D.R. 16 classification.
21 Staff's current recommendation is consistent with

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1 the planning board's zoning recommendation for this
2 property as part of the 2000 comprehensive zoning map
3 process. In addition, the proposed zoning would be
4 consistent with the existing zoning at the properties
5 located in close proximity to the subject site.
6 MR. HOFFMAN: I would offer this as being the
7 recommendation of the Baltimore County planning board as
8 well as the Baltimore County planning staff. I believe
9 I'm up to five?
10 MS. WORRALL: Right.
11 THE CHAIRMAN Accepted.
12 Q. Mr. Madden, did you consider the consistency of
13 the current and prospective classification with the Master
14 Plan?
15 A. Yes, I did.
16 Q. Tell me how you considered it?
17 A. I reviewed the Master Plan and the zoning, and I
18 found that the D.R. 16 classification is consistent with
19 the Master Plan for reasons that I described before, that
20 being that multi-family is permitted as of right, promotes
21 more community development.

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1 You don't necessarily have to develop D.R. 16
2 land as multi-family, but it directs you in that way,
3 understanding the market, certainly directs the real
4 estate development market that way, whereas D.R. 5.5 is a
5 lower density zone that requires a compatibility to go to
6 higher, so it requires a test, of proving the test.
7 That's a very negative thing.
8 So it's more likely that D.R. 5.5 zoning would be
9 developed pursuant to family development and, again,
10 that's the response that the real estate development
11 market has to those different zonings, so I find the D.R.
12 16 zoning is consistent with all the aspects of the Master
13 Plan as opposed to the D.R. 5.5 zoning not being
14 consistent with those factors.
15 MR. ZIMMERMAN: I will move to strike
16 particularly the part of the answer to compatibility
17 standards being a negative thing.
18 That's contrary to the law. The law imposes
19 compatibility review, and by definition that's a positive
20 thing. It's part of the law. And I think an opinion
21 based on the idea that compatibility review is negative is

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1 just an opinion.
2 THE CHAIRMAN: That's his opinion. We'll allow
3 it.
4 Q. Mr. Madden, I show you a copy of the Master Plan
5 2000 adopted by the County Council February 22, 2000?
6 A. Yes.
7 Q. Does it include a land use map at page 182?
8 A. Yes, it does.
9 Q. Can you find this particular site on that land
10 use map?
11 A. Yes, I can.
12 Q. What does it show?
13 A. It shows it's designated for multi-family by the
14 coloration of that location.
15 MR. ZIMMERMAN: I would move to strike that.
16 Maybe the Board needs to look at the Master Plan. I
17 believe that map shows partly multi-family and partly
18 single family. It has two colors.
19 Maybe the Board can take a look at it and see if
20 the Board agrees with me, or we'll do it on cross to save
21 time. I'll do it on cross.

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1 MR. HOFFMAN: I didn't have access to a color
2 photocopier and --
3 MR. ZIMMERMAN: It suggests a combination as
4 yellow and brown, and I will have to cross-examine.
5 MR. HOFFMAN: I wasn't arguing the point any
6 longer. I was saying I want to submit this map as an
7 exhibit, but I didn't realize until this morning that I
8 need to make a color photograph of this. Whether it's
9 brown, yellor, or green, I still want to do a black and
10 white photograph and have it meaninful.
11 MR. ZIMMERMAN: I think it may show up on black
12 and white, but it would be better in color.
13 MR. HOFFMAN: I'd like to submit it as an exhibit
14 and provide the Board and Mr. Zimmerman with a color
15 photograph of page 182 of the Baltimore County Master
16 Plan.
17 THE CHAIRMAN: Accepted.
18 Q. Mr. Madden, is it your testimony that the land
19 use map on page 182 shows multi-family? I would also ask,
20 if you could --
21 A. That's a reduced version of the county land use

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1 map.
2 Q. Right.
3 A. That's included in the document.
4 Q. Did you review any map at a larger scale?
5 A. There's a map at a larger scale that will show
6 that more clearly. I do not have that map here. Maybe we
7 can get it from the office of planning.
8 Q. I would ask you, if you would, on Petitioner's
9 Exhibit No. 5, if you could read the planning staff and
10 planning board's comment with regard to the Master Plan
11 and community plan?
12 A. It says here that the proposed land use map
13 adopted by the County Council on February 22, 2000,
14 indicates the site is designated for multi-family
15 residential use.
16 Q. Thank you. Are there any other components of the
17 Master Plan that you considered, or any of its text, in
18 drawing your conclusions?
19 A. Well, I did look at the county water and sewer
20 master plan which kind of relates to the water and sewage
21 supply issues, but I did find that if you look at the

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1 water and sewer master plan, it shows this is a high
2 density development area served very well by that public
3 infrastructure and put it in place for the purpose of
4 serving the higher density development at D.R. 16.
5 And then I also did look at the historical
6 perspective of the development of the Owings Mills growth
7 area.
8 Q. I don't want you to repeat that testimony, but
9 does the Baltimore County, the current Master Plan, refer
10 to the 1984 Owings Mills plan?
11 A. Yes. It builds upon it. It does not change any
12 trends in regard to it.
13 Q. Can we adopt your fifteen minutes of testimony
14 earlier? So I don't have to get you to go through that
15 again?
16 A. I hope so.
17 Q. On that issue?
18 A. Yes.
19 Q. You did mention the county plan for sewerage and
20 water supply facilities, so I won't cover that again.
21 Did you consider the capital program as a factor

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1 in reaching your conclusion?
2 A. Yes, I did. For the most part, the capital
3 facilities plan that affects this property is pretty much
4 in place. There is another capital project for Lyons Mill
5 Road improvements which is on the books to be done yet,
6 and there is a capital project for the extension of Owings
7 Mills Boulevard south.
8 There is some controversy associated with that
9 alignment, so I'm not sure what the status of that is, but
10 if I look at the capital facilities plan, other than a
11 few, you know, fill-in projects, most everything for the
12 growth area and serving this property has been put in
13 place.
14 Owings Mills Boulevard is developed to its
15 ultimate right-of-way, as is Lakeside. And water and
16 sewer facilities are in place for ultimate development,
17 size and alignment. It's pretty much in place.
18 MR. HOFFMAN: Thank you. I have no other
19 questions.
20 THE CHAIRMAN I think we'll break for lunch.
21 It's ten after. We'll go until 1 o'clock.

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1 (A luncheon recess was taken.)
2 * * * * *
3 AFTERNOON SESSION.
4 THE CHAIRMAN: Mr. Zimmeman.
5 MR. ZIMMERMAN: Yes.
6 CROSS EXAMINATION
7 BY MR. ZIMMERMAN:
8 Q. Mr. Madden, where do you live?
9 A. I live in Severna Park, Maryland.
10 Q. Anne Arundel County?
11 A. Anne Arundel County.
12 Q. You don't live in the neighborhood which is the
13 subject of this case?
14 A. No, I do not.
15 Q. Are your clients normally developers?
16 A. Yes. Typically, that's my clientele.
17 Q. When did you first become involved with this
18 petition for rezoning?
19 A. I actually looked at the staff issue back in
20 October, and commented to my client about that, October of
21 2000, on this issue.

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1 Q. Your clients being Mr. Macks?
2 A. Mr. Macks, yes, and Mr. Baylin, the managing
3 partners.
4 Q. Mr. Baylin?
5 A. Baylin.
6 Q. B-a-y --
7 A. B-a-y-l-i-n. Mr. Jack Baylin.
8 Q. As far as D.R. 16 zoning, that if it's granted,
9 that would allow a maximum of 290 residential units, is
10 that correct?
11 A. I don't have a calculator. Did you take the
12 eighteen acres and multiply --
13 Q. 18.17 times sixteen?
14 A. Actually, the allowable density would be more
15 than that because you are allowed to count density of half
16 of your frontage right-of-way that you can access, so the
17 density would be more.
18 Q. Give me a number.
19 A. I can't give you a number.
20 Q. Give me an approximate number.
21 A. I don't know what that number is.

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1 Q. Excuse me?
2 A. I don't know what the acreage is.
3 Q. You don't have a clue?
4 A. You want me to render a guess?
5 Q. Your educated observation. You have been working
6 this area for years, haven't you?
7 A. I can't do math in my head very well. 300 units,
8 something like that.
9 Q. Other than the documented site plan in this case,
10 given the developer's venture on the apartments next door
11 to the west, it's likely apartments would be developed on
12 this property if the zoning is granted?
13 A. Something like that. Codominiums or apartments,
14 something vertical. That's what's appropriate here.
15 Q. Given the environmental constraints that you have
16 assumed, or testified to, potentially, those 300
17 apartments would be concentrated on about nine acres, is
18 that correct?
19 A. Well, theoretically, those 300 units wouldn't be
20 able to be built on the property.
21 Q. I'm asking what's allowable.

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1 A. And I'm telling you what's practical.
2 Q. But you haven't done that calculation? You don't
3 know?
4 A. Which calculation?
5 Q. As to how many apartments you could squeeze on
6 nine acres that you have assumed?
7 A. How many?
8 Q. How many apartments you could --
9 A. Develop?
10 Q. Yes. Or develop on nine acres?
11 A. I have a better handle on that number because of
12 the amount of the development. And land is, you know, is
13 more predictable to me at this point, sitting in this
14 chair, than is the gross density, which has nothing to do
15 with how much you can build on the property.
16 Q. But don't have that exact number?
17 A. Which?
18 Q. An exact number of how many apartments can be
19 developed?
20 A. If has to go through all the development
21 processes to get to that point.

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1 Q. And you or your clients have made no effort to
2 develop this property under the D.R. 5.5 zoning, correct?
3 A. Under the D.R. 5 --
4 Q. Under the existing zoning?
5 A. No.
6 Q. Under the existing zoning, D.R. 5.5, taking just
7 the 18.17 acres, would you agree that comes to ninety-nine
8 units?
9 A. Allowable density, yes, that sounds correct.
10 Q. That would have to be increased in the same way
11 for --
12 A. Yes.
13 Q. -- the additional --
14 THE CHAIRMAN: Let's have one at a time.
15 Q. So over a hundred --
16 A. Yes.
17 Q. -- are allowed under the current zoning?
18 A. Yes.
19 Q. The zoning regulations state, as to D.R. 5.5
20 zoning, you would agree with me, that in D.R. 5.5, subject
21 to findings of compatibility by the Hearing Officer, group

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1 houses and multi-family buildings are allowed?
2 A. That is correct. That's what everyone is afraid
3 of.
4 Q. Is there anything in black and white that the
5 compatibility -- does that compatibility refer to any
6 other standards explicitly, or simply compatibility?
7 A. By review, it will be applied to every aspect of
8 the development you can imagine.
9 Q. But in black and white, it's just the word
10 "compatibility"?
11 A. That's what I'm saying. It will be applied to
12 everything. There's no limit.
13 Q. But your client has not attempted to develop a
14 compatible townhouse development in the existing zoning,
15 correct?
16 A. Not to my knowledge.
17 Q. Yet, you're assuming that hundreds of apartments
18 could be built at D.R. 16 zoning which could be compatible
19 with the surrounding area, is that correct?
20 MR. HOFFMAN: I'm going to object to the portion
21 of the question that says "hundreds of apartments."

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1 I don't think the witness was actually allowed to
2 answer one question a few questions ago about the number,
3 but that's the only objectionable part.
4 THE CHAIRMAN: Well, we are talking, I think
5 somebody has been talking about 290 to 300. I heard those
6 figures.
7 MR. ZIMMERMAN: The maximum allowable.
8 THE CHAIRMAN: And he doesn't know, hasn't
9 figured out how many.
10 THE WITNESS: If we are talking about what's
11 actual, you're probably talking about more like in the
12 neighborhood of a 120 multi-family unit. We are not
13 talking about 300.
14 You're talking about how much useable land you
15 have to park. You have to follow all the development
16 regulations. So that's really what you're talking about.
17 And to answer your question, yes, I think it
18 boils down to the type of unit. You're allowed to build a
19 multi-family unit as of right. You're not allowed to
20 build it as of right in D.R. 5.5. And that's the
21 difference that we are talking about.

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1 Q. But you also said D.R. 16 zoning is compatible in
2 the area, correct?
3 A. Yes.
4 Q. And that the proposed development under D.R. 16
5 zoning is compatible in the area?
6 A. Yes.
7 Q. Let's take your number of 120. You're assuming
8 120 multi-family units could be developed compatible in
9 the area, correct?
10 A. I think that's a reasonable expectation, yes.
11 Q. Well, if 120 can be developed compatibly, then
12 certainly 99 can be developed in D.R. 5.5 zoning
13 compatible in the area?
14 A. Not necessarily, because you don't have the
15 compatibility issues in D.R. 16 that you do in 5.5.
16 Q. So you're saying compatibility means one thing
17 for D.R. 16 zoning and another thing for D.R. 5.5 zoning?
18 A. It means nothing for D.R. 16 and everything in
19 D.R. 5.5.
20 Q. You testified D.R. 16 zoning and development
21 could be done compatibly in that area, didn't you?

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1 A. Yes.
2 Q. I would suggest to you that -- well, show me
3 anything in black and white in the legislation that
4 precludes development of 99 multi-family dwellings in this
5 area?
6 A. The mere fact that the compatibility must be met
7 is, in itself, it can be denied. The very fact that
8 compatibility applies to the D.R. 5.5 and not to the D.R.
9 16 is my point.
10 D.R. 5.5 carries with it the weight of the
11 compatibility requirement. D.R. 16 does not.
12 Under a compatibility finding, one of the
13 differences in having a compatibility requirement and not
14 is the flexibility and design you have when there is no
15 requirement of a compatibility finding to design it in
16 such a way you wish.
17 Under D.R. 5.5, you don't have that same
18 flexibility, because you must meet the compatibility
19 requirements.
20 Q. The compatibility standard is set by the County
21 Council, is it not?

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1 A. Yes. Compatibility may mean different things in
2 that term and --
3 Q. That's not what I asked you.
4 MR. ZIMMERMAN: I move to strike the answer.
5 Q. That's set by the County Council? That's in the
6 zoning regulations?
7 A. And I said, yes.
8 MR. HOFFMAN: Mr. Chairman, I'm going to object.
9 I should have when he asked the question before he
10 answered. The line of questioning, to me, presumes that
11 this witness is somehow the decision-maker on whether or
12 not a proposed development could be compatible.
13 I don't see how it's relevant to get into with
14 this witness whether he would find it compatible, if he
15 tried to built apartments under the current zoning.
16 It's not his decision. It will be the Hearing
17 Officer's decision, which would be appealable to this
18 Board of Appeals.
19 You all will decide ultimately what compatibility
20 means, not this witness, or perhaps there are proponents
21 or opponents of any project on this.

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1 So the line of questioning to this witness, does
2 he think it's compatible, and to try and weave that into
3 this case on mistake, I think is an inappropriate and
4 irrelevant line of questioning.
5 THE CHAIRMAN: Well, one of the requirements is
6 compatability of uses generally allowable under the
7 prospective classification with the present and projected
8 development and character of the surrounding area.
9 MR. HOFFMAN: Maybe I'm trying to parch it too
10 much. I'm not trying to say this witness can't say
11 whether or not the proposed uses would be compatible, in
12 his opinion.
13 Mr. Zimmerman's line of questioning goes to
14 whether there is or isn't some difference between D.R. 5.5
15 and D.R. 16. So he's trying to -- well, I don't want to
16 get into argument.
17 MR. ZIMMERMAN: With all due respect, I think we
18 have gotten into double-talk.
19 THE CHAIRMAN: Let's go ahead. I'm going to
20 overrule your objection.
21 Q. Let me just -- do you know of a single townhouse

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1 development in Owings Mills that was rejected in D.R. 5.5
2 zoning based on compatibility?
3 A. I don't know anything that had to meet the
4 compatibility test because of the date of the development.
5 Q. Again, answer my question.
6 A. No. I --
7 Q. Do you know of one that's been rejected based on
8 compatibility?
9 MR. HOFFMAN: I think the witness is entitled to
10 explain his answer.
11 MR. ZIMMERMAN: I'm entitled to a yes or no
12 answer to my question.
13 MR. HOFFMAN: And then he can explain his answer.
14 He skipped the yes or no and went right to the next
15 question.
16 MR. ZIMMERMAN: The question called for a yes or
17 no.
18 THE CHAIRMAN: Let's proceed.
19 Q. Through the Hearing Officer process in Baltimore
20 County, I would suggest to you -- and you tell me whether
21 you disagree -- that ninety-nine percent of developments

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1 are approved in one form or another, whether with
2 conditions or not, but it is almost as rare as a cold day
3 in a hot place to have a development absolutely prohibited
4 in Baltimore County if it is within the density standards?
5 MR. HOFFMAN: I'm going to object to the
6 question.
7 THE CHAIRMAN: I'm going to sustain the
8 objection. I think we are getting a little far afield
9 here.
10 Q. Are you suggesting, Mr. Madden, that if the
11 property remains in the D.R. 5.5 zone and the client wants
12 to develop townhouses, that you would tell them it's
13 absolutely illegal to try to come up with a development
14 plan for townhouses that's compatible?
15 A. I'm not suggesting that, no.
16 Q. Would you consider townhouses as multi-family
17 housing?
18 A. Well, it's identified separately in most of the
19 regulations as single family attached, so I don't consider
20 it multi-family.
21 Q. Is townhouses the same as group houses?

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1 A. A group house is defined in the zoning
2 regulations, yes.
3 Q. It is a type of group house?
4 A. Yes.
5 Q. So, certainly, you could develop a townhouse
6 community that's compatible in this area, couldn't you?
7 A. Oh, I think you could on this property. It would
8 be inappropriate, but I think --
9 Q. It would be -- what did you say?
10 A. Inappropriate.
11 Q. But you could do it?
12 A. (No response).
13 Q. Now, you mentioned that you worked for this
14 developer for a long time, correct?
15 A. Yes.
16 Q. Close to twenty years?
17 A. Yes.
18 Q. And the principal -- is Painters Mill Venture the
19 same name of the company that's developed or worked in
20 this entire Owings Mills area, or do they go under
21 different names with the same individuals controlling?

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1 A. Painters Mill Venture, LLP, is an entity that's
2 comprised of many members. The majority of those people
3 are or have an interest in the Aex Brown and Sons pension
4 plan. That's the majority of the people. It's an
5 investment property that was purchased.
6 There are other members that own small
7 percentages. Mr. Macks is one. Mr. Baylin is another.
8 There are a few others and, currently, Mr. Macks and Mr.
9 Baylin serve as managing partners of the entity.
10 Q. LLP stands for Limited Liability Partnership?
11 A. Yes.
12 Q. This partnership has been in existence for twenty
13 to thirty years?
14 A. The LLP part is fairly new, but Painters Mill
15 Venture in one form or another has been around.
16 Q. Is this -- call it the venture -- is this venture
17 one of the primary developers of land in Owings Mills over
18 the last twenty to thirty years?
19 A. No. PMV, to my knowledge, does not develop land,
20 per se.
21 Q. So they sell it to others?

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1 A. They have sold it, for example, they sold the
2 property to Rouse that the mall was developed on by Rouse
3 Company.
4 Q. Do you know whether or not the principle
5 managers, if I can call them that, Mr. Macks and Mr.
6 Baylin, have developed other property in Owings Mills?
7 A. Yes. Mr. Macks is an eminant developer who has
8 been active in the Owings Mills area.
9 Q. And you say he's one of the primary developers in
10 the Owings Mills community?
11 A. One of the top ones.
12 Q. His office is there as well, correct?
13 A. Yes.
14 Q. Separately, or indirectly, Painters Mill LLP, or
15 Mr. Macks, have already developed many properties in
16 Owings Mills?
17 A. Again, PMV, to my knowledge, has not developed
18 any.
19 Q. But indirectly, they have sold property to
20 others?
21 A. To me, there's a big difference. Simply because

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1 of the emphasis of my expertise, there's a big difference.
2 Q. Well, let me be clear. The LLP has sold many
3 properties already for development in Owings Mills?
4 A. Yes. Out of these holdings.
5 Q. And they have been developed?
6 A. Yes.
7 Q. And Mr. Macks has developed many properties?
8 A. A few of them.
9 Q. A few. So is this one of the last properties
10 left for Painters Mill Venture, LLP, or do they have many
11 more?
12 A. There are several more significant properties
13 that remain undeveloped.
14 Q. Clearly, if the D.R. 16 zoning is granted, you
15 would agree, from your experience, that much more money
16 will be made at D.R. 16 zoning than at D.R. 5.5 zoning?
17 A. I don't know about that. I'm not sure. You
18 know, I did say before that it could be developed as a
19 townhouse development, and that might be more financially
20 feasible simply because the development costs would be
21 less.

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1 So I can't speak to the financial side of a
2 tenant's interest. My interest and expertise is in the
3 physical side.
4 Q. Let me make sure I understand your answer.
5 You're saying that a townhouse development in D.R. 5.5
6 zoning may be just as profitable, or close to it, as
7 whatever may be developed as D.R. 16 zoning?
8 A. It could be. Yeah, it could be.
9 Q. But the petitioner is not a charitable
10 organization, is it? As far as you know.
11 A. Not to my knowledge, no.
12 Q. Now, you testified to some extent about how the
13 Owings Mills plan developed in the 1970s and eighties,
14 correct?
15 A. Yes.
16 Q. Plans change over time, don't they?
17 A. Sure do.
18 Q. In 1980, there was talk about a lake being
19 developed in Owings Mills?
20 A. Yes, there was.
21 Q. That's the origin of the name Lakeside Boulevard,

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1 is it not?
2 A. That is correct.
3 Q. But there is no lake, is there?
4 A. No lake.
5 Q. So in all situations, plans change from time to
6 time, don't they?
7 A. Yes, they do.
8 Q. And zoning in Baltimore County gest reviewed
9 every four years, does it not?
10 A. Yes.
11 Q. By the County Council?
12 A. Yes.
13 Q. Do you know whether or not there are any
14 sidewalks in this area of Lyons Mill Road?
15 THE CHAIRMAN: Are you talking about the property
16 in question?
17 Q. The property in question. Excuse me.
18 A. Yes, I believe there is sidewalk or planned to be
19 sidewalk, paved for sidewalk on Owings Mills Boulevard,
20 and there is constructed sidewalk further north on Owings
21 Mills Boulevard.

