3/4/02

IN THE MATTER OF THE APPLICATION OF PENNROSE PROPERTIES, INC. – CONTRACT PURCHASER; DR. MIRZA HUSSAIN ALI BAIG - LEGAL OWNER FOR A ZONING RECLASSIFICATION ON PROPERTY LOCATED ON THE W/S ROLLING ROAD BETWEEN CHIPPER ROAD AND JODY KNOLL ROAD (3134 ROLLING ROAD)	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Case No. CR-02-120-A
2ND ELECTION DISTRICT 2ND COUNCILMANIC DISTRICT	*	

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OPINION

This case comes to the Baltimore County Board of Appeals based on original jurisdiction to hear cases involving zoning reclassifications of property. That request is coupled with a variance to permit a proposed building length of 428 feet in lieu of the 240 feet allowed. The matter was heard in public session on October 30, 2001. G. Scott Barhight, Esquire, appeared on behalf of the Petitioners; and Peter Max Zimmerman represented the Office of People's Counsel, Baltimore County.

Both Mr. Barhight and Mr. Zimmerman offered brief opening statements concerning the issues to be submitted during the course of the hearing. Mr. Barhight's opening statement referenced the property itself, what was proposed, the significant support of the project from elected officials and community groups; and the need for such a project; i.e., insufficient elderly housing opportunities in the area coupled with land not currently zoned for such housing. Mr. Zimmerman stressed his responsibility to defend the maps adopted by the Baltimore County Council during the last Comprehensive Map Zoning Process (CMZP) and outlined the process for rezoning requests. He indicated that there was no community group in the immediate area of the site that had been directly contacted by the Developer other than by sign posting, and that the

property was surrounded by D.R. 5.5 zoning and single-family dwellings. He requested the Board consider the area and, based on the facts of the case to be presented, that the site plan was not compatible with existing homes. The Planning Staff had not considered the matter during the last Comprehensive Zoning Map Process (CZMP) since no issue had been filed by anyone to request rezoning. It was Mr. Zimmerman's position that, relative to the variance, the Hearing Officer could increase the building limit to 300 feet but not grant anything in excess thereof by reason of statutory limitation.

Ms. Catherine Caskey appeared as the first witness for the Petitioner. She related her extensive background in real estate development and her current position and responsibilities within the Pennrose Properties corporation, with special involvement in the development of real estate projects for affordable senior citizen housing. She had 2 years' experience with Pennrose, and had opened their Maryland offices which now operated approximately 500 to 700 current senior units. She was accepted as an expert in development of affordable real estate for middle income renters and homeowners and development of housing for those groups.

Ms. Caskey introduced Petitioners' Exhibit No. 1, a brochure describing the activities of Pennrose, and Petitioners' Exhibit No. 2, a Documented Site Plan. Petitioner's Exhibits No. 3 and No. 4 were submitted as elevation and aerial descriptions of the proposed project. Ms. Caskey described the details of the Documented Site Plan as containing approximately 11+ acres, set off Rolling Road. The long arm of the proposed "E"-shaped building is not visible from the street and faced vacant land in the rear. The building itself would be situated on approximately 5 ½ acres of the approximate 11 acres. Petitioners' Exhibit No. 5 was a letter from Ms. Mary Harvey, Director of the Baltimore Community Conservation Office, supporting the elderly housing project. Petitioners' Exhibit No. 7 was a memo dated October 4, 2001 signed

by the Director of the Office of Planning supporting the project. Petitioners' Exhibit No. 6 was admitted as an October 11, 2001 memorandum from Mrs. Harvey to George Zahner, Department of Permits & Development Management, supporting the project. Petitioner's Exhibit No. 8 was also admitted as a letter from the Liberty Road Community Council supporting the project, and Petitioners' Exhibit No. 9 was admitted as a letter from Mr. William Obriecht, President of the Liberty Road Community Coalition, Inc., supporting the request, with additional comments that certain restrictions requested by the Coalition be placed on the site if approved by the Board. Petitioners' Exhibit No. 10 represented a letter from the Liberty /Randallstown Coalition dated October 25, 2001 in support of the proposed use of the property. Petitioners' Exhibit No. 11 was admitted as a letter from Mr. Pat Keller to the Honorable S. G. Sam Moxley, Chairman of the Baltimore County Council, dated August 17, 2001, certifying the action of the Planning Board requesting that "early action upon the petition by Pennrose Properties, Inc., for zoning reclassification of the property at 3134 Rolling Road is manifestly required in the public interest," along with several attachments. Petitioners' Exhibit No.12, dated November 6, 2001, represented a letter from Thomas J. Peddicord, Jr., Legislative Counsel /Secretary to the Baltimore County Council, to Mr. Lawrence Wescott, Chairman of the Baltimore County Board of Appeals, with Resolution No. 106-01, approving the Planning Board's action that the zoning reclassification petition filed by Pennrose Properties should be exempted from the regular cyclical process of § 2-356(c)-(h) inclusive, of the *Baltimore County Code*, 1998 As Amended, and attachments thereto.

All of these exhibits were discussed by Ms. Caskey during direct examination by Mr. Barhight. Petitioners' Exhibit No. 13 represented a letter from the County Executive, C. A. "Dutch" Ruppersberger, to Mrs. Caskey outlining the County's proposal to offer partial tax relief

as the County's contribution to the project. Petitioners' Exhibit No. 14 represented a letter from The Honorable Kevin Kamenetz to Ms. Caskey supporting the project, referencing that the project was "contingent upon an award of housing tax credit from the State of Maryland" and requesting that his letter be put in Pennrose's file response to the Maryland Department of Housing and Community Development. The County Councilman references "a need for this type of housing in that area…."

Petitioners' Exhibit No. 15 was the subject of discussion by Ms. Caskey which represented a market feasibility analysis in the Rolling Road section conducted by Lippman, Frizzell, and Mitchell, real estate consultants, prepared for Ms. Caskey and submitted on October 24, 2001. Petitioners' Exhibit No. 16 was admitted as a letter from David L. Thomas, P.E., Assistant to the Director of Baltimore County Public Works, advising that there were no Public Works concerns if the site were developed as per the Documented Site Plan. Ms. Caskey explained that construction would probably begin in the spring of 2003, if the project were approved, and competitive funding granted at an estimated cost of $13 million. Ms. Caskey indicated that a certain number of units were required to cover the $3 million in debt for costs associated with the project. The facility would employ approximately five to seven full-time employees. Ms. Caskey stated that once completed the units would not be converted at some future date to condominiums or re-sale units. Pennrose, she opined, always assumes responsibility for management of the units, and the units would be available to all individuals regardless of race, color, creed, or national origin.

The Board posed several questions concerning funds to be paid to one of the community organizations involved that was advocating approval of the rezoning request. That organization would receive $10,000 at settlement and $10,000 a year for 4 years following settlement.

Mr. Zimmerman cross-examined the witness relative to the boundaries of the Liberty Road Coalition with which she was not familiar. The financial arrangements with the Liberty Road Coalition were also discussed as noted above. She opined that she believed that there was some interweaving of officers of both the Liberty Road Coalition and the Liberty /Randallstown group. Both groups supported the project. The witness acknowledged that she had not made any effort to discuss the proposed project with any immediate neighbors on Chipper Road or Jody Knoll Road. She was aware of the dominance of single-family homes and townhouses in proximity to the site. She was also aware of the new development located at Deer Run at Mayfield, where 122 units were planned with 80 lots actually having been sold and 8 homes occupied, all single-family dwellings. She opined that no contact had been made with any immediate neighbors to the site, indicating that her organization dealt only with established community organizations and not individual homeowners. She was not aware whether or not the new Ryland development was informing their prospective homebuyers about the proximity of the Pennrose project.

Ms. Caskey stated that Baltimore County had supplied the names of the two community groups to contact, and she assumed that they represented the immediate area. She believed that the zoning signs posted on the property were sufficient public notice, and notification to the two community groups constituted additional notice to the nearby residents.

In response to Mr. Zimmerman's questions concerning other available sites in the area, Ms. Caskey responded that the project had been referred to her by Mr. Marenberg, and he would address whether or not there were other properties in the west County area that might be available for senior housing and the appropriateness of same. She opined that Pennrose Properties evaluated proposed sites on very strict standards: (1) did the proposed project make

sense financially; and (2) does the project have community and government support? Ms. Caskey emphasized that residents of the proposed project would be 62 years of age, and that the facility was not an assisted living facility. She also stated that tax credits would designate income levels ($38,000 to $40,000). Rentals would be in the $500 to $800 a month range which did not include utilities; and initial entry would be based on annual income and not total assets of the applicant.

Mr. Buford Driscoll III was Petitioners' second witness. He was accepted as an expert in the field of architecture and was the designer for this project. He described in depth the architectural concept for the facility. He had broad experience in designing elderly unit proposals and explained how this project would fit in with the mix of townhouses, single-family homes, and apartment units with some commercial businesses and churches nearby. He opined that studies had concluded that seniors desired to stay in areas where they had already lived with commercial facilities nearby. He described the site per the Documented Site Plan, the reasons for the "E"-shaped building, parking, and the efforts made to create a home-like appearance and that the building would contain various internal amenities, including a library, workshops, etc., and the efforts made for neighborhood compatibility, that is site and materials, to facilitate a less institutional look. Petitioners' Exhibit No. 17 was admitted (a 1,000 scale zoning map). The subject site was identified. Mr. Zimmerman questioned Mr. Driscoll concerning the general area referencing the exhibit. Mr. Driscoll indicated that he had looked over a large area that covered Windsor Mill to Milford Mill Roads and admitted that there were single-family dwellings on both Chipper and Jody Knoll Roads. The new Ryland development was all single-family homes, with an approximate size of 1,500 to 2,400 square feet, normally two to three story units. The building being proposed was 428 feet in length which was considerably larger than any other

facility between Milford Mill and Windsor Mill Roads on both sides of Rolling Road. The "E" 3-section wings were 160 feet long and 60 feet wide. He acknowledged that the property would be far larger than the homes in the neighborhood. The main entry into the building would be in the front of the building, with elevators at each end and the front would look at Deer Run development. It could be either opened or treed; it was currently open but the new trees would be a combination of deciduous /evergreen plantings. He indicated that there were churches, a liquor store, and a pizza shop in proximity to the proposed site.

Mr. Driscoll acknowledged that the design of the building could be reduced, but it would be difficult and a reduced structure was not what his office had considered. He did acknowledge that there could be a series of buildings constructed on the site, but that it would not be cost-effective.

On re-direct examination, Mr. Barhight questioned the witness relative to the site. The witness indicated that most of the site would continue to be wooded, although some trees would be lost but they would be reforested to make the site attractive. Mr. Driscoll acknowledged that the facility would be housed in one building and that the site determined the size and scope of the building in that it was not feasible to be developed with several smaller buildings, because the site would make it difficult to do so, and it would not be economically advisable to do that. He indicated that the client had not requested his firm to draw anything smaller and that they would have to re-investigate the site and determine the cost factor, although, in his opinion, it would create inefficiencies in that 60-foot wide units were usual for apartments of this type.

With permission of counsel, Ms. Deborah Ross was the first Protestants' witness taken out of order. She resides at 7927 Chipper Road (a corner property) and identified her home on one of the exhibits. People's Counsel's Exhibits 2A and 2B were admitted reflecting aerial

photographs taken in March 1995 with the subject site in the middle. People's Counsel's 2A and 2B were admitted as planemetric photographs and the proposed building would be across from her back yard. Ms. Ross indicated that she had moved to the area in 1986 and worked for Verizon in Green Belt, Maryland. She opined that the posted reclassification sign was pushed back in the woods, barely visible from Rolling Road, and even if visible, the heavy traffic on Rolling Road precluded anyone stopping to actually read the small printed material. She opined that Rolling Road is a two-lane system with no sidewalks. The witness was aware that Rolling Road is to be widened to four lanes, since she had to give an 8-foot easement to the County to widen the road. Her concerns were (1) increased traffic if the project were completed; (2) the area was more rural 15 years ago; (3) continued development of the area and lack of public infrastructure; (4) the massive size of the building; (5) the setback provisions; and (6) lack of notification to local residents who could voice opposition. She did not particularly like the Ryland development but did prefer single-family dwellings rather than townhouses or apartments. She did not believe that the two pro-project community groups spoke for nearby neighbors and that proper notice had not been given. She acknowledged that her subdivision had a homeowner's association, but she was not familiar with the organization, officers, meetings, or if they had a management company. In an accompanying grid, 55 homes were stated to be in the homeowners association.

Mr. Michael Chapman also appeared as a witness. He is a nurseryman residing at 10225 Liberty Road, about 5 miles from the proposed site, and was active in the 1996 and 2000 CZMP. He is on the Board of Directors of the Liberty Road Business Association and Coalition. He also acknowledged that the subject property was not included in the 2000 CZMP. He stated that the Liberty Road Business Association had not taken any prior position, and he only became aware

about it 2 weeks ago and expressed concern about the process occurring outside of the normal cycle. He believed that senior housing was a proper concern of Baltimore County, but opined that this building did not fit in with the scope of the community – the building was too large and the 50-foot buffer should be imposed. The Ryland site plan was admitted as People's Counsel Exhibit No. 4 (ID only). He referenced the Master Plan reflecting the zoning as D.R. 5.5 and Pat Keller's letter of October 4, 2001 with the Planning Board's Report also indicating the site consisted primarily of single-family dwellings.

Mr. Barhight questioned the witness concerning the fact that the Liberty /Randallstown Coalition supported the project as well as the Baltimore County Planning Office. Questions were posed concerning the community group's support. The witness opined that it was his observation that the question was decided too quickly due to the Developer's need for community support to go to the State for funding. He stated several times that he personally disagreed with the approval given by the Liberty /Randallstown Coalition – even though he was recording secretary for the organization.

Mr. William Obriecht spoke as a Petitioners' witness and resides about 4 to 5 miles from the facility. He is with the Liberty Road Community Council, was in support of the project as one that could be beneficial to the entire community, and he was familiar with the scope and activities of the Pennrose property. He opined concerning the concern of the Council experienced in his March 6, 2001 letter (55-foot buffer on both sides, screens for neighbors, and provisions for the property reverting back to D.R. 5.5 zoning). The Council is an umbrella group representing 22 individual organizations and numerous individuals. He acknowledged that the Council had not contacted any of the immediate neighbors to the site, and that the Liberty Road /Randallstown Coalition consisted of four groups that had formed the coalition consisting of

basically business organizations. He was aware of Pennrose's proposal to the Coalition concerning certain funds that would be paid for services being rendered to the proposed project and that Mr. Marenberg of Pennrose had made the proposal to the Liberty Road Council. He acknowledged that the Council had participated in the Comprehensive Zoning Map proposals, but that the Council had not made any efforts to have the property in the log of issues, and that he was familiar with the process which takes place under the CZMP. He was not aware of any requests for D.R. 16 or 10.5 rezoning. Mr. Marenberg met with the Liberty Road Council in December 2000, as well as Mr. Obriecht could recall.

Sandy Marenberg testified as a witness for the Petitioner. He was the development consultant for the project. He stated that he had reviewed the area for site opportunities and that no other sites were either feasible or zoned for the project. He indicated that he had been a developer in Baltimore County since the early 1980s. He acknowledged that he had been aware of the property prior to the reclassification request. He had contacted Ryland Homes and they had no concerns with the senior housing proposal. The two community groups contacted by him had been referred by County Councilman Kevin Kamenetz. The officers of the community council had suggested the Coalition as a group to partner with in association with the project. Upon cross-examination by Mr. Zimmerman, he opined that the Pennrose group first became interested in the property in mid-2000. Other properties had been examined in Baltimore County since the early 1980s. He was not particularly concerned about a lack of communication to neighbors in that, if they had an active HOA, they would have been aware of the project. The only recourse the Petitioner had was to deal with the two community groups that they actually contacted. He again stated that the building would not be visible from Rolling Road, that Rolling

Road is to be widened, and that 128 adults could live on the site as currently zoned as well as teenagers and that would be considerably greater than the proposed elderly housing.

Mr. Anthony Corteal, vice president with STV, Inc., land developer, also testified. He stated that while he was not a licensed surveyor he had 35 years of employment in land development and marketing. He stated his involvement in construction of local McDonald's units, KFC facilities, and also extensive involvement with the building of the Owings Mills Town Center subway. He opined that he had been on the site several times and was quite familiar with the topography. He discussed its irregular shape as the "E" building being approximately 550 feet west of Rolling Road, that the majority of trees would be retained plus additional ones would be planted. The facility would be accessed by a private road with 121 parking spaces in lieu of the 179 required by Baltimore County, and that there would be a 50-foot RTA landscape buffer between the site and the Ryland development. Approximately one half of the property would remain undeveloped except for stormwater management area and that there would be no greater runoff if constructed than presently existed, and of the many available facilities that would be available to the senior citizens along Rolling Road. He saw no problem of capacities on the part of the County. There would be recreational activities on site. There were no problems with access or traffic considerations, and he related the various buffers that would exist on the north, south and eastern portions of the property. He acknowledged that there were many single-family units in the immediate area and that an abandoned lumberyard was in proximity to the project. He indicated that Mrs. Rose's house was approximately 600 feet from the building; 275 feet to the parking lot; and there existed 225 feet of heavy vegetation. He acknowledged that he had not personally consulted the Baltimore County Master Plan relative to the project.

Ms. Deborah K. Wittle was the next witness for the Petitioner. She has been associated with STV, Inc., for approximately 15 years and described her activities as a landscape architect, overseeing general design teams and responsible for quality control. She had a B.S. in Land Architecture from Pennsylvania State University and is pursuing a Master's Degree from Johns Hopkins in Land Development and had previously testified as an expert in land architecture, land planning and zoning. Mr. Zimmerman conducted an extensive *voire dire* relative to Maryland requirements concerning variances. He indicated that he did not question her expertise in architecture and land development. He did question her area of expertise in zoning. The Board permitted questioning, but, as to zoning issues, the Board members would determine the legal sufficiency as a matter of weight in their individual determinations.

Ms. Wittle stated that she had reviewed briefly the Petitioners' market study and that any land highlighted, zoned D.R. 10.5 or D.R. 16 that could be considered as an alternate site within the market area, had all been developed. She opined that the population trends in Baltimore County continue to increase and that, according to the 2000 Census, the elderly population, 62 and older, had grown to 110,000 with that number increasing to 115,000 by the year 2010. Between the period from 1990 to the year 2000, senior population had grown 40 percent as the County had expected. She believed the proposed building to be compatible with the area. It was not particularly intrusive to the neighborhood, in her opinion. She acknowledged the goals of the Master Plan as consistent with the elderly housing; yet protection had to be afforded urban communities. She again indicated that studies have shown that the elderly prefer to live in their own neighborhood where they had formerly owned or rented property. A Baltimore County Capital program relative to widening of Rolling Road was also discussed, and she indicated that it was scheduled to be completed during the years 2004-2006. She also referenced the variance

request and the length of the building, and that a length of 240 feet was permitted and that a request had been made for a variance for 440 feet.