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1 Q. I hope I didn't misspeak, but my question was on
2 Lyons Mill road.
3 A. I'm sorry. Not on this section of Lyons Mill
4 Road, no. Further down there is, further west.
5 Q. Where is the furthest firehouse?
6 A. There's a firehouse up on Owings Mills Boulevard,
7 across 795, and I don't know of any other one. I'm sure
8 there is another one.
9 Q. Where on Owings Mills Boulevard, exactly?
10 A. About a thousand feet or so north of -- yes,
11 north of Reisterstown Road.
12 Q. North of Reisterstown Road? In other words, on
13 the other side of Reisterstown Road?
14 A. Yes.
15 Q. Not just on the other side of 795?
16 A. That is correct.
17 Q. Further to Reisterstown Road?
18 A. That's where I believe it is, without looking at
19 a map.
20 Q. How far away is that firehouse?
21 A. At that location, it would be maybe a mile, a

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1 mile and a half.
2 Q. How far is the closest library?
3 A. I don't know.
4 Q. Do you know whether the library system in the
5 area is overcrowded?
6 A. It's my knowledge, that with the changes in the
7 library system, that it's not overcrowded, per se.
8 Whatever that means in library terms.
9 Q. What specific information do you have about any
10 particular library that may serve this area?
11 A. I don't have any information with me today.
12 Q. So you don't know whether or not that any
13 library --
14 A. I don't have that information with me today.
15 Q. -- is overcrowded?
16 A. I don't have that information with me today.
17 Q. What's the closest elementary school?
18 A. It would be -- well, the Newtown Elementary
19 School that just opened would be the closest.
20 Q. Where's it?
21 A. It's west on Lakeside Drive. I believe it's

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1 across from the shopping center.
2 Q. Would it show on any of these maps?
3 A. That's a good question. It would be right about
4 here, because -- this is Newtown Boulevard. It's between
5 Lakeside and Lyons Mill, and it's across from the main
6 entrance to Newtown. The shopping center with the Giant
7 Food is right about here, I would imagine.
8 Q. So it's west of the area shown on --
9 A. Indicating west, off the map.
10 Q. Off the map. And it has access to Lakeside
11 Drive?
12 A. Yes, and to Lyons Mill. And they are building
13 the --
14 Q. That's a pretty large piece of property if it has
15 access to both?
16 A. They are, in fact, building the Newtown High
17 School there, which isn't open yet.
18 Q It's going to have both an elementary and high
19 school?
20 A. Yes.
21 Q. What is the status of the Newtown Elementary

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1 School as to overcrowding?
2 A. I understand from news reports that it opened in
3 an overcrowded condition.
4 Q. When did it open?
5 A. This school year.
6 Q. So we already have an overcrowded school system
7 in this area?
8 A. Apparently that school is overcrowded, yes.
9 Today.
10 Q. You suggested in your direct examination --
11 correct me if I'm wrong -- that apartments tend to have
12 less children than single family homes, is that correct?
13 A. Yes.
14 Q. Have you done a survey of any of the apartments
15 and single family homes in this particular neighborhood?
16 A. No. I was referring to the county generator
17 criteria that they use for school population.
18 Q. Would it surprise you if at least one citizen who
19 lives in the area would observe that the apartments in the
20 area tend to have as many or more children than single
21 family homes?

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1 A. Yes, that would surprise me, since the county
2 doesn't feel that's accurate. I tend to agree that the
3 historical trend and data seem to indicate that apartments
4 generate less school age children than single family homes
5 and/or townhomes.
6 Q. Have you spoken with any of the citizens who
7 reside in any of the residential developments such as
8 Lyons Gate or Lyons Wood or White Hurst about this case?
9 A. No, I have not.
10 Q. Would it surprise you if some of the citizens in
11 the neighborhood observed or perceive a significant amount
12 of traffic congestion already in that area?
13 A. Yes, it would surprise me, since the levels of
14 service are so good, according to the county, and the road
15 system is so well developed, that would surprise me.
16 Q. You're not a traffic engineer?
17 A. No, I'm not.
18 Q. And you haven't done a specific traffic study of
19 this area, have you?
20 A. No.
21 Q. Now, I think you said a few minutes ago -- and

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1 tell me whether it's a guess or something else -- that 120
2 would be the number of units that would probably be
3 developed if this property were rezoned to D.R. 16?
4 A. That was a guess based upon my knowledge of the
5 site.
6 Q. You haven't done a study? You wouldn't want to
7 bind yourself to this if this property were rezoned to
8 D.R. 16?
9 A. I have looked at this property. I have studied
10 it. I have looked at it with different types of units on
11 on it, proposed on it, so that comes from that experience.
12 Q. That's based partly on your description of the
13 environmental constraints, correct?
14 A. That is correct.
15 Q. Assuming that you're right about the 120 for a
16 moment, then D.R. 5.5 zoning would just about fit right in
17 with a maximum of ninety-nine? It would be quite close?
18 A. From a number standpoint, potential numbers, yes.
19 That's not the issue, but, yeah.
20 Q. As far as the environmental constraints go, you
21 mentioned, in connection with the Owings Mills Run and the

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1 developments, the forest buffer was delineated with the
2 idea there should be no further changes, is that correct?
3 A. A variance was obtained. In the statement on
4 that variance, the letter says no other variances will be
5 considered.
6 Q. Wouldn't you agree that from time to time
7 property owners come in and ask for changes in prior
8 decisions, and ask for additional variances or other
9 improvements?
10 A. They can ask for them. They're probably not
11 going to get them.
12 My experience with government is they will tell
13 you how many times we have to tell you you're not.
14 Q. Anyway, there's nothing to preclude this property
15 owner to come in and ask for a modification of the
16 previous decision?
17 A. He can ask.
18 Q. Well, assuming he doesn't ask, or doesn't get,
19 for a moment -- let's go with the situation you do
20 describe.
21 Would you say that there are more or less or the

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1 average amount of trees on this site as compared with
2 other sites in the neighborhood?
3 A. I would -- you have to define for me the property
4 left in the town center area.
5 Q. The subject property, the eighteen acres or so,
6 and given the number of trees on it that you've drawn, or
7 Mr. Rouk has drawn on Petitioner's Exhibit 2, is that
8 normal for the area? Is it low? Is it high?
9 A I have to understand your question a little
10 better, because what Mr. Rouk has drawn on the exhibit is
11 the forest buffer.
12 There are many more trees on the property than
13 that outside of the forest buffer. So that's my
14 confusion.
15 Q. Let's take the forest buffer which sounds close
16 to half the site, or give me your estimate?
17 A. One-third. It's probably in the neighborhood of
18 a third.
19 Q. How does that compare with forest buffers on
20 other properties in the neighborhood that you have had any
21 experience with? Do they tend to run one-third? Less?

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1 More?
2 A. The forest buffer?
3 Q. Right.
4 A. If the property is not on the main branch of the
5 Red Run, that would be a very high number that I would
6 anticipate. If it's on the main branch of the Red Run,
7 then it's probably what you'd expect. This not being on
8 the main branch, it's abnormally high.
9 Q. Well, assuming that to be correct, wouldn't the
10 higher amount of forest buffer suggest to you that the
11 density which is to be developed should be lower? Not
12 higher?
13 A. No. It indicates to me the type of housing units
14 has to be more sensitive to that, which multi-family is,
15 over townhouses and single family.
16 Q. You would agree, would you not, that there's
17 already a substantial amount of single family development
18 and townhouse development on both sides of Lyons Mill Road
19 in this area from Painters Mill Road west?
20 A. Mostly multi-family and townhouses, yes.
21 Q. Have you been in the Lyons Wood development?

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1 A. Yes, I have.
2 Q. That's single family?
3 A. Uh-huh.
4 Q. Is it not?
5 A. Yes. You're speaking of a development in the
6 south side.
7 Q. Just east of Owings Mills Boulevard where the
8 access is, actually?
9 A. It's in the Horsehead watershed area, and, yes.
10 Q. Runs back to the west?
11 A. They are predominantly very nice single family
12 homes.
13 Q. You have a development called White Hurst. Are
14 you familiar with that one?
15 A. I might know it by another name. Sometimes these
16 developments get different names. Do you know where --
17 Q. To the west of the cornfield on the south side?
18 West of Mr. Ballard's property. Are you familiar with any
19 single family homes?
20 A. Yes.
21 Q. It doesn't show on your petitioner's exhibit?

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1 A. I saw it the other day when I was touring there.
2 Q. You've got a mix of single family and townhouses
3 as was testified to by Mr. Rouk on the north side of Lyons
4 Mill Road?
5 A. Samuel Owings Drive, yes.
6 Q Then you have townhouses in Lyons Gate?
7 A. Yes.
8 Q. Almost immediately to the west? I won't say
9 immediately.
10 A. Not immediately.
11 Q. 400 feet to the west, or a couple hundred feet to
12 the west? You tell me.
13 A. It's right next -- it's two apartment
14 developments away from the proposed site.
15 Q. How many hundred feet away? 400 feet? 600 feet?
16 A. A thousand. 1100 feet.
17 Q. All of those were developed within the zoning
18 established by the Baltimore County Council, correct?
19 A. I believe so, yeah.
20 Q. Can you identify on Lyons Mill Road a single
21 property that obtained its zoning by the piecemeal

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1 reclassification process before this Board of Appeals?
2 A. On Lyons Mill Road?
3 Q. Right. In this area, is there any property that
4 got a zoning board, Board of Appeals, administrative
5 rezoning, or was all the zoning simply done by the County
6 Council and adhered to?
7 A. I don't know of any properties that were done by
8 reclass petition on Lyons Mill Road.
9 Q. So this would be the first?
10 MR. HOFFMAN: He just answered he didn't know.
11 MR. ZIMMERMAN: As far as he knows, this is the
12 first, if it were granted.
13 Q. In your direct testimony, did you state that next
14 to a minor arterial road such as Owings Mills Boulevard,
15 D.R. 5.5 zoning is inconsistent?
16 A. Yes, I believe I said that.
17 Q. Wouldn't you agree that in Baltimore County
18 there's a substantial amount of D.R. 5.5 zoning on major
19 arterials all around the county?
20 A. No, not major arterials, except for accessible
21 major arterials.

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1 Q. Belair has D.R. 5.5 zoning in place?
2 A. Mostly commercial.
3 Q. That's not my question. Isn't there a
4 substantial amount of D.R. 5.5 zoning on Belair Road?
5 A. No. I don't -- I know there's a lot of 10.5 and
6 a lot of commercial.
7 Q. What about if you go up and down Reisterstown
8 Road, or Liberty Road, you will find some D.R. 5.5?
9 A. There are some I know of, yes.
10 Q. And those are major arterials, not minor?
11 A. Yeah, there are some.
12 Q. Smith Avenue, is Smith Avenue a minor arterial
13 road?
14 ASmith Avenue, I don't know what the classification
15 is.
16 MR. HOFFMAN: Of which one? There's multiple
17 Smith Avenues.
18 Q. West of Mt. Washington.
19 A. I don't know what's the road classification. It
20 would surprise me if you told me it was an arterial. I
21 would think it would be a collector, but I don't know for

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1 a fact.
2 Q. At the present time, Owings Mills Boulevard
3 dead-ends at Lyons Mill Road, correct?
4 A. Correct.
5 Q. Is there any documentation to show construction
6 to be done in the next year or two, or imminantly?
7 A. There is -- I believe there are items on the
8 capital program that indicate funding. I can't tell you
9 whether it's funding just for design or if there's any
10 construction money there. I don't know, offhand.
11 Q. There are many items in the capital program that
12 don't actually get built for many years?
13 A. Yes, that's true. And there is some controversy
14 associated with that.
15 Q. With reference to the Master Plan -- so we can
16 clarify that -- did you have a chance at the lunch hour to
17 look at any additional maps?
18 A. Yes, I did.
19 Q. Do you have that available?
20 A. I believe I left it over at the table we have,
21 apparently.

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1 MR. ZIMMERMAN: Why don't we look at the official
2 map? We have a blow up -- actually, I think Mr. Hoffman
3 obtained one. I am going to show the witness page 182
4 which I will have a copy in a moment.
5 THE WITNESS: Why don't you ask me about it?
6 MR. ZIMMERMAN: I'm trying to point to the Board
7 what we are talking about.
8 We'll be glad to offer this in a few minutes.
9 Why don't we at least mark this for identification as --
10 is this petitioner's? Are you going to put this in?
11 MR. HOFFMAN: You're on cross, Mr. Zimmerman. Do
12 whatever you want to do, and I will object if I see
13 something objectionable.
14 MS. WORRALL: This is not the same thing as the
15 color map that you are to get us?
16 MR. HOFFMAN: No, it's not a color photograph of
17 page 182. It is not that.
18 MR. ZIMMERMAN: It's something different?
19 THE WITNESS: Yes.
20 MR. ZIMMERMAN: Let me withdraw my question.
21 Q. Look at page 182 of the Master Plan.

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1 A. Okay.
2 Q. Will you agree with me I am showing you that?
3 A. You didn't hide anything in here, did you? Page
4 182 of the Master Plan 2010.
5 Q. Would you agree with me that the northwest
6 intersection of Owings Mills Boulevard and Lyons Mill
7 Road, there are several colors? There's a yellow? A
8 brown?
9 A. Let me tell you what the problem is.
10 Q. First answer my question. Then you can explain.
11 A. There are several colors at the intersection.
12 Q. Is one yellow?
13 A. Yes. Several roads at the intersection. What
14 this map shows you -- and I have to tell you that I
15 learned of this when I finally saw the blow-up -- because
16 my eyes are not quite what they used to be as well, and
17 what you see are three different alignments for Owings
18 Mills Boulevard, none of which are the alignment that has
19 been built.
20 The alignment that has been built is delineated
21 by the brown and the orange on this map. If you plot out

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1 where that road is shown, or developed, you will see that.
2 So none of these three alignments are the actual
3 alignment.
4 Q. Well, you're assuming this map was confined to
5 one alignment or another, correct?
6 A. No. This map shows three alignments, clearly.
7 Q. Let me ask you this. What the map explicitly
8 does show, whether or not you think the alignment is
9 wrong, or different, or whatever on this map, there is a
10 yellow marking to the west of Owings Mills Boulevard as
11 shown on this map? Putting aside you think the alignment
12 is wrong.
13 A. Well, I kind of look at it differently. I look
14 at if we put the road in the right place, I would answer
15 your question no. There's brown on the west side of
16 Owings Mills Boulevard.
17 Q. I'm asking, with your eyesight, whether or not
18 you would agree with me, on this map, without looking at
19 anything else, including you've got a blow-up available to
20 you as well, that there is yellow as well as brown and
21 orange coloring in the area to the west of Owings Mills

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1 Boulevard or on the north side of Lyons Mill Road?
2 A. Of the three lines that are shown, yes.
3 Q. And yellow means single family attached (sic) in
4 the notation?
5 A. Yes.
6 MR. HOFFMAN No.
7 Q. "Detached," I mean.
8 A. It's light green, yellowish green.
9 Q. It's the same color we are talking about?
10 A. That color designated single family detached.
11 Q. And orange or copper is single family attached?
12 A. Correct.
13 Q. And then the darker brown is multi-family?
14 A. Correct.
15 MR. HOFFMAN: I guess now I don't know how to
16 object, but Mr. Zimmerman has asked a lot of questions.
17 The witness has referred to this in answering the
18 questions--
19 MR. ZIMMERMAN: I withdrew my question to the
20 blow-up and just asked about the actual Master Plan.
21 MR. HOFFMAN: Unless there are three alignments

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1 shown on that -- are there three alignments shown on that
2 as well? I can't see them.
3 MR. ZIMMERMAN: I don't want to slow this down.
4 The answer is yes, it's the same one as the blow-up of the
5 other.
6 MR. HOFFMAN: It would be easier to read --
7 THE CHAIRMAN: Let's have the other one in.
8 MR. ZIMMERMAN: I think the Board can take
9 judicial notice of the Master plan, in any event.
10 THE CHAIRMAN: Right. This will be Petitioner's
11 No. 6.
12 Q. Separately, Mr. Madden, I want to ask you whether
13 you agree that the following statement should apply to the
14 Owings Mills growth area.
15 Promotes a mix of housing that emphasizes single
16 family detached homes, unquote. Do you think that fits
17 with the Owings Mills growth area?
18 A. No.
19 Q. Let me ask you if you think this is an accurate
20 statement about the Owings Mills area.
21 Quote. A mix of housing types has not been as

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1 balanced between single family and multi-family units as
2 originally envisioned. A combination of housing market
3 forces has resulted in a predominance of townhouses,
4 condominiums and apartments. Unquote. Do you agree or
5 disagree?
6 MR. HOFFMAN: If he's going to quote the Master
7 Plan, shouldn't he identify the page?
8 MR. ZIMMERMAN: I'm asking the question. I think
9 it's inappropriate for counsel to suggest what I may or
10 may not be reading from.
11 I'm asking the witness whether he agrees or
12 doesn't agree with a certain statement.
13 MR. HOFFMAN: I don't think it's inappropriate
14 when he starts the question out with a quote. The
15 witness is entitled to know where the quote is coming
16 from.
17 I think I am entitled to know where the quote is
18 coming from. If you don't want to use the quote, then
19 don't use the quote.
20 MR. ZIMMERMAN: I'm not obligated to state where
21 the statement comes from. Cross examination is testing,

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1 and I'm allowed to ask the witness whether he agrees or
2 disagrees with a certain point.
3 THE WITNESS: I would ask for one clarification
4 in asking a question like that. If it's, in fact, coming
5 from the Master Plan, I think, from a textural standpoint,
6 that it's important, because you can be speaking about the
7 core town center or you can be talking about a larger area
8 as defined. And the appropriateness of a statement to the
9 scale of the area you're talking about, or the area that's
10 encompassed by it would be important. He can ask the
11 question. I'm not --
12 THE CHAIRMAN: Well, that's the answer to the
13 question, you would like to have it in context.
14 THE WITNESS: Yes, please.
15 Q. In other words, the statement which I just read
16 to you, you say you would agree or disagree with it,
17 depending on the context?
18 A. What are you talking about? What area are you
19 talking about?
20 Q. Let's assume I'm talking about the entire Owings
21 Mills growth area. Do you agree or disagree?

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1 A. Could you read the statement again?
2 Q. The mix of housing types has not been as balanced
3 between single family and multi-family units as originally
4 envisioned. A combination of housing market forces has
5 resulted in a predominance of townhouses, condominiums,
6 and apartments.
7 A. I would agree with that statement.
8 Q. Do you think what I'm going to read you now or
9 say now is a good idea or bad idea, to, quote, evaluate
10 the development potential and density of vacant parcels
11 zoned D.R. 10.5, D.R. 16, R.A.E. and O.T to determine
12 appropriate land use and modify zoning as needed, unquote.
13 A. Your question is do I agree? I think that is
14 ill-advised. I disagree with that approach.
15 Q. Would it surprise you if each of those statements
16 I read were contained in the Master Plan 2010?
17 A. No, it wouldn't surprise me.
18 Q. I show you page 177, and under under the issue,
19 achieving a balanced mix of housing, would you now agree
20 that each of those statements I read to you were verbatim
21 from the 2010 Master Plan?

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1 THE CHAIRMAN: Well, you stated that's where they
2 are from. It speaks for itself. I don't think you have
3 to ask him on that. Let's move on.
4 MR. ZIMMERMAN: I would move on, and at this
5 point I would submit the Master Plan. And to put things
6 in context, I have pages 174 through page 182, which is
7 the section on the Owings Mills growth area, and it's
8 finished with a black and white copy of that map that we
9 have been talking about on page 182.
10 THE CHAIRMAN: Any objection, Mr. Hoffman?
11 MR. HOFFMAN: To pages out of the Master Plan?
12 No, not at all.
13 MR. ZIMMERMAN: That would be People's Counsel
14 No. 2?
15 MS. WORRALL: Yes.
16 Q. In your direct examination, you spoke about
17 growth areas -- and correct me if I am wrong -- prevention
18 of sprawl?
19 A. I believe I mentioned that earlier this morning.
20 Q. Would it surprise you if some citizens in the
21 area perceive that Owings Mills itself already suffers now

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1 from sprawl?
2 A. No, it wouldn't surprise me. To the untrained
3 eye and looking at the scale of the area, some people
4 might tend to say that.
5 MR. ZIMMERMAN: Thank you, Mr. Madden.
6 THE WITNESS: Thank you, Mr. Chairman.
7 THE CHAIRMAN: Anything further, Mr. Hoffman?
8 MR. HOFFMAN: Just one moment, please.
9 REDIRECT EXAMINATION
10 BY MR. HOFFMAN:
11 Q. Mr. Madden, could you explain your answer as to
12 why multi-family development may be more sensitive to the
13 environmental conditions of the site?
14 I believe your answer was it would be, but you
15 didn't have an opportunity to explain.
16 A. Sure. And a good example would be the
17 development right next door to to it, Owings Run
18 Apartments.
19 If you notice, the apartment buildings are
20 presented to the stream. Number one, people in the
21 apartments have a view into the forest buffer and the

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1 stream. These are multi-family units, so there are no
2 back yards.
3 If they were single family homes, back yards
4 would project into there, and there would be sheds and
5 swimming pools, and everything else.
6 Multi-family does not have any of that attendent
7 to it. In fact, multi-family units present almost like a
8 no-man's zone behind the building. So, in fact, these
9 homes have created a buffer area between the development
10 and the sensitive environmental area.
11 All the activity, the swimming pools, the
12 community building, the parking areas, trash loading, all
13 that occurs up here on the plat with the buildings
14 presented in that way. There's no impact on it.
15 So you can site multi-family housing in that way
16 with split level buildings and keep all your parking areas
17 and so forth above there. You can manage your stormwater
18 in a tiered system that eventually outfalls to it, but not
19 physically impact the buffer.
20 So in using that technique, and there are others,
21 a multi-family development can be much more

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1 environmentally sensitive than a single family
2 development.
3 Q. Now, Mr. Madden, with regard to Petitioner's No.
4 6 -- did it get marked? Petitioner's 6, can you just
5 please indicate where the difference between the brown and
6 the yellow is vis-a-vis Owings Mills Boulevard? Just
7 explain that one more time, in your opinion.
8 A. Sure. If you look at the way this land
9 configurations are, and if you know the alignment of
10 Owings Mills Boulevard like I do, which is a very
11 definitive curve in it, you will see it follows that line
12 of orange. The innerface between the orange and the brown
13 is the location of Owings Mills Boulevard. Extending that
14 to Lyons Mill Road, and this is brown, indicating
15 multi-family land use on the entire west side of Owings
16 Mills Boulevard.
17 Q. And the land use map at page 182, which that is
18 the blow-up of the land use map, on page 182 of the Master
19 Plan, it indicates a great deal of different types of
20 housing as well as commercial and industrial uses,
21 correct?

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1 A. Yes. Several categories, yes.
2 Q. And do you believe that the land use map is
3 consistent with the actions stated on page 177, I believe
4 is what Mr. Zimmerman was reading from?
5 MR. ZIMMERMAN: Objection. The plan speaks for
6 itself, and it's a legal conclusion as to what the
7 relationship is.
8 THE CHAIRMAN: What was the question?
9 MR. HOFFMAN: I haven't really asked a question
10 yet. I was most of the way there.
11 MR. ZIMMERMAN: I think you did.
12 A. I think I understand what you are asking.
13 Q. Let me do it again. I wasn't sure I asked the
14 question.
15 Do you have an opinion as to whether the action
16 stated in the paragraph under, Issue, Achieving a balanced
17 mix of housing, on page 177, is consistent with the land
18 use map?
19 A. Yes. In other words, the land use map clearly
20 shows areas an identified.
21 MR. ZIMMERMAN: I did want to get in an

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1 objection. I think the map speaks for itself. It's in
2 the plans. The map speaks for itself and the Board can
3 determine what's consistent or not consistent.
4 MR. HOFFMAN: Mr. Zimmerman decided to read him
5 the quote.
6 THE CHAIRMAN: He has an opinion. I will let him
7 answer.
8 A. Thank you. I believe that the map on page 182
9 does reflect action contained in page 177 and, clearly, it
10 shows areas designated for all types of those land uses,
11 presenting a good mix, yes.
12 Q. And did you or did you not evaluate back at page
13 177, did you or did you not evaluate the development
14 potential and density of this particular parcel zoned D.R.
15 16 to determine the appropriate land use for this site?
16 A. Yes, I did. And my determination was D.R. 16
17 multi-family land use was the most appropriate for this,
18 and that's designated on the Master Plan.
19 MR. HOFFMAN: Thank you. I don't have any other
20 questions.
21 MR. ZIMMERMAN: I just have one or two as far as

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1 sensitivity to the environment.
2 RECROSS EXAMINATION
3 BY MR. ZIMMERMAN:
4 Q I mean, just about all land in Baltimore County,
5 specifically development, has some environmental features,
6 environment constraints? You always have to adjust for
7 environmental constraints when developing property?
8 A. You should. That's an exercise that you should
9 go there. Whether or not it exists, you should be
10 cognizant.
11 Q. Your comment about being able to design
12 multi-family buildings, so you're assuming apartments or
13 condominiums, basically?
14 A. Multi-family building. I leave it as a more
15 general category.
16 Q. As far as your comment about being able to design
17 them in a more environmentally sensitive way than single
18 family homes, I guess from that point of view, every piece
19 of land in Baltimore County ought to have multi-family
20 within the urban area?
21 A. No. Only the ones that have the more severe

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1 environmental constraints, there would be an advantage
2 upon.
3 Q. So any property that has substantial
4 environmental constraints, you make the density higher, is
5 that your philosophy?
6 A. No, not density. The type of housing.
7 Q. By the way, as far as townhouses, are you saying
8 it's impractical to develop townhouses? That's
9 insensitive to the environment?
10 A. I'm not saying impractical. Again, you have an
11 advantage in working with multi-family housing types that
12 you do not have on a townhouse, and most of that relates
13 to the rear yard usage and to the ability to use grading
14 across the building, front to the back.
15 Q. You have developed many single family and
16 townhouse development, have you not, from the point of
17 view of landscape architecture and being an engineer?
18 A. Yes.
19 Q. I assume that you would tell us in the majority,
20 if not all of those situations, you helped to work on a
21 development that's environmentally sensitive?

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1 A. I have always tried to do that.
2 MR. ZIMMERMAN: Thank you. No further questions.
3 MR. HOFFMAN: No further questions.
4 THE CHAIRMAN: Thank you, Mr. Madden.
5 MR. HOFFMAN Mr. Chairman, may I have one minute
6 before Mr. Long?
7 THE CHAIRMAN: Let's take five.
8 (A recess was taken.)
9 THE CHAIRMAN: Mr. Hoffman.
10 MR. HOFFMAN: Jeff Long.
11 J E F F R E Y L O N G,
12 having been called as a witness, was duly sworn and
13 testified as follows.
14 MR. ZIMMERMAN: I want to put on the record and
15 register Mr. Thompson's attendance. I mentioned in my
16 opening statement that we hoped Mr. Randy Thompson might
17 be able to make it and, in fact, he's here. And his
18 address, which I had a moment ago --
19 MR. THOMPSON: 9504 Lyons Wood Road.
20 MR. ZIMMERMAN: He can testify later.
21 MR. THOMPSON: I'm going to get in trouble for

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1 dinner. I'm going to be late.
2 DIRECT EXAMINATION
3 BY MR. HOFFMAN:
4 Q. Hi, Mr. Long. State your name and address and
5 your occupation,for the record.
6 A. Jeffrey Long, 401 Bosley Avenue, Towson,
7 Maryland. I'm section chief of the development review
8 section for the county planning office.
9 Q. Your responsibilities for the county planning
10 office include coordinating and processing recommendations
11 of your department to the planning board and to the Board
12 of Appeals with respect to cycle rezoning requests. Did
13 you do that in this case?
14 A. I did.
15 Q. Did you attend the planning board meeting and
16 present the planning staff report that was submitted as
17 Petitioner's number --
18 A. I don't know about the number, but, yes, I did.
19 Q. That was No. 5. Pardon me.
20 A. I presented the report to the planning board, and
21 the planning board accepted staff's recommendation to

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1 change the property zoned from D.R. 5.5 to D.R. 16.
2 Q. In reaching your conclusions contained in your
3 report, you worked with your staff, your staff members who
4 were involved in the comprehensive rezoning process?
5 A. Correct. Principally Bill Hughey, who's the
6 third district planner for Baltimore County.
7 Q. And prior to making your recommendation, did you
8 receive a letter from the Baltimore County councilman for
9 the Third District --
10 MR. ZIMMERMAN: I object. I will wait until the
11 end of the question.
12 Q. -- dated date May 1, 2000?
13 A. Yes.
14 MR. ZIMMERMAN: I have an objection.
15 MR. HOFFMAN: I'm waiting.
16 MR. ZIMMERMAN: The reason is that the case law
17 says one cannot inquire into the subjective thought
18 process of the county councilmen, and based on that, the
19 county councilmen have traditionally not been allowed to
20 testify or been subpoenaed in this process here before the
21 Board of Appeals.

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1 And a written communication is equivalent to
2 basically testimony by the County Council. And I simply
3 think we have never had that, and it would not be a good
4 precedent.
5 And, if allowed, I think that the next step is
6 that County Council people be subpoenaed to testify about
7 what they thought, what they knew, what they didn't know,
8 so I have to object.
9 MR. HOFFMAN: My response would be again back to
10 at least part of the burden of proof, which is to at least
11 part of our case, is that there are certain factors or
12 circumstances that the councilman from this district was
13 not aware of, and I have witnesses here today who can
14 testify as to their conversation and what the councilman
15 said to them.
16 But we've got the councilman himself who drafts a
17 letter, not to me, although I was copied on the lettter,
18 he addressed it to the director of the office of planning
19 indicating what his position on this request is, and what
20 he did and didn't know during the map process.
21 I don't know why that's not acceptable evidence

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1 in the case when the courts have told me I need to prove
2 one of two things, either facts, trends, or circumstances
3 that were in existence at the time that he ignored and,
4 therefore, was a mistake, or facts and circumstances,
5 trends, that were not in existence at the time, but would
6 lead you today to believe there was a mistake.
7 So I think this is the best evidence I could
8 produce on that issue.
9 THE CHAIRMAN: What we are supposed to determine
10 is whether or not the County Council made a mistake or
11 didn't make a mistake.
12 Does that gives us the burden of determining
13 whether or not they had all the facts at the time and
14 whether or not, with what they had, they made a proper
15 determination. I know there are cases that say the County
16 Council, they shouldn't be subpoenaed or --
17 MR. ZIMMERMAN: Let me shortcut this. I will
18 withdraw my objection, preserving the opportunity to argue
19 the weight or significance.
20 This is not a subpoena and it is not an
21 involuntary act, apparently, on the part of the

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1 councilman, since it is a letter that he wrote.
2 I think I probably would be better advised to
3 withdraw the objection, but I still have a concern which I
4 will express in closing argument about the weight of it
5 and whether or not a subsequent thought such as this, what
6 weight it has, or significance. I think that's probably
7 the better -- I was not expecting this to be introduced.
8 THE CHAIRMAN: Well, anything that can help us in
9 this determination which we must make is going to be
10 useful. You know, I think the three of us would like to
11 see it. All right. Let's go ahead.
12 MR. HOFFMAN: Thank you.
13 Q. Mr. Long, is that a copy? You have the original?
14 A. This is the original, so it doesn't matter to me,
15 I can keep a copy and give you the original for the Board.
16 Doesn't matter.
17 But it is the letter from Brian T. McIntire, the
18 councilman for the Third Councilmanic District, directed
19 to the office of planning, Pat Keller, and a letter that
20 was certainly shared with us early in the process as we
21 were developing our staff position on this.

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1 Clearly, this indicates that the councilman did
2 not know at the time that he made his decision in this
3 matter -- in his words -- there were severe environmental
4 restraints -- I'm sure he means constraints -- which
5 divides the property into two developable portions.
6 I spoke with Bill Hughey, we had the discussion
7 with Bill Hughey, who was the Third District planner, and
8 he indicated to me he did not know of any environmental
9 constraints at the time that the staff recommendation was
10 developed, and he had no conversations with the councilman
11 that would indicate that the councilman was aware if there
12 were any environmental constraints on the property.
13 MR. HOFFMAN: I would offer that as petitioner's
14 next exhibit, the original letter, and I thank you for --
15 that one has the stamp that came into the planning office,
16 Petitioner's No. 7.
17 THE CHAIRMAN: Accepted.
18 Q. Mr. Long, based upon all the facts that you have
19 gathered, which are contained in your report which is
20 Petitioner's No. 5, and now Petitioner's 7 with the letter
21 from the councilman, do you have an opinion to whether or

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1 not the current classification is in error?
2 A. Yes. With the letter, it's probably never been
3 or as stands as clear in my mind the fact there was an
4 error. The councilman did make his decision based on
5 information that was not available to him at the time.
6 And if he had known those facts, then the
7 decision would have been different.
8 And based on what I have heard here today, given
9 the environmental constraints, the proximity of the
10 property to Owings Mills Boulevard and the adjacent
11 development to the west, it is my opinion that D.R. 16
12 zoning as proposed is appropriate for this property.
13 MR. HOFFMAN: Thank you. No further questions.
14 THE CHAIRMAN: Mr. Zimmerman.
15 MR. ZIMMERMAN: Yes.
16 CROSS EXAMINATION
17 BY MR. ZIMMERMAN:
18 Q. You didn't speak personally with the councilman
19 in reference to his letter, did you?
20 A. I did not.
21 Q. Do you know who may have brought to his attention

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1 the matter of severe, quote, unquote, severe environmental
2 constraints?
3 A. I can only --
4 Q. Who would that be?
5 A. I can only assume that matter was brought to his
6 attention after the decision was made, and probably
7 brought to his attention by the impacted folks, the
8 property owners.
9 Q. Do you know whether or not there would have been
10 any conferences, meetings, or hearings to allow citizens
11 to give their point of view about the impact of the
12 environmental constraints, or anything like that?
13 A. Yes, there was a hearing.
14 Q. In front of the County Council?
15 A. In front of the Baltimore County planning board,
16 and no one attended that hearing to express any concern at
17 all regarding the proposed zoning change.
18 There was a public hearing before the planning
19 board on this matter.
20 Q. That wasn't what I meant by my question, but
21 maybe it was imperfectly worded.

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1 Let me ask you, the letter of May 1, 2001, a copy
2 was sent to Mr. Keller, a copy to Mr. Robert Hoffman,
3 Esquire, correct?
4 A. Yes.
5 Q. Assuming that shows the carbon copy going to Mr.
6 Hoffman?
7 A. Yes.
8 Q. Was this letter made available to any of the
9 residential communities or sent out to any of the
10 residential communities in the area, or the public?
11 A. It was made part of the file, and the file is a
12 matter of public record, and it's available to anyone who
13 would be willing to come into the office to look at it.
14 Did someone come in and view the file? I don't
15 know. We don't require people to sign in. Anyone can
16 come into the office anytime during business hours and
17 review a file.
18 Q. Was there any County Council hearing subsequent
19 to October of 2000?
20 A. There's no required Council hearing that's part
21 of this process.

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1 Q. Do you know whether or not Councilman McIntire
2 assumed that this, quote, unquote, environmental
3 constraints, made this property undevelopable in D.R. 5.
4 zoning?
5 A. I don't know. The letter says what it says.
6 Q. Do you know whether his last sentence, quote, I
7 therefore feel it only fair to the property owner that
8 this matter be reconsidered in the out-of-cycle process
9 and that the previous designation of D.R. 16 be retained,
10 unquote, was meant to indicate that the Board of Appeals
11 should consider the merits of a rezoning request or should
12 definitely grant the rezoning request, or is it ambiguous?
13 A. I don't think it's ambiguous at all. If you take
14 the last part of that sentence starting with "and that the
15 previous designation of D.R. 16 be retained," it's as if
16 he's dismissing the action the Council took in the
17 adoption of the 2000 maps, using the word "retained."
18 I mean, it's as if he's ignored 5.5 on the map
19 now and he's saying, Retain the D.R. 16.
20 So, in my mind, he's entirely dismissing the 55
21 that's on the map, and he's saying the property should be

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1 returned to its original designation. So I think it's
2 fairly strong.
3 Q. Did you or Mr. Keller ask him this question?
4 A. No. You asked me my interpretation.
5 Q. From what you heard today, you would agree that
6 the environmental restraints do not prevent the
7 development of the property in the D.R. 5.5 zoning
8 classification?
9 A. Correct.
10 Q. Would you agree that if it were developed for
11 multi-family housing, subject to compatibility standards,
12 your office would work with the developer to have the
13 results of a compatible multi-family development.
14 MR. HOFFMAN: Objection. I think that's, again,
15 on that particular issue, I feel like we are going to --
16 THE CHAIRMAN: I think we are going far astray.
17 Q. In your planning office or planning board report,
18 did your office effectively write the report for approval
19 by the planning board?
20 A. We did. There was one change in the report, but
21 it had no impact on the report for this particular item,

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1 so it's identical to what planning staff had reported to
2 the planning board, and I wrote it for the planning staff
3 and the planning board.
4 Q. You mentioned that this property was an issue in
5 the comprehensive zoning map process, was it not?
6 A. Correct.
7 Q. Your office published a description of the
8 scheduling of the period, the timing period of the
9 process?
10 A. That is correct.
11 Q. I'd like to show you a publication in the 2000
12 comprehensive zoning map process and ask you if that's the
13 standard publication which your office generated with
14 respect to the 2000 comprehensive map process?
15 A. It is.
16 MR. ZIMMERMAN: We would submit this as People's
17 Counsel 3.
18 MS. WORRALL: Yes.
19 MR. ZIMMERMAN: I've provided a copy to Mr.
20 Hoffman. And People's Counsel Exhibit 4, I would show a
21 flow chart describing the different elements of that

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1 process and the timing.
2 Q. Do you recognize this?
3 A. I recognize it, yes.
4 MR. ZIMMERMAN: That would be submitted as
5 People Counsel No. 5.
6 THE CHAIRMAN: No. 5 accepted.
7 Q. Your office maintains a file on each issue in the
8 comprehensive process, correct?
9 A. Correct.
10 Q. This issue was 3-136, was it not?
11 A. Yes.
12 Q. And that was actually initated by the planning
13 staff?
14 A. By the planning staff, yes.
15 Q. And I'd like to show you copies of papers related
16 to that process and see if you can recognize or
17 cooroborate these could be copies of documents found in
18 the file?
19 A. Yes.
20 MR. ZIMMERMAN: I provided copies to Mr. Hoffman
21 and proffer these were obtained from Mr. William Hughey of

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1 your office.
2 This would be People's Counsel Exhibit 5?
3 MS. WORRAL: No. 5.
4 Q. And would it be normal for the file to contain
5 any letters from interested persons, whether it be on the
6 developer's side, the property owner's side, or the
7 citizens' side?
8 A. All letters in support or opposition are always
9 placed in the issue file.
10 Q. So if People's Counsel Exhibit 5 contained an
11 E-mail from Ernestine Durham, HOA Board of Directors of
12 Lyons Wood Community, that would be a normal thing to have
13 in the file?
14 A. If it's sent, it would be a normal thing to have
15 in the file.
16 Q. That's dated September 19, 2000. And also in the
17 file there's a document with Morris * Ritchie Associates
18 logo. I will show this to you.
19 A. It affixes the property.
20 Q. We stapled together everything we found in the
21 file. They weren't necessarily all stapled. I will show

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1 this to the Board as I ask you about this.
2 This document is referenced as Exhibit 1 and it's
3 the next to last page of our People's Counsel exhibit. I
4 will show it to the Board as I ask you a question. It
5 does show the forest buffer right on the exhibit, does it
6 not?
7 A. Yes, it does.
8 Q. And that would be the major environmental
9 constraints on the property, would it not?
10 A. That was, I believe, addressed earlier by another
11 witness.
12 Q. All right. Separately, each year at the end of
13 the process, a comprehensive zoning map log is prepared,
14 is it not?
15 A. Correct.
16 Q. A final log of issues.
17 MR. ZIMMERMAN: I will give a copy to Mr.
18 Hoffman as well. This will be our People's Counsel's
19 Exhibit 6.
20 Q. I suggest to you this is actually the log of the
21 entire Third Councilmanic District. See if you can take a

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1 look at it, along with the overall district map.
2 A. Yes.
3 Q. Twenty-two pages plus the map of the district?
4 A. Yes.
5 THE CHAIRMAN: Excuse me, Mr. Zimmerman. This
6 map that you put in part of No. 5 --
7 MS. WORRALL: You already gave us that.
8 MR. ZIMMERMAN: No. 5 was the copies of the
9 documents that were in the County Council's file
10 maintained by the planning office for Issue 3-136.
11 People's Counsel Exhibit 6 is the Final Log Of
12 issues, adopted October 10, 2000. I think Mr. Long has
13 just corroborated that is what it is.
14 Q. And that log shows, does it not, the existing
15 zoning, the planning board recommendation, planning
16 staff -- well planning staff recommendation does not show
17 on the final log? That was shown on an earlier log?
18 A. Because, after that point that the planning board
19 makes its determination, our recommendations really no
20 longer are relevant, because the planning board's
21 recommendation actually becomes staff recommendation.

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1 Q. To make a long story short, did your staff
2 recommend D.R. 16 during the 2000 process?
3 A. No. The staff recommended D.R. 5.5.
4 Q. What was the reason for that recommendation?
5 A. With comprehensive zoning map issues, there never
6 is a reason or a justification in the file.
7 Q. Well, as a coordinator, supervisor, do you have
8 any knowledge as to what your office's reason probably was
9 for recommending D.R. 5.5 zoning?
10 A. I coordinate the cycle zoning process. I did not
11 coordinate the comprehensive zoning map process, was not
12 involved in decision making that took place at that time.
13 I do know several properties that were zoned D.R.
14 16 in the Owings Mills area were raised as an issue with
15 potential downzoning cases.
16 It was a broad brush. So any property that was
17 identified as being undeveloped zoned D.R. 16 was raised
18 as an issue, and those properties across the board were
19 recommended for a lower D.R. classification than the
20 sixteen.
21 And if not every case, I'm sure almost every

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1 case, it was D.R. 5.5 that was recommended.
2 Q. Did you check with Mr. Hughey, the area planner,
3 as to what the reasoning was for the office's
4 recommendation on this property?
5 A. He did not give a specific reason why this
6 property was downzoneed.
7 Q. Did you ask him for a specific reason?
8 A. We talked about it, and he did not give a
9 specific reason. He said the zoning was D.R. 16 and that
10 county staffer had raised all those D.R. 16 zone
11 properties in Owings Mills that were undeveloped and that
12 we recommended a lower classification, and that was it.
13 Q. You didn't ask him any further why?
14 A. No.
15 MR. ZIMMERMAN: I would note for the record that
16 3-136 is on page 18 of the exhibit. It does show the
17 planning board recommending D.R. 16, but the County
18 Council determining D.R. 5.5.
19 And so as not to be misleading, the Board may
20 note, and counsel may note, a number of the issues have a
21 magic marker in yellow, and that's my magic marker and

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1 those are issues, other issues which appear to be in the
2 general area of the west end of the Owings Mills area, but
3 they speak for themselves, and the Board can note that the
4 second page of the exhibit -- or I will ask Mr. Long.
5 Q. The second page of the exhibit shows the entire
6 district with the location of every issue, does it not?
7 A. Correct.
8 MR. ZIMMERMAN: And I have marked in yellow
9 Issue 3-136 on that map. I have not attempted to mark
10 every other issue in yellow.
11 Q. Other than the documents from Morris & Ritchie
12 Associates that we have identified a few moments ago as
13 being in People's Counsel Exhibit 5, the County Council
14 file, do you know whether there are any other
15 communications in writing from the property owner or
16 Morris & Ritchie during the comprehensive zoning process?
17 A. I wanted to review the file today in preparation
18 for my testimony. It was my understanding you had the
19 file in your possession.
20 Q. The file was awaiting Mr. Hughey's pickup, I
21 believe.