As to the uniqueness of the site, she indicated that in her opinion there were many long, skinny parcels in the area but, also in her opinion, these were too small for the proposal before the Board. The size was unique in relation to its dimension, and she indicated that she was not aware of any lots in the area that were larger that were this narrow, indicating that there were none. As to the issue of practical difficulty, she stated that Pennrose could not design enough units in 240 feet and that, in her opinion, that limitation would not meet the demand of the community nor would 119 units be financially feasible.

She stated that, in her opinion, the building met the spirit and intent of Baltimore County's zoning regulation and that the issue of massing is a length restriction that the building accommodated by being broken up with courtyards. She opined that she saw no adverse impacts relative to the usual traffic, schools, health, safety or welfare issues.

On cross-examination by Mr. Zimmerman, she acknowledged that senior housing was permitted under D.R. 5.5 zoning. She had not personally met with the property owner and was not aware that the property had been for sale within the last 5 years, or whether the owner had requested different zoning. She was also not aware if an application had been filed for the recently completed CZMP process. She was aware that the Weidermeyer property fronting on Windsor Mill Road was for sale and did not believe that it should be rezoned D.R. 16. She felt that the Weidermeyer property was totally different from the chosen site. The proposed site could be reduced to two to three smaller buildings, but fewer units were possible. They would be more expensive and she felt that the seniors living therein would lose their community cohesiveness. She acknowledged that senior housing development with 100 units was possible,

but that economics drove the size, and that was an important factor in Pennrose's computations. She acknowledged that the nearby Ryland property, which was under development, was wider than the subject property and that it was long and narrow, but it was not available for purchase. She was aware that the next CZMP would occur in the year 2004 and that the Master Plan recognizes a need for senior citizen housing, and that the land use map designating the subject property has a D.R. 5.5 zoning consisting of single-family dwellings, indicating that the zoning for this property did not fit what the Developers wanted to do. She acknowledged that a developer could develop single-family homes on the property similar to the Ryland homes next door. The basic problem was that the zoning necessary for this particular project does not fit the current zoning. She acknowledged that the Master Plan suggested that senior housing be placed within existing communities with commercial needs near town centers. Again, it was her opinion that the County had not provided enough zoning for senior housing. She was under the opinion that an Environmental Impact Statement had been filed with the County, that it was in the County's file and that if it did not include all the requirements, she was not aware of it.

At the conclusion of the Petitioners' case, the Board requested brief closing statements and rebuttal, in lieu of formal briefs, although the Board did require both Counsel to supply recent cases involving reclassifications that would support their various contentions. Mr. Barhight stressed the lack of appropriately zoned property in the area and currently available, and the uncontested need for senior citizen housing in Baltimore County. He argued that there was a mistake made in the property's zoning, and that the Council could not have known of the area's needs. No study had been done to inform the Council, and the recent Petitioners' study would have convinced them of the need, had the study been available. He cited strong County agency support. No significant impacts would occur if the rezoning were granted; i.e., no

building visible from the road, no traffic, school, park, etc., issues impacted. The variance should be considered in light of the shape and size of the parcel.

Mr. Zimmerman argued that the need for senior citizen housing was a factor hard to oppose. The need was subjective, and such a need is universally acknowledged. He emphasized, however, that need is not a legal substitute for mistake. The Developer got the idea for this project following the 2000 CZMP which had numerous safeguards to protect the public and local residents' interests. The two community groups contacted by the Developer did not represent the interests of the nearby neighbors or residents. In essence, there was nothing in error relative to the Council's original decision. The need for senior housing was known by the Council, and there were legitimate questions presented by the residents about the building size, massing, and width relative to the single-family homes in proximity.

The Board members individually reviewed the cases supplied by counsel, and the exhibits submitted during the course of the hearing, along with their notes taken during the questioning of the various witnesses. A public deliberation took place on November 28, 2001. That deliberation encompassed the scope of the testimony taken at the public hearing, the evidence submitted, and application of the facts to the applicable statutory and case law. Essentially, the Board members determined that the proposed project was a worthy one in theory and they could fully understand the widespread support for it as evidenced by the exhibits submitted by the Petitioner. However, the Board, as a finder of fact, found that the Petitioner had failed to meet the burden of weight required under the law to establish the element of "mistake on the part of the County Council," or the requirements for the granting of a variance under both the *Baltimore County Zoning Regulations* and case law. The Board, therefore, denied the reclassification and accompanying Petition for Variance for the subject property.

On December 6, 2001, the Petitioner filed with the Board a "Motion for Filing of Transcript, Briefs, and Supplemental Public Deliberation," requesting that the Board permit the Petitioner to submit the full transcript of the public hearing to the Board, along with a Brief outlining the Petitioner's position, and requesting a supplemental public deliberation. The basis of the request was to refresh the memory of the Board relative to certain data that the Petitioner believed, if reviewed, could cause a reconsideration of the Board's original decision. The Petitioner was not citing Rule 10 of the rules of the Board relative to "Revisory Power of the Board" which controls the revisory power of the Board in the event of fraud, mistake, or irregularity with thirty (30) days after the entry of the Board's Order. In this instance, the Board had not yet issued its "Order." Rather, the Petitioner cited Rule 1.b. General:

> b. Meetings of the county board shall be held as determined by the chairman, but never less than weekly; and the board shall meet at such other times as the board may determine.

and Rule 4.b. "Conduct of Hearings":

> b. The chairman shall regulate the course of the hearing and shall rule upon procedural matters, applications, modifications and objections made during the course of the hearing, subject to the concurrence of a majority of the board conducting the hearing.

People's Counsel filed an "Answer to Motion for Filing of Transcript, Briefs & Supplemental Public Deliberation" on December 19, 2001, citing no statutory authority for a supplemental public deliberation with comments relative to the prior decision of the Board and reasons why the Motion should be denied. The Board heard oral argument concerning the Motion on January 17, 2002. Because another matter was scheduled following the hearing, the Board agreed to publicly deliberate the Motion in the afternoon, which was done.

At that time, the Board denied the Motion on the basis that the original hearing had been closed; both parties could have requested the Board to entertain Briefs (even though the Board

desired only case law); and it is not unusual for the Board to deliberate using only their notes taken during the hearing and the evidence submitted therein. The Board has stated on many occasions that the process of deliberation is to enable public attendance at the time of the final decision making process and excerpts of discussion are not the basis of appeal nor is lack of a transcript which could have been provided before the deliberation, if either party believed that would benefit the Board members.

It is the final "Opinion and Order" of the Board that contains the written rationale for the decision of the Board that is appealable, and not statements or utterances made by Board members during the public deliberation process. To permit otherwise creates an atmosphere that would utterly destroy the process for fear, on the part of the panel, that "any phrase, sentence or thought could be used as an excuse for objection." [People's Counsel Brief, page 4]

As to the issue stated, in every reclassification proceeding in this State, the Board initially starts with the premise that a policy decision made by the legislative branch of charter county, relative to comprehensive zoning, does not require any further justification to support it; it is presumed to be correct.

Therefore, before any property is reclassified under § 2-356 of the *Baltimore County Code*, the Board of Appeals must find:

> (1) that…there has occurred a substantial change in the character of the neighborhood in which the property is located since the property was last classified or that the last classification of the property was established in error. [emphasis added]

It is the second of the two considerations that is involved in this case. The Petition for Reclassification came approximately 10 months after the adoption of the 2000 Comprehensive Zoning Maps, and it is clear that no substantial change occurred in the character of the neighborhood during the period. Indeed, Pennrose made no allegation of substantial change.

Consequently, the only question is whether the County Council was guilty of a mistake or error in the course of its 2000 comprehensive zoning process [*Boyce v. Sembly*, 25 Md.App. 43, 44, 334 A.2d 137 (1975)].

The issue is a narrow one. Did the County Council commit basic and actual "mistake" or "error" as those interchangeable terms are used in zoning law?

> Error can be established, for purposes of ordinance providing for reclassification by county board of appeals if county council has established prior classification in error; by showing that, at time of comprehensive zoning, council failed to take into account then existing facts, or projects or trends which were reasonably foreseeable of fruition in the future, so that council's action was premised initially on misapprehension. [*Baltimore County Code*, § 2-356(j)]

> Those seeking zoning reclassification from county board of appeals on ground that county council established comprehensive zoning classification in error have burden of showing both the then-existing conditions that allegedly made comprehensive zoning incorrect, and the literal failure of county council to have considered those conditions. [*Baltimore County Code*, § 2-356(j)]

> ...Any finding of such a change or error and any finding that the prospective reclassification is warranted may be made only upon consideration of factors relating to the purposes of the zoning regulations and maps, including but not limited to all of the following: Population trends; availability and adequacy of present and proposed transportation facilities, water-supply facilities, sewerage, solid-waste-disposal facilities, schools, recreational facilities, and other public facilities, compatibility of uses generally allowable under the prospective classification with the present and projected development or character of the surrounding area; any pertinent recommendation of the planning board or office of planning and zoning; and consistency of the current and prospective classifications with the master plan, the county plan for sewerage and water-supply facilities, and the capital program. [*Baltimore County Code*, § 2-356(j)]

It is the responsibility of the Board to determine if the Petitioner has demonstrated that facts existed at the time of comprehensive zoning, but also which, if any, of those facts were not actually considered by the County Council; and their evidentiary burden can be accomplished by showing that specific physical factors were not readily visible or discernible at the time of

comprehensive zoning. In rendering any decision, the Board must be careful not to engage in "spot zoning" in direct contradiction of both County regulations and Maryland case law.

Was there present at the public hearing sufficient evidence of a mistake on the part of the County Council to have made the issue fairly debatable?

Based on the Board's notes taken at the public hearing and evidence presented, the Board concurs unanimously that the burden placed upon the Petitioner has not been met. The major thrust of the Petitioner's case rests upon the need for senior citizen housing that was not known by the County Council at the time of the rezoning process, or could have been reasonably foreseen in the future. There is no doubt that a continuing need exists for development of senior citizen housing in Baltimore County. The brochure (Petitioners' Exhibit No. 1) describing the goals and activities of "Pennrose" is most impressive. Considerable thought went into the site plan (Petitioners' Exhibit 2) to maximize the building's design and retain extensive wooded area. Additionally, the two sketches (Petitioners' Exhibits 3 and 4) also reflect a quality design based on land constraints. Petitioners also garnered considerable support from Baltimore County agencies, including the Baltimore County Office of Community Conservation (Petitioners' Exhibits 5 and 6); the Planning Board recommendation for early action by this Board (Petitioners' Exhibit 7) in light of the "Office of Planning support for the Applicants' request for reclassification and petition for variance." Supplementing these were the positive support of the Liberty Road Community Council, Inc. (Petitioners' 8 and 9), support of the Liberty /Randallstown Coalition, Inc. (Petitioners' Exhibit 10), the action by Baltimore County requesting early action on the Petition (Petitioners' Exhibit 11), Resolution 106-01 of the Baltimore County Council approving the Planning Board's certification relative to exemption from the regular cyclical procedures of the Baltimore County Code, and Petitioners' Exhibit 13

(a letter from the County Executive to the Petitioner offering certain tax relief as the County's contribution to the project), coupled with Petitioners' Exhibit 14, a letter from second district Councilman, The Honorable Kevin Kamenetz, in support of the proposed facility. Additionally, Petitioners' Exhibit 16 recognizes no problems to adequate water and sewer to the proposed site. No opposition appeared at the time of the hearing except from Ms. Rose and Mr. Chapman.

The major thrust of the Petitioners' case was that the Council was not aware of the need for senior housing in the County and in the area and did not have available the report submitted to Ms. Caskey on October 24, 2001. The Petitioners produced a number of land development experts and individuals involved in senior housing development. Their testimony was presented to determine the need for senior housing in Baltimore County and the area, and the worthiness of the project. The Petitioners' case was presented to demonstrate that, as a result of lack of anticipation of trends of development in 2000, or as a result of a change in trends which had occurred since then, whether anticipated or not, the existing zoning was in error at the time of the hearing.

The Board does not accept the Petitioners' argument. As to the question of the need for senior housing not being known by the Council at the time of the adoption of the Comprehensive Zoning Maps, the Petitioners' case falls short of establishing that criteria. It has been known by the County Executive, the County Council and numerous County agencies well into the 1990s that Baltimore County has one of the largest senior populations in the Country. Indeed, this fact is well recognized by Ms. Harvey, Director of the Baltimore County Community Conservation Unit as stated in her letter of August 13, 2001 to Ms. Caskey, "In our communities, we are seeing a growing population of elderly residents on fixed incomes who are experiencing difficulty maintaining their current living arrangements." That department is responsible for conveying to

the County Executive and Council the need for, and "working with you (Pennrose) and other agencies to meet the growing needs of the elderly in Baltimore County." Her letter of October 11, 2000 to George Zahner, Department of Permits & Development Management, states that "the need for elderly housing in Baltimore County is well documented. In our communities, we see a growing population of elderly residents on fixed incomes who are experiencing difficulty in maintaining their current living arrangements....This department and the Baltimore County Department on Aging are charged with the responsibilities to make known senior citizen demands to the Council. Our response requires foresight and not hindsight." [Emphasis added.]

Pat Keller, Director of the Baltimore County Office of Planning, in his letter of October 4, 2001 (Petitioners' Exhibit 7) references the Planning department's review of the reclassification request. He acknowledges that "the property has not been the subject of any issues filed as part of the a comprehensive zoning map process. To the north, east, and west are D.R. 5.5 residential properties, to the south D.R. 5.5 and B.R., residential and commercial. The proposed site is designed for single-family residences." Every report "recognizes the large concentration of elderly households in Baltimore County; and that the County has committed a substantial portion of its resources to assist the development of housing affordable to its senior population." [Emphasis added.] The report recites a need for affordable housing in this community on page 7. However, there is no inference that such a need is one that suddenly and swiftly has been drawn to the Council's attention. Again, it is the responsibility of the Director of Planning and the Planning Board to take into consideration such needs; and to provide for such needs as part of the Comprehensive Zoning Map Process. The Market Feasibility Report did not reflect any such need that was not already known to Baltimore County agencies or to the County Council.

Mr. Obriecht's letter of March 5, 2001 describes the "need for such projects and how they enhance the quality of life in our area." But there is no data or reference offered from either community organization that mutual efforts had been undertaken to locate any area properties to satisfy any such need. Similarly, the Liberty /Randallstown Coalition references "need," but does not suggest that the Council's action was in error or a mistake – rather, stresses the fact that "we understand that we [the Coalition] will receive $50,000 [over a 5 year period] for this work" ($10,000 after project settlement and $10,000 for each successive 4 year term).

The Board also notes Mr. Barhight's comments in his letter of July 30, 2001 to Mr. Keller requesting the reclassification petition. Significantly, that letter was written over 2½ months before the market feasibility analysis was submitted by the consultant firm to Ms. Caskey on October 24, 2001. On what basis was the reclassification petition filed if the report had not clearly been received and digested by the party requesting the reclassification? He recites figures from the Maryland Department of Aging, that Baltimore County currently has the largest population of residents aged 60 and older, more than any other county in Maryland. That fact is not a new revelation. It has long been known that Dade County, Florida, and Baltimore County, Maryland, have large percentages of senior citizens. Mr. Barhight also recites that the State Census data indicates that in this area there are 139,116 residents over the age of 60 currently living in Baltimore County. The Census projects that the numbers will grow to 161,232 in 2010 and 205,204 in the year 2020 representing a 47.5 percent increase in the Baltimore County senior population between the years 2000 and 2020. The Board does not believe that these statistics come as a lightning bolt from the heavens. The Master Plan adopted by the Baltimore County Council on February 22, 2000, considerably before the adoption of the Comprehensive Zoning Maps on October 15, 2000 (People's Counsel Exhibit 10) references, on

page 145, certain policies which include: "Encourage the development of housing for the elderly close to town and community centers. Page 148 under "Issues": Provide housing for growing senior population for the disabled. "As the County population ages, the population of residents who are disabled or frail will increase."

As the Board considered the testimony of Petitioners' witnesses, there was much to be desired in establishing the "need" criteria. There is substantial case law in this State to support the contention that a "proof of need" does not automatically translate into a "mistake" or "error." The testimony of Ms. Caskey was focused upon the ability of Pennrose to provide adequate and affordable senior citizen housing and the type of structure to be considered for the site, along with the support of elected officials, government agencies, and the two umbrella community groups. However, other than for the October 24, 2001 report, again received after the July 30, 2001 request for reclassification, there were no specific indications that the County Council had made a mistake or error when the property was zoned D.R. 5.5 in October 2000 and that they were not aware from prior census data that need existed for senior housing.

Indeed, some of the testimony offered by Pennrose substantiates that the County Council and the local Councilman were aware of this area of the County. Exhibit No. 8 offered by the People's Counsel clearly reflects a substantial number of residential issues in the Comprehensive Zoning Map Proposal Log for this area. In examining the issues, the Board notes that there was a rejection in Issues 2-19 and 2-27 of the Weidemeyer request for upzoning of the adjoining 17 acres to the south from D.R. 5.5 to 0-2 or 0-3. The County Council was fully aware of the population aging in the County and was also cognizant that zoning of D. R. 5.5 permits senior housing.

Mr. Driscoll's testimony as designer for the project centered around the design of the proposed site. He indicated that he had looked over an area larger than Windsor Mill to Milford Mill. However, while he and Mr. Marenberg agreed that no other sites were either available or feasible and zoned D.R. 10.5 or D.R. 16, the Board found such testimony lacking in clarity as to the scope of either review, and even perhaps self-serving. The Board takes note of the substantial number of apartment units in the area, and that the market report (Petitioner's #15) acknowledges that "[t]his market area has one of the strongest concentrations of multifamily apartments in Baltimore County" [page 10], and yet recognizes that "as many as 25% of tenants will ultimately come from outside the PMA…." [page 10] However, testimony was limited in scope to determine the extent to which such existing apartments can accommodate the needs of local senior citizens. Certainly, comparable units of $500 to $800 a month, not including utilities, and income levels of $38,000 to $40,000, might well be within the reach of seniors who desire to remain in the neighborhood. The Board notes People's Counsel's Exhibit No. 10 which references that the County leads the region in construction of multi-family apartments.

The testimony of Ms. Wittle did not convince the Board sufficiently. She indicated that there was no land zoned D.R. 10.5 or D.R. 16 within the market study that could be an alternative site. But no testimony was offered relative to existing D.R. 5.5 land being available for senior housing that would not require rezoning. If anything, the cornerstone of the request for reclassification rests upon the October 24, 2001 report submitted to Ms. Caskey. In fact, senior housing is permitted under the current zoning classification, but the Petitioners affirm that what is allowed would not be sufficient for their economic requirements. Bluntly speaking, the Board believes this is a case of putting the "cart before the horse." While this may be a worthwhile project, the proper venue for rezoning is the Comprehensive Zoning Map Process.

Mr. Obriecht of the Liberty Road Community Council testified that he first became aware of the project in early 2000, but his organization never requested any rezoning. Mr. Marenberg said he became interested in the project in mid- to early 2000, yet no one made any effort to raise the rezoning of this property as an issue. Once the subject property became available for sale, the next step was to install the "need" factor to attempt to establish "error" or "mistake" on the part of the County Council. The rezoning request was made on July 30, 2001 reciting general data concerning senior citizen data in Baltimore County. No reference was made to the "Market Feasibility Study" because it was not submitted to Ms. Caskey until October 24, 2001. Mr. Barhight recites that "certifying Pennrose's Petition for early action is imperative in that it allows Pennrose to seek the necessary State funding for the project." Even if a need existed at the time of the reclassification request, it would appear that the sole purpose of the report was focused and directed to establish the need and confine and restrict the market area to establish the need. The Board, therefore, is suspect of the report.