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1 A. Yes. So it wasn't available today, so I didn't
2 have a chance to look at it today.
3 Q. So other than what's in the file -- there is
4 nothing else in the file other than what's in People's
5 Counsel 5? Do you know of any other documents?
6 A. Well, there couldn't be any other information in
7 the file because there would be information about letters
8 to notify affected property owners if there was a zoning
9 issue on the property. There would be some property tax
10 information that would be generated by staff.
11 Q. So it would have been customary to notify the
12 property owners if the property was an issue?
13 A. Correct.
14 MR. ZIMMERMAN: That's all I have.
15 MR. HOFFMAN: May I ask a question off the record
16 and approach for a second?
17 THE CHAIRMAN: Let's take a break.
18 (Discussion held off the record.)
19 THE CHAIRMAN: Mr. Hoffman?
20 REDIRECT EXAMINATION
21 BY MR. HOFFMAN:

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1 Q. Mr. Long, you were on, I guess it was on cross,
2 you indicated that in People's Counsel Exhibit -- the Log
3 of Issues, final Log Of issues -- I want to make sure I
4 understand -- the county staff recommendation for issue
5 3-136 was consistent with the planning board
6 recommendation, is that correct?
7 A. Well --
8 Q. D.R. 16, which was was modified at the planning
9 board work session?
10 A. Well --
11 Q. I excess my question is, do you recall that the
12 planning staff recommendation was modified?
13 A. No, I don't recall that. My recollection was --
14 and I could be incorrect -- that our recommendation become
15 D.R. 16 once the board adopted that as their
16 recommendation to the Council.
17 I wasn't previously aware that we had amended our
18 recommendation, but we do that from time to time.
19 Q. You just said that from time to time your
20 recommendations are amended, and that would take place
21 either at a planning board work session or planning board

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1 public hearing?
2 A. That is correct.
3 Q. And with regard to People's Counsel Exhibit 5,
4 which I believe are the contents of the file, to the best
5 of -- well, you stated you have checked with the rest of
6 your staff, and the information that's contained herein
7 wasn't necessarily submitted by the petitioner here today,
8 the property owner?
9 A. No, not at all.
10 Q. And the existence of the information that's
11 contained herein doesn't indicate that Councilman McIntire
12 was being in any way untruthful when he indicated he
13 wasn't aware of the environmental constraints on the
14 property?
15 A. Correct, no.
16 MR. HOFFMAN: Thank you. I have no other
17 questions.
18 MR. ZIMMERMAN: I will ask Mr. Hughey a question
19 or two because he just came over here, and he's got the
20 file.
21 THE WITNESS: Mr. Hoffman, is my testimony over?

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1 MR. HOFFMAN: That's all the questions I have.
2 MR. ZIMMERMAN: I don't have any questions.
3 THE CHAIRMAN: I have a few questions. Mr. Long,
4 look at the -- do you have a copy of People's Counsel No.
5 6?
6 THE WITNESS: I don't, no.
7 THE CHAIRMAN: Can you give him a copy of the Log
8 of Issues? On page eighteen, just go through with me
9 Issue 3-136.
10 The first column says owner, petitioner, issue
11 number, and then the second column says owner, petitioner.
12 What does that mean?
13 THE WITNESS: Owner, petitioner is something --
14 that's a category that we have used since the 1971
15 comprehensive zoning map process, and it's inprecise.
16 It should say applicant, because that applicant
17 can be staff, it can be the County Council.
18 THE CHAIRMAN: This is the applicant, meaning the
19 group that is seeking change in zoning?
20 THE WITNESS: What that means, when you see the
21 issue number and then the second column under owner,

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1 petitioner, the term staff, that means the staff raised
2 this as an issue.
3 THE CHAIRMAN: Now, just going across, it says
4 existing zoning and acres, D.R. 16, and then 26.5. Is
5 that what this particular property was zoned at that time,
6 D.R. 16?
7 THE WITNESS: Correct.
8 THE CHAIRMAN: 26.5 acres. Now, the next column
9 is requested zoning and acres. It's got D.R. 3.5 or D.R.
10 5.5, and then underneath that, D.R. 16. What does that
11 mean?
12 THE WITNESS: Well, when we identify an issue, we
13 will frequently note several zones. That's not uncommon
14 for that to happen.
15 So I guess we were saying, all those zones were
16 being considered at the time, but then our final
17 recommendation, or that was actually amended, was the D.R.
18 5.5. So, basically, all these zones were on the table.
19 THE CHAIRMAN: So your final recommendaion was
20 D.R. 5.5, and that final recommendation was amended, as
21 Mr. Hoffman indicated, just prior to the work session or

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1 to the planning board public hearing, but then the final
2 recommendation of the office of planning is consistent
3 with whatever planning board recommends to the County
4 Council?
5 THE WITNESS: Once the planning board makes its
6 decision, then all the work that planning staff did to
7 develop recommendation is essentially forgotten, and we go
8 along with planning board's recommendation.
9 So we no longer advocate for a particular zoning
10 classification that we felt was appropriate. If we are
11 asked, we would then say our recommendation is D.R. 16 in
12 this particular case.
13 THE CHAIRMAN: How were issues being raised by
14 the staff?
15 THE WITNESS: How?
16 THE CHAIRMAN: How would it be raised as an issue
17 in rezoning? Does the staff go out and survey, look at
18 various pices of property around the county to decide
19 whether they're properly zoned?
20 THE WITNESS: It's done two ways. You look at
21 the base map, and the base map will indicate what the

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1 zoning is.
2 The problem is the base maps, as earlier
3 indicated, were flown in 1986, so you have to take the
4 base map and go out into the field and compare that
5 against the built environment.
6 In this case, and Mr. Hughey is here, and he can
7 answer this question, as it specifically relates to these
8 properties, probably identified these tracts of land on
9 the 200 scale zoning map, took the 200 scale zoning maps
10 out into the field to field verify whether those sites
11 were developed, and so on. Properties that were each
12 zoned D.R. 16 that were indicated on the maps that were
13 not developed in the field, those were created as issues.
14 THE CHAIRMAN: But the final recommendation of
15 the planning board was D.R. 16?
16 THE WITNESS: Correct.
17 THE CHAIRMAN: Then there's a hearing. The
18 County Council holds hearings for the map?
19 THE WITNESS: They do, corect.
20 THE CHAIRMAN: Who appears before the Council
21 representing the planning board?

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1 THE WITNESS: Representing the planning board?
2 Well, I guess, in essence, the planning board doesn't have
3 independent representation.
4 I guess, for example, today, I guess I'm here on
5 behalf of the planning office, and I'm presenting the
6 planning board's recommendation, their report. They
7 understand that.
8 THE CHAIRMAN: But my question is, before the
9 County Council, I know I have heard that councilmanic
10 courtesy prevails, and if the councilman that represents
11 that district wants the rezoning, then pretty much the
12 rezoning will happen, because the other councilmen will go
13 along. Is that your understanding?
14 THE WITNESS: I can only remember that not being
15 the case in one particular case involving Birchie Manley
16 in southwestern Baltimore County, an issue when she served
17 on the Council, and in that case, councilmanic courtesy
18 wasn't exercised.
19 THE CHAIRMAN: Now, before the Council, a
20 representative of the planning board or your staff is
21 present during the hearings to hear the discussion of

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1 these particular issues and to give input if the Council
2 requests it?
3 THE WITNESS: After the hearing begins -- the
4 planning staff will revise some recommendations, give some
5 general information before the hearing is brought to
6 order. Rarely does the County Council member ask, ever
7 ask a question of staff, particularly a substantive
8 question.
9 Maybe a procedural question. But in recent
10 memory, and I have attended almost every County Council
11 public hearing, because we have one in each councilmanic
12 district, I can't remember staff being asked a question by
13 the County Council.
14 THE CHAIRMAN: Because it brings up to my mind
15 the question of if the planning board recommends D.R. 16,
16 and the County Council decides it's DR 5.5, whether or not
17 there was anybody from your office present who might have
18 heard a discussion which eventually resulted in the
19 decision of the Council to zone it D.R. 5.5 against the
20 decision of the planning board?
21 THE WITNESS: I think I know know where your

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1 question should be, but with all due respect, those
2 discussions take place after the public hearing and before
3 the decision is made by the County Council.
4 And Mr. Hughey, who's here today, may have been
5 present when the councilman was discussing what he may or
6 may not do with some of these issues.
7 But on the night of the hearing, there's no such
8 discussion. It happens subsequent to the public hearing.
9 THE CHAIRMAN: But do you know whether or not a
10 member of your staff is present during those discussions?
11 THE WITNESS: Yes, they are. Well, not every
12 discussion. The councilman may decide to meet with the
13 developer, with the community, and staff may not be there.
14 We are there for some of the meetings, but not every
15 meeting.
16 THE CHAIRMAN: That's all I have. Do my
17 questions raise any questions?
18 MR. HOFFMAN: No sir.
19 MR. ZIMMERMAN: No. Thank you., Mr. Long.
20 THE CHAIRMAN: Thank you.
21 MR. HOFFMAN: One more witness.

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1 M O R T O N M A C K S,
2 having been called as a witness, was duly sworn and
3 testified as follows:
4 DIRECT EXAMINATION
5 THE WITNESS: My name is Morton Macks. I live at
6 7 Regency Court, in the Second Councilmanic District of
7 Baltimore County.
8 BY MR. HOFFMAN:
9 Q. Mr. Macks, you're one of the managing partners of
10 Painters Mill Venture?
11 A. Yes.
12 Q. You are aware, are you not, a portion of your
13 property was created as an issue in the rezoning map
14 process as Issue 3-136?
15 A. Yes.
16 Q. And were you aware at the time that the property
17 was zoned D.R. 16, and possibly could be rezoned to any
18 category, that it was in play, so to speak, and the
19 rezoning could take place?
20 A. Yes.
21 Q. During this process, did you meet with Councilman

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1 McIntire?
2 A. Yes.
3 Q. That would be one of the meetings which the
4 Chairman was referring to when he questioned Mr. Long
5 about that particular issue?
6 A. Yes.
7 Q. Do you remember approximately what month that
8 meeting took place?
9 A. October 2nd.
10 Q. Well, that's pretty good. What time was that
11 meeting?
12 A. I'm not sure.
13 Q. In that meeting with the councilman, did you
14 explain to him the environmental constraints that were
15 apparent on the property as you heard today from Mr.
16 Madden?
17 A. We never discussed it.
18 Q. Did Mr. McIntire indicate to you he was aware of
19 any such environmental constraints at the time?
20 A. We didn't discuss it.
21 Q. What did Mr. McIntire say to you shortly after

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1 you began talking about Issue 3-136?
2 A. That he was going to leave the zoning as it was,
3 D.R. 16.
4 MR. HFFMAN: I have no other questions.
5 THE CHAIRMAN: Mr. Zimmerman?
6 MR. HOFFMAN: I'm sorry. I did want to ask one
7 more question.
8 Q. Did you at any time submit any information to
9 Councilman McIntire showing environmental constraints or
10 any constraints on the property?
11 A. To the best of my knowledge, I don't believe we
12 submitted anything, because it wasn't our issue.
13 Q. When you say that, you mean it was the staff
14 issue?
15 A. It was a staff issue. In fact, we didn't even
16 know we had an issue until someone called our attention to
17 the fact that the planning staff had created an issue.
18 Q. And during the time of the map process, it looks
19 like Walgreens from one of the documents that People's
20 Counsel submitted that was in the file, had they expressed
21 an interest in purchasing the property?

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1 A. They did.
2 Q. And is it possible Walgreens submitted certain
3 information to the county staff that would now appear in
4 their file?
5 A. It certainly was a possibility, because my deal
6 with them was very simple. If you think you can get that
7 passed, God bless you, but you won't get any help from us.
8 MR. HOFFMAN: I have no other questions. I'm
9 sorry.
10 CROSS EXAMINATION
11 BY MR. ZIMMERMAN:
12 Q. You mean Walgreens wanted commercial zoning?
13 A. Yes.
14 Q. Just a couple questions, Mr. Macks. When did you
15 know your property was brought up as an issue by the
16 staff?
17 A. I'm not sure, but it was sometime when the
18 document -- it was sometime after the document was
19 published.
20 Q. Do you remember whether the planning office sent
21 you a notice?

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1 A. It may have been a notice that came out at
2 sometime. We get notices of everybody in the area that
3 wants to do something.
4 Q. Certainly, you could have presented any
5 information to the councilman you wished to present?
6 A. Yes, we could have.
7 Q. The file does show a document prepared by Morris
8 & Ritchie -- when I say the file, our Exhibit 5 maintained
9 by the planning office on this issue shows a Morris &
10 Ritchie document of this property showing the dimensions,
11 the forest area, so on. Do you know whether or not Morris
12 & Ritchie presented that on your behalf?
13 A. I have no idea where it came from, but it's
14 something I had seen before. But when I looked at that
15 just a few minutes ago, it has been doctored up over the
16 issue of what I saw from Morris & Ritchie.
17 Q. In any event, somebody else, not you personally,
18 subitted that?
19 A. Nobody in our organization.
20 Q. Evidently, after October 2nd, you thought the
21 property was going to be retained at D.R. 16?

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1 A. That's exactly right.
2 Q. You don't know what meeting the councilman had
3 after?
4 A. I don't have any idea. I went off to Florida.
5 MR. ZIMMERMAN: That's where I should be. I
6 think that's all.
7 THE CHAIRMAN: Thank you, Mr. Macks.
8 MR. HOFFMAN: That would be our all the
9 witnesses.
10 THE CHAIRMAN: Okay. Mr. Zimmerman?
11 MR. ZIMMERMAN: Thank you. I think, since Mr.
12 Hughey has been good enough to come over, I'd like to ask
13 him some questions, partly to follow up with the Board
14 Chairman's questions.
15 WILLIAM HUGHEY,
16 having been called as a witness, was duly sworn, and
17 testified as follows:
18 DIRECT EXAMINATION
19 BY MR. ZIMMERMAN:
20 Q. Please stae your full name and office position.
21 A. My name is William Hughey. I am a community

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1 planner for the Third Councilmanic District in the office
2 of planning.
3 Q. You have been an area planner for that area for
4 sometime?
5 A. Yes.
6 Q. How long?
7 A. Approximately eight years.
8 Q. You have been in the planning office for?
9 A. Fifteen.
10 Q. First of all, I believe you brought over the
11 original file on Issue 3-136?
12 A. Yes, I do have it.
13 Q. Just so the Board sees what the original looks
14 like, I am going to show the original to the Board and at
15 the same time -- if I may continue -- look at People's
16 Counsel Exhibit 5 -- and I'll show that to Mr. Hughey in a
17 moment -- comparing the file -- and I submitted People's
18 Counsel 5, a copy of the documents in the file, not
19 counting the list of addressees that you sent notices out
20 to, and, in any event, if you would take a look at what
21 I'm showing you, see if you recognize that as a document

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1 from that file? And we can get the original back in a
2 moment and compare the two, if you'd like.
3 A. Yes, they are part of the file, the original
4 file.
5 MR. HOFFMAN: They've already been admitted. I
6 didn't object do their introduction.
7 Q. I'm on the application itself, the first page of
8 the exhibit five. It does list as requested zoning the
9 three, D.R. 16, D.R. 5.5 -- or maybe our copy is not
10 complete -- if we can look at the original? Apparently,
11 our xerox machine cut off the far right-hand part, but
12 it's "or D.R. 3.5?
13 A. That is correct.
14 Q. And, first of all, 26.5 acres is noted, what's
15 current piecemeal is for 18 acres. Do you know the
16 difference in the acres?
17 A. I can't recall why 26.5 is noted. Normally, I
18 take my acreage off the assessment information, and I
19 can't explain the discrepancy.
20 Q. In your own words, could you state why this
21 property was made an issue by your office?

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1 A. Prior to filing, the community planning division
2 decided to study, to locate, identify, significant
3 undeveloped parcels in the Owings Mills area, and this was
4 one of them.
5 Q. Do you know whether or not that was consistent
6 with some indication in the Master Plan about examining
7 parcels in the Owings Mills area that were zoned D.R. 16
8 and other certain classifications?
9 A. It's consistent. And we also did it because
10 there was a concern among certain community groups that
11 the densities were too high in Owings Mills, and we wanted
12 to study them one more time.
13 Q. I will give this back to you. Now, how many
14 other properties would you say were in the same kind of
15 undertaking besides this one that would be more or less in
16 the same group?
17 A. I believe they were eight to twelve separate
18 applications, staff issues.
19 Q. Those would be shown in the logs?
20 A. Yes.
21 Q. Now, in Mr. Long's testimony -- and I think he's

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1 still here -- his recollection was the planning staff
2 originally recommended D.R. 5.5 zoning on the subject
3 property. Do you recall that?
4 A. I vaguely remember having -- the preliminary
5 staff recommendations are not part of the file, and I
6 didn't review them before I came over, but I vaguely
7 remember we had a preliminary position.
8 Q. In fairness, you had 164 issues to deal with
9 during the 2000 comprehensive zoning process, correct?
10 A. Correct.
11 Q. Many of these issues involved hundreds of acres?
12 A. Yes.
13 Q. Some small? Some large?
14 A. Correct.
15 Q. So you don't have a hundred percent memory of
16 every single issue you worked on what, a year and a half
17 ago?
18 A. That's true.
19 Q. Whatever recollection do you have as to why the
20 staff would have preliminarily recommended D.R. 5.5 on the
21 subject property?

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1 A. To reduce the residential densities in certain
2 parts of the growth area.
3 Q. What would be the reason for doing that?
4 A. We had some concerns about traffic and types of
5 infrastructure issues.
6 Q. What else besides -- traffic congestion?
7 A. Yes.
8 Q. What else?
9 A. Whether the open space was adequate to provide
10 for the population. That was basically it.
11 Q. What about nearby open space, if any?
12 A. The nearest open space would probably be part of
13 Deer Park Elementary School. They have an elementary and
14 middle school. Fortunately, currently, the Northwest
15 Regional Park is being developed, but at that time we
16 didn't realize it was going to come on line as quick as it
17 did.
18 Q. This concern, whatever parks there were is not
19 adequate for that large population?
20 A. At that point, we were a little concerned.
21 Q. In any event, it was pointed out that the

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1 planning board decided to recommend D.R. 16, and then your
2 office automatically falls in line, in effect, with the
3 planning board after they make recommendations, is that a
4 fair statement?
5 A. Once the planning board adopts their
6 recommendation, almost all reference to original staff
7 position is left behind.
8 Q. There were some previous questions when Mr. Long
9 was on the stand about what discussion may or may not have
10 occurred involving the County person Mr. McIntire, for
11 example, and your office after the planning board made its
12 recommendation, but before the Council made its final
13 decision to zone the property DR 5.5.
14 Can you enlighten the Board of Appeals as to any
15 discussions you may have been present at with reference to
16 to this property subsequent to the planning board
17 recommendation?
18 A. As far as the residential downzoning, I had very
19 little additional decision with the councilman. Most of
20 our discussion dealt with the proposal for the drugstore,
21 the Walgreens, and the request for commercial zoning.

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1 And we had quite a few discussions with the
2 councilman in that regard.
3 Q. What was the gist of that?
4 A. That basically he did not want to see another
5 corner, a significant intersection, with a commercial use
6 at it.
7 Q. But in that the other options were D.R. 5.5, D.R.
8 16 and or D.R. 10.5, if I recall, or --
9 A. D.R. 3.5, D.R. 5.5, and D.R. 16.
10 Q. Do you remember anything in any of those
11 discussions that were directly or indirectly on those
12 choices?
13 MR. HOFFMAN: I'm going to object. He already
14 answered the question that he didn't recall any other
15 discussion.
16 THE CHAIRMAN: I'll let him answer.
17 A. I do not recall having any discussion with the
18 councilman as to whether he was leaning towards 3.5., 5.5,
19 or D.R. 16.
20 Q. Let me ask you this. Why, as a planning staff
21 making the issue, why did you perceive 3.5 as a possible

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1 option?
2 A. Because the 3.5 only permits single family homes,
3 single family detached homes, and there was a position on
4 that that we were going to try to encourage more single
5 family homes.
6 Q. Does the existence of some 3.5 zoning in the area
7 have anything to do with that thought process?
8 A. Well, in some regard it did, because there we
9 were looking at a tapering out of densities as you go from
10 the town center out away, and some of the larger parcels
11 further west D.R. 3.5 or 5.5.
12 Q. In a sense, the decision that was ultimately made
13 on D.R. 5.5 was in the middle between D.R. 3.5 and D.R.
14 16? Maybe not exactly in the middle, but of the three
15 classes, it was the middle class?
16 A. That is correct.
17 Q. Let me ask you this. In trying to get all the
18 facts possible after the Council made the decision to
19 rezone the property D.R. 3.5 --
20 A. D.R. 5.5.
21 Q. Excuse me, D.R. 5.5, we've been presented today

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1 with a letter I saw for the first time today, the May 2,
2 2001 letter, Petitioner's Exhibit 7.
3 Have you ever seen this letter? It's addressed
4 from Councilman Bryan McIntire to the planning director,
5 or I should ask you, have you seen before?
6 A. Yes, I have seen this.
7 Q. I will first ask you, between October 10, 2001,
8 or 2000, and May 1, 2001, did you have any further
9 discussion with the councilman regarding this issue?
10 A. The counciman did ask me to bring over the file,
11 and he did look at some of the maps in the file, and that
12 was about it.
13 Q. So you brought the file that is the file of the
14 3-136 we explained --
15 A. I don't know. I don't know if I brought the
16 actual file, but I brought some 200 scale zoning maps over
17 for him to take a look at.
18 Q. Do you know whether you brought what's now in as
19 People's Counsel 5 over?
20 I will show it to you again. You have the
21 application, the maps, the correspondence from Ms. Durham,

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1 the E-mail?
2 A. I can't remember exactly what I took over those
3 days.
4 Q. I ask you, were those -- did that occur prior to
5 the May 1, 2001 letter, do you know? Do you know about
6 when that happened?
7 A. I think it was last winter, sometime.
8 Q. Did you have any further discussions late winter,
9 early spring, with Councilman McIntire?
10 A. No.
11 Q. After this letter of May 1, 2001, after you saw
12 it, did you have any further discussion with Mr. McIntire?
13 A. No.
14 Q. Did you have, based on your meeting with Mr.
15 McIntire in the winter, or at any other time, can you give
16 me any sense as to whether you perceived his intent in
17 writing this letter that the zoning be reconsidered by the
18 Board of Appeals, or it definitely should be granted, the
19 D.R. 16 should be granted?
20 MR. HOFFMAN: I'm going to object. I think he
21 indicated he hadn't had any discussion. This is not forum

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1 shopping.
2 MR. ZIMMERMAN: I just wanted this as in the
3 interest of getting as many of the facts out as possible.
4 I don't think it's forum shopping.
5 THE CHAIRMAN: Is that it?
6 MR. ZIMMERMAN: I think that's it. Thank you.
7 THE CHAIRMAN: Mr. Hoffman?
8 CROSS EXAMINATION
9 BY MR. HOFFMAN:
10 Q. Mr. Hughey, one or two two questions. I think
11 only one. Do you recall the planning staff
12 recommendation, preliminary recommendation, changing prior
13 to the planning board action through Mr. Kern's statement
14 to the planning board that the recommendation should be
15 changed to D.R. 16?
16 A. I vaguely remember that, yes. I can't say it's
17 crystal clear, but I believe that did occur.
18 Q. So the planning staff recommendation changed --
19 the planning staff final recommendation to the planning
20 board would have been D.R. 16, not D.R. 5.5, based on Mr.
21 Kern's proffer -- for lack of a better word -- to the

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1 planning board that had happened?
2 A. Yes.
3 MR. HOFFMAN: I have no other questions.
4 REDIRET EXAMINATION
5 BY MR. ZIMMERMAN:
6 Q. Are you sure that the original planning staff
7 recommendations changed prior to the planning board making
8 its recommendation?
9 A. I don't see when else it could have occurred in
10 order for the planning board to have come up with their
11 point.
12 THE CHAIRMAN: Are you talking about Mr. Kern,
13 K-e-r-n?
14 MR. HOFFMAN: If I might --
15 THE CHAIRMAN: Who's Mr. Kern?
16 MR. HOFFMAN: He was --
17 THE WITNESS: He's the division chief of
18 community planning.
19 THE CHAIRMAN: Were you finished?
20 MR. HOFFMAN: Yes.
21 MR. ZIMMERMAN: I am on redirect.

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1 THE CHAIRMAN: I think I interrupted to find out
2 who Mr. Kern was.
3 Q. Your staff made an original recommendation of
4 D.R. 5.5 on this particular property?
5 A. Correct.
6 Q. Sometimes the staff may submit a document prior
7 to the planning board making its recommendation that
8 changes your own recommendation, correct?
9 A. Correct.
10 Q. And that's usually documented, is it not? Like a
11 memorandum, here are some different recommendations?
12 A. I believe that was done originally at one of the
13 work sessions.
14 Q. You think there was a verbal exchange?
15 A. I think there was an announcement by Mr. Kern.
16 Q. Since you're the area planner, do you know, if
17 that happened, do you know why that happened?
18 A. I believe it happened because we reviewed the
19 general land uses around the site and saw apartments to
20 the west and townhomes to the east, and saw this property
21 between those two land uses, and then reconsidered the

1 appropriateness of D.R. 16.
2 Q. Would you say that within your office as the
3 process went on, it was fairly debatable between the two?
4 You had some concerns which led you to D.R. 5.5, other
5 concerns which led you ultimately to a D.R. 16
6 recommendation?
7 MR. HOFFMAN: I guess I'm going to object. I
8 don't think Mr. Zimmerman liked that last answer too much.
9 MR. ZIMMERMAN: I'm trying to get all the facts.
10 THE CHAIRMAN: Okay. Is that the end?
11 MR. ZIMMERMAN: Yes, I think that's it.
12 MR. HOFFMAN: Nothing further.
13 THE CHAIRMAN: Thank you. Your next witness.
14 MR. ZIMMERMAN: Thank you, Mr. Hughey. Mr.
15 Thompson.
16 RANDY THOMPSON,
17 having been called as a witness, was duly sworn and
18 testified as follows.
19 THE WITNESS: I'm Randy Thompson. This is the
20 part where I tell who I am?
21 THE CHAIRMAN: Just answer Mr. Zimmerman's

1 questions.
2 MR. ZIMMERMAN: I will give you an opportunity.
3 DIRECT EXAMINATION.
4 BY MR. ZIMMERMAN:
5 Q. State your name and address, for the record,
6 please.
7 A. My name is Randy Thompson. My address is
8 2504 Lyons Wood Drive. That's in the White Hurst
9 development.
10 A. On the plan that would be Petitioner's Exhibit 3?
11 A. That would be just south of this cornfield.
12 Q. To the south and west?
13 A. Yes.
14 Q. When was White Hurst developed, do you know?
17 Q. Do you know whether part of the development, or
18 at least the eastern section would now be shown in this,
15 A. I would say probably in '96, '97, in that area. I
16 don't know for sure, but back in that area.
17 Q. Do you know whether part of the development, or
19 of this aerial photograph were taken today?
20 A. Yes.

1 A. Yes. I actually can see the cornfield from my
2 house, from the window.
3 Q. What would be the type of single family homes in
4 your development?
5 A. When you say "type"?
6 Q. Rancher? Two-story?
7 A. Two-story colonel.
8 Q. One-third acre? Or what would be the acreage?
9 A. About a third of an acre. It's seventy homes in
10 that development.
11 Q. What is your educational background?
12 A. University of Wisconsin, B.S. degree in
13 marketing, Master's degree in business administration.
14 Q. What is your current employment?
15 A. Twenty-five years with Cargill, Incorporated, and
16 I am now back in Baltimore, my hometown, after leaving at
17 seventeen.
18 Q. And you have been here for at least part of the
19 hearing today, and you heard several of the witnesses?
20 A. That is correct.
21 Q. How would you describe the neighborhood?

1 A. I mean, it's a great neighborhood. A part of the
2 problem that I see with the neighborhodd really deals with
3 they can only one side of the line and, really, it's
4 highly diversified on the other side, and moving into the
5 area, I was not aware of that, because although both of us
6 work and make a good income, we looked at homes in Towson
7 and we looked at homes in Mays Chapel, up in that area
8 and, you know, really found the homes to be very pricey.
9 And this was a part of Baltimore County that we
10 decided to live in, we found a fairly priced home for the
11 value.
12 Q. In terms of the application of apartments,
13 townhouses, single families in the area, give the Board
14 some since of that mix? What is in most demand? What's
18 A. These are my humble opinions. We find that
15 most needed?
16 What problems, if any, do you associate with the
17 different types of development?
19 within a short drive, there's only one grocery store, and
20 that's in Newtown. So to get to Newtown from our

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1 around down Lakeside Drive and back around into our
2 development. While I drive that Owings Mills Boulevard
3 every day to and from 795, in my opinion, there's no
4 shortage of apartment right in that area.
5 But on my street, when people are driving down as
6 they do to see the neighborhood, everyone is looking for
7 single homes in an area. There are ample townhomes in the
8 Lyons Wood and Lyons Gate area which we looked at, and
9 those townhomes are 2800 square feet, which is a nice size
10 townhome.
11 Then if you go left at Owings Mills and Lyons
12 Wood, there's another group of townhomes coming and, you
13 know, just in looking at where townhomes are when I was in
14 the market, for $2500 a young couple can move into a
15 townhome versus renting an apartment in that area.
16 Q. In terms of how it fits into the area, let's
17 assume the choice on the subject property were townhomes
18 versus apartments. What do you think would fit better in
19 the area?
20 A. Again, this is just my opinion, it really is --
21 boy, I drive by it every day and look at those stretch of

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1 trees. It really would be very hard for me to understand
2 apartments in that area.
3 I heard today about kids and a number of per
4 apartments to homes. I live at the very end of Lyons Wood
5 The two homes next to me have no kids. The three or four
6 homes up from me have two children. They are in private
7 school.
8 If I go on up, the next group of kids on the same
9 side of the street I live on, there are two kids going to
10 elementary school.
11 Already just in our community, as a taxpayer, we
12 had trouble entering those kids into Newtown Elementary
13 School. I mean, we had to fight like the dickens to get
14 those kids in that school. It's already crowded.
15 Q. What is your observation as to whether, according
16 to the petitioner, apartments don't have children?
17 A. Well --
18 Q. Or not as many?
19 A. I think that, you know, he stated something from
20 the county. I just think things change.
21 Kids today wait longer to have children. My

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1 daughters are all in college and they're talking, you
2 know, when they are in their thirties to have kids. They
3 want to buy a home, or a townhome.
4 So I think the trend changes. In this particular
5 area, I think the thing that bothers me the most, we are
6 already heavily populated. I'm seeing kids leaving these
7 townhomes trying to get to Rite-Aid to buy soda, and no
8 sidewalks.
9 Coming down on Owings Mills Boulevard, people cut
10 across Lyons Wood, going up past Deer Park, onto Liberty
11 Road, and headed on up to the dam. I just think that the
12 planning board did a good job of planning, but it's just
13 thick and populated. It's just a lot of people.
14 Q. And in terms of traffic problems, what if any,
15 problems? What do you find?
16 A. I live three-quarters of a mile -- from my house
17 in the morning at 7 o'clock -- to 795. There's a
18 fifteen-minute or twenty-minute drive to that exit. It's
19 almost sixteen minutes before I'm on 795, and that's
20 probably two miles.
21 Lyons Mill or Lyons Mill Road is only two lanes,

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1 so then you turn onto a four lane, two or three traffic
2 lights, and then onto the highway.
3 Q. By the way, did you have any difficulty finding
4 out about this zoning hearing today?
5 A. I actually contacted Mr. Zimmerman. Someone in
6 my community said there was some change, and we keep
7 thinking it's happening on the cornfield, but more and
8 more I finding it's just small pockets of land that it
9 happens.
10 But I actually called him to ask some questions,
11 and heard about the hearing. I left work today to come
12 here and see the process.
13 Q. Was it hard to see any signs on the property?
14 Assuming there's a sign, as I think there was on this
15 property posted, did you notice that sign?
16 A. Well, I saw it for the first time yesterday
17 posted out there. Part of the problem I have as a
18 homeowner in this area, which I love, is that when zoning
19 laws are changed, you know, after a certain point, and you
20 build a community up, it's time for the people in the
21 community to being notified.

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1 I heard Mr. Macks say he's notified for
2 everything, or every change, but our development was not
3 notified that any zoning laws or zoning appeals were going
4 to be changed. That concerns me.
5 Q. In terms of libraries -- switching subjects for a
6 moment -- what's the availability of library service and
7 how does that relate, in your opinion, to this zoning
8 issue here today?
9 A. There's not a library in the Newtown area which
10 high school kids can walk to. This ballpark they are
11 talking about -- and I would ask yourself, put yourself in
12 my place -- this ballpark is across Deer Park and on up,
13 heading up to Liberty Road, so they can't ride their
14 bicycles -- well, they can, but it's going to be
15 dangerous. They can't hardly walk there.
16 So I mean, all of these parents, if anything is
17 happening up there, they have got to drive up there.
18 Q. So, in your view, there are adequate or
19 inadequate recreational area or spaces at this point in
20 the neighborhood?
21 A. It's probably, space-wise, there's probably going

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1 to be enough ballparks, fields, for the kids to play
2 soccer and baseball, but there's no rec center, no
3 controlled activity, nowhere to go to get baseball teams
4 together.
5 If we are not doing it as parents, there's no
6 establishment, no rec area in that area. So anybody can
7 come and use this field, but there's no established
8 recreation center. No walk-in library.
9 Now, I have been in this community two years, and
10 I didn't realize that the fire department was on the other
11 side of 795. I thought that the fire department that
12 came, that would come to our house, would be on Liberty
13 Road and back down in that area.
14 So I mean, even at this point, they would have a
15 difficult time trying to to determine what is who's --
16 whose development and where they are going.
17 THE CHAIRMAN: Is there a volunteer company in
18 Reisterstown?
19 THE WITNESS: I don't know. I assume it is,
20 because what I am seeing, you know, in offering donations
21 to the volunteers, and I see them on Reisterstown Road,

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1 but they're roughly at the corner of Reisterstown Road and
2 the front of the Safe Way, so that tells me that they may
3 be on back up Owings Mills Boulevard, that way.
4 There was a fire company at the train station. I
5 think they tore that down and moved it somewhere.
6 Q. Given the fire station mentioned by Mr. Madden
7 was actually on the other side of Reisterstown Road, how
8 do you view that in terms of the availability of fire
9 service?
10 A. I'm not as afraid as I was five years ago when
11 all the teenagers were in the house, but I would imagine
12 that I feel like most people, I would like to have a
13 neighborhood fire station.
14 If it's going to be a neighborhood, or if it's
15 considered Newtown Square, or center, I think that even
16 though it's a straight shot, it's a good distance for
17 either one of those guys to come.
18 Q. As far as you mentioned the supermarket, where's
19 the one supermarket exactly in your area? Is that the
20 Giant?
21 A. That's a Giant in Newtown.

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1 Q. When you say Newtown, you mentioned that a few
2 times, you've got to be a little more exact.
3 A. Newtown is actually down Lakeside Drive, and it's
4 probably a good mile if you're coming off Owings Mills
5 Boulevard. There's a Rite-Aid, a Mobile gas station,
6 which there's only one gasoline station.
7 Q. They are actually shown on Petitioner's 2?
8 A. Keep on going down there.
9 Q. Keep going to the west?
10 A. Yes.
11 Q. Then you've got a shopping center that has the
12 Giant?
13 A. The Giant. And as you drive done there, there's
14 a group of apartment complexes, maybe two apartment
15 complexes, and then when you make the right-hand turn into
16 the Giant, there's a McDonald's, there's some single
17 family homes. There's some more townhomes or multi-living
18 elevator type homes in that area.
19 Q. These things you have been talking about, the
20 library, the firhouse, the supermarket, the recreation,
21 how does this all bear, in your view, as to whether the

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1 zoning should be higher density or medium or lower density
2 on this subject property?
3 A. I'd like to speak frankly. I didn't know much
4 about zoning. I observed a lot today.
5 In my opinion, when you change the zoning,
6 whether mistake or not has been made, and allow more
7 apartment complexes to come into a neighborhood, you don't
8 really have ownership of the neighborhood.
9 You have transient people coming and going, which
10 that happens. But after awhile, you know, developers or
11 owners sell apartment complexes, and then they begin to be
12 like the ones on Reisterstown Road where you have -- how
13 do I put put this? My opinion, they are low income family
14 Section Eight. I don't have any proof of that until I go
15 to the grocery store and see those folks walking back from
16 the grocery store, trying to get across Reisterstgown Road
17 to that apartment complex.
18 Q. In your view, are there already enough apartments
19 in your area?
20 A. Yes, I would think so. You know, you developed a
21 beautiful community. And, today, anyone who has a child

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1 coming out of college, that child is trying to buy a
2 home.
3 And whether you buy a condo, or whoever buys it,
4 that's what they are really trying to do. So if I am
5 talking to a newcomer in my neighborhood, they're actually
6 looking for a place to live and to buy, not a place to
7 rent.
8 Q. And in terms of simply the matter of apartments
9 creating additional population, does what you said about
10 limited supermarkets, libraries, school, and so on, does
11 that relate to your concern about just the additional
12 population?
13 A. Absolutely.
14 MR. HOFFMAN: I'm going to object.
15 THE CHAIRMAN: I think that's a little leading,
16 Mr. Zimmerman.
17 MR. HOFFMAN: That's not the way I remember his
18 answer.
19 Q. Do you have an observation as to whether at this
20 point the area is overcrowded? Not overcrowded enough?
21 Or just right?

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1 A. My observation is that, at this particular time,
2 I am just patient enough with the traffic, and that's how
3 you tell whether or not the area has got too much
4 population or not, if you can get in and out of your
5 development in a peaceful manner.
6 Or the second observation is whether or not you
7 have policemen patrolling the speed limit determines to me
8 how busy it is, how occupied it is.
9 When you see people moving, walking their dogs
10 from the townhomes down through your street to get to a
11 common area because they don't have enough space in an
12 area, then those are all telltale signs you pretty much
13 have enough people in the neighborhood.
14 Q. And that's not counting any other developments
15 that are already in the process and may be developed
16 shortly, correct?
17 A. Correct. I was surprised to see townhomes being
18 built behind the American Legion there, but, you know, at
19 least they are townhomes, and people take ownership
20 interest there. They plant flowers. They are concerned
21 about the community. They are willing to volunteer, to

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1 give.
2 Not to say apartment people aren't willing to do
3 that, but you have ownership in the community.
4 Q. What's your observation on access? You drive the
5 intersection every day at Lyons Mill and Owings Mills,
6 correct?
7 A. Yes.
8 Q. What concerns, if any, do you have with respect
9 to access, cars exiting and entering the site and its
10 impact on your traffic movement?
11 A. Making that right-hand turn off of Owings Mills
12 Boulevard onto Lyons Wood, is -- well, I would say a small
13 speedway, because everybody is trying to get around that
14 corner and get on up.
15 What would concern me would be coming from out of
16 the apartment complex, across Lyons Mill to get to Owings
17 Mills Boulevard, to go down to 795, that would be an issue
18 for me in that area.
19 Right at that intersection, you can probably hold
20 ten cars to make a left turn, so that whole intersection
21 really could be widened to accommodate the traffic at some

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1 point.
2 Q. Do you have any additional observations as to
3 your position on this matter that you haven't been able to
4 express?
5 A. Other than the things that I have said, no. Just
6 that, you know, once again, I learned a lot, and I thank
7 you guys for allowing me to speak.
8 And I guess you have a big task ahead of you, so
9 I wish you luck.
10 MR. ZIMMERMAN: Thank you, Mr. Thompson.
11 THE CHAIRMAN: Cross?
12 MR. HOFFMAN: Yes.
13 CROSS EXAMINATION
14 BY MR. HOFFMAN:
15 Q. Mr. Thompson, just first a point of
16 clarification. The lots in your development in Lyons Wood
17 are about a fifth of an acre?
18 A. I don't live in Lyons Wood.
19 Q. On Lyons Wood Drive. You said about a third of
20 an acre. I pulled the tax records for your community.
21 Would it surprise you if I told you they are

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1 about a fifth of an acre?
2 A. No, it wouldn't surprise me. To my understanding
3 right here today, a third of an acre, a fifth.
4 Number-wise, they are separate homes. There's decent
5 space between the two homes.
6 Q. I drove past your houses yesterday afternoon.
7 They are very nice homes, and everybody on your block at
8 least keeps their homes nicely.
9 A. With the exception of some.
10 Q. Your house looked pretty good yesterday. You
11 stated that your -- well, when you say, Can I speak
12 frankly, my primary concern is with regard to ownership
13 and apartments and people in apartments, your experience
14 tends to talk about ownership in the neighborhood and
15 people who own property, is that a fair observation of
16 what you said?
17 A. I would think at fifty years old -- well, I'm not
18 quite fifty, I'm forty-seven -- I would think that would
19 be a fair assessment after living all over the U.S. Yes.
20 Q. The zoning classification that was on the
21 property, the D.R. 16, would allow for multi-family

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1 buildings, as you heard today. Multi-family buildings.
2 Well, let me ask it this way. If these buildings
3 were condominiums, I heard you express the thought if one
4 owned a condo, they would, therefore possess that
5 ownership interest, that would give more of a feeling of
6 ownership interest in the neighborhood, am I correct that
7 was your assessment?
8 A. Right. I gather that feeling from knowing two
9 senior citizens that live in the condominimums on the same
10 side of the street that the property is on, but maybe, I
11 say, less than half a mile up, but down in there, and when
12 you talk to those folks, or pick them up to take to
13 church, they feel like they are part of that community.
14 They also don't have to, you know, plant flowers, or do
15 any of those wonderful things either, cut grass.
16 Q. I saw a lot of mulch in front of your neighbor's
17 house.
18 A. That's my mulch.
19 Q. Do you understand that the requested zoning today
20 is not to ensure apartments would be built -- well, let me
21 ask this way.

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1 Are you aware that multi-family buildings could
2 be condominiums that have ownership? People could have
3 ownership of the building, as opposed to apartments, are
4 you aware of that?
5 A. No, I was not aware of that sitting in today.
6 I didn't hear, as a citizen, why it's being asked to be
7 rezoned and what is the purpose, what is the plan that
8 they are going to do with the property.
9 So they are requesting a rezoning, but no one
10 ever said, well, we are rezoning it so we can build
11 condominiums, build whatever it is, so we are rezoning it.
12 And then that leads me to believe that, okay, we
13 are going to rezone it to D.R. 16, and then we'll work
14 with whoever, and if whoever wants to build apartments,
15 then that's what we'll build. But there's no real
16 purpose.
17 Q. I can't help you during the hearing, but please
18 talk to our client afterwards, and they can explain to you
19 what they propose, outside of the hearing room.
20 MR. ZIMMERMAN: I object to that comment. It
21 could have been a documented site plan and they chose not

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1 to do that.
2 THE CHAIRMAN: Let's get it over with.
3 Q. Any of the communities that you looked at before
4 you chose the one where you live -- well, isn't it true
5 that there aren't very many communities, including the
6 ones you named that you looked at, that have a library
7 within walking distance?
8 Mays Chapel, you would have to go across York
9 Road to go to the library. I don't recall the other ones,
10 but isn't that a fair statement that there aren't too
11 many, that somebody lives near a library, but not all the
12 communities, including the ones you listed, have a library
13 within walking distance?
14 A. That would be -- not knowing all the
15 communities --
16 Q. How about the ones you mentioned?
17 A. The ones I mentioned, we didn't even -- we
18 started looking at those, and you start looking at areas,
19 you start looking at price, price for the value of the
20 home, right?
21 And then after you start looking at value, you

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1 start looking at the schools, libraries, what's in walking
2 distance.
3 Q. You didn't get past price?
4 A. I didn't get past price.
5 Q. Fair enough. Just a couple more things. There
6 is a Safe Way that's opened up at Owings Mills Boulevard
7 and Reisterstown Road, correct?
8 A. Correct.
9 Q. So that's an additional shopping opportunity for
10 groceries for you? I don't know if you've visitied it
11 yet, but it is there?
12 A. Correct.
13 Q. And you mentioned you have seen people walking
14 from the grocery store back to Reisterstown Road, and
15 there's one or two Giants on Reisterstown Road? St.
16 Thomas --
17 A. The Safe Way is a good distance from the
18 apartment complex on Reisterstown Road, so it's easier for
19 a person to -- actually, the apartment complex is very
20 close to Krispy Creme, so, my opinion, that's where I see
21 them walking.