The report submitted by Lippman, Frizzell and Mitchell represents a market feasibility study and the Petitioners' alleged support, with the conclusion that, had the report been available to the County Council in 2000, the property would have been appropriately rezoned to accommodate the proposed project. The project encompasses a market study area of Randallstown, Lochearn, Security, and Woodlawn, but there is no indication how Lippman, Frizzell and Mitchell has "determined that the vast majority of prospects for the proposed senior independent housing will be residing in Baltimore County, specifically in the areas known as Randallstown, Lochearn, Security, and Woodlawn," yet on page 10, acknowledges that "as many as 25 percent of tenants will ultimately come from outside the Primary Market Area." Was this factor one that should have been known by the County Council in the zoning of the property? The Board thinks not. Rather, it is the responsibility of the Baltimore County Council to

consider the needs of its senior citizen population within its jurisdictional limits without regard to Baltimore City.

The report references substantial residential apartment units already existing in the area. The report acknowledges that the "site is located in a predominantly residential neighborhood, generally, with older, single family homes on the west side of Rolling Road in an area of Baltimore County which is undergoing new growth and revitalization." The proximity of the new Ryland Homes development of 122 homes is acknowledged, as well as the "numerous multifamily rental communities that have been constructed." [page 6] While "the sponsor has indicated that there are no known adverse environmental considerations on the property" [page 7], no "Environmental Impact Statement" as required by § 2-356(l) accompanied the documented site plan. The Board does acknowledge a two-page statement with the petition, but the Board does not believe the statement satisfies the statutory BCZR definition of the Environmental Impact Statement in that a failure exists to fully analyze the visual impact of the proposal.

While the report stresses what it considers a "healthy increase in the number of senior persons and households within the market area" [page 31], it recognizes "there is a need for a variety of housing options for seniors now living in the Primary Market Area, as well as those who will move here due to the area's community services and general appeal." [page 31]

Again, it is the consensus of the Board that the County Council was well aware of the need for senior citizen affordable housing during the 2000 Comprehensive Zoning Map Process, and that the Petitioners' report which attempts to localize the need within their Primary Market Area actually enlarges the scope of this area by referring in several instances to seniors coming from outside the Primary Market Area. The Board, as a finder of fact, has determined that insufficient evidence was produced to establish the element of "error" or "mistake" on the part of the County Council at the time of the 2000 comprehensive rezoning process.

Moving forward, without conceding that the County Council had erred, the Board would deny the variance requested. This is based on a number of factors. There was never any request to rezone the property in the 2000 Comprehensive Zoning Map Process. While this fact in and of itself, under case law, is not a fatal defect, nevertheless, under standards recently enacted by the County Council, certain safeguards are present to ensure local property owner notification of proposed changes that are not available in subsequent reclassification procedures. While a sign was posted, Ms. Chapman indicated that it was not totally visible to ride-bys on Rolling Road, or walkers with no sidewalk on Rolling Road. While two community organizations were contacted, which have several intermixed directors, no real effort was made to contact local homeowners and the financial arrangements with one of the organizations may be indicative of a conflict of interest, coupled with the speed with which the organization's support was given.

Clearly, based on the testimony and evidence, the request for a variance to permit a building length of 428 feet in lieu of the 240 feet permitted is excessive and not within the spirit and intent of the BCZR nor does it meet the standards set forth in *Cromwell v. Ward*. The totality of the testimony of all of the witnesses for Petitioners was that the design of the building was to accommodate the site. There is no disagreement that the building itself is immense compared with the overwhelming D.R. 5.5 residential uses to the north, east, and west, and D.R. 5.5 residential /commercial uses to the south. It is undisputed that smaller units could be placed on the site, but the Developer did not consider that scheme because it was not economically viable for them to do so.

It is also undisputed that the site is desirable for housing under its present D.R. 5.5 zoning and the reasonable success of the Ryland project in proximity would cause the Board to believe that similar success would be achieved in the absence of the proposed project. Similarly, there is no legal impediment to a development of elderly housing under the current D.R. 5.5 zoning. An examination of other properties does not reflect that the size and scope of the site is either

unusual or unique; and any practical difficulty in developing elderly housing on the subject site is one imposed by the Developer himself.

And finally, the Board concludes that the total building length or fullest building width of a multifamily building may be increased from the maximum 240-foot length up to 300 feet if the structure is designed in accordance with special emphasis given to certain design considerations. The proposed three-story senior housing apartment building (119 units) is 407 +/- feet in length. There is no question but that the E-shaped building is out of character with the neighborhood of overwhelmingly single-family dwellings and is not consistent with the Baltimore County Master Plan.

ORDER

THEREFORE, IT IS ORDERED, by the Baltimore County Board of Appeals, this 4th day of March, 2002, that the Petition for Reclassification from D.R. 5.5 to D.R. 16 be and the same is hereby **DENIED**; and it is further

ORDERED the Petitioner's request for variance for a building length of 428 feet in lieu of 240 feet be and the same is **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

Charles L. Marks, Chairman

Margaret Worrall

C. Lynn Barranger

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: #CR-02-120
Address: 3134 Rolling Road
Description. W/S of Rolling Road Between Chipper Road and Jody Knoll Road
2nd Election District - 2nd Councilmanic District
Legal Owner(s): Dr. Mirza Hussain Ali Baig
Contract Purchaser. Catherine Caskey, Pennrose Properties, Inc.
Reclassification: from D.R.5.5 to D.R.16
Hearing: Tuesday, October 30, 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.
JT 10/727 Oct 16

C500292

CERTIFICATE OF PUBLICATION

10/19/, 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 10/16/,2001.

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

S. Wilkinson

LEGAL ADVERTISING

County Board of Appeals of Baltimore County

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

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

March 4, 2002

RE: *In the Matter of: Pennrose Properties, Inc.*
Dr. Mirza Hussain Ali Biag -Legal Owner
Case No. CR-02-120-A

Dear Mr. Barhight:

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

Kathleen C. Bianco
Administrator

Enclosure

c: Pennrose Properties, Inc. /
Catherine Caskey, Director, Md Office
Dr. Mirza Hussaid Ali Baig
STV Incorporated
Deborah Rose
John and Joanne Brown
William Obriecht, LRCC
Office of People's Counsel
Pat Keller, Director /Planning
Jeffrey Long /Planning
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

12/19/01

IN THE MATTER OF	*	**BEFORE THE**
PENNROSE PROPERTIES, Inc.		
Contract Purchaser	*	**BALTIMORE COUNTY**
MIRZA HUSSAIN ALI-BAIG		
Owner	*	**BOARD OF APPEALS**
3134 Rolling Road		
Petitioners	*	**Case No. CR-02-120-A**

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

People's Counsel for Baltimore County's Conditional Cross-Motion for Review of Issues in the Event of any Further Deliberations

People's Counsel for Baltimore County files this cross-motion, and states:

1. People's Counsel has filed an answer to oppose the Pennrose motion to file transcripts, briefs, and have supplemental deliberations. The answer demonstrates there is no jurisdiction or authority for such proceedings, that there are other statutory remedies which must be followed, and that it would be inconsistent with fairness, the administration of justice, and the public interest to disrupt the decision-making process in this way.

2. To allow Pennrose's motion would open up a Pandora's Box in this case and lead inevitably to similar tactical disruptions in other cases.

3. If, nevertheless, the CBA were inclined to consider reopening this case, People's Counsel must conditionally bring to the CBA's attention many reasons why this petition cannot legally be granted.

4. This conditional cross-motion provides an outline of issues which could be briefed to refute the legal and factual sufficiency of Pennrose's latest claim. It also includes other points which bar approval, some discussed in the deliberations and some omitted or not reached.

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5. Petitioners' claim of need for senior housing and unavailability of other sites is legally insufficient and factually unsupported for the following reasons:

- There was zero evidence of actual mistake at the time of the 2000 comprehensive rezoning process.
- The property owner, Dr. Ali-Baig, did not request a rezoning, did not even appear at the CBA hearing to claim injustice, and is not named, or in a position to join, in the Pennrose motion.
- Had the property owner requested upzoning on the basis of "need", the county council would not have been required to approve it.
- Case law shows that proof of "need" does not translate to "mistake" or "change." See Heller v. Segner and other cases submitted.
- As the CBA recognized, D.R. 5.5 zoning allows for senior housing. There is a large amount of D.R. 5.5 land being developed or available for development. D.R. 5.5 also allows for assisted living facilities and nursing homes by special exception.
- The county council knew this area. The CZMP log (PC Ex. 8) shows many residential issues. They include rejection in Issues 2-19 and 2-27of Homer Wedemeyer's request for upzoning of the adjoining 17 acres to the south from D.R. 5.5 to O-2 or O-3. The council retained D.R. 5.5 zoning. No one claims this is a mistake.

- Rylands Homes is developing a substantial single-family development on the property zoned D.R. 5.5 adjoining to the north, No one claims this is a mistake.
- Even were senior housing disallowed in the D.R. 5.5 zone, the council would not be required to confer higher density zoning on the subject site. It is obviously out of character with neighboring single-family developments and amounts to "spot zoning."
- The Baltimore County Master Plan calls for "infill development that is compatible with the character of the neighborhood" and cautions against new housing developed at a higher density than the surrounding neighborhood. It identifies "the visual disruption of the residential pattern …" PC Ex. 10. Page 146.
- This piecemeal rezoning functions as a financial bonanza. It provides Pennrose with an expected $1,000,000.00 profit. There follow future operating profits. It provides the consultant and former developer Marenburg derivative compensation. It likely provides the property owner a windfall.
- The developer has given Liberty Randallstown Coalition a consulting contract concurrent with LRC's support. Pet. Ex. 10, PC Ex. 1. This should not influence a zoning decision in any case, but especially where the local neighborhood is not part of the process.

- The Liberty Road Community Council has stated general support, but qualified this with a south side setback which Pennrose will not meet, an unenforceable condition that the project revert to D.R. 5.5 if the senior project does not succeed (because if significant development occurs within 3 years, it is vested under Code Sec. 2-356(n)), and an impossible condition that Baltimore County commit to a percentage limitation on senior housing. Pet. Ex. 9

- In sum, it is impermissible to subordinate the county council's comprehensive zoning decisions to the development, marketing, and financial decisions, profits, and timetables of private developers. Any developer may claim at any time a need for virtually any residential, commercial, or industrial project, and that any zoning which does not allow that project is a mistake.

* * *

- Pennrose did not, in any event, do a survey to determine the availability of other locations for senior housing in the area. Neither did its "experts." Pennrose took the project over from Marenburg. Marenburg is not a planning and zoning expert. His testimony with regard to the unavailability for this particular project of other sites zoned D.R. 16 not only was irrelevant, but also was conclusory, not probative, and permeated with self-interest. The Whittle testimony was likewise both immaterial and conclusory. See Coppolino v.

County Board of Appeals and People's Counsel v. Beachwood as to the requirements of relevance and a strong factual foundation even for objective expert evidence.

- The only study produced by Petitioners was the Lippmann Frizzell Mitchell market feasibility analysis completed October 24, 2001. Pet. Exh. 15. It was not a "needs" study and, moreover, undermines Pennrose's claims. The report shows

-- "substantial new growth" in the area, including the Ryland community on the north side and "numerous upscale multifamily residential communities" a short distance to the south. Page 2.

-- "two tax credit senior apartment communities in the market area and one which has been funded but not yet constructed." These are Parkview at Randallstown, Parkview at Woodlawn, and Fairspring Senior Housing. Page 3.

-- "This market area has one of the strongest concentrations of multifamily apartments in Baltimore County ..." Page 10.

-- Recent apartment developments, which are available to persons of all ages, are listed on page 14.

-- "Existing & Pending Moderate Income (Tax Credit) Senior Rental Housing" is discussed at pages 19-23 and summarized in Table V-3. They include not only the Parkview (2) and Fairspring

developments, but also Village Oaks and, for more affluent seniors, the Augsburg Lutheran Village.

- In this context, William Obrecht of LRCC expressed a reasonable concern that the proposed high-density development here would draw seniors from existing apartment developments in the Liberty Road/Woodlawn area and cause their destabilization. He also identified overreaching by Petitioner in its request for D.R. 16.
- The Baltimore County Master Plan points out that the County leads the region in construction of multifamily apartments. P.C. Exh. 10. Page 27.
- Whether, and where, to provide high-density zoning generally or for seniors is entrusted to the judgment of the Council. This is not a case where either the county or the market area lacks high-density zoning or development.
- Indeed, Petitioners have chosen arguably among the worst possible locations for high-density development.

6. There is yet another reason why this rezoning cannot, as a matter of law, be granted. The Petitioners failed to produce for review the environmental impact statement required by Sec. 2-356(l) to accompany a documented site plan. Petitioners did file a 2-page statement with their petition. But even if the filing alone could satisfy the code, the statement does not satisfy the requirements of the BCZR 101 definition of EIS. It fails to analyze the

visual impact of the proposal. It also fails to analyze reasonable alternatives to the proposed action. Any further review of this case would have to address the EIS issue.

7. Furthermore, there is no legal basis to grant the variance for the building length of 420 feet, on top of both the BCZR and CMDP standard requirement of 240 and waiver limit of 300. The CBA's correct denial of the variance makes it unnecessary and academic to consider the rest of the case since the rezoning request and variance are intertwined. It is undisputed that Pennrose's request here is based on economics, in other words, to maintain its million-dollar profit projection.

8. People's Counsel is prepared to fulfill its responsibility to defend the County Council's decision at each level of review and to defend this Board's present decision at any level of judicial review. This case is in the path of appellate cases holding piecemeal rezoning impermissible as a matter of law.

9. There is no good reason in law, justice, or efficient administration for the CBA to reopen this case. If, however, the case were reopened, we would request the opportunity to brief all of these issues and to have sufficient time to file a memorandum reviewing the case in detail.

10. It would be contrary to law and justice to allow Pennrose to dictate the terms of issues for further deliberation, without providing People's Counsel an opportunity to identify all the points which bar approval of this petition.

11. In the end, it should be apparent from a review of the record that Pennrose's motion opens a Pandora's Box, and should be denied as contrary to law and the public interest.

Conclusion

Pennrose's Motion should be denied. People's Counsel asks conditionally, however, that if granted, then People's Counsel should have the opportunity to file a brief and to demonstrate, reinforce, and give additional reasons why the CBA's decision to deny the Pennrose petitions was, and still is, the correct decision.

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. DeMilio
Deputy People's Counsel

Courthouse
400 Washington Avenue
Towson, Maryland 21204
410 887-2188

Certificate of Service

I hereby certify this 19 day of December, 2001 that a copy of this People's Counsel's Conditional Cross-Motion was mailed to G. Scott Barhight, Esq., Whiteford, Taylor & Preston, 210 Pennsylvania Avenue, Towson, MD 21204, Attorney for Petitioners.

Peter Max Zimmerman

12/19/01

IN THE MATTER OF	*	**BEFORE THE**
PENNROSE PROPERTIES, Inc.		
Contract Purchaser	*	**BALTIMORE COUNTY**
MIRZA HUSSAIN ALI-BAIG		
Owner	*	**BOARD OF APPEALS**
3134 Rolling Road		
Petitioners	*	**Case No. CR-02-120-A**

People's Counsel's Answer to Motion for Filing of Transcript, Briefs and Supplemental Public Deliberation

People's Counsel for Baltimore County Answers the Motion as follows:

I. Jurisdiction, Authority, Statutory Remedies

There is no statutory authority for a supplemental public deliberation. Once the required public deliberation is concluded, the CBA issues an Order. Rule 10 of the CBA Rules provides for revisory power of the board only following its Order. This Rule states:

> "Within (30) days after entry of an order, the board shall have revisory power and control over the order in the event of fraud, mistake, or irregularity."

There is no rule to allow reconsideration of a deliberation.

A deliberation occurs after the record is closed. Parties may attend, but cannot participate. Parties have no right to comment, interrupt, argue, or object. The ensuing CBA decision flows seamlessly into preparation and issuance of the final order. The rules do not allow a party to undermine the process by motion, letter, or other disruptive tactic. Once the deliberation is complete, the case moves to the next stage.

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Maryland law provides for judicial review of the final order under the Express Powers Act (Md. Code Art. 25A, Sec. 5(U)), the Baltimore County Charter Article VI, and Title 7 of the Maryland Rules. The exclusive statutory remedy for reconsideration at the CBA level is the Rule 10 process which also follows issuance of the order.

It has long been the law in Maryland that a party must follow and exhaust the available statutory remedies. Poe v. Baltimore City 241 Md. 303 (1966); Prince George's County v. Blumberg 288 Md. 274 (1980). The present motion is clearly improper.

So that there is no misunderstanding, the CBA rule on reconsideration is not a lever to brief and reargue the facts or law of the case. It narrowly circumscribes the grounds as "fraud, mistake, or irregularity." The courts have confined "mistake" to "jurisdictional mistake." Hughes v. Beltway Homes 276 Md. 382 (1975); Bernstein v. Kapneck 46 Md. App. 231 (1980), aff'd 290 Md. 452 (1981); Johnston v. Johnston 297 Md. 48 (1983); Evans v. Evans 75 Md. App. 364 (1988); Home Indem. Co. v. Killian 94 Md. App. 205 (1992); Tandra S. v. Tyrone W. 336 Md. 303 (1994). Our observations with respect to Rule 10 should not, therefore, be misconstrued as an invitation for Pennrose to brief its point on reconsideration. We can show it does not fit the rule on "fraud, mistake, or irregularity."

Pennrose may petition for judicial review at the circuit and appellate courts. We are prepared to defend the legislative map and the CBA denial of this

reclassification all the way up to the Court of Appeals. This reclassification cannot legally be granted, and it is not a close case.

II. Fairness

In paragraph 1, Pennrose claims that "... counsel was not permitted to file a brief or obtain a transcript of the proceedings." Pennrose further implies it suffered from a "required" time limit of five minutes in which to present closing argument. These statements are inaccurate, incomplete, and misleading.

The CBA sometimes requests memoranda and sometimes leaves it to the parties whether they are content to have oral argument. We know of no case where a party has requested to file a memorandum and been denied that opportunity. It certainly did not happen on October 30, 2001 in this case.

The CBA never asks for a transcript. Like a judge or a jury, it decides a case based on recollection, notes, and exhibits. Neither the CBA nor the parties asked for a transcript in this case.

The presentation of evidence here concluded late in the afternoon. The Board did not disallow the filing of briefs or acquisition of a transcript. Rather, Pennrose wished to conclude the case quickly, in the hope of a faster approval than might occur if time were taken for the preparation and review of briefs (and a transcript, if desired). Pennrose wanted to conclude the case by oral argument. People's Counsel did not object. Then, given the lateness of the hour, the CBA established, with the informed consent of the parties, a five-minute allocation, to be supplemented by the transmission of case law believed relevant.

Now that Pennrose is disappointed in the result, it claims that the CBA disallowed briefs. Nothing could be further from the truth. The CBA customarily accepts briefs in rezoning and other cases where the parties desire to submit them. The parties did not express such a desire here.

If Pennrose suggests any unfairness, it is the height of hypocrisy to do so. The CBA gave Pennrose a full opportunity to present its case.

III. Administration of Justice

Even were there any authority to conduct a supplemental public deliberation, it is not in the interest of justice to do so. CBA members customarily deliberate by reference to their recall of the testimony. They also have available their notes and the exhibits. In the case of any collective deliberation, whether it be agency (or, by analogy, jury), it is always possible for any party to attack an isolated statement, call it unsupported, and turn it into a lever to reopen the case. It is equally possible to claim that the CBA omitted some fact or legal consideration in its deliberation.

If this were tolerated as a vehicle to reopen, it would chill the public deliberations. Board members would worry that a party might seize upon any phrase, sentence, or thought as an excuse for objection. They would worry similarly about omission of some factual detail or legal consideration.

Every case would likely generate some request for supplemental deliberation based on an alleged imperfection. This not only would hinder free

discussion, but also would prolong the agency's decision process, clog its schedule, and abuse its time and resources.

There is a public interest in finality of the deliberative process. Once the decision is made, the case must move forward. The law provides ample opportunity for review in the circuit court and appellate courts, along with CBA Rule 10 on reconsideration of an Order.

IV. Pennrose's Contention

We shall not answer in detail Pennrose's contention with regard to need, and the unavailability of other sites. That would invite the allowance of briefs, which would be unwarranted and inappropriate.

If briefs had been requested, we would have shown these Pennrose claims are legally insufficient, immaterial, and not probative of mistake. We would also have demonstrated they are factually unsupported and misleading. There are, in addition, many other reasons why this reclassification cannot legally be granted. Some reasons were mentioned in the deliberations, while others were not reached.

But the time for briefs at the CBA decisional level has passed. The parties agreed to a fair procedure of oral argument followed by submission of cases. The CBA has conducted a fair proceeding, and that is all the law requires.

Should the necessity arise, we are prepared to file briefs in the circuit and in appellate courts to defend the CBA decision to deny this reclassification. Upon this record, the appellate courts will not remand this case. Rather, they will affirm

this CBA decision, in line with many other cases where the courts have held the evidence insufficient, as a matter of law, to overturn the legislative judgment.

V. Closing Comment

The CBA rightfully denied Pennrose's attempt to dictate or impose its development plans and thereby undermine the comprehensive zoning map with a spurious claim of "mistake." The CBA should similarly deny this latest attempt to dictate or impose its own terms, procedures, and issues and thereby subvert the deliberative process and fair administration of justice.

The county council is in charge of comprehensive zoning. The county board of appeals is in charge of the administrative process.

Pennrose is a contract purchaser lately arrived from outside Maryland. Its motion is a tactical maneuver to manipulate and usurp the legislative and administrative authority. The property owner, Dr. Ali-Baig, has never shown up to contest the zoning in 2000, at the CBA hearing, or otherwise. There is no case.

The motion should be denied.

Peter Max Zimmerman
Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. DeMilio
Carole S. DeMilio
Deputy People's Counsel

Courthouse
400 Washington Avenue
Towson, Maryland 21204
410 887-2188

Certificate of Service

I hereby certify this 19 day of December, 2001 that a copy of this People's Counsel's Answer to Motion for Filing of Briefs, Transcript and Supplemental Deliberation was mailed to G. Scott Barhight, Esq., Whiteford, Taylor & Preston, 210 Pennsylvania Avenue, Towson, MD 21204, Attorney for Petitioners.

Peter Max Zimmerman

Peter Max Zimmerman

12/6/01

COUNTY BOARD OF APPEALS
01 DEC -6 PM 2:27

IN THE MATTER OF PENNROSE PROPERTIES, INC. 3134 Rolling Road	*	BEFORE THE
	*	BALTIMORE COUNTY
2nd ELECTION DISTRICT 2nd COUNCILMANIC DISTRICT	*	BOARD OF APPEALS
Petitioner	*	Case No. CR-02-120-A

* * * * * * * * * * *

MOTION FOR FILING OF TRANSCRIPT, BRIEFS AND SUPPLEMENTAL PUBLIC DELIBERATION

Pennrose Properties, Inc., by and through its attorneys, G. Scott Barhight and Whiteford, Taylor & Preston L.L.P., hereby files this Motion and states as follows:

1. On October 30, 2001, an evidentiary hearing was held in the above-captioned case. At the conclusion of the testimony, counsel was not permitted to file a brief or obtain a transcript of the proceedings. Moreover, counsel was required to present closing argument with a five minute time limitation.

2. On November 28, 2001, the Board of Appeals held its public deliberation in this matter. This deliberation occurred without the benefit of the transcript of the October 30, 2001 hearing or any brief summarizing the testimony elicited. During that deliberation, the Board members stated that if a particular fact had been entered into evidence, the requirements of error in the reclassification case would have been met. Specifically, Ms. Barranger stated that if evidence had been introduced that there were no other zoned and available sites in the market area for this development project, the error would have been proven. Mr. Marks stated that he desired to grant the reclassification case, but was concerned that the error standard had not been met without the testimony described by Ms. Barranger. Based upon these remarks, it is clear that the Board failed to recollect the testimony of Sandy Marenberg,

consultant to the project . Mr. Marenberg specifically addressed this issue when he testified that he had done a study of the available sites and that the subject site was the only available site.

3. Comments were also made with regard to the practical difficulty test of the zoning variance. The Board, from its notes, and without the benefit of a transcript, tried to recall the testimony of Lee Driscoll, the architect who described the project in order to understand the issues surrounding the length of the building. It was clear to anyone listening, that the Board did not fully and accurately recall the testimony of Mr. Driscoll.

4. In both factual cases, the Board either failed to recollect critical testimony entered into evidence or October 30, 2001, or misrecollected the testimony that was offered. Unfortunately, the Board was deliberating without the benefit of a transcript or written briefs which would have pointed out and summarized the testimony of the witnesses and, as a result reached an erroneous conclusion. In as much as the Board was deprived of a transcript and/or briefs that would have provided the necessary information for the Board to make a complete public deliberation, the Board should remedy the situation.

5. The Board should provide counsel with the opportunity to provide a transcript of the proceedings, and provide written briefs. If the Board so desires, the Board should also consider requesting that counsel argue the case again, after the transcript and briefs are provided.

6. If the Board fails to take advantage of these available tools, it will be contrary to the best interests of the litigants and the Board of Appeals. In all likelihood, the matter will be appealed to the Baltimore County Circuit Court, and then reversed and remanded back to the Board of Appeals to make findings of fact in accordance with the transcript. On appeal, the

Circuit Court will have the benefit of the transcript to check the actual testimony of the witnesses. The Board only had the benefit of its notes and recollection.

7. Counsel for the Petitioner has ordered a copy of the entire transcript. At Petitioner's expense, a copy of the transcript will be provided to the Board and opposing counsel, namely People's Counsel, as soon as practicable upon receipt from the court reporter.

WHEREFORE, the Petitioner respectfully requests that this Board:

A. Review the transcript of the proceedings in its entirety upon receipt;

B. Provide counsel with the opportunity to brief the case within 10 days after the Board and counsel receives the transcript;

C. Schedule oral argument in this matter to occur within 10 days after the deadline for the filing of the briefs; and

D. Schedule a supplemental public deliberation to revisit the Findings of Fact and Conclusions of Law made during the initial public deliberation.

Respectfully submitted,

G. Scott Barhight
Whiteford, Taylor & Preston L.L.P.
210 West Pennsylvania Avenue
Towson, Maryland 21204-4515
(410) 832-2000
Counsel for Petitioner, Pennrose Properties, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6TH day of December, 2001, a copy of the foregoing Motion for Filing Of Transcript, Briefs and Supplemental Public Deliberation was mailed to:

Peter M. Zimmerman, Esquire
People's Counsel for Baltimore County
Old Courthouse, Room 47
400 Washington Avenue
Towson, Maryland 21204

G. Scott Barhight

240203

Petition for Reclassification

to the Board of Appeals of Baltimore County

for the property located at 3134 Rolling Road
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 Class A Housing for the Elderly

(Independent Living Senior Housing)

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

See Attachment A

dff/ad
OK TO FILE

RECEIVED
BOARD OF APPEALS
01 AUG 30 AM 9:38

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:

Pennrose Properties, Inc.
Name - Type or Print

Catherine Caskey, Director, MD. Office
Signature Catherine Caskey 410/832-2000

901 Druid Park Lane Dr, STE 100 see Atty
Address Telephone No.

BALTIMORE, MARYLAND 21217
City State Zip Code

Legal Owner(s):

Dr. Mirza Hussain Ali Baig
Name - Type or Print

Mirza Hussain Ali Baig
Signature

Name - Type or Print

Signature

410-832-2000

4219 Dustin Road See Atty
Address Telephone No.

Burtonsville MD 20866
City State Zip Code

Attorney For Petitioner:

G. Scott Barhight, Esquire
Name - Type or Print

Signature

Whiteford, Taylor & Preston, LLP
Company

210 W. Pennsylvania Ave. STE 400 410-832-2000
Address Telephone No.

Towson MD 21204
City State Zip Code

Representative to be Contacted:

G. Scott Barhight, Esquire
Name

Same 410-832-2000
Address Telephone No.

Same
City State Zip Code

RZV 9/18/98

Attachment A – Petition for Reclassification
Petitioner, Pennrose Properties, Inc.
3134 Rolling Road, Baltimore, MD

Petitioner hereby requests a variance from the following sections of the zoning regulations of Baltimore County:

1) BCZR §1B01.2.B.2, BCZR §504.2 and CMDP's Residential Standards for multi-family buildings, Pennrose seeks a modification of standards and variance to permit a building length of 428 feet in lieu of the 240 feet permitted.

STV Incorporated

21 Governor's Court
Baltimore, Maryland 21244-2722
(410) 944-9112 fax:(410) 298-2794

ZONING DESCRIPTION FOR THE ROLLING ROAD SENIOR COMMUNITY WEST SIDE OF ROLLING ROAD OPPOSITE/BETWEEN CHIPPER ROAD AND JODY KNOLL ROAD BALTIMORE COUNTY, MARYLAND

BEGINNING at a point in the existing pavement of Rolling Road, distant North 08°42'57" West 8.5 feet and South 78°25'28" West 3.0 feet from that point formed by the intersection of the centerline of pavement of said Rolling Road and the westerly projection of the centerline of Chipper Road. Thence running in said pavement of Rolling Road, as follows:

1. South 09°08'46" East 264.0 feet to a point, thence leaving Rolling Road and running,
2. North 68°08'46" West 247.5 feet to a point thence,
3. South 30°51'14" West 161.7 feet to a point thence,
4. North 50°34'05" West 1,848.97 feet to a point thence,
5. North 12°20'05" East 260.18 feet to a point thence,
6. South 51°15'50" East 1,482.92 feet to a point thence,
7. South 45°34'32" East 346.19 feet to a point thence,
8. North 78°25'28" East 244.20 feet to the place of beginning as recorded in Deed Liber S.M. 8211, Folio 840.

CONTAINING 11.28 acres of land. Also known as No. 3134 Rolling Road and located in the Second (2nd) Election District.

STV INCORPORATED
Mark A. Riddle
MD Professional Land Surveyor No. 10899

STATE OF MARYLAND
MARK ALAN RIDDLE
No. 10899
REGISTERED
PROFESSIONAL LAND SURVEYOR

July 5, 2001

MAR/jm
h:\general\data\10707\zoningdescription.doc

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT JLL/AJ

No. 3336

DATE 8/30/01 ACCOUNT 001-006-6150

AMOUNT $ 1500.00

RECEIVED FROM: Whiteford Taylor & Preston LLP
($1,250.00) & ($250.00)

FOR: OUT OF CYCLE RECLASS & VARIANCE FILING INCL. SIGN FEE

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT
PAYMENT ACTUAL TIME
8/30/2001 8/30/2001 09:37:47
RE 4504 CASHIER DDOL DMD DRAWER 2
RECEIPT # 154375 OFLN
Dept 5 520 ZONING VERIFICATION
CR NO. 003336
Recpt Tot 1,500.00
1,500.00 CK .00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

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: Penrose Properties, Inc.

Address or Location: 3134 Rolling Road

PLEASE FORWARD ADVERTISING BILL TO:

Name: Penrose Properties, Inc Attn: Catherine Caskey

Address: 901 Druid Park Lake Drive, ste 100

Baltimore, MD 21217

Telephone Number: 410-462-6200

Revised 2/20/98 - SCJ

TO: PATUXENT PUBLISHING COMPANY
Tuesday, October 16, 2001 Issue - Jeffersonian

Please forward billing to:
Dr. Mirza Hussain Ali Baig
4219 Dustin Road
Burtonsville MD 20866

410 832-2000

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: CR-02-120
ADDRESS: 3134 Rolling Road
DESCRIPTION: W/S of Rolling Road Between Chipper Road and Jody Knoll Road
2nd Election District – 2nd Councilmanic District
Legal Owner: Dr. Mirza Hussain Ali Baig
Contract Purchaser: Catherine Caskey, Pennrose Properties, Inc.

Reclassification: from D.R.5.5 to D.R.16

HEARING: Tuesday, October 30, 2001 at 10:00 a.m. in Room 48 of the Old Courthouse, 400 Washington Avenue

Lawrence S. Wescott

Lawrence S. Wescott
Chairman GDZ

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

CR-02-120-A

September 21, 2001

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: CR-02-120
ADDRESS: 3134 Rolling Road
DESCRIPTION: W/S of Rolling Road Between Chipper Road and Jody Knoll Road
2nd Election District – 2nd Councilmanic District
Legal Owner: Dr. Mirza Hussain Ali Baig
Contract Purchaser: Catherine Caskey, Pennrose Properties, Inc.

Reclassification: from D.R.5.5 to D.R.16, Special Exception to allow a Class A Housing for the Elderly, a modification of standards and a variance to permit a building length of 428 feet in lieu of the 240 feet permitted

HEARING: Tuesday, October 30, 2001 at 10:00 a.m. in Room 48 of the Old Courthouse, 400 Washington Avenue

Lawrence S. Wescott Reclass. and Variance

Lawrence S. Wescott
Chairman GDZ

c: G. Scott Barhight, Esquire, Whiteford, Taylor & Preston LLP, 210 W Pennsylvania Avenue, Towson 21204
Dr. Mirza Hussain Ali Baig, 4219 Dustin Road, Burtonsville 20866
Catherine Caskey, Pennrose Properties, Inc, 901 Druid Park Lane Drive, Suite 100, Baltimore 21227

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.

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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

October 31, 2001

NOTICE OF DELIBERATION

IN THE MATTER OF:

***Pennrose Properties, Inc. .CP* –Petitioner**
Case No. CR-02-120-A

Having concluded this matter on 10/30/01, public deliberation has been assigned as follows:

DATE AND TIME : **WEDNESDAY, NOVEMBER 28, 2001 at 9:30 a.m.**

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

NOTE: Copies of referenced opinions due by November 9, 2001; *no* briefs to be filed.

Kathleen C. Bianco
Administrator

c: Counsel for Petitioner : G. Scott Barhight, Esquire
Petitioner : Pennrose Properties, Inc. /
Catherine Caskey, Director, Md Office
: Dr. Mirza Hussain Ali Baig –Legal Owner

STV Incorporated

Deborah Rose
William O'Briecht
John and Joanne Brown

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

c C.W.B.

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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

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

December 10, 2001

NOTICE OF ASSIGNMENT –
Motion Hearing – Argument on Petitioner's Motion for Filing of Transcript, Briefs and Supplemental Public Deliberations

CASE #: CR-02-120-A
(Out of Cycle, 2001)

IN THE MATTER OF: ***Pennrose Properties, Inc.***
Dr. Mirza Hussain Ali Biag – Legal Owner. 3134 Rolling Road
W/s of Rolling Road between Chipper Road and Jody Knoll Road
2nd Councilmanic District

Reclassification: From D.R. 5.5 to D.R. 16 (11.8 acres +/-)
Variance: To permit building length of 428 feet in lieu of the 240 feet permitted

Motion Hearing – for receipt of argument *only*

ASSIGNED FOR: **THURSDAY, JANUARY 17, 2002 at 9:00 a.m.**

***NOTICE:* 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 : G. Scott Barhight, Esquire
: Pennrose Properties, Inc. /
Catherine Caskey, Director, Md Office
: Dr. Mirza Hussaid Ali Baig

STV Incorporated

Deborah Rose
John and Joanne Brown
William O'Briecht, LRCC

Office of People's Counsel
Pat Keller, Director /Planning
Jeffrey Long /Planning
Lawrence E. Schmidt /Zoning Commissioner
W. Carl Richards /PDM
Arnold Jablon, Director /PDM

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on Recycled Paper

County Board of Appeals of Baltimore County

WLR

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 NOVEMBER 26, 2001

TUESDAY **11/27 10:00 am** **HEARING PULLED**

WEDNESDAY **11/28 9:30 am** **Case No.: CR-02-120-A** **/Deliberation**
In the Matter of:
Pennrose Properties, Inc.
2nd Election District; 2nd Councilmanic District

10:00 am *(Sun Oil cases postponed to December 5, 2001)*

THURSDAY **11/29 10:00 am** **Case No.: R-01-437** **/Hearing**

In the Matter of:
Jarvis Steel & Lumber Co., Inc. – Applicant
SW/s Dover Road, approx 600' N of Baublitz
4nd Election District; 3nd Councilmanic District

Reclassification: From RC 4 and RC 5 to RC 4 and RC 5 as shown on Plat to Accompany Petition

Day #3 from 10/25/01

---

c: Executive Office
Law Office
Director /PDM
People's Counsel
Planning Office
Court Info. Desk
County Council
Board Members
Court Reporter

1 S YOS

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on Recycled Paper

Maryland Department of Transportation
State Highway Administration

Parris N. Glendening
Governor

John D. Porcari
Secretary

Parker F. Williams
Administrator

Date: 10.1.01

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

RE: Baltimore County
Item No. CR-01-120
(02)

Dear. Ms. Jackson:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not affected by any State Highway Administration projects.

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

Very truly yours,

K. A. McDonald

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, MARYLAND

INTEROFFICE CORRESPONDENCE

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

DATE: October 10, 2001

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

SUBJECT: Zoning Advisory Committee Meeting
For September 24, 2001
Item No. 120
Case No. CR-02-120
W/S of Rolling Road between Chipper
Road and Jody Knoll Road
District 2C2

The Bureau of Development Plans Review has reviewed the subject zoning item.

This site is required to meet the Baltimore County Development Regulations dated February 1992 and as amended.

Public sanitary sewer must be extended through this site to the upstream properties.

RWB:HJO:jrb

cc: File

Baltimore County
Fire Department

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

September 27, 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: Dr. Mirza Hussain Ali Baig

Location: DISTRIBUTION MEETING OF September 24, 2001

Item No.: CR-02-120

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.

4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.