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1 I very seldom see them walking from Safe Way, but
2 across Reisterstown road is where I see them.
3 MR. HOFFMAN: No other questions. Thank you.
4 THE CHAIRMAN: Thank you.
5 MR. ZIMMERMAN: Thank you, Mr. Thompson. There's
6 a gentleman named Mr. Dillon.
7 THE CHAIRMAN: Mr. Dillon, come on up here. You
8 have been waiting all day. We are going to give you your
9 chance.
10 STANLEY DILLON,
11 having been called as a witness, was duly sworn and
12 testified as follows:
13 DIRECT EXAMINATION
14 MR. ZIMMERMAN:
15 Q. Mr. Dillon, state your name and address.
16 A. I am Stanley Dillon, 9530 Lyons Mill Road, Owings
17 Mills, Maryland.
18 Q. Would you show the Board approximately where that
19 is on Petitioner's 3, in what direction?
20 A. This is my driveway. This is my house.
21 Q. So you're at the very left-hand edge of the map

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1 on Petitioner's Exhibit 3?
2 A. Correct.
3 Q. How long have you lived there?
4 A. The property has been in the family since 1955.
5 We built a house 1964.
6 Q. What would you like to tell the Board about this
7 case?
8 A. Well, I have mixed feelings. I have attended a
9 lot of hearings and expressed my concern about the change
10 in the area, and what I feared would happen.
11 Being a small homeowner with no association or
12 anything, I do not carry much weight, and what has
13 happened to the area is what I expected.
14 I have came to the hearing because I saw the
15 notice -- and I try to come to all the hearings I can
16 because it's an area that I raised four children, and I've
17 really been blessed with.
18 I think in light of everything -- may I?
19 THE CHAIRMAN: Sure. Go ahead.
20 A. First all, I have always lived in the area, only
21 lived in two places in Baltimore County. I went to

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1 evening school for ten years, Loyola College for my
2 undergraduate and Johns Hopkins University for my
3 graduate.
4 After twenty-two years at Johns Hopkins
5 University at the Applied Physicis Laboratory, I now work
6 for the National Security Agency, and I should be at work,
7 but, anyhow, all along this area here, there are
8 townhomes. This is all townhomes in here now.
9 On the other side of me are townhomes. If you go
10 back towards the Owings Mills town center, I don't know
11 what you call them, but you have townhomes that are less
12 than -- they're only a driveway apart.
13 What they are asking for, if it's townhomes, I do
14 not think it's out of line with everything that's here.
15 I realize this is 5.5 zoning. But I also realize
16 and understand what cluster zoning is. If you asked any
17 of the lay persons who come along, they'll tell you it's
18 sixteen six the way their homes are, and I just feel that
19 it's nothing out of the ordinary.
20 I prefer condominiums rather than apartments, but
21 you'd have all the units here, and it's just in character

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1 with everything that's there, and it's too late for me,
2 but that's my feeling.
3 I think the concerns -- I know -- I think I know
4 how Baltimore county works, the road won't be widened
5 until something is done as far as development is done
6 because Baltimore County very seldom widens a road on
7 their own. They normally have a developer come along and
8 use them to widen the roads.
9 If I go across Lyons Mill Road, it's widened
10 wherever the development is. It's narrow in front of my
11 house, but then it widens again when you get to the next
12 development.
13 But I moved out into the area to get away from --
14 you know, I didn't care whether it was a shopping center
15 or anything close to me. I still don't go to them.
16 But I saw the zoning notice, the sign. I go
17 there every day. Being a homeowner, I was concerned, I
18 just wanted to hear.
19 I don't want apartment units, but I have no
20 objection to condominiums, their zoning request they have.
21 Q. You would not object to townhomes under the

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1 existing zoning?
2 A. Under the existing zoning?
3 Q. If townhomes were built, you wouldn't object?
4 A. No. They are so many around there now.
5 Q. Just to clarify one point, you own about seven
6 acres?
7 A. It's a family plot.
8 Q. Actually, you were in the 2000 comprehensive
9 zoning process? You requested D.R. 16 zoning, correct?
10 A. That is correct.
11 Q. And that's Issue 3-9 you showed me this morning?
12 A. Correct.
13 Q. The County Council kept your property at D.R.
14 5.5?
15 A. That is correct.
16 MR. ZIMMERMAN: That's all I have.
17 THE CHAIRMAN: Mr. Hoffman?
18 MR. HOFFMAN: No.
19 THE CHAIRMAN: Thank you.
20 MR. ZIMMERMAN: Mr. Chairman, we have some
21 additional documents to present, for the record.

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1 These consist of E-mails that we received. I
2 gave a copy to Mr. Hoffman, from citizens in the area.
3 The first is an E-mail from Ms. Hazel Perry to
4 our office, which speaks for itself. She lives at 4424
5 Wynfield Drive. We would submit that as People's Counsel
6 No. 7.
7 We also have an E-mail from Ms. Ernestine Durham,
8 who wrote a letter during the 2000 comprehensive process,
9 dated September 25. Both of these E-mails, actually.
10 This would be our People's Counsel Exhibit 8.
11 In the Board's file already, we found a group of
12 letters that we would submit this group of letters as
13 People's Counsel Exhibit 9, and they are in the Board's
14 file.
15 And, finally, for sake of completeness, in the
16 Board's file is the Bureau of Development Plans Review
17 comment dated June 27, 2001, which is essentially no
18 comment. I submit that as People's Counsel No. 10. That
19 would complete our evidence. Also, as 11 and 12, the 200
20 and 1000 scale zoning map.
21 THE CHAIRMAN: Okay. I presume you do not wish

1 to argue this afternoon?
2 MR. HOFFMAN: Thank you. No.
3 THE CHAIRMAN: Submit briefs. How much time do
4 you need?
5 MR. HOFFMAN: Thirty days, that would be fine.
6 MR. ZIMMERMAN: That would be fine. Thank you.
7 I thank the Board for its patience.
8 MR. HOFFMAN: Just on the sign posting, I don't
9 believe we posted a sign. I think this is a county
10 posting of a County Board of Appeals hearing.
11 THE CHAIRMAN: I think that's correct.
12 MR. HOFFMAN: I would like to state for the
13 record I saw the sign. I'm not saying that it was great,
14 but I don't believe we picked the spot.
15 It was the county who picked the spot. And
16 wherever it went, if that wasn't good enough for some
17 people to see, I just wanted to say it's not our
18 responsibility. Not this time.
19 THE CHAIRMAN: Okay. Briefs will be due in
20 thirty days. That would be October 26, which is a Friday.
21 Make it the following Monday, October 29th.

1 MR. ZIMMERMAN: Yes. We'll try to keep them
2 short.
3 THE CHAIRMAN: Okay.
4 MR. HOFFMAN: Thank you.
5 THE CHAIRMAN: Thank you. The hearing is closed.
6 (Hearing concluded.)
7 * * * * *
8
9
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14
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Per. #7

COUNTY COUNCIL OF BALTIMORE COUNTY

COURT HOUSE, TOWSON, MARYLAND 21204

T. BRYAN MCINTIRE
COUNCILMAN, THIRD DISTRICT

COUNCIL OFFICE: 887-3196
887-3387

May 1, 2001

Arnold F. "Pat" Keller, III, Director
Office of Planning
401 Bosley Avenue, Room 406
Towson, Maryland 21204

RECEIVED
MAY - 2
OFFICE OF PLANNING

Re: CZMP Issue 3-136

Dear Mr. Keller:

Toward the end of the last comprehensive Zoning Map Process, the above captioned property came under consideration for several uses. Working from the zoning map, I did not know that there were severe environmental restraints, which, in effect, divide the property into two developable portions. I therefore feel it only fair to the property owner that this matter be reconsidered in the out-of-cycle process and that the previous designation of DR16 be retained.

Very truly yours,

T. Bryan McIntire
Councilman, Third District

TBM:dlm
cc: Robert A. Hoffman, Esq.
keller czmp 3-136.ltr.wpd

Verified 1-26-01

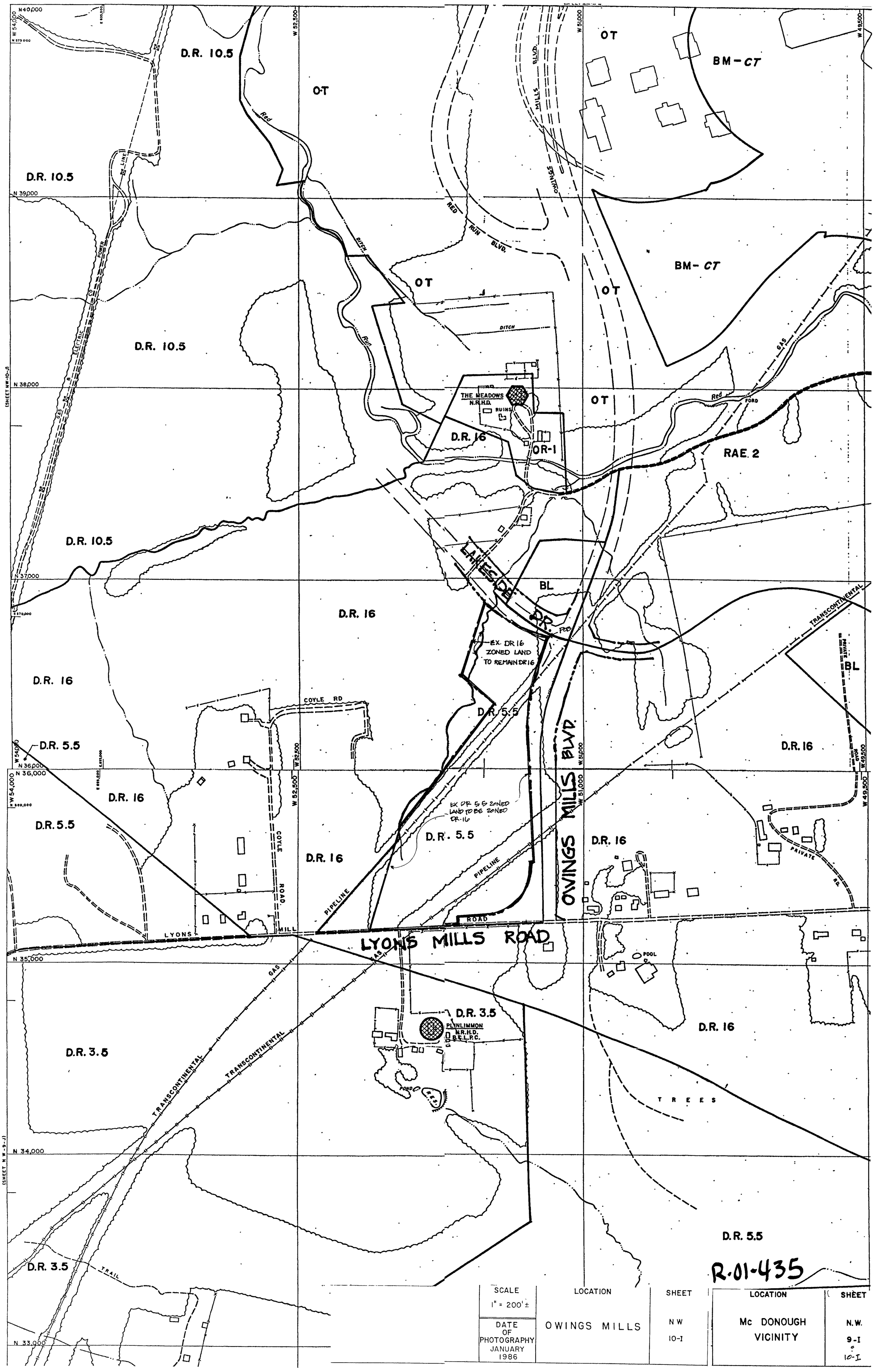
Case # R 01-435 Exhibits Apr 26, 2001

P. Counsel

1. HDC map of property
2. Master Plan 2010 pp. 174 – 182
3. CZM Process Aug. 2, ~~2000~~ – Jan. 18, 2000
4. Graph B. Ch. 2000 CZMP
5. 2000 CZMP Application & Pl. Office file (stapled)
6. 2000 CZMP Log of Issues Oct. 10, 2000
7. Email from Hazel Perry
8. Email from Ernestine Dunham
9. Group of letters from Bill family
10. Intra office correspondence June 27, 2001 from Robt. Bowling
11. 200-scale zoning map
12. 1000-scale zoning map

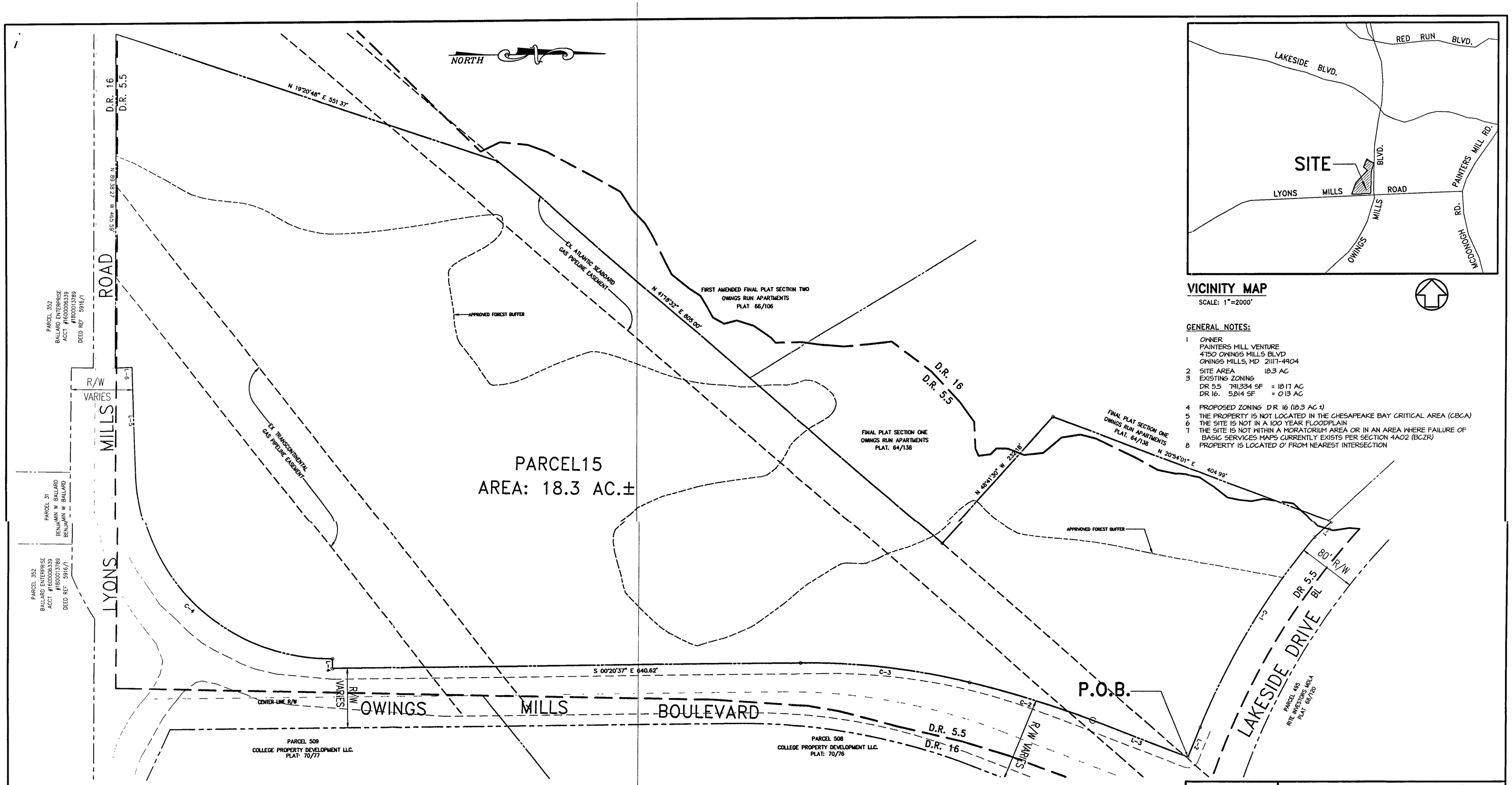
Petitioner

1. Site plan
2. Board w/ 2000 scale map & photographs of subject property (large exhibit) Large exhibit ~~CLOSET~~ IN
3. Aerial map w/ development superimposed
4. Resume of Tim Madden
5. Recommendation of Planning Board July 19, 2001
6. p. 182 Master Plan 2010 [~~Hoffman will supply color photo asap~~]
7. Letter to Keller from McIntire, dated May 1, 2001



R-01-435

SCALE	LOCATION	SHEET	LOCATION	SHEET
1" = 200'±	OWINGS MILLS	NW 10-I	Mc DONOUGH VICINITY	N.W. 9-I & 10-I
DATE OF PHOTOGRAPHY JANUARY 1986				



VICINITY MAP

SCALE: 1"=2000'

GENERAL NOTES:

1. OWNER
   PAINTERS MILL VENTURE
   4750 OWINGS MILLS BLVD
   OWINGS MILLS, MD 21117-4904
2. SITE AREA 18.3 AC
3. EXISTING ZONING
   DR 5.5 791,334 SF = 18.17 AC
   DR 16. 5,814 SF = 0.13 AC
4. PROPOSED ZONING D.R. 16 (18.3 AC ±)
5. THE PROPERTY IS NOT LOCATED IN THE CHESAPEAKE BAY CRITICAL AREA (CBCA)
6. THE SITE IS NOT IN A 100 YEAR FLOODPLAIN
7. THE SITE IS NOT WITHIN A MORATORIUM AREA OR IN AN AREA WHERE FAILURE OF BASIC SERVICES MAPS CURRENTLY EXISTS PER SECTION 4A02 (BCZR)
8. PROPERTY IS LOCATED 0' FROM NEAREST INTERSECTION

CURVE TABLE

Name	Delta	Radius	Length	Bearing	Chord	Tangent
C-1	17°10'36"	1027.76	308.11	S 59°52'50" E	306.96	155.22
C-2	07°36'23"	1,327.24	176.20	S 17°43'41" W	176.07	88.23
C-3	14°16'07"	938.25	233.66	S 06°47'26" W	233.06	117.44
C-4	88°16'39"	265.00	408.29	S 43°47'42" W	369.09	257.15

LINE TABLE

Name	Bearing	Distance
L-1	S 43°05'43" E	31.61
L-2	S 68°28'32" E	45.00
L-3	S 21°31'52" W	140.94
L-4	S 89°39'23" W	13.00
L-5	S 87°56'02" W	150.95
L-6	S 02°03'58" E	23.07

Petitioner's #1

MORRIS & RITCHIE ASSOCIATES, INC.
ENGINEERS, PLANNERS, SURVEYORS AND LANDSCAPE ARCHITECTS
110 WEST ROAD SUITE 245
TOWSON, MARYLAND 21204
(410) 821-1690
FAX (410) 821-1748

STATE OF MARYLAND — MICHAEL LEE SOLL — 11041 — PROFESSIONAL LAND SURVEYOR — 2/28/01

UNDOCUMENTED PLAN TO ACCOMPANY
RECLASSIFICATION PETITION

OWINGS MILLS PMV PARCEL

TAX MAP #67, GRID #13, PARCEL 15
ELECTION DISTRICT: 02
COUNCILMANIC DISTRICT 03
BALTIMORE COUNTY, MARYLAND

DATE	REVISIONS	
		JOB NO: 11664
		SCALE: 1"=60'
	R-01-435	DATE: 02/28/01
		DRAWN BY SL
		DESIGN BY: SR/SL
		REVIEW BY: SR
		SHEET 1 OF 1

P-NW

2000 COMPREHENSIVE ZONING MAP
ADOPTED by
THE BALTIMORE COUNTY COUNCIL
OCTOBER 10, 2000
Bills Nos. 87-00, 88-00, 89-00, 90-00, 91-00, 92-00, 93-00.

Chairman, County Council

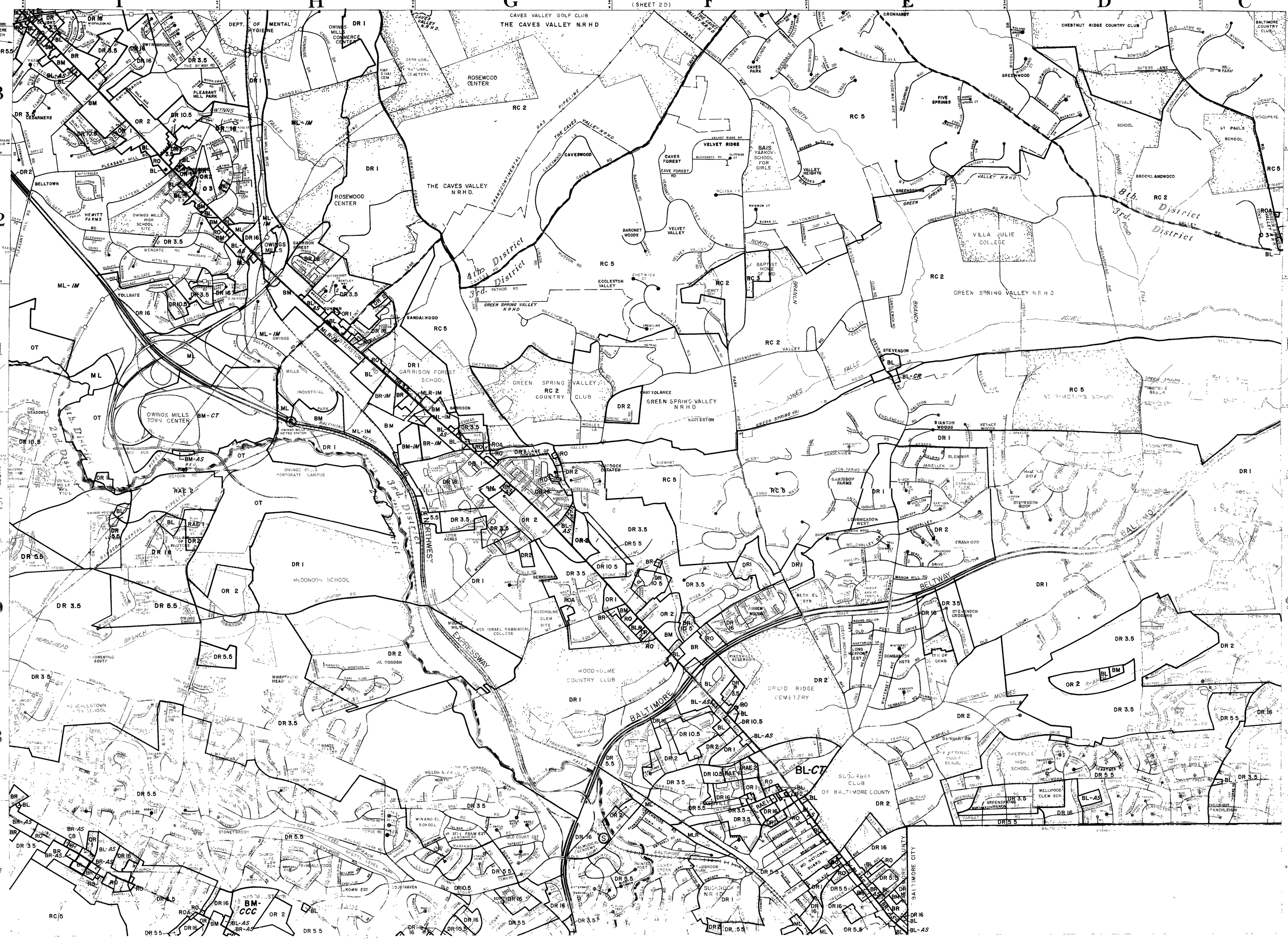
THIS MAP HAS BEEN REVISED IN SELECTED AREAS
TOPOGRAPHY COMPILED BY PHOTOGRAMMETRIC METHODS
BY BUCHART-HORN, INC BALTIMORE, MD 21210

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
OFFICIAL ZONING MAP

SCALE	LOCATION	SHEET
1" = 200' ±	Mc DONOUGH VICINITY	N.W 9-I
DATE OF PHOTOGRAPHY JANUARY 1986		

NW 9 I

P.C. #11



BALTIMORE COUNTY OFFICE OF PLANNING

PIKESVILLE

BALTIMORE COUNTY BASE MAP SERIES

REVISED DATE SEP '95

2C

P.C. 4/2

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

ZONING RECLASSIFICATION PETITIONS

Cycle I, 2001

May 31, 2001

ZONING RECLASSIFICATION PETITIONS

Cycle I, 2001

Report by the Baltimore County Office of Planning

to the

Baltimore County Planning Board

May 31, 2001

Baltimore County
Office of Planning
Towson, Maryland

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Baltimore County
Office of Planning

401 Bosley Avenue - Ste 406
Towson, Maryland 21204
410-887-3211
Fax: 410-887-5862
E-mail: planning@co.ba.md.us

TO: Members
Baltimore County Planning Board

DATE: May 31, 2001

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

In the current cycle, the Baltimore County Board of Appeals accepted seven reclassification petitions. Please note, however, that two of the petitions–Case Numbers R-01-437 and R-01-438–have been exempted from the regular cyclical procedure of Section 2-356(c) through (h), inclusive, of the Baltimore County Code. In compliance with the Baltimore County Code, recommendations on the remaining petitions are submitted in the attached report.

The Planning Board is scheduled to review the petitions on June 7, 2001, and to make final recommendations on July 19, 2001. The Planning Board's report must be submitted to the Baltimore County Board of Appeals no later than July 31, 2001.

The Board of Appeals has tentatively scheduled hearing dates on these petitions and will advertise these hearing as required. Hearings are set to take place during the period from September 26, 2001 through November 14, 2001.

Pat Keller

Arnold F. 'Pat' Keller, III

AFK: JL
Attachment

Introduction

Under the provisions of Section 2-356(e) of the Baltimore County Code, 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 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 remaining in the current cycle have been reviewed by the planning staff, and the following pages report the Office of Planning'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 a review of the 2000 Comprehensive Zoning Map Process. 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 and Transportation Planning.

In reaching its decision on each petition, the Board of Appeals is required to use the standards in Section 2-356(j) of the Baltimore County Code. During the first cycle following the 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 10, 2000] was established in error."

PETITIONS FOR RECLASSIFICATION
CYCLE I, 2001

Assigned Hearing Dates
County Board of Appeals

Case No. R-01-435
Painters Mill Venture, LLP
NWC Owings Mills Blvd. & Lyons Mill Rd.
Wednesday, September 26, 2001 at 10:00 a.m.

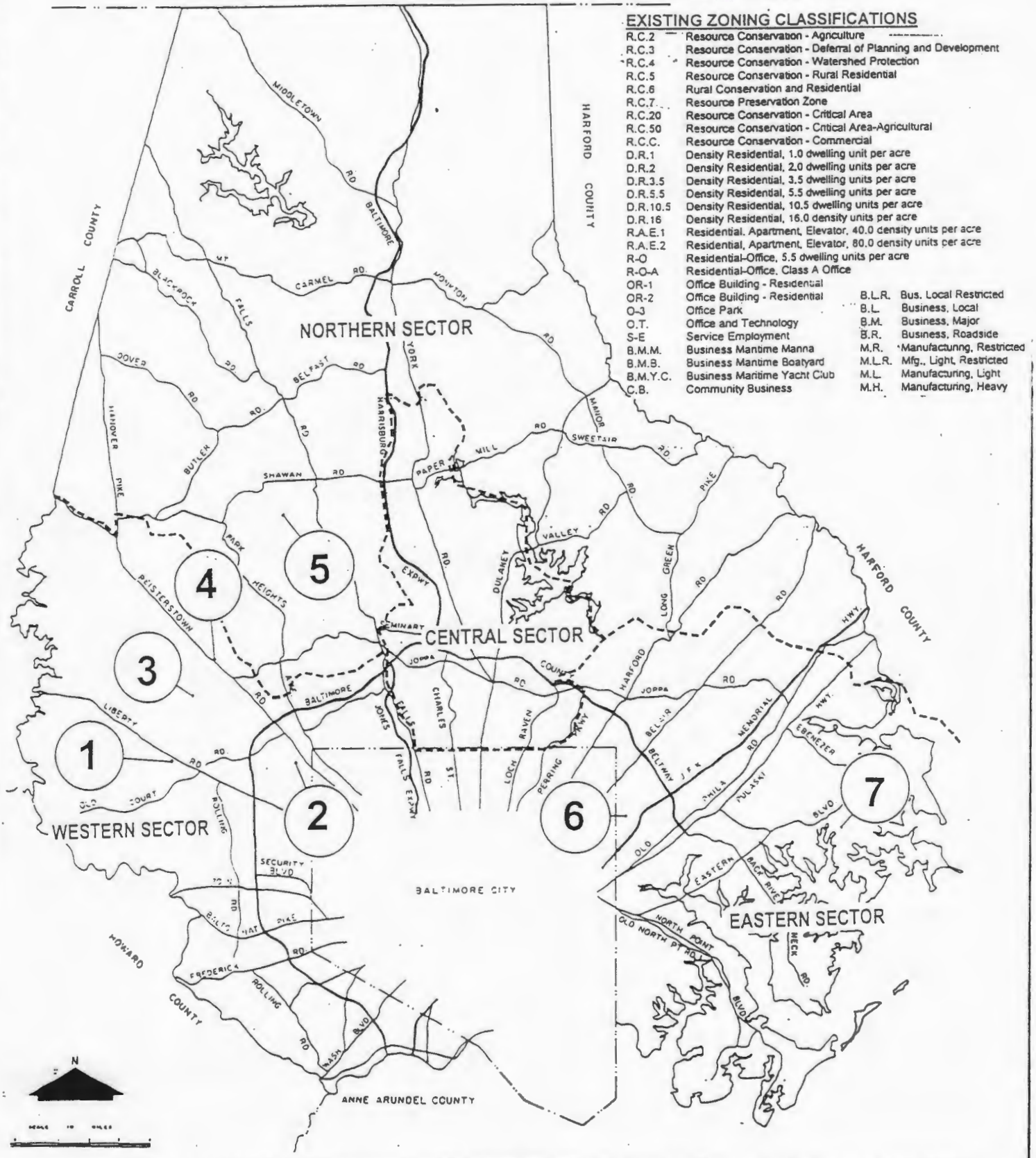
Case No. R-01-434
Balto. Co. Revenue Auth.; Paul Gourley, Ethel Smith; BP Amoco Corp (legal owner), and BP Amoco (contract purchaser)
520 Reisterstown Road, ½ Linden Terrace and 2 Linden Terrace
Wednesday, October 3, 2001 at 10:00 a.m.

Case No. R-01-439
7-Eleven, Inc.
204 Bowleys Quarters Road
Wednesday, October 17, 2001 at 10:00 a.m.

Case No. CR-01-436
Highway Realty, Inc., Eastrel, LLC, David Pisanic, Patricia Franey; Marie and Donald Haga
9913-9921 Reisterstown Rd.
Wednesday, October 24, 2001 at 10:00 a.m.

Case No. CR-01-433-X
Sohan L. Sambhi & Joginder Kaur
9217 Liberty Rd.
Wednesday, November 14, 2001 at 10:00 a.m.

LOCATIONS OF PROPERTIES UNDER PETITION
CYCLE I --- APRIL 2001 - OCTOBER 2001



BALTIMORE COUNTY DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT/ZONING REVIEW

SOURCE MATERIAL

Recommendations for the two 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 10, 2000;

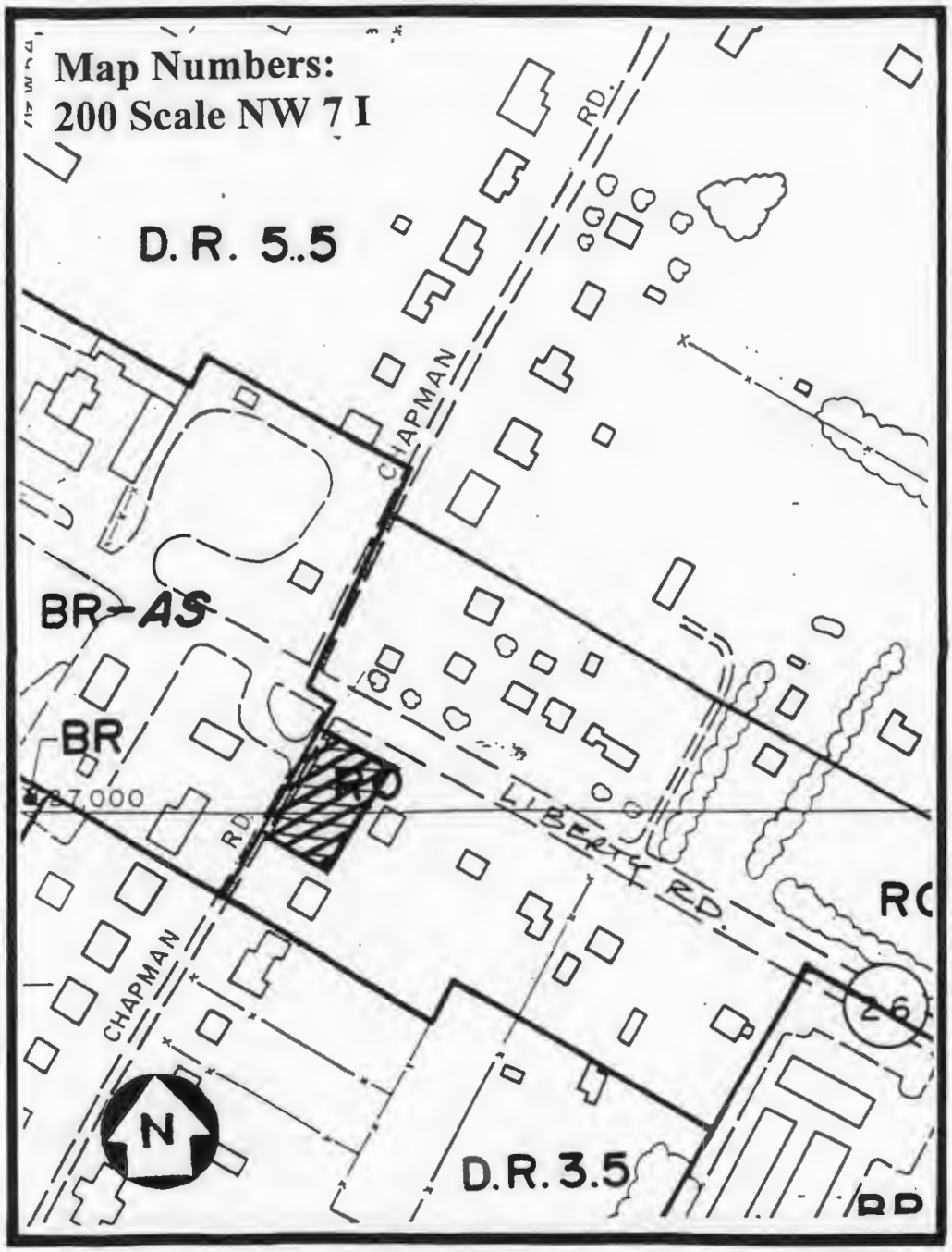
2. Capital Budget and 5-Year Capital Program;

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 Number *CR-01-433-X*
Location of Property Under Petition

Scale: 1" = 200'

CASE NO:
CR-01-433-X

PETITIONER:
Sohan L. Sambhi and Joginder Kaur

REQUESTED ACTION:
Reclassification to BL (Business Local) and a Special Exception for a service garage.

EXISTING ZONING:
RO (Residence Office)

LOCATION:
9217 Liberty Road

AREA OF SITE:
.27 acres

ZONING OF ADJACENT PROPERTY/USE:

North:	RO and BR-AS	Office and commericial
South:	RO and DR 3.5	Office and residential
East:	RO	Office
West	BR and BR-AS	Commercial

SITE DESCRIPTION:
The site consists of .27 acres of land located at the southeast corner of the intersection of Liberty Road and Chapman Road. The property was formerly improved with a single family, detached home that has been razed.

WATER AND SEWERAGE:
The site is served by public and sewer and is designated as W-1, S-1 (existing service area) according to the Master Water and Sewer Plan. A private sewage disposal system, however, is indicated on the documented site plan.

TRAFFIC AND ROADS:
The site has frontage along Liberty Road, a principal arterial, and Chapman Road, a local road, which provides access to residences located south of Liberty Road.

ZONING HISTORY:
This property has not been the subject of an issue filed as part of a Comprehensive Zoning Map Process.

MASTER PLAN:

The proposed land use map, adopted by the County Council on February 22, 2000, indicates the site is designated for commercial use.

PROPOSED vs. EXISTING:

The use regulations for the RO and BL zones may be found in Sections 204 and 230 of the Baltimore County Zoning Regulations, respectively.

The RO zone was created to accommodate houses converted to office buildings (Class A) and small office buildings in predominately residential areas on sites adjacent to commercial activity, heavy traffic, or other similar factors which can no longer be restricted solely to residential uses. Buildings and uses in the RO zone should be compatible with nearby residential properties.

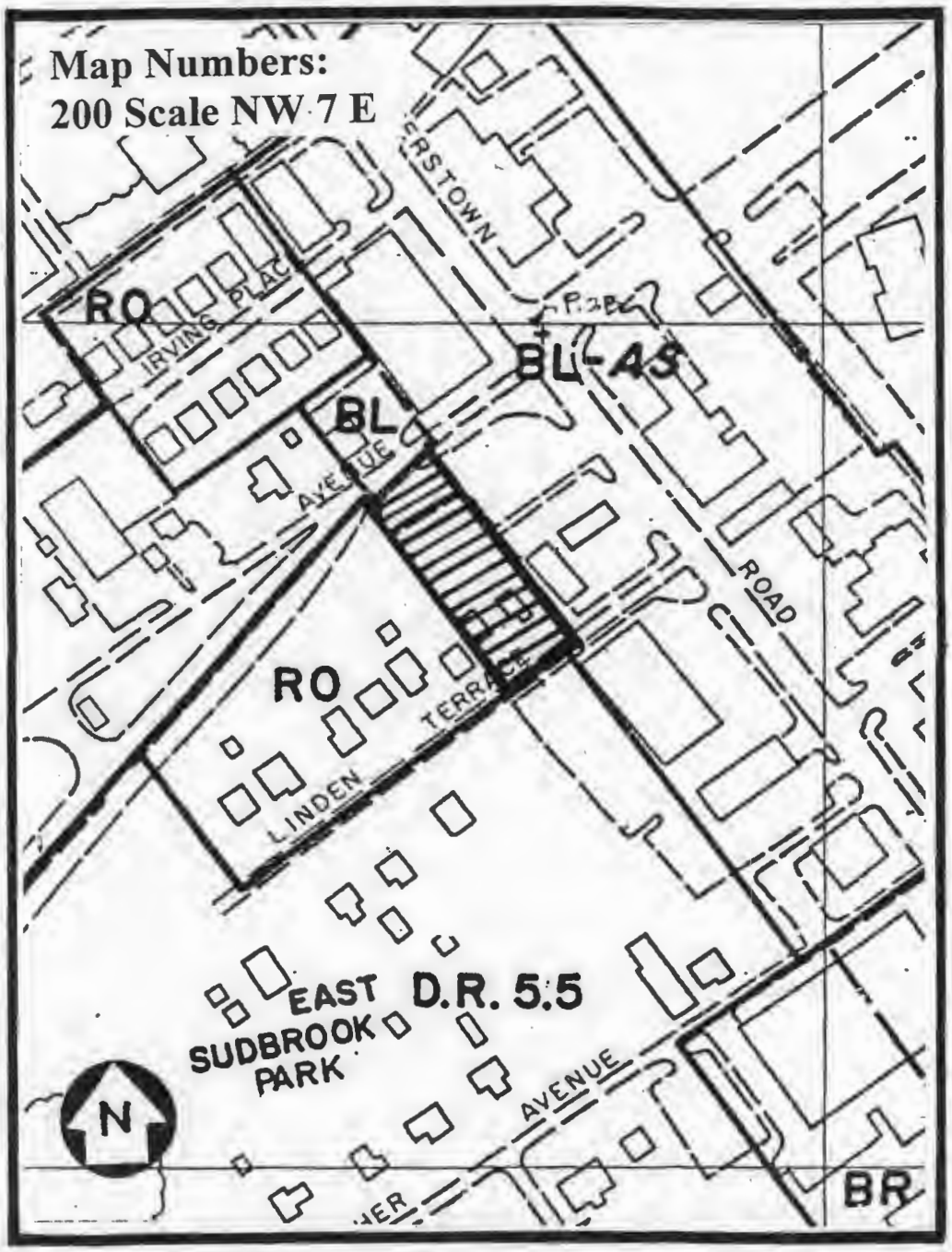
The BL zone allows a wide range of uses in addition to those permitted in the residential zone immediately adjoining the property. Density is regulated by a floor area ratio of 3.0. However, density is realistically limited by parking requirements and economic constraints.

DOCUMENTED SITE PLAN:

The documented site plan indicates a proposed one-story, three-bay service garage building. The service bays are proposed to be oriented toward Chapman Road. The proposed building elevations are at best minimal and additional information should be provided with respect to these documented site plan requirements. In addition, the plan provides no information regarding sign details, nor is information provided on the proposed dumpster location.

OFFICE OF PLANNING RECOMMENDATION:

Based upon the information provided and analysis conducted, the Office of Planning recommends the existing RO zoning be retained.



Case Number *CR-01-434*
Location of Property Under Petition

Scale: 1" = 200'

CASE NO:
R-01-434

PETITIONERS:
Baltimore County Revenue Authority, Paul Gourlay, Ethel Smith, BP Amoco Corporation (legal owner), and BP Amoco (contract purchaser).

REQUESTED ACTION:
Reclassification to BL-AS (Business Local, Automotive Service)

EXISTING ZONING:
RO (Residence Office)

LOCATION:
520 Reisterstown Road, ½ Linden Terrace and 2 Linden Terrace

AREA OF SITE:
.57 acres

ZONING OF ADJACENT PROPERTY/USE:

North:	BL and OR-1	Commercial and Office
South:	DR 5.5	Residential and Commercial (parking)
East:	BL-AS	Commercial
West:	RO	Residential and Office

SITE DESCRIPTION:
The property consists of three parcels comprising approximately .57 acres of land. ½ Linden Terrace and 2 Linden Terrace are improved with buildings originally constructed for residential purposes. ½ Linden Terrace currently appears to be used as an office. 2 Linden Terrace appears to be unoccupied. The portion of the property known as 520 Reisterstown is used as a parking lot.

WATER AND SEWERAGE:
The site is served by public water and sewer and is designated as W-1, S-1 (existing service area) according to the Master Water and Sewer Plan.

TRAFFIC AND ROADS:
The Linden Terrace properties have direct access to that road, and the existing Revenue Authority parking lot is accessed off of Slade Avenue. Linden Terrace and Slade Avenue are designated as local roads.

ZONING HISTORY:
Zoning issues were filed on the subject property as part of the 1980 and 2000 Comprehensive Zoning Map Processes. The County Council changed the zoning from DR 16 and DR 5.5 to RO in 1980. In the 2000 process, an issue was filed to

change the zoning of the subject property from RO to BL. The County Council voted to retain the existing RO zoning.

MASTER PLAN:

The proposed land use map, adopted by the County Council on February 22, 2000, indicates the site is designated for commercial use. The property is located within the boundaries of the Pikesville Revitalization Plan, which was adopted by the Baltimore County Council in 1991.

PROPOSED vs. EXISTING ZONING:

The use regulations for the RO and BL zones and AS district may be found in Sections 204, 230, and 405 of the Baltimore County Zoning Regulations, respectively.

The RO zone was created to accommodate houses converted to office buildings (Class A) and small office buildings in predominately residential areas on sites adjacent to commercial activity, heavy traffic, or other similar factors which can no longer be restricted solely to residential uses. Buildings and uses in the RO zone should be compatible with nearby residential properties.

The BL zone allows a wide range of uses in addition to those permitted in the residential zone immediately adjoining the property. Density is regulated by a floor area ratio of 3.0. However, density is realistically limited by parking requirements and economic constraints. The AS district, at this location, would enable the applicant to improve the property with a fuel service station in combination with a convenience store.

OFFICE OF PLANNING RECOMMENDATION:

As indicated above, the property was the subject of a map issue as part of the 2000 Comprehensive Zoning Map Process, and at that time, the Office of Planning expressed concerns regarding the impact of any subsequent development of the property. In the absence of a documented site plan that could potentially address specific development details and impacts, the Office of Planning recommends the existing zoning be retained.

CASE NO:
R-01-435

PETITIONERS:
Painters Mill Joint Venture, LLP

REQUESTED ACTION:
Reclassification to DR 16 (Density Residential 16 Dwelling Units Per Acre)

EXISTING ZONING:
DR 5.5 (Density Residential 5.5 Dwelling Units Per Acre)

LOCATION:
North side of Lyons Mill Road, west of Owings Mills Boulevard

AREA OF SITE:
18.17 acres

ZONING OF ADJACENT PROPERTY/USE:

North:	BL	Commercial
South:	DR 16	Residential
East:	DR 16	Residential
West:	DR 16	Residential

SITE DESCRIPTION:
The petitioner's property consists of 18.3 acres of land zoned DR 16 and DR 5.5. The entire property is in forest and undeveloped with the exception of two transcontinental gas pipelines that transverse the property.