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

cc: File

RECEIVED
OCT 1 2001
DEPT. OF PERMITS AND
DEVELOPMENT MANAGEMENT

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on Recycled Paper

ZONING ADVISORY COMMITTEE
MEETING OF SEPTEMBER 24, 2001

Case Number:	CR-02-120
Item Number:	120
Hearing Date/Time:	Tuesday, October 30, 2001/10:00 a.m.
Legal Owner:	Dr. Mirza Hussain Ali Baig
Contract Purchaser:	Catherine Caskey, Pennrose Properties, Inc.
Location:	W/S of Rolling Road Between Chipper Road and Jody Knoll Road
Existing Zoning:	D.R.5.5
Proposed Zoning:	D.R.16 Petition For Reclassification and Special Exception to allow Class A Housing for the Elderly, a modification of standards and a variance to permit a building length of 428 feet in lieu of the 240 feet permitted.
Area:	11.28 acres
District:	2nd Election District 2nd Councilmanic District
Attorney:	G. Scott Barhight, Esquire
Miscellaneous:	

PENNROSE PROPERTIES, INC. –CP
Dr. Mirza Hussain Ali Biag – Legal Owner.
3134 Rolling Road
W/s of Rolling Road between Chipper Road
and Jody Knoll Road 2nd Councilmanic District

#CR-02-120-A
(Out of Cycle 2001)

From D.R. 5.5 to D.R. 16 (11.8 acres +/-)
Variance – To permit building length of 428 feet in lieu of the 240 feet permitted.

8/17/01 Planning Board certification to the County Council for early action out of cycle (8/16/01 Planning Board meeting).

8/30/01 Petition for Reclassification filed by G. Scott Barhight, Esquire, on behalf of Petitioner, Pennrose Properties, Inc.

9/04/01 Approval for out of cycle status by County Council.

9/06/01 – Memo sent to A. Jablon with copy of Resolution 106-01 approving for out of cycle hearing and Petition for Reclassification and Plans filed by Petitioner's counsel on 8/30/01 for processing; holding 10/30/01 for hearing; notice to be sent by PDM (window 10/04/01 – 12/03/01)

9/21/01 – Notice of Zoning Reclassification Hearing sent by PDM; assigned for Tuesday, October 30, 2001 at 10:00 a.m.

10/30/01 – Board convened for hearing (Marks, Worrall, Barranger); requested addition to file: Deborah Rose, 7927 Chipper Road, 21244 410-922-0222 (H) and 301-313-8627 (W); and William O'Briecht, LRCC, 2415 Poplar Drive, 21207. File so noted this date. Hearing concluded; copies of referenced decisions to be submitted by 11/09/01; no briefs to be filed; scheduled for public deliberation on Wednesday, 11/28/01 at 9:30 a.m.; notice to be sent.

10/31/01 – Notice of Deliberation sent to parties; scheduled for Wednesday, November 28, 2001 at 9:30 a.m.

11/09/01 – Letter from People's Counsel submitting nine (9) cases, as instructed, for the Board's consideration.

- Letter from Scott Barhight submitting three (3) cases, as instructed, for the Board's review and consideration.

11/28/01 – Board convened for deliberation (Marks, Barranger, Worrall); reclassification DENIED – burden not met; variance request also DENIED – even if uniqueness met, practical difficulty /unreasonable hardship not met – property can be built for intended purpose – smaller operation. Written Opinion and Order to be issued; appellate period to run from date of written Order.

12/06/01 – Petitioner's Motion for Filing of Transcript, Briefs and Supplemental Public Deliberations filed by G. Scott Barhight, Esquire.

12/10/01 – Notice of Assignment /Motion Hearing sent to parties; hearing on Petitioner's Motion for Filing of Transcript, etc., assigned for Thursday, January 17, 2002 at 9:00 a.m.; to receive argument only on Petitioner's Motion. FYI copy to C.B.W.

12/18/01 – Letter w/accompanying transcripts received from S. Barhight. Kcb holding all copies at this time.

12/19/01 – People's Counsel's Answer to Motion for Filing of Transcript, Briefs and Supplemental Public Deliberation filed by Peter M. Zimmerman, People's Counsel for Baltimore County.
-- People's Counsel for Baltimore County's Conditional Cross-Motion for Review of Issues in the Event of any Further Deliberation filed by P. Zimmerman.

12/27/01 – T/C to S. Barhight regarding submittal of transcript (Original and three copies remain with kcb) – copies of the transcript will be provided to the Board only after argument hearing on 1/17/02 – the purpose of which is to determine whether or not the Board will accept the transcript inasmuch as deliberation has been concluded and a decision reached. Copies to remain with kcb until after 1/17/02 hearing.

12/27/01 – Copies of Mr. Zimmerman's filings sent to C.B.W. this date (copies of Mr. Barhight's Motion were previously forwarded to C.B.W. on 12/10/01. MOTION HEARING – 1/17/2002.

1/17/02 – Argument on Motion received this date (S. Barhight and P. Zimmerman); public deliberation taking place at 1:00 p.m. this date (Marks, Barranger, Worrall). Motion for Filing of Transcript…DENIED by Board. Record was closed; deliberation had occurred; transcripts and/or briefs should have been filed prior to public deliberation. (Final Order of the Board in this reclassification petition is still pending.)
-- Letter to S. Barhight (copy to P. Zimmerman); returning four packets of material filed by S. Barhight 12/27/01 – Motion to file transcript, etc., was denied this date by Board.

1/23/02 – Letter to S. Barhight in response to correspondence dated 1/22/02; transcripts and cover letters returned to him on 1/17/02; transcript will become part of file if appeal taken to Circuit Court; also, should Motion for Reconsideration be filed with CBA subsequent to Board's Order, any material /documentation filed with that Motion will also be part of the record and case file. Copy to PMZ.

BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF: Penrose Properties, Inc. - CP
Dr. Mirza Hussain Ali Baig – Legal Owner
Case No.: CR-02-120-A

DATE: January 17, 2002

BOARD/PANEL:

Lawrence H. Stahl	LHS
C. Lynn Barranger	CLB
Margaret Worrall	MW

RECORDED BY: Theresa R. Shelton / Legal Secretary

PURPOSE: To deliberate the matter of *the Petitioner's Motion for Filing of Transcript, Briefs* and Supplemental Public Deliberation.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

- Discussed Rule 1B and 4B; Chairman to rule during the course of the hearing; regulations of hearings
- The transcripts and/or briefs are delivered prior to the deliberation
- When a hearing is closed; its closed – then deliberated
- Can be remanded for clarification and Board has 30 days to amend the order
- Deliberation is NOT opinion and order
- Notes of all Board Members were consistent

DECISIONS BY BOARD MEMBERS:

LMS Reject Motion
CLB Reject Motion
MW Reject Motion

FINAL DECISION: That the Petitioner's Motion for Filing of Transcript, Briefs and Supplemental Public Deliberation is DENIED.

NOTE: These minutes, which will become part of the case file, are intended to indicate for the record that a public deliberation took place that date regarding this matter. The Board's final decision and the facts and findings thereto will be set out in the written Opinion and Order to be issued by this Board.

Respectfully submitted,

Theresa R. Shelton
County Board of Appeals

BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF:	Penrose Properties, Inc. Case No.: CR-02-120-A	
DATE:	November 28, 2001	
BOARD/PANEL:	Charles L. Marks	CLM
	C. Lynn Barranger	CLB
	Margaret Worrall	MW
RECORDED BY:	Theresa R. Shelton / Legal Secretary	

PURPOSE: Reclassification Petition to change zoning from DR 5.5 to DR 16

PANEL MEMBERS DISCUSSED THE FOLLOWING:

- The documented site plan was impressive, sketches striking and a lot of support given to the project
- The issue at hand was whether there was a mistake or a change in the character of the area to reclassify
- Deference given to the County Council – once adopted/passed/strictly legal
- If there was a mistake, Petitioners need to provide substantial evidence to prove mistake
- Trends indicate this type of housing in Baltimore County – The Council was probably aware that there is always a need for elderly housing in Baltimore County
- The burden is on the Petitioners – The Board has a limited power of review (presumption of correctness)
- The owner of the property did not raise the issue in the 2000 CZMP review. The case never came up. The issue was never raised.
- Dr 5.5 is all around the area. Property can be developed for elderly with the current zone.
- Lacking strong evidence that the entire area had been researched and that this was the only property available for the project.
- Discussion of the analysis dated 10/2001 and the Baltimore County Master Plan in recognizing the elderly
- The Board's scope is different than that of the Council's. The law does not accommodate the facts.

- Variance issued addressed to go on the record.
- The Board can not consider economic issues and what is feasible or viable.
- Property is not unique or unusual – Fails test for 1st prong
- Can be developed, but smaller
- Environmental - no concerns

DECISIONS BY BOARD MEMBERS:

CLM Zoning Reclassification – DENIED (very reluctantly) – not enough substantial evident to change

CLM Zoning Reclassification – DENIED – not enough substantial evident to change

MW Zoning Reclassification – DENIED – not enough substantial evident to change

FINAL DECISION: To DENY Petitioners request to change the zoning from D.R. 5.5 to D.R. 16. Variance also DENIED.

NOTE: These minutes, which will become part of the case file, are intended to indicate for the record that a public deliberation took place that date regarding this matter. The Board's final decision and the facts and findings thereto will be set out in the written Opinion and Order to be issued by this Board.

Respectfully submitted,

Theresa R. Shelton

Theresa R. Shelton
County Board of Appeals

County Board of Appeals of Baltimore County

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

January 17, 2002

LETTER BY FAX THIS DATE; ORIGINAL AND ENCLOSURES VIA U.S. MAIL

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

RE: *In the Matter of: Pennrose Properties, Inc. –CP/Petitioner*
Case No. CR-02-120-A

Dear Mr. Barhight:

With the conclusion of the Board's deliberation this afternoon in which your Motion for Filing of Transcript, Briefs and Supplemental Public Deliberation was denied, enclosed are the transcript copies and cover letter filed with this office on December 27, 2001 (four packets). This material has remained sealed at my desk pending the Board's decision as to your above-referenced Motion.

Should you have any questions, please call me.

Sincerely,

Kathleen C. Bianco
Administrator

Enclosures (4)

c: Peter M. Zimmerman
People's Counsel for Baltimore County

FILE

Printed with Soybean Ink
on Recycled Paper

BALTIMORE COUNTY, MARYLAND
Office of Community Conservation

Inter-Office Correspondence

Date: October 11, 2001

To: Department of Permits and Development Management
Attn: George Zahner
M.S. 1105

From: Mary L. Harvey,
Director

Re: Case No. CR-02-120
Item No. 120
Penrose Properties, Inc.
w/s of Rolling Road between Chipper Road and Jody Knoll Road

The need for affordable, elderly housing in Baltimore County is well documented. In our communities, we see a growing population of elderly residents on fixed incomes who are experiencing difficulty maintaining their current living arrangements. This Project will provide elderly households in Baltimore County with another option of affordable housing.

The Office of Community Conservation supports the proposed development of Rolling Road Senior Apartments, has endorsed their application for financing through the Maryland State Department of Housing and Community Development, and therefore supports the Petition for Reclassification and the request for a variance pending before you.

OFFICE OF COMMUNITY CONSERVATION

By: Mary L. Harvey
Mary L. Harvey, Director

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

TO: Arnold Jablon, Director
Department of Permits & Development Management

DATE: September 7, 2001

FROM: Kathleen C. Bianco
County Board of Appeals

SUBJECT: Out-of-Cycle Exemption **/Documented Site Plan**
Request for Reclassification, Special Exception and Variance
/Property located at 3134 Rolling Road 2nd Councilmanic District
Petition filed by: Pennrose Properties, Inc. /Contract Purchaser /Lessee
(Dr. Mirza Hussain Ali Baig, Legal Owner)
Approval by County Council: September 4, 2001
Date for Hearing before the Board – 10/30/01 @ 10 a.m.

Pursuant to Section 2-356(i), the Board has scheduled the subject out-of-cycle reclassification petition for hearing on Tuesday, October 30, 2001 at 10:00 a.m. in Room 49, Old Courthouse.

This petition for reclassification, special exception and variance was approved for hearing out of cycle by the County Council at its September 4, 2001 (a copy of Resolution 106-01 is attached for your information and file).

I have copied Carl Richards on this memorandum so that the necessary advertising and posting can be accomplished by your office and notice sent to the appropriate parties reflecting the hearing date of October 30, 2001. I've also forwarded to Carl the Petition for Reclassification, Special Exception and Variance and accompanying documentation, filed with this office on 8/30/01, for further processing.

Should you have any questions, please call me at extension 3180.

Attachment

cc: Carl Richards, Jr. /PDM
Jeffrey Long /Planning
Office of People's Counsel
The Honorable Kevin Kamenetz
Baltimore County Council

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

TO: Arnold Jablon, Director
Department of Permits & Development Management

DATE: September 7, 2001

FROM: Kathleen C. Bianco
County Board of Appeals

SUBJECT: Out-of-Cycle Exemption /**Documented Site Plan**
Request for Reclassification, Special Exception and Variance
/Property located at 3134 Rolling Road 2nd Councilmanic District
Petition filed by: Pennrose Properties, Inc. /Contract Purchaser /Lessee
(Dr. Mirza Hussain Ali Baig, Legal Owner)
Approval by County Council: September 4, 2001
Date for Hearing before the Board – 10/30/01 @ 10 a.m.

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This petition for reclassification, special exception and variance was approved for hearing out of cycle by the County Council at its September 4, 2001 (a copy of Resolution 106-01 is attached for your information and file).

I have copied Carl Richards on this memorandum so that the necessary advertising and posting can be accomplished by your office and notice sent to the appropriate parties reflecting the hearing date of October 30, 2001. I've also forwarded to Carl the Petition for Reclassification, Special Exception and Variance and accompanying documentation, filed with this office on 8/30/01, for further processing.

Should you have any questions, please call me at extension 3180.

Attachment

cc: Carl Richards, Jr. /PDM
Jeffrey Long /Planning
Office of People's Counsel
The Honorable Kevin Kamenetz
Baltimore County Council

Carl: This is the Petition we discussed on 9/05/01. The 10/30/01 date is the only date I have open during the window of 10/04/01 – 12/03/01 (30 to 90 days from approval by Council for out of cycle). With the Petition already filed, it seems this would be adequate time for advertising. Call me if there's a problem. Also, call me with the case number as soon as one has been assigned, and forward a copy of the Notice of Hearing for our file and information.

Thanks

Kathi

County Council of Baltimore County

Court House, Towson, Maryland 21204
410-887-3196
Fax 410-887-5791

S. G. Samuel Moxley
FIRST DISTRICT

Kevin Kamenetz
SECOND DISTRICT

T. Bryan McIntire
THIRD DISTRICT

Wayne M. Skinner
FOURTH DISTRICT

Vincent J. Gardina
FIFTH DISTRICT

Joseph Bartenfelder
SIXTH DISTRICT

John Olszewski, Sr.
SEVENTH DISTRICT

Thomas J. Peddicord, Jr.
LEGISLATIVE COUNSEL
SECRETARY

September 6, 2001

Lawrence S. Wescott, Chairman
Baltimore County Board of Appeals
Court House
Towson, Maryland 21204

Dear Mr. Wescott:

Attached please find a copy of Resolution 106-01 approving the Planning Board's certification that the zoning reclassification petition filed by Penrose Properties, Inc., for the property located at 3134 Rolling Road and situated in the Second Councilmanic District, should be exempted from the regular cyclical procedure of Section 2-356(c) through (h), inclusive, of the Baltimore County Code, 1988, as amended.

This Resolution was unanimously approved by the County Council at its September 4, 2001 meeting and is being forwarded to you for appropriate action.

Sincerely,

Thomas J. Peddicord, Jr.
Legislative Counsel/Secretary

TJP:dp
Enclosure

r10601.wpd

01 SEP -6 AM 10:36
RECEIVED
COUNTY BOARD OF APPEALS

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 2001, Legislative Day No. 16

Resolution No. 106-01

Mr. Kevin Kamenetz, Councilman

By the County Council, September 4, 2001

A RESOLUTION of the Baltimore County Council to approve the Planning Board's certification that the zoning reclassification petition filed by Pennrose Properties, Inc. for the property located at 3134 Rolling Road and situated in the Second Councilmanic District, should be exempted from the regular cyclical procedure of Section 2-356(c) through (h), inclusive, of the Baltimore County Code, 1988, as amended.

WHEREAS, the Planning Board, by Resolution dated August 16, 2001, has certified that early action on the Petition for Zoning Reclassification filed by Pennrose Properties, Inc., requesting a reclassification of the above described property is manifestly required in the public interest; and

WHEREAS, the County Council of Baltimore County, in accordance with the provisions of Section 2-356(i), may approve said certification and exempt the Petition for Zoning Reclassification from the regular procedures of Section 2-356.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, that the certification by the Planning Board that early action on the zoning reclassification petition filed by Pennrose Properties, Inc. , with the documented site plan filed with the request for exemption from the regular cyclical procedure, be

and the same is hereby approved; and

BE IT FURTHER RESOLVED, that the County Council's approval herein does not constitute an opinion on the merits of the petition; and

BE IT FURTHER RESOLVED, that the Board of Appeals shall schedule a public hearing on said petition in accordance with Section 2-356(i) of the Baltimore County Code.

r10601.wpd

READ AND PASSED this 4th day of September, 2001.

BY ORDER

Thomas J. Peddicord, Jr.
Secretary

ITEM: Resolution 106-01

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

DATE: December 10, 2001

TO: C. Marks
M. Worrall
L. Barranger

FROM: Kathi

SUBJECT: Case No. CR-02-120-A */In the Matter of: Pennrose Properties, Inc.*
Motion Hearing – Thursday, January 17, 2002 at 9:00 a.m.

Enclosed for your review is a copy of a Motion for Filing of Transcript, Briefs and Supplemental Public Deliberation filed by G. Scott Barhight, Esquire, on behalf of the Petitioners in the subject matter.

As soon as a response to this Motion is received from Mr. Zimmerman, a copy will also be forwarded to you.

This matter has been scheduled for argument on Mr. Barhight's Motion only on Thursday, January 17, 2002 at 9:00 a.m. Please note that Lynn and Margaret are also scheduled for the 10 a.m. variance case assigned to follow this 9:00 a.m. Motion hearing. A copy of the hearing Notice is also enclosed.

Should you have any questions, please call me.

Enclosures (2)

FILE

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

DATE: December 27, 2001

TO: C. Marks
M. Worrall
L. Barranger

FROM: Kathi

SUBJECT: Case No. CR-02-120-A */In the Matter of: Pennrose Properties, Inc.*
Motion Hearing – Thursday, January 17, 2002 at 9:00 a.m.
Response filed by People's Counsel

Enclosed for your review is a copy of People's Counsel's Answer to Motion for Filing of Transcript…(a copy of Scott's Motion was forwarded to you on December 10th). Also enclosed is a copy of People's Counsel's Conditional Cross-Motion for Review of Issues (in the event Scott's Motion is granted).

Again, as an FYI - this matter is scheduled for argument on Mr. Barhight's Motion only on Thursday, January 17, 2002 at 9:00 a.m. – and, once again, please note that Lynn and Margaret are also scheduled for the 10 a.m. variance case assigned to follow this 9:00 a.m. Motion hearing.

Should you have any questions, please call me.

Enclosures (2)

FILE

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

Date: August 3, 2001

To: Baltimore County Planning Board

From: Arnold F. 'Pat' Keller, III

Re: Pennrose Properties, Inc. (3134 Rolling Road)

The attached letter requests certification by the Planning Board for out-of-cycle action on a zoning petition for reclassification of the subject property.

Section 2-356(i) of the Baltimore County Code authorizes the Planning Board to certify to the County Council that expedited scheduling of a reclassification hearing by the Board of Appeals "is manifestly required in the public interest or because of an emergency." Neither the certification by the Planning Board nor a concurrence by the County Council would constitute an opinion on the merits of the petition; the effect is simply to take the petition out of the normal cycle zoning schedule for an earlier hearing.

The subject request for certification has been reviewed by planning staff and without taking a position on the merits of the case, the Office of Planning recommends to the Planning Board that certification for early action upon this zoning reclassification petition is required.

Sincerely,

Pat Keller

Arnold F. 'Pat' Keller, III
Director

AFK:GK:lsn
Attachment

S:\COMPLAN\GARY\PENNROSE PROPERTIES, INC..doc

Printed with Soybean Ink
on Recycled Paper

WHITEFORD, TAYLOR & PRESTON
L.L.P.

210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4515
410 832-2000
FAX 410 832-2015
www.wtplaw.com

SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202-1626
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30 COLUMBIA CORPORATE CENTER
10440 LITTLE PATUXENT PARKWAY
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FAX 410 884-0719

1025 CONNECTICUT AVENUE, NW
WASHINGTON, D.C. 20036-5405
TELEPHONE 202 659-6800
FAX 202 331-0573

1317 KING STREET
ALEXANDRIA, VIRGINIA 22314-2928
TELEPHONE 703 836-5742
FAX 703 836-0265

JULIE A. DIGRIGOLI
DIRECT NUMBER
410 832-2084
gbarhight@wtplaw.com

July 30, 2001

Via Hand Delivery
Mr. Arnold F. "Pat" Keller
Director
Baltimore County Office of Planning
4th Floor, County Office Building
401 Bosley Avenue
Towson, MD 21204

Re: Pennrose Properties, Inc.
3134 Rolling Road
Petition for Reclassification

Dear Mr. Keller,

This Office represents Pennrose Properties, Inc.'s ("Pennrose") with respect to the above-referenced matter. Pennrose is a Philadelphia, Pennsylvania based developer who has gained an excellent reputation for developing and managing high quality, affordable housing projects in Maryland, Washington D.C., Pennsylvania, New Jersey, and Delaware. With this letter, Pennrose respectfully requests that its Petition for Reclassification on the above property be considered out-of-cycle by the Baltimore County Planning Board. As explained herein, early action upon Pennrose's Petition for Reclassification is manifestly required in the public interest.

By way of background, Pennrose is the contract purchaser and developer of certain property located at 3134 Rolling Road in the Second (2nd) Councilmanic District ("Subject Property"). The Subject Property currently contains 11.8 acres ± of D.R. 5.5 zoned property. I have enclosed a vicinity map and zoning map to assist you in locating the property.

With this Petition for Reclassification, Pennrose seeks to reclassify the Subject Property from a D.R. 5.5 to a D.R.16 zoning classification. If Pennrose's Petition for

Reclassification is granted, it will develop a 119 unit senior independent living rental housing building on the property. The project will include 57 one-bedroom units and 62 two-bedroom units. Please be advised that the project will not contain a nursing, assisted living or medical component. Pennrose's senior rental housing building will provide an affordable housing option to seniors 62 years and older. I have enclosed elevations of the proposed project for your review.

It is manifestly in the public interest to certify that early action should be taken on Pennrose's Petition for Reclassification. In addition to such justifications as Pennrose may present at the hearing in this matter, Pennrose offers the following in support of its Petition: First, there is unquestionably an immediate need for Senior Independent Living Facilities, like the one proposed by Pennrose, in Baltimore County. According to the Maryland Department of Aging, Baltimore County currently has the largest population of residents aged 60 years and older than any other County in Maryland. The State's census data indicates that there are 139,116 residents over the age of 60 currently living in Baltimore County. The census projects that this number will grow to 161, 232 residents in 2010 and 205,204 residents in 2020. This represents a 47.5% increase in the Baltimore County's senior population between the years 2000 and 2020.

Additionally, the Baltimore County 2010 Master Plan recognizes that Baltimore County has experienced an increase in the number of persons over the age of 65. The Master Plan states that "[t]he percentage of senior population in Baltimore County is increasing at such a rate that by 2010, 15.6% of the County's population will be senior citizens". (*See* 2010 Master Plan, p.10). Despite these astounding statistics, Baltimore County has very little senior rental apartment buildings currently available. According to the Baltimore County Department of Aging, there are only 30 senior rental buildings available to serve 139,116 senior residents.

Secondly, certifying Pennrose's Petition for early action is imperative in that it allows Pennrose to seek the necessary State funding for the project. In order to offer the proposed housing at an affordable price to seniors, Pennrose must obtain financial assistance from the Maryland Department of Housing and Community Development ("DHCD"). To qualify for such assistance, Pennrose must submit a comprehensive application package to DHCD by September 21, 2001.

Based on the foregoing, Pennrose asserts it is manifestly in the public interest to certify that early action should be taken on its Petition for Reclassification. Please do not hesitate to contact me if you have any questions regarding this matter. Additionally, please contact me if you need any additional information in order to

evaluate Pennrose's request. Thank you in advance for consideration of this request.

Sincerely,

Julie A. DiGrigoli

Enclosures:

1000 Scale Zoning Map
Elevations (3)

ccs: The Honorable Kevin Kamenetz (w/enclosures)
Mr. Jeffrey Long, Office of Planning (w/ enclosures)
Mr. Timothy K. Dugan, Office of Planning (w/enclosures)
Ms. Laurie Hay, Second District Planner, Office of Planning (w/ enclosures)
Ms. Catherine Caskey, Pennrose Properties, Inc.
Mr. Sandy J. Marenberg, Marenberg Enterprise Inc.
G. Scott Barhight, Esquire

231042

Baltimore County
Planning Board

401 Bosley Avenue - Ste 406
Towson, Maryland 21204
410-887-3495
Fax: 410-887-5862
E-mail: planning@co.ba.md.us

August 17, 2001

The Hon. S. G. Samuel Moxley
Chairman, Baltimore County Council
County Courthouse
Towson, MD 21204

Re: Certification on Reclassification Petition -
Pennrose Properties, Inc.

Dear Councilman Moxley:

At a special meeting on August 16, 2001, the Baltimore County Planning Board voted, in accordance with Section 2-356(i) of the County Code, to certify to the County Council that early action upon the petition by the Pennrose Properties, Inc., for zoning reclassification of the property at 3134 Rolling Road is manifestly required in the public interest.

Enclosed is the report on this matter by the Office of Planning, as accepted by the Planning Board. The Planning staff will be pleased to assist the Council in the consideration of this matter.

Sincerely,

Arnold F. 'Pat' Keller, III
Secretary

AFK:TD:rlh

Enclosure

c: Members, Baltimore County Council
Thomas J. Peddicord, Jr., Legislative Counsel/Secretary
Brian J. Rowe, County Auditor
John M. Wasilisin, Administrative Officer
Edward J. Gilliss, County Attorney
Lawrence S. Wescott, Chairman, Board of Appeals
Peter M. Zimmerman, People's Counsel
Arnold Jablon, Director, Permits & Development Management
G. Scott Barhight, Petitioner's Representative

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. Lawrence S. Wescott, Chairman
Baltimore County Board of Appeals

DATE: October 4, 2001

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

SUBJECT: Case # CR-02-120-A
Dr. Mirza Hussain Ali Baig, Legal Owner
Pennrose Properties, Inc., Contract Purchaser
West side of Rolling Road between Chipper Road and Jody Knoll Road

At its meeting on August 16, 2001, the Baltimore County Planning Board voted in accordance with Section 2-356(i) of the County Code, to certify to the County Council that early action upon the Petition for Zoning Reclassification of the subject property was manifestly required.

The County Council unanimously approved a Resolution approving the Planning Board's certification on September 4, 2001.

Enclosed herewith is a copy of the report of the Office of Planning.

Pat Keller

Arnold F. 'Pat' Keller, III

AFK:JWL:kma

01 OCT -5 PM 3:12

W:\DEVREV\cr-02-120-A-letter.doc

CASE NO:

CR-02-120-A

PETITIONER:

Dr. Mirzah Hussain Baig, Legal Owner

Pennrose Properties, Inc., Contract Purchaser

REQUESTED ACTION:

Reclassification to DR-16 (Density, Residential, 16 dwelling units per acre) and a variance from the following sections of the zoning regulations: Baltimore County Zoning Regulations Sections 1B01.2.B.2 and 504.2, and the Comprehensive Manual of Development Policies residential standards for a modification of standards to permit a multi-family with a building length of 428 feet in lieu of the 240 feet permitted.

EXISTING ZONING:

DR 5.5 (Density, Residential, 5.5 dwelling units per acre)

LOCATION:

West Side of Rolling Road between Chipper Road and Jody Knoll Road

AREA OF SITE:

11.28 acres

ZONING OF ADJACENT PROPERTY/USE:

North:	DR 5.5	Residential
South	DR 5.5 and BR	Residential, commercial
East	DR 5.5	Residential
West	DR 5.5	Residential

SITE DESCRIPTION:

The subject site is located on the west side of Rolling Road, approximately 1000 feet north of the intersection of Rolling Road and Windsor Mill Road. It is a long, narrow parcel of unimproved land that is significantly wooded.

WATER AND SEWER:

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.

TRAFFIC AND ROADS:

The site has frontage along Rolling Road, which is classified as a principal arterial.

ZONING HISTORY:

This property has not been the subject of any issues filed as part of a Comprehensive Zoning Map Process.

MASTER PLAN:

The proposed land use adopted by the Council on February 22, 2000 indicates the site is designated for "Single Family Detached" residential use.

PROPOSED vs. EXISTING ZONING:

The use regulations for the DR zones may be found in Section 1B01.1.A 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.

DOCUMENTED SITE PLAN:

SCHOOL IMPACT

This development is subject to the requirements of Bill 110-99, Adequate Public Facilities. A school impact analysis is required with development plan submittal. Information is available on the Baltimore County Office of Planning's Web Page: http:/www.co.ba.md.us/bacoweb/services/planning/html/planof.htm.

RESIDENTIAL PERFORMANCE STANDARDS

Be advised that this development is subject to Bill 58-01 titled "Residential Performance Standards". Section 260 of The Baltimore County Zoning Regulations requires the Director of Planning to make a finding to the Hearing Officer for all residential development of four lots or more in Baltimore County that is located within the Urban/Rural Demarcation Line. The Office of Planning may require the submittal of sufficient information, such as building elevations and grading plans, from which a finding can be made on compliance of the project with the standards.

The Hearing Officer or the Director of Permits and Development Management, as applicable, shall consider the findings presented by the Director of Planning or the Director's designee before a development plan is approved.

After considering the findings, the Hearing Officer or the Director of Permits and Development Management may deviate from the standards only if clearly necessary to:

- Comply with another standard;
- Comply with environmental regulations or otherwise protect resources; or
- Achieve the best possible development design, considering other goals in the Comprehensive Manual of Development Policies.

Before a finding can be made on compliance of the project with the Residential Performance Standards the following items must be submitted:

- Architectural elevations of all facades including any proposed garage that shall include general massing of the buildings, major facade divisions, porches, gables, dormers, chimneys, size and placement of openings, roof treatment, materials, and colors;
- The design and placement of the signage and entrance treatment;
- A grading plan;

- The design and location of the open space area; and
- A written report that addresses the performance standards.

260.2 SITE PLANNING

1. A development proposal shall:

   (a) Retain the existing quality vegetation of the site to the fullest extent possible and protect the root systems of that vegetation during construction.

   (b) Integrate locally significant features of the site, such as distinctive buildings, vistas, topographic features, specimen trees, tree stands, hedgerows, monuments, landmarks, ruins, and gardens, into the site design, and retain the character of the features and their settings.

   (c) Coordinate building design, site layout, and grading so that grade transitions are gradual and respect the existing topography.

   (d) Provide a landscaped buffer between the rear yards of dwellings existing on May 25, 2001 and the rear yards of abutting new dwellings.

   (e) Provide for smooth transitions between neighborhoods by arranging and orienting the proposed buildings and site improvements to complement those in the surrounding neighborhood.

   (f) Provide transitions with respect to setbacks, street patterns, and building-to-street grade relationships.

2. Reverse frontage lots are permitted only if the petitioner can demonstrate that adequate setbacks, topography, berming, landscaping, or building design will effectively screen private yard space and decks from the public view. Fences may not be located closer than 20 feet to a public right-of-way.

3. Panhandle lots are not permitted as a matter of right. Panhandles must conform to section 26-266 of the Baltimore County Code and to the standards in the Comprehensive Manual of Development Policies.

260.3 OPEN SPACE

1. A development proposal shall:

   (a) Integrate open space areas into the proposed development by:

   - Creating focal points along streets;
   - Locating landscaped open green spaces in view of the development entrance or adjoining public street;
   - Planning a linked network of natural and landscaped open areas connected by pedestrian/bike trails; and
   - Orienting dwelling units around open areas or squares.

2. Incorporate significant features such as stands of trees into open areas.

3. Link the development's open areas to the surrounding neighborhood open areas, including public parks, walks and bike trails and create both functional and visual continuity, e.g. by matching the design of a bike trail in the proposed development to the bike trail located in the adjoining property.

260.4 Streets and Parking

1. A development proposal shall:

   (a) Provide for at least one street connection to an adjoining neighborhood or an adjoining property, not including the principal access to the subdivision, in order to facilitate good traffic circulation.

   (b) Design streets to slow traffic by offsetting alignments, reducing street width, reducing the length of blocks, and employing the use of traffic management devices such as roundabouts, chokers, chicanes, etc., to accomplish traffic calming.

   (c) Allow on-street parking.

   (d) Provide pedestrian and bicycle access to commercial areas and community facilities on site within the development and to the surrounding neighborhood.

   (e) Provide street and parking accommodations, which compliment the surrounding neighborhood.

2. Cul-de-sacs may be used if it is demonstrated that a street connection is not feasible due to site conditions such as severe grade transitions or sensitive natural features, or an alternative site layout is not feasible. If cul-de-sacs are used, developments should consist of a balance of street patterns (cul-de-sacs and connections). If cul-de-sacs are used, design elements such as center landscaping and traffic circles shall be used.

3. Street widths and front yard setbacks may be reduced in accordance with traditional neighborhood design standards.

260.5 LANDSCAPE DESIGN

A development proposal shall:

(a) Landscape public open spaces to invite users. Particularly emphasizing the intended entrance to the open space.

(b) In addition to plant material, use fences, walls or earth forms to provide effective and attractive screens and buffers where necessary.

(c) Provide for, or reinforce and maintain a continuous street tree canopy by preserving healthy street trees or if they are not present, planting new trees. The canopy shall be comprised of trees of the same species or trees with design characteristics and growth habits that are similar to those of the existing street trees.

(d) Include the design for site signage on the schematic landscape plan. If this is not possible, the signage design may be included in the final development plan and shall be approved before issuance of any building permits.

260.6 BUILDINGS

A development proposal shall:

(a) Provide variety in housing type or design, while maintaining continuity in scale, rhythm, proportion and detail.

(b) Orient the front of the dwelling toward the street and incorporate prominent entries and porches or stoops into front building facades.

(c) Adhere to a consistent front building setback for all dwellings on the same street or square so that the fronts of dwellings define a uniform street edge.

(d) Design decks, balconies and porches as components of the building following dominant building lines, proportions and style and in a scale appropriate to the available space on the site. Decks shall be screened to minimize visibility from a public street.

(e) Design accessory structures at a scale appropriate to the dwelling and design storage buildings and garages with the same architectural theme as the principal building on the site, providing consistency in materials, colors, roof pitch and style.

(f) Extend the finish material of the exteriors of buildings to grade, or if this is not possible, to within 12 inches of grade, on all sides of the building excluding foundation walls which shall use a finished quality material such as decorative concrete block, poured concrete with a brick pattern, or stucco, and provide landscaping along the foundation.

(g) Use similar materials and design elements on all building facades and articulate all building facades using coordinated architectural features such as porches, windows, doors, chimneys, gables and dormers.

(h) Garages may not become the dominant street feature. Garage doors shall use items such as windows, decorative patterns and color to relieve the visual impact of the house from the street.

MODIFICATION OF STANDARDS

Upon a favorable recommendation by the Director of the Office of Planning, the total building length or fullest building width of a multi-family building may be increased from the maximum 240 foot length up to 300 feet if the structure is designed in accordance with special emphasis given to the following design considerations:

1. Staggered building setbacks;
2. Varied facades and materials;
3. The inclusion of amenities such as courtyards, sitting areas, tot lots, etc. and;
4. The increased length is used to minimize topographical disturbance, address unusual lot configurations or provide affordable housing.

The proposed 3-story senior housing apartment building (119 dwelling units) is ±407 feet in length. A request for a zoning variance for the increased building length

has been requested. The applicant has submitted building and sign elevations, illustrative drawings, a site plan and a landscape plan.

The building footprint is "E" shaped, the overall length being divided by three projecting wings that face north. This façade is adjacent to the Mayfield single family residential development that is currently under construction. The three projecting wings effectively break up the façade into two segments of approximately 200 feet long with courtyards located between the building segments. The south or long façade is staggered to break up the length.

The building materials and architectural elements are at a residential scale using brick on the first and second floors with siding as an accent on the third floor. Hardi-plank trim and panels are used to define the façade projections and primary building entrance. The roof material is asphalt shingle. A pattern of single and double hung windows, reverse gables, dormers, building offsets and projecting wings provide variation and reduce the mass and scale of the building.

The increased building length is needed to address the long and narrow lot configuration, approximately 280 feet wide by 2000 feet long. In addition, Pennrose is seeking State funding in order to offer the proposed housing at an affordable price to seniors.

The Office of Planning recommends favorably for the modification subject to the following:

The site and landscape plans should include amenities such as courtyards, sitting areas and benches. An accessible pathway system should be designed to circle the building linking the courtyards, building entrances and parking lot.

DESIGN

1. Provide sidewalks along Rolling Road.
2. Provide an accessible pathway from the building entrance to the public sidewalk in Rolling Road.
3. The landscape plan should include planting of the 50 foot Residential Transition Area buffer.
4. Place the following note on the plan: A plan will be submitted, with the locations and details of the proposed lighting and a computerized lighting design with point-by-point calculations that conforms with the *Illuminating Engineering Society of North America* (IESNA) standards, for review and approval by the Office of Planning in conjunction with the Final Landscape Plan.

RECOMMENDATION:

Based upon the information provided and analysis conducted, the Office of Planning supports the applicant's requested Petition for Reclassification and Petition for Variance.

Recognizing the large concentration of elderly households in Baltimore County, the county has committed a substantial portion of its resources to assisting the development of housing affordable to its senior population.

Development of such housing can have a positive impact on an older community as the development is seen as evidence of the continued desirability of the neighborhood.

There is a need for housing affordable to moderate income seniors in this community, and the proposed project would contribute to the overall enhancement of the neighborhood.