WATER AND SEWERAGE:
The site is served by public water and sewer and is designated as W-1, S-1 (existing service area) according to the Master Water and Sewer Plan.

TRAFFIC AND ROADS:
The site has direct access to Owings Mills Boulevard and Lyons Mill Road, which are classified as minor arterials.

ZONING HISTORY:
Zoning issues were filed on the property as part of the 1984 and 2000 Comprehensive Zoning Map Processes. In 1984 the County Council changed the zoning of the subject property from RC 3 to DR 16. In 2000 the County Council rezoned the property from DR 16 to DR 5.5.

MASTER PLAN/COMMUNITY PLANS:
The proposed land use map, adopted by the County Council on February 22, 2000, indicates the site is designated for multi-family residential use.

PROPOSED vs. EXISTING ZONING:

The use regulations for the DR zones may be found in Section 1B01.1A of the Baltimore County Zoning Regulations. The DR 5.5 and DR 16 zones permit a density of 5.5 and 16 dwelling units per acre, respectively.

OFFICE OF PLANNING RECOMMENDATIONS:

Based upon the information provided and analysis conducted, the Office of Planning recommends the applicant's property be rezoned to the DR 16 classification. Staff's current recommendation is consistent with the Planning Board's zoning recommendation for this property as part of the 2000 Comprehensive Zoning Map Process. In addition, the proposed zoning would be consistent with the existing zoning of the properties located in close proximity to the subject site.

→ Compatible w/ built environment
" w/ smart growth

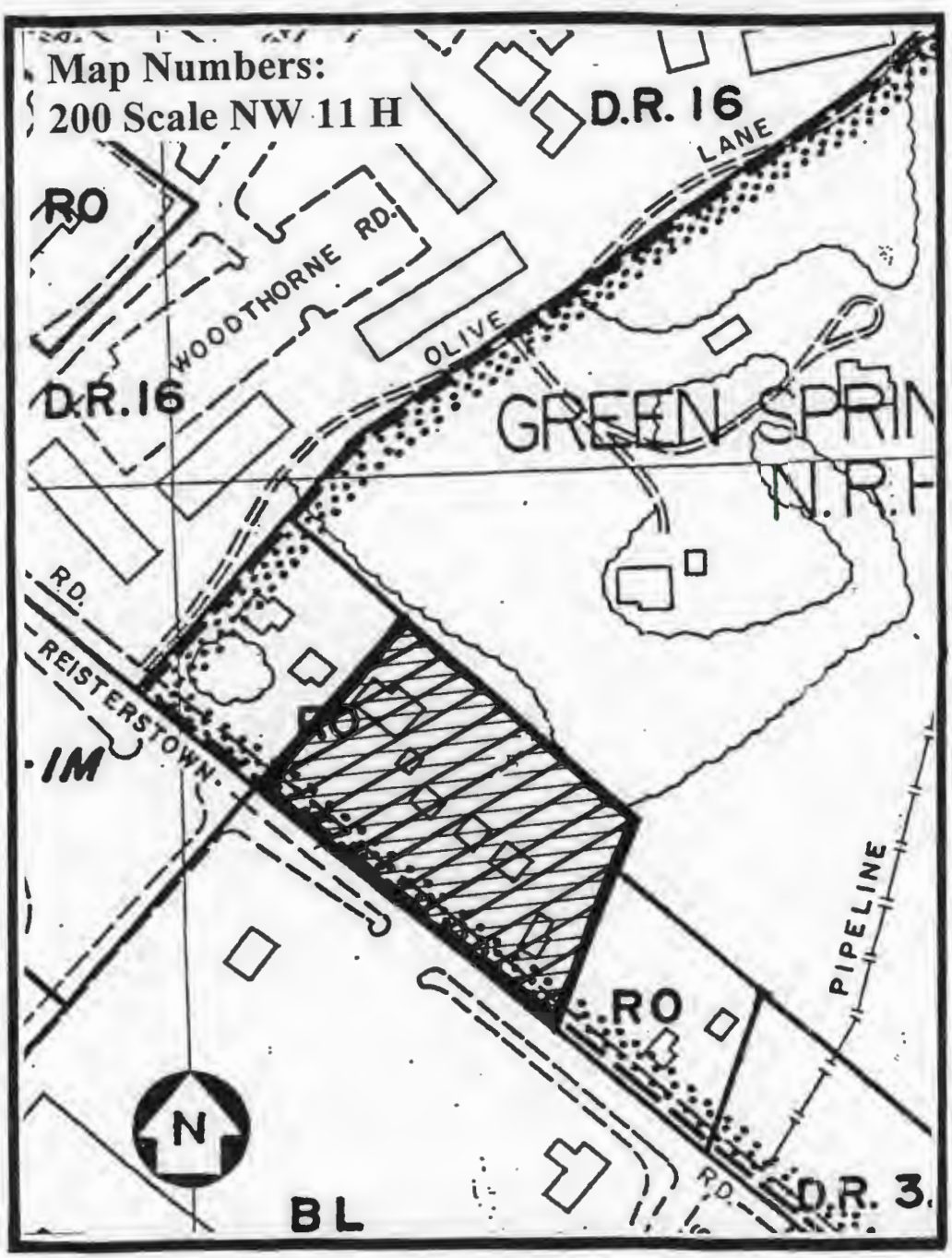
→ " Increase Metro ridership

→ Location w/in one of the
→ two county growth

→ 1979 Master Plan

→ 1989 Zoning process

LCR



Case Number *CR-01-436*

Location of Property Under Petition

Scale: 1" = 200'

CASE NO:
CR-01-436

PETITIONERS:
Highway Realty, Inc., Eastrel, LLC; David Pisanic; Patricia Franey; Marie and Donald Haga

REQUESTED ACTION:
Reclassification to BL (Business Local)

EXISTING ZONING:
RO (Residential Office)

LOCATION:
9913, 9915, 9917, 9919 and 9921 Reisterstown Road

AREA OF SITE:
1.95 acres

ZONING OF ADJACENT PROPERTY/USE:

North:	RO	Office
South	BL	Commercial
East	RO/DR-1	Institutional
West	BL	Commercial

SITE DESCRIPTION:
The petitioners' property consists of 1.95 acres of land zoned RO. The site is currently being used for Class A offices.

WATER AND SEWERAGE:
The site is served by public water and sewer and is designated as W-1, S-1 (Existing Service Area) according to the Master Water and Sewer Plan.

TRAFFIC AND ROADS:
The site has direct access to Reisterstown Road, which is designated as a principal arterial.

ZONING HISTORY:
A zoning issue was filed on the subject property as part of the 2000 Comprehensive Zoning Map Process. No change in the property's zoning classification took place.

MASTER PLAN/COMMUNITY PLANS:
The proposed land use map, adopted by the County Council on February 22, 2000, indicates the site is designated for commercial use.

PROPOSED vs. EXISTING ZONING:

The use regulations for the RO and BL zones may be found in Sections 204 and 230 of the Baltimore County Zoning Regulations, respectively.

The RO zone was created to accommodate houses converted to office buildings (Class A) and small office buildings in predominately residential areas on sites adjacent to commercial activity, heavy traffic, or other similar factors which can no longer be restricted solely to residential uses. Buildings and uses in the RO zone should be compatible with nearby residential properties.

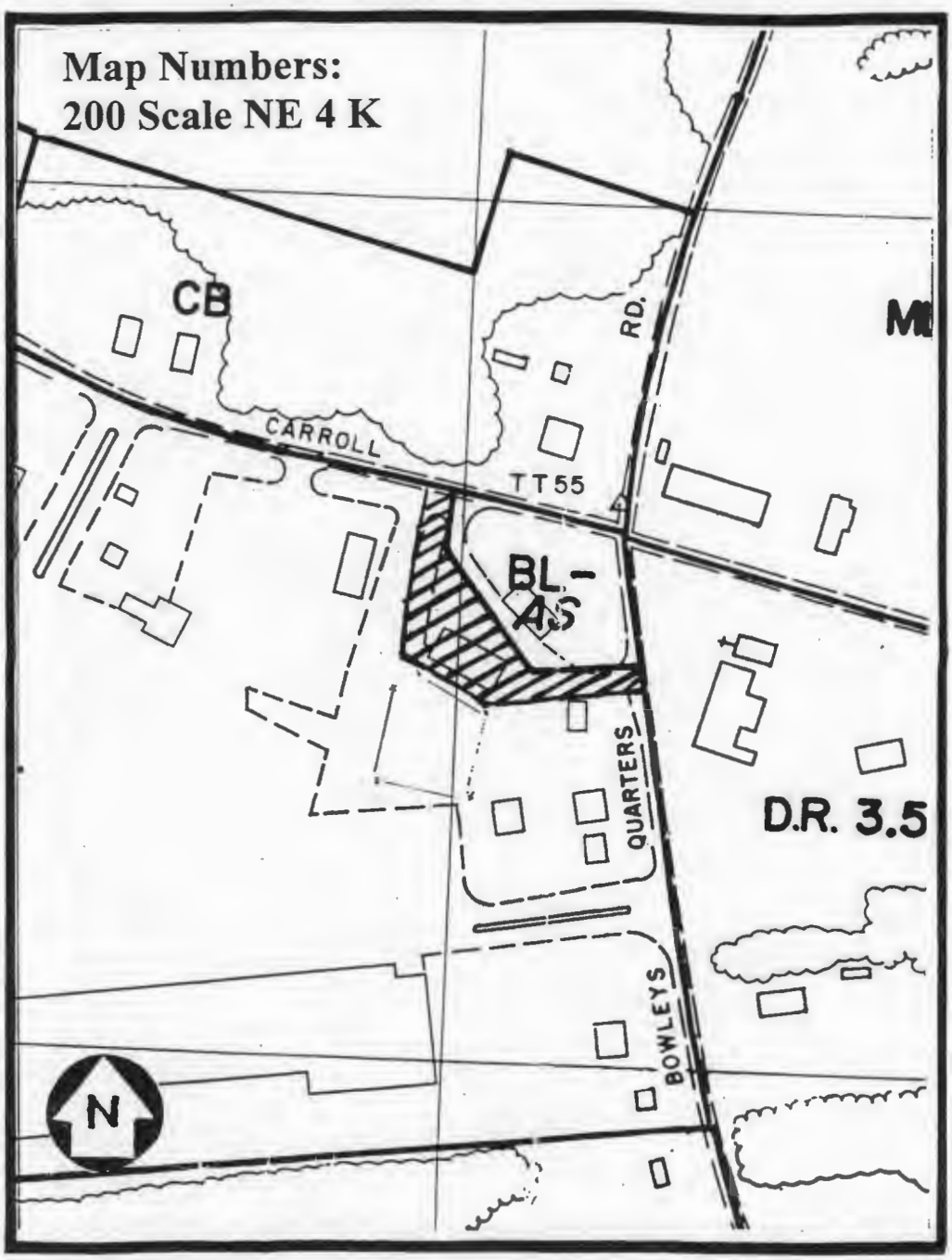
The BL zone allows a wide range of uses in addition to those permitted in the residential zone immediately adjoining the property. Density is regulated by a floor area ratio of 3.0. However, density is realistically limited by parking requirements and economic constraints.

DOCUMENTED SITE PLAN:

The documented site plan indicates two proposed commercial buildings. A one-story, 3693 square foot McDonald's restaurant and a one-story, 5,600 square foot bank would be erected on the subject. A note on the plan reveals that another permitted retail use could be improved on the property instead of the bank. Landscaping shown on the plan is generally acceptable. However, a note on the plan indicates that existing trees are to be removed on property contiguous to Garrison Forest School. These trees should be retained in the event that the petitioners' request is granted. The proposed building elevations are at best minimal; additional information is needed with respect to this documented site plan requirement. In addition, information on materials to be used for the dumpster enclosure and sign elevations should be provided to the Office of Planning. Additional review of other site related matters would be appropriate at the development plan stage.

OFFICE OF PLANNING RECOMMENDATIONS:

Staff can find no reason to rezone the subject site at this particular time. It will be incumbent upon the petitioner to prove to that the County Council made an error when the comprehensive Zoning Maps were last adopted.



Case Number *R-01-439*
Location of Property Under Petition

Scale: 1" = 200'

CASE NO:
R-01-439

PETITIONER:
7-Eleven, Inc.

REQUESTED ACTION:
Reclassification to BL-AS (Business Local, Automotive Service)

EXISTING ZONING:
BL (Business Local)

LOCATION:
Southwest corner of Bowleys Quarters Road and Carroll Island Road

AREA OF SITE:
.33 acres

ZONING OF ADJACENT PROPERTY/USE:

North:	CB and BL-AS	Unimproved and commercial
South:	BL	Commercial
East	DR 3.5	Institutional
West	BL	Commercial

SITE DESCRIPTION:
The subject property consists of .33 acres of land zoned BL, and is currently used as a 7-Eleven store. The site is adjacent to the Carroll Island Shopping Center. Property immediately contiguous to the site is improved with a service garage, which would be razed and combined with the petitioner's property under a proposed redevelopment scenario outlined by representatives of the property owner.

WATER AND SEWERAGE:
The site is served by public water and sewer and is designated as W-1, S-1 (existing service area) according to the Master Water Sewer Plan.

TRAFFIC AND ROADS:
The site has direct access to Carroll Island Road, a collector road, and Bowleys Quarters Road, which is classified as a minor arterial.

ZONING HISTORY:
The property was part of a larger zoning issue in 1996, at which time the zoning was changed from BL-CCC to BL.

MASTER PLAN/COMMUNITY PLANS:

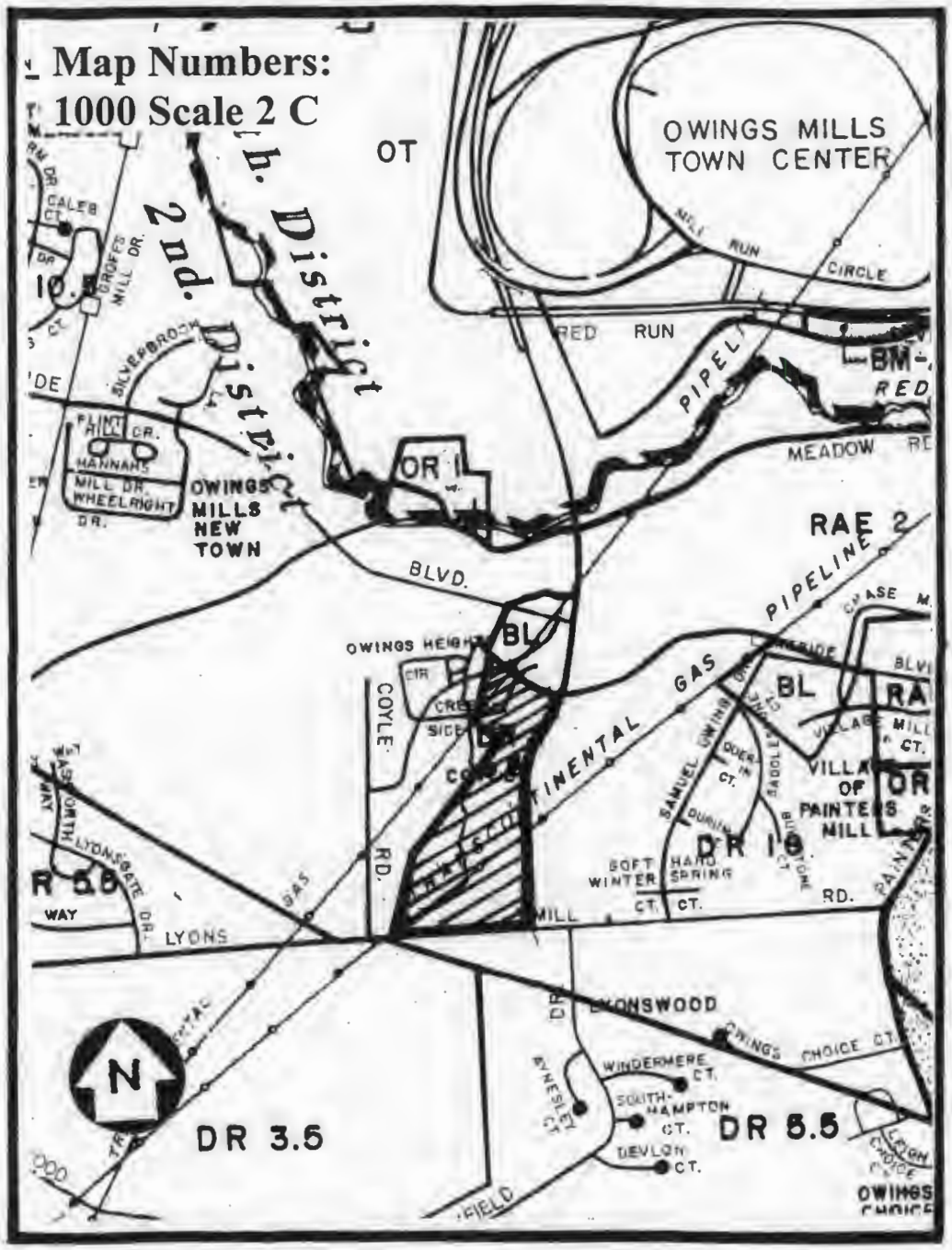
The proposed land use map, adopted by the County Council on February 22, 2000, indicates the site is designated for commercial use.

PROPOSED vs. EXISTING:

Regulations governing the BL zone and the AS district may be found in Section 230 and 405 of the Baltimore County Zoning Regulations, respectively. The BL zone allows a wide range of uses in addition to those permitted in the residential zone immediately adjoining the property. Density is realistically limited by parking requirements and economic constraints. The AS district, at this location, would enable the applicant to improve the property with a fuel service station in combination with a convenience store.

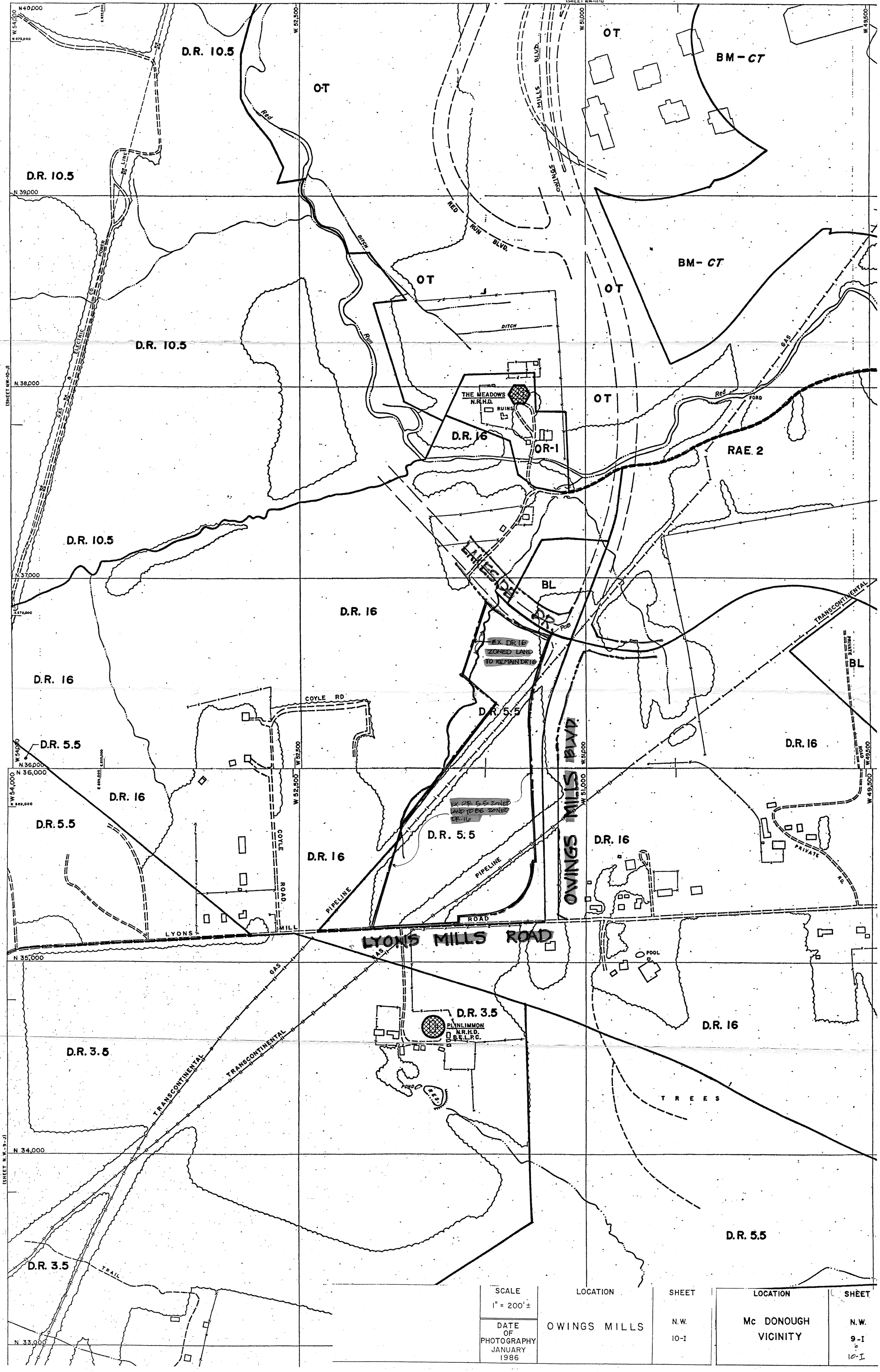
OFFICE OF PLANNING RECOMMENDATION:

Support for any zoning change would be dependent upon the quality of site specific issues with respect to vehicular access; internal circulation and parking, building height, location and size; landscaping, and signage details. In the absence of a documented site plan, by which the quality of development on the subject site could be controlled, the staff recommends the existing zoning be retained at this time.



Case Number *R-01-435*
Location of Property Under Petition

Scale: 1" = 1000'



SCALE	LOCATION	SHEET	LOCATION	SHEET
1" = 200'±	OWINGS MILLS	N.W. 10-I	Mc DONOUGH VICINITY	N.W. 9-I & 10-I
DATE OF PHOTOGRAPHY JANUARY 1986				