RE: PETITION FOR ZONING RECLASSIFICATION	*	BEFORE THE
3134 Rolling Road	*	COUNTY BOARD OF APPEALS
W/S Rolling Rd between Chipper Rd and Jody Knoll Rd	*	FOR BALTIMORE COUNTY
2nd Election District, 2nd Councilmanic	*	Case No. CR-02-120
Legal Owner: Dr. Mirza Hussain Ali Baig Contract Purchaser: Pennrose Properties	*	Out-of-Cycle
Petitioners	*	

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

01 SEP 28 PM 3:08
COUNTY BOARD OF APPEALS

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel for Baltimore County 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, Maryland 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of September, 2001, a copy of the foregoing Entry of Appearance was mailed to G. Scott Barhight, Esq., Whiteford, Taylor & Preston, 210 W. Pennsylvania Avenue, Suite 400, Towson, MD 21204, attorney for Petitioners.

Peter Max Zimmerman

PETER MAX ZIMMERMAN

County Board of Appeals of Baltimore County

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

January 17, 2002

LETTER BY FAX THIS DATE; ORIGINAL AND ENCLOSURES VIA U.S. MAIL

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

RE: *In the Matter of: Pennrose Properties, Inc. –CP/Petitioner*
Case No. CR-02-120-A

Dear Mr. Barhight:

With the conclusion of the Board's deliberation this afternoon in which your Motion for Filing of Transcript, Briefs and Supplemental Public Deliberation was denied, enclosed are the transcript copies and cover letter filed with this office on December 27, 2001 (four packets). This material has remained sealed at my desk pending the Board's decision as to your above-referenced Motion.

Should you have any questions, please call me.

Sincerely,

Kathleen C. Bianco
Administrator

Enclosures (4)

c: Peter M. Zimmerman
People's Counsel for Baltimore County

FILE

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Penrose - HOLD

12/27/01

The attached packets submitted by Mr. Barhight are being held pending the outcome of the Motion hearing scheduled for January 17th, 2002.

HOLD until 1/17/02; no distribution prior to that date (Total – 4 envelopes /Original and three copies)

kcb

Hand Deliver

DCL:9808/00001
WHITEFORD, TAYLOR & PRESTON L.L.P.
210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4515

Ms. Kathleen Bianco, Administrator
Board of Appeals
400 Washington Avenue – Room 49
Towson, Maryland 21204

Hand Deliver

DCL:9808/00001
WHITEFORD, TAYLOR & PRESTON L.L.P.
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TOWSON, MARYLAND 21204-4515

Mr. Charles Marks, Panel Chairman
Baltimore County Board of Appeals
400 Washington Avenue, Room 49
Towson, Maryland 21204

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WHITEFORD, TAYLOR & PRESTON L.L.P.
210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4515

Ms. Margaret Worrall, Member
Board of Appeals
400 Washington Avenue – Room 49
Towson, Maryland 21204

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WHITEFORD, TAYLOR & PRESTON L.L.P.
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TOWSON, MARYLAND 21204-4515

Ms. Lynn Barranger, Member
Board of Appeals
400 Washington Avenue – Room 49
Towson, Maryland 21204

County Board of Appeals of Baltimore County

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

January 23, 2002

LETTER BY FAX THIS DATE; ORIGINAL
~~AND ENCLOSURES~~S VIA U.S. MAIL

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

RE: *In the Matter of: Pennrose Properties, Inc. –CP/Petitioner*
Case No. CR-02-120-A

Dear Mr. Barhight:

In response to your letter of January 22nd, the transcripts and cover letter referenced in your correspondence were returned to your office on January 17th.

Should an appeal be filed in the Circuit Court, the original transcript, which would be requested from and provided by the Court Reporter, would be transmitted to the Court as part of the complete record. In addition, should a Motion for Reconsideration be filed with the Board subsequent to the issuance of the Board's final Opinion and Order in this matter, any attachments or supporting documentation filed with that Motion would then be included as part of the complete record.

Should you have any questions, please call me.

Sincerely,

Kathleen C. Bianco
Administrator

c: Peter M. Zimmerman
People's Counsel for Baltimore County

FILE

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on Recycled Paper

TRANSMISSION VERIFICATION REPORT

TIME: 01/23/2002 15:07
NAME: BOARD OF APPEALS
FAX : 4108873182
TEL : 4108873180

DATE,TIME	01/23 15:06
FAX NO./NAME	94108322015
DURATION	00:00:32
PAGE(S)	01
RESULT	OK
MODE	STANDARD ECM

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G. SCOTT BARHIGHT
DIRECT NUMBER
410 832-2050
gbarhight@wtplaw com

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1317 KING STREET
ALEXANDRIA, VIRGINIA 22314-2928
TELEPHONE 703 836-5742
FAX 703 836-0265

January 22, 2002

Via Hand Delivery

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

Re: In the Matter of Pennrose Properties, Case # CR-02-120-A

Dear Ms. Bianco:

Thank you for your letter of January 17, 2002 in which you advise that the Board is returning to me the transcript copies and cover letter which I filed with the Board on December 27, 2001. The cover letter and the transcripts are part of the record in the case, and should be retained by the Board. They constitute part of the proceedings in my client's Motion for Filing of Transcript, Briefs and Supplemental Deliberation. The Board should maintain a complete and accurate record in the case, and accordingly, these items should not be returned to me. If an appeal is filed, the Board's records need to be complete.

Thank you for your kind attention to this matter. Should you have any questions, please contact me.

Sincerely,

G. Scott Barhight

G. Scott Barhight

02 JAN 22 PM 12:5

C: Pennrose, Inc.
People's Counsel for Baltimore County

243412

County Board of Appeals of Baltimore County

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

January 17, 2002

LETTER BY FAX THIS DATE; ORIGINAL AND ENCLOSURES VIA U.S. MAIL

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

RE: *In the Matter of: Pennrose Properties, Inc. –CP/Petitioner*
Case No. CR-02-120-A

Dear Mr. Barhight:

With the conclusion of the Board's deliberation this afternoon in which your Motion for Filing of Transcript, Briefs and Supplemental Public Deliberation was denied, enclosed are the transcript copies and cover letter filed with this office on December 27, 2001 (four packets). This material has remained sealed at my desk pending the Board's decision as to your above-referenced Motion.

Should you have any questions, please call me.

Sincerely,

Kathleen C. Bianco
Administrator

Enclosures (4)

c: Peter M. Zimmerman
People's Counsel for Baltimore Count

Post-it® Fax Note 7671	Date 1/17/02	# of pages ▶ 1
To Scott Barhight	From Kathi Bianco	
Co./Dept.	Co.	
Phone #	Phone # 410 887 3180	
Fax # 410-832-2015	Fax #	

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ZONING ADVISORY COMMITTEE AGENDA
DISTRIBUTION MEETING OF SEPTEMBER 24, 2001

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

Distribution:

\# Board of Appeals (Kathi Bianco); MS #2013
* Zoning Commissioner's Office (Lawrence Schmidt); MS #2112
\# PDM, Zoning Review H.O. Hearing File (George Zahner)
\# 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 Development 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 your office or department's code, standards or regulations. Development representatives that attend the meeting should be prepared to submit their agency's response as either "no comment", "written comment" or "more review time required" before the hearing date. If no written response is received by the committee before this hearing date, it is assumed that your agency has "no comment". All written comments must reference the ZAC item number or case number. All comments received will be compiled and included in the zoning/development file for review and consideration by the hearing officer during the course of the upcoming zoning/development hearing.

If your agency or section is not represented at the meeting, 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 petitions, please contact Carl Richards at 410-887-3391 (FAX - 410-887-5708).

Revised 8/11/00

ZONING ADVISORY COMMITTEE
MEETING OF SEPTEMBER 24, 2001

Case Number:	CR-02-120
Item Number:	120
Hearing Date/Time:	Tuesday, October 30, 2001/10:00 a.m.
Legal Owner:	Dr. Mirza Hussain Ali Baig
Contract Purchaser:	Catherine Caskey, Pennrose Properties, Inc.
Location:	W/S of Rolling Road Between Chipper Road and Jody Knoll Road
Existing Zoning:	D.R.5.5
Proposed Zoning:	D.R.16 Petition For Reclassification and Special Exception to allow Class A Housing for the Elderly, a modification of standards and a variance to permit a building length of 428 feet in lieu of the 240 feet permitted.
Area:	11.28 acres
District:	2nd Election District 2nd Councilmanic District
Attorney:	G. Scott Barhight, Esquire
Miscellaneous:	

BALTIMORE COUNTY, MARYLAND
Inter-Office Memorandum

DATE: September 19, 2001

TO: Baltimore County Zoning Advisory Committee

FROM: W. Carl Richards, Jr.,
Zoning Review Supervisor (410-887-3391)

SUBJECT: Out-of-Cycle Documented Zoning Reclassification Petition
Case Number CR-02-120
Legal Owner: Dr. Mirza Hussain Ali Baig
Contract Purchaser: Catherine Caskey, Pennrose Properties, Inc.
Address: 3134 Rolling Road
Description: W/S of Rolling Road Between Chipper Road And Jody Knoll Road
2nd Election District; 2nd Councilmanic District

THE ABOVE REFERENCED PETITION HAS BEEN EXEMPTED FROM THE REGULAR CYCLICAL BI-YEARLY ZONING RECLASSIFICATION PROCEDURE BY CERTIFICATION OF THE BALTIMORE COUNTY PLANNING BOARD ON AUGUST 16, 2001 AND BY RESOLUTION OF THE BALTIMORE COUNTY COUNCIL DATED SEPTEMBER 4, 2001 (ATTACHED). PURSUANT TO SECTION 2-356(I) OF THE BALTIMORE COUNTY CODE, THE COUNTY BOARD OF APPEALS HAS SET A VERY EARLY HEARING DATE OF TUESDAY, OCTOBER 30, 2001 AT 10:00 A.M IN ROOM 48 OF THE OLD COURTHOUSE, 400 WASHINGTON AVENUE. YOU ARE REQUESTED TO EXPEDITE YOUR REVIEW AND FORWARD YOUR COMMENTS TO THIS OFFICE UNDER THE ABOVE REFERENCE PRIOR TO THE HEARING DATE. IF YOU NEED ADDITIONAL MATERIALS TO COMPLETE YOUR COMMENTS, YOU SHOULD CONTACT THE ENGINEER, ATTORNEY, OR MYSELF IMMEDIATELY.

WCR: gdz

ZAC AGENDA

Item Number: 120 **Case Number:** 02-120-CR **Type:** Reclassification **Reviewer:** JJS

Legal Owner: Dr. Mirza Hussain Ali Baig

Contract Purchaser: Catherine Caskey, Pennrose Properties Inc

Critical Area: No **Election District:** 2nd **Councilmanic District:** 2nd

Property Address: 3134 Rolling Road

Location: W/S of Rolling Road between Chipper Road and Jody Knoll Road

Existing Zoning: D.R.5.5 **Area:** 11.28 acres

Proposed Zoning: RECLASSIFICATION and Special Exception to allow Class A Housing for the Elderly, a modification of standards and a variance to permit a building length of 428 feet in lieu of the 240 feet permitted

Attorney: G. Scott Barhight, Esquire

Miscellaneous: Change Zoning from D.R.5.5 to D.R.16

FILE

ENVIRONMENTAL IMPACT STATEMENT TO ACCOMPANY RECLASSIFICATION PETITION FOR PROPERTY AT 3134 ROLLING ROAD

EXISTING CONDITIONS:

- The site is currently vacant and is heavily vegetated with heavy shrubs and bushes, having an area of 11.28 ac.+/-.

Soil types are as follows in order of prominence:

Soil Type	Name	Hydrologic Soil Groups	K Factor
AdB2 –	Aldino silt loam	D	0 .43
NeB2 –	Neshaminy silt loam	B	0 .32
KeB2 –	Kelly silt loam	D	0 .37
WaA	Watchung silt loam	D, Wetland Soil Type	0.43
MsB2 –	Montalto silt loam	B	0 .32
LfC –	Legore, very stony silt loam	C	0.24

While most of the soils have high erodibility factors, the site slopes only gently to the rear of the property; the lack of steep slopes reduces the potential erosion that can be encountered with erodible soils.

- There are no rare or endangered species known to exist on site. No wetlands or streams were located, although what could be a stream channel was encountered at the very rear of the property.
- The site is not within the 100-year floodplain.
- The property contains no historical or archeological sites.
- There are no existing water wells or buried fuel tanks on site.
- Public water and sewer are currently not serving the site, but public service is available in Rolling Road.
- The site is densely vegetated with woody plant material, both at the front of the site, along Rolling Road, and the rear of the site. All three strata are well established. The groundcover is a mix of Virginia Creeper, Vinca, English Ivy, and Honeysuckle Vine. The Understory contained Lindens, Tulip Trees, Red Raspberries, and other varieties. The canopy was comprised of Oaks, Lindens, and Tulip Poplars. There are several large trees on site of varying degrees of condition.
- The central portion of the site was in meadow, represented by a variety of wildflowers and grasses.
- The site has been subject to dumping throughout the wooded area. Tires, metal, wood and other items are scattered randomly.

PROPOSED CONDITIONS:

The proposed use of this site is to provide Class A housing for the elderly, Senior Independent Living. The proposed development will provide 119 units, and up to 119 parking spaces, six of which will be handicapped. Access to the site will be from Rolling Road via a proposed driveway that connects to the proposed parking lot. The site will be serviced by public water and sewer located in Rolling Road. The proposed parking lot will be graded with the natural slope, with water being directed to a stormwater management facility to improve water quality, and release the increased flow at an acceptable rate.

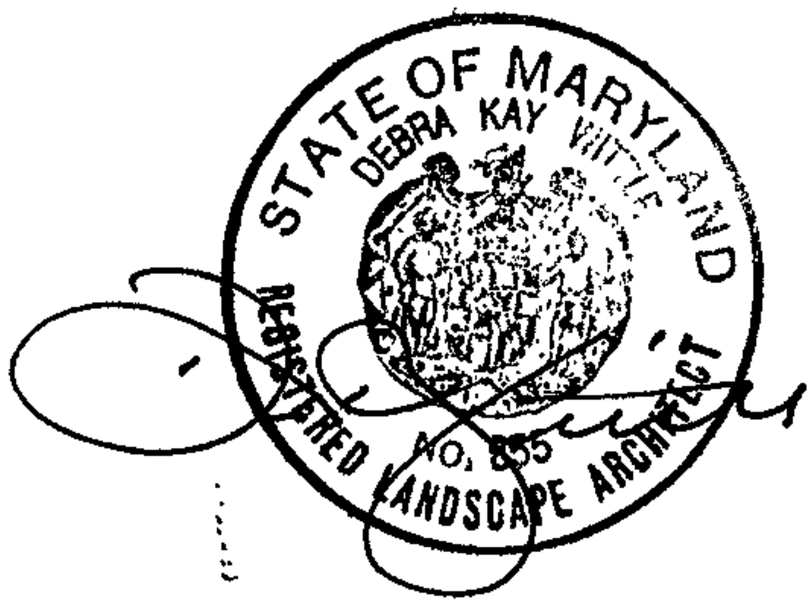
IMPACTS TO THE SITE

The proposed development for this site will require some destruction of the wooded areas, and the meadow. The proposed development will leave a buffer along Rolling Road, and a minimum 50-foot buffer of undisturbed area along the eastern edge of the property. This will connect the front of the site to the rear portion of the site that is not being disturbed, thereby maintaining a wildlife corridor.

The property has been designed to minimize the amount of disturbance by keeping the building and parking lot towards the front of rolling road. Grading can be done in a manner that does not create steep slopes, and the proposed elevations will be set to closely mimic the natural grade. The stormwater management system will be designed in accordance with Baltimore County requirements, protecting the water quality and velocity of flow. In addition, the proposed development will result in the cleanup of the existing debris, and will deter dumping in the future.

CONCLUSION

While the proposed development does destroy some natural habitat, a large portion is maintained. The development can retain the character of the natural habitat by sensitive planning and construction, and still provide the community with needed elderly housing.



SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202-1626
TELEPHONE 410 347-8700
FAX 410 752-7092

30 COLUMBIA CORPORATE CENTER
10440 LITTLE PATUXENT PARKWAY
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TELEPHONE 410 884-0700
FAX 410 884-0719

JULIE A. DIGRIGOLI
DIRECT NUMBER
410 832-2084
jdigrigoli@wtplaw.com

WHITEFORD, TAYLOR & PRESTON
L.L.P.

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1317 KING STREET
ALEXANDRIA, VIRGINIA 22314-2928
TELEPHONE 703 836-5742
FAX 703 836-0265

September 6, 2001

01 SEP -5 AM 10:52

Via Hand Delivery
Lawrence Wescott, Esq.
Chairman, Board of Appeals for Baltimore County
Attn: Ms. Kathleen C. Bianco
Room 49, Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

Re: Pennrose Properties, Inc.
3134 Rolling Road
Out-of-Cycle Petition for Reclassification

Dear Chairman Wescott,

Please be advised that on September 4, 2001, the Baltimore County Council introduced and adopted Resolution No. 106-01 approving the Planning Board's certification of Pennrose Properties' out-of-cycle Petition for Reclassification. I have enclosed a copy of the County Council's September 4th Final Agenda as well as Resolution No. 106-01 for your file.

Pursuant to Baltimore County Code §2-356 (i), Pennrose respectfully requests that the Board of Appeals now schedule this matter for a public hearing. Please do not hesitate to call me or Scott Barhight at 410-832-2050 with any questions regarding this

matter. Thank you in advance for your kind attention to this matter.

Sincerely,

Julie A. DiGrigoli

cc: Pennrose Properties, Inc.
G. Scott Barhight, Esquire

Enclosure
GSB:j

233515

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 2001, Legislative Day No. 16

Resolution No. 106-01

Mr. Kevin Kamenetz, Councilman

By the County Council, September 4, 2001

A RESOLUTION of the Baltimore County Council to approve the Planning Board's certification that the zoning reclassification petition filed by Pennrose Properties, Inc. for the property located at 3134 Rolling Road and situated in the Second Councilmanic District, should be exempted from the regular cyclical procedure of Section 2-356(c) through (h), inclusive, of the Baltimore County Code, 1988, as amended.

WHEREAS, the Planning Board, by Resolution dated August 16, 2001, has certified that early action on the Petition for Zoning Reclassification filed by Pennrose Properties, Inc., requesting a reclassification of the above described property is manifestly required in the public interest; and

WHEREAS, the County Council of Baltimore County, in accordance with the provisions of Section 2-356(i), may approve said certification and exempt the Petition for Zoning Reclassification from the regular procedures of Section 2-356.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, that the certification by the Planning Board that early action on the zoning reclassification petition filed by Pennrose Properties, Inc. , with the documented site plan filed with the request for exemption from the regular cyclical procedure, be

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G. SCOTT BARHIGHT
DIRECT NUMBER
410 832-2050
gbarhight@wtplaw com

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December 6, 2001

DELIVERY BY HAND

Ms. Kathleen C. Bianco
County Board of Appeals of Baltimore County
Room 49, Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

Re: Pennrose Properties, Inc. - Petitioner
Case No. CR-02-120-A

Dear Ms. Bianco:

Enclosed for filing in the above-referenced case, please find Petitioner, Pennrose Properties, Inc.'s Motion for Filing of Transcript, Briefs and Supplemental Public Deliberations. I would appreciate it if you would please date stamp the enclosed copy of the Motion and return it to the messenger.

Of course, should you have any questions, please do not hesitate to contact me.

Sincerely,

G. Scott Barhight

GSB:sll
Enclosures
cc: Peter M. Zimmerman, Esquire
Pennrose Properties, Inc.

238595

01 DEC -6 PM 2:27
COUNTY BOARD OF APPEALS

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August 17, 2001

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

Re: Pennrose Properties, Inc.
3134 Rolling Road
Petition for Reclassification

Dear Chairman Wescott,

This Office represents Pennrose Properties, Inc. ("Pennrose") with respect to the above-referenced matter. Pennrose is the contract purchaser and developer of the property which is subject to this Petition for Reclassification. Pennrose is a Philadelphia, Pennsylvania based developer who engages in all facets of real estate development, including, rental housing. Pennrose develops and manages high quality, affordable housing projects in Maryland, Washington D.C., Pennsylvania, New Jersey, and Delaware.

The property which is subject to this Application is located on 3134 Rolling Road in the Second (2nd) Councilmanic District. The Subject Property currently contains 11.8 acres ± of D.R. 5.5 zoned property. With this Petition for Reclassification, Pennrose proposes that the Subject Property be reclassified from D.R. 5.5 to a D.R.16 zoning classification. If Pennrose's Petition for Reclassification is granted, it will develop a 119 unit senior independent living rental housing building on the property. The project will include 57 one-bedroom units and 62 two-bedroom units.

In addition to the justifications or reasons that may be presented at the

hearing in this matter, Pennrose offers the following justifications for its Petition for Reclassification:

1) There is a recognized need for Senior Independent Living Facilities, like the one proposed by Pennrose, in the surrounding area as well as throughout Baltimore County.
2) As identified in the 2010 Master Plan, Baltimore County has experienced an increase in the number of persons above age 65. "The percentage of senior population in Baltimore County is increasing at such a rate that by 2010, 15.6% of the County's population will be senior citizens". (*See* 2010 Master Plan, p.10). Pennrose's proposed housing building will serve the County's projected senior population.
3) Pennrose's housing project furthers the 2001 Master Plan's objective of "providing for attractive and well-maintained rental housing". The Master Plan recognizes that a supply of quality rental housing throughout the County provides choices and flexibility for people in a variety of circumstances such as: . . . elderly people who are no longer able to take care of a home . . . ." (*See* 2010 Master Plan, p.108).
4) There is adequate infrastructure, including public water and sewer, to support Pennrose's housing project.
5) Pennrose's housing project furthers Maryland's "Smart Growth" mandate to encourage higher intensification of uses within developed areas and concentrate development near existing infrastructure.

Pennrose has designed a superior quality independent living senior housing rental building for the subject property. The design of the building and landscaping of the site will serve to enhance the appearance of the entire area. Additionally, the proposed housing project will provide the Liberty Road Community with a much needed housing type. Significantly, the Liberty Road Community Council, Inc. has reviewed Pennrose's proposal and has indicated that it will support the housing project.

Based on the foregoing, Pennrose's Petition for Reclassification to reclassify the subject property to a D.R. 16 zoning classification should be granted. Please do not hesitate to contact me or Julie DiGrigoli at 410-832-2084 if you have questions or require any additional information regarding our

request.

Sincerely,

G. Scott Barhight

cc: Pennrose Properties, Inc.
Julie A. DiGrigoli, Esquire

GSB:j

229687

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October 9, 2001

Via Hand Delivery
Mr. Arnold Jablon
Attn: George Zahner
Department of Permits and Development Management
111 W. Chesapeake Avenue
Towson, MD 21204

Re: Pennrose Properties, Inc.
3134 Rolling Road
Case No. CR-02-120
Notice of Zoning Reclassification Hearing

Dear Mr. Jablon,

Please be advised that the Petition for Reclassification and Notice of Zoning Reclassification in the above-referenced matter incorrectly states that Pennrose Properties, Inc. ("Pennrose") petitioned for a Special Exception. As reflected on its Documented Plan to Accompany Reclassification Petition and Variance Petition, Pennrose is seeking only a zoning reclassification, modification of standards and variance in this matter. This is also reflected in the $1,500.00 filing fee submitted to Baltimore County on August 30, 2001. I have enclosed a copy of the receipt for your files.

Per this office's conversation with Carl Richards, please delete the reference to a special exception on the Notice of Zoning Reclassification Hearing prior to posting or advertising the property. Feel free to contact me with any questions regarding my request. Thank you in advance for your kind attention

RECEIVED
01-3473
OCT 11 2001
DEPT OF PERMITS AND
DEVELOPMENT MANAGEMENT

to this matter.

Sincerely,

G. Scott Barhight

cc: Mr. Carl Richards

GSB:j

235857

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT VLW/AV

No. 3336

DATE 8/30/01 ACCOUNT 001 006 6150

AMOUNT $ 1500.00

RECEIVED FROM: Wallace, Taylor & Preston LLP.
($1,250.00) & (250.00)

FOR: Out of Cycle Recess & Variance Filing Fee.

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

CASHIER'S VALIDATION

PAID RECEIPT
PAYMENT
8/30/2001 8/30/2001
REC 0504 CASHIER DRL DAV ORDER
RECEIPT
1,500.00
1,500.00 CK
Baltimore County, Maryland

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BALTIMORE, MARYLAND 21202-1626
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JULIE A. DIGRIGOLI
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July 30, 2001

Via Hand Delivery
Mr. Arnold F. "Pat" Keller
Director
Baltimore County Office of Planning
4th Floor, County Office Building
401 Bosley Avenue
Towson, MD 21204

Re: Pennrose Properties, Inc.
3134 Rolling Road
Petition for Reclassification

Dear Mr. Keller,

This Office represents Pennrose Properties, Inc.'s ("Pennrose") with respect to the above-referenced matter. Pennrose is a Philadelphia, Pennsylvania based developer who has gained an excellent reputation for developing and managing high quality, affordable housing projects in Maryland, Washington D.C., Pennsylvania, New Jersey, and Delaware. With this letter, Pennrose respectfully requests that its Petition for Reclassification on the above property be considered out-of-cycle by the Baltimore County Planning Board. As explained herein, early action upon Pennrose's Petition for Reclassification is manifestly required in the public interest.

By way of background, Pennrose is the contract purchaser and developer of certain property located at 3134 Rolling Road in the Second (2nd) Councilmanic District ("Subject Property"). The Subject Property currently contains 11.8 acres ± of D.R. 5.5 zoned property. I have enclosed a vicinity map and zoning map to assist you in locating the property.

With this Petition for Reclassification, Pennrose seeks to reclassify the Subject Property from a D.R. 5.5 to a D.R.16 zoning classification. If Pennrose's Petition for

Reclassification is granted, it will develop a 119 unit senior independent living rental housing building on the property. The project will include 57 one-bedroom units and 62 two-bedroom units. Please be advised that the project will not contain a nursing, assisted living or medical component. Pennrose's senior rental housing building will provide an affordable housing option to seniors 62 years and older. I have enclosed elevations of the proposed project for your review.

It is manifestly in the public interest to certify that early action should be taken on Pennrose's Petition for Reclassification. In addition to such justifications as Pennrose may present at the hearing in this matter, Pennrose offers the following in support of its Petition: First, there is unquestionably an immediate need for Senior Independent Living Facilities, like the one proposed by Pennrose, in Baltimore County. According to the Maryland Department of Aging, Baltimore County currently has the largest population of residents aged 60 years and older than any other County in Maryland. The State's census data indicates that there are 139,116 residents over the age of 60 currently living in Baltimore County. The census projects that this number will grow to 161, 232 residents in 2010 and 205,204 residents in 2020. This represents a 47.5% increase in the Baltimore County's senior population between the years 2000 and 2020.

Additionally, the Baltimore County 2010 Master Plan recognizes that Baltimore County has experienced an increase in the number of persons over the age of 65. The Master Plan states that "[t]he percentage of senior population in Baltimore County is increasing at such a rate that by 2010, 15.6% of the County's population will be senior citizens". (*See* 2010 Master Plan, p.10). Despite these astounding statistics, Baltimore County has very little senior rental apartment buildings currently available. According to the Baltimore County Department of Aging, there are only 30 senior rental buildings available to serve 139,116 senior residents.

Secondly, certifying Pennrose's Petition for early action is imperative in that it allows Pennrose to seek the necessary State funding for the project. In order to offer the proposed housing at an affordable price to seniors, Pennrose must obtain financial assistance from the Maryland Department of Housing and Community Development ("DHCD"). To qualify for such assistance, Pennrose must submit a comprehensive application package to DHCD by September 21, 2001.

Based on the foregoing, Pennrose asserts it is manifestly in the public interest to certify that early action should be taken on its Petition for Reclassification. Please do not hesitate to contact me if you have any questions regarding this matter. Additionally, please contact me if you need any additional information in order to

evaluate Pennrose's request. Thank you in advance for consideration of this request.

Sincerely,

Julie A. DiGrigoli

Enclosures:

1000 Scale Zoning Map
Elevations (3)

ccs: The Honorable Kevin Kamenetz (w/enclosures)
Mr. Jeffrey Long, Office of Planning (w/ enclosures)
Mr. Timothy K. Dugan, Office of Planning (w/enclosures)
Ms. Laurie Hay, Second District Planner, Office of Planning (w/ enclosures)
Ms. Catherine Caskey, Pennrose Properties, Inc.
Mr. Sandy J. Marenberg, Marenberg Enterprise Inc.
G. Scott Barhight, Esquire

231042

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August 17, 2001

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

Re: Pennrose Properties, Inc.
3134 Rolling Road
Petition for Reclassification

Dear Chairman Wescott,

This Office represents Pennrose Properties, Inc. ("Pennrose") with respect to the above-referenced matter. Pennrose is the contract purchaser and developer of the property which is subject to this Petition for Reclassification. Pennrose is a Philadelphia, Pennsylvania based developer who engages in all facets of real estate development, including, rental housing. Pennrose develops and manages high quality, affordable housing projects in Maryland, Washington D.C., Pennsylvania, New Jersey, and Delaware.

The property which is subject to this Application is located on 3134 Rolling Road in the Second (2nd) Councilmanic District. The Subject Property currently contains 11.8 acres ± of D.R. 5.5 zoned property. With this Petition for Reclassification, Pennrose proposes that the Subject Property be reclassified from D.R. 5.5 to a D.R.16 zoning classification. If Pennrose's Petition for Reclassification is granted, it will develop a 119 unit senior independent living rental housing building on the property. The project will include 57 one-bedroom units and 62 two-bedroom units.

In addition to the justifications or reasons that may be presented at the

hearing in this matter, Pennrose offers the following justifications for its Petition for Reclassification:

1) There is a recognized need for Senior Independent Living Facilities, like the one proposed by Pennrose, in the surrounding area as well as throughout Baltimore County.
2) As identified in the 2010 Master Plan, Baltimore County has experienced an increase in the number of persons above age 65. "The percentage of senior population in Baltimore County is increasing at such a rate that by 2010, 15.6% of the County's population will be senior citizens". (*See* 2010 Master Plan, p.10). Pennrose's proposed housing building will serve the County's projected senior population.
3) Pennrose's housing project furthers the 2001 Master Plan's objective of "providing for attractive and well-maintained rental housing". The Master Plan recognizes that a supply of quality rental housing throughout the County provides choices and flexibility for people in a variety of circumstances such as: . . . elderly people who are no longer able to take care of a home . . . ." (*See* 2010 Master Plan, p.108).
4) There is adequate infrastructure, including public water and sewer, to support Pennrose's housing project.
5) Pennrose's housing project furthers Maryland's "Smart Growth" mandate to encourage higher intensification of uses within developed areas and concentrate development near existing infrastructure.

Pennrose has designed a superior quality independent living senior housing rental building for the subject property. The design of the building and landscaping of the site will serve to enhance the appearance of the entire area. Additionally, the proposed housing project will provide the Liberty Road Community with a much needed housing type. Significantly, the Liberty Road Community Council, Inc. has reviewed Pennrose's proposal and has indicated that it will support the housing project.

Based on the foregoing, Pennrose's Petition for Reclassification to reclassify the subject property to a D.R. 16 zoning classification should be granted. Please do not hesitate to contact me or Julie DiGrigoli at 410-832-2084 if you have questions or require any additional information regarding our

request.

Sincerely,

G. Scott Barhight

cc: Pennrose Properties, Inc.
Julie A. DiGrigoli, Esquire

GSB:j

229687

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November 9, 2001

01 NOV -9 PM 12:24

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

Re: Pennrose Properties, Inc. - Petitioner
Case No. CR-02-120-A

Dear Members of the Board:

Pursuant to your instructions during the hearing, please find enclosed three copies of three separate cases which your Petitioner would like for you to review. These cases are named as follows:

People's Counsel for Baltimore County v. The Prosser Company
Rohde v. County Board of Appeals
Tennison v. Shomette

Should you have any questions or comments, please feel free to contact me.

Sincerely,

G. Scott Barhight

GSB:sll
Enclosures

defense case. Instead, appellant failed to challenge the timing or validity of the jury trial waiver. It is appellant's silence during the four week continuance that most distinguishes this case from *Martinez*.

In our view, the right to complain about compliance with the timing of the waiver inquiry, under the circumstance presented here, resulted in a waiver of appellant's contention. The focus of the rule is, after all, on a knowing and voluntary waiver. We do not see how the failure to tell appellant that the court did not comply with the timing of Rule 4–246 affects these two elements, which are at the heart of the rule. Based on the facts of this case, we are satisfied that appellant's claim is not preserved, because he failed to object to the belated advisement, despite ample opportunity to do so. *See* Maryland Rule 8–131. If other constitutional rights can be waived by a defendant, this important right can also be waived.

JUDGMENT AFFIRMED.

COSTS TO BE PAID BY APPELLANT.

---

704 A.2d 483

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, et al.

v.

The PROSSER COMPANY, INC.

No. 603, Sept. Term, 1997.

Court of Special Appeals of Maryland.

Jan. 12, 1998.

People's counsel for county, community association, and association's president petitioned for judicial review of county board of appeals decision granting property owner's petition for interim site plan zoning reclassification of property from

residential office, commercial rural, and rural residential to light manufacturing. The Circuit Court, Baltimore County, affirmed in part and remanded. People's counsel, association, and president appealed, but subsequently voluntarily dismissed appeal. On remand, board granted petition. People's counsel, association, and president petitioned for judicial review. The Circuit Court, Baltimore County, Christian H. Kahl, J., affirmed. Appeal was taken, and people's counsel, association, and president moved for sanctions. The Court of Special Appeals, Eyler, J., held that: (1) county council did not disapprove interim site plan zoning reclassification, which board had previously approved for property, when council subsequently maintained property's prior classification in comprehensive zoning map; (2) law of the case doctrine did not preclude Court of Special Appeals from reaching issue of whether county zoning regulation required disqualification of owner's petition for reclassification; (3) county zoning regulation precluding "zoning commissioner" from accepting for filing petition to reclassify rural residential zone unless there was planned public water and sewer service within two years did not require disqualification of reclassification petition; (4) evidence was sufficient to sustain board's finding of mistake in county council's prior classification of property in comprehensive zoning map process so as to warrant granting of reclassification petition; (5) board rule requiring that three board members sit for purpose of conducting business of board did not require board decision on remand by three members who were at hearing; (6) board sufficiently addressed factors relating to purposes of zoning regulations and maps as required by county code provision; and (7) Court of Special Appeals would deny motion for sanctions.

Circuit court judgment affirmed, and motion for sanctions denied.

1. Zoning and Planning ⇐742

People's counsel for Baltimore County was party in interest on appeal from circuit court judgment affirming county

board of appeals decision granting petition for zoning reclassification of property.

2. Zoning and Planning ⇐605, 703

There are two general standards of review of decision of zoning board: in regard to findings of fact, trial court cannot substitute its judgment for that of agency and must accept agency's conclusions if they are based on substantial evidence and if reasoning minds could reach same conclusion based on record; however, when reviewing findings of law, no such deference is given the agency's conclusion.

3. Zoning and Planning ⇐231

In determining legislative intent behind site plan zoning reclassification provisions in county code, Court of Special Appeals could look to legislative scheme and practice and procedure of various entities involved in county zoning process.

4. Zoning and Planning ⇐191

Baltimore county council did not disapprove interim site plan zoning reclassification, which county board of appeals had previously approved for property, when council maintained property's prior classification in its quadrennial comprehensive review of zoning map, as board's action was not final at time of council's action because it was subject to judicial review and because property could in the future potentially revert to prior classification for lack of development.

5. Zoning and Planning ⇐191

Under Baltimore county code, when petition for zoning reclassification, supported by site plan, is filed with county board of appeals prior to April 16 of a year in which county council concludes comprehensive zoning map process and there has been no final irreversible decision by board prior to action by council on comprehensive map proposal, council's action on comprehensive zoning map does not supersede action or ultimate action of board granting petition unless county council changes existing zoning classification or otherwise

expressly indicates disagreement with proposed conditional rezoning.

6. Zoning and Planning ⇐191

Under Baltimore county code, when petition for zoning reclassification, supported by site plan, is filed with county board of appeals prior to April 16 of a year in which county council concludes *comprehensive* zoning map process, if board's action on petition is final in both procedural and vesting sense before comprehensive rezoning is adopted, then board's decision has effect of law and, thus, if board granted petition, then new classification subject to site plan prevails unless council changes new classification in zoning map.

7. Zoning and Planning ⇐191

When petition for zoning reclassification in Baltimore county, supported by site plan, is filed with county board of appeals prior to April 16 of a year in which county council concludes comprehensive zoning map process, if board's action granting petition is final in both procedural and vesting sense before comprehensive rezoning is adopted, then zoning classification has "changed" prior to council action within meaning of Baltimore county code subsection providing that subsequent enactment of zoning map will not affect site plan reclassification unless zone classification is further changed by map.

8. Zoning and Planning ⇐191

Law of the case doctrine did not preclude Court of Special Appeals, which had present zoning case before it for the first time, from reaching issue of whether county zoning regulation, which precluded zoning commissioner from accepting for filing petition to reclassify rural residential zone unless public water and sewer service requirement was met, required disqualification of subject petition for interim site plan reclassification of property, despite contention that issue was decided in first board decision in present case and not in second decision on remand from circuit court's decision on first review. Md.Rule 7–209.

9. Zoning and Planning ⇐741

Opinion and order of circuit court on review of county board of appeals decision granting petition for zoning reclassification was final appealable judgment, even though it included order of remand. Md.Rule 7–209.

10. Zoning and Planning ⇐191

Baltimore county zoning regulation precluding "zoning commissioner" from accepting for filing petition to reclassify rural residential zone unless there was planned public water and sewer service within two years did not require disqualification of petition for interim site plan reclassification of property that was zoned rural residential; county charter provided that board had original and exclusive jurisdiction over reclassification petitions, and county code section requiring that board consider availability of public water and sewer did not mandate its availability within any prescribed period of time.

11. Zoning and Planning ⇐167.1

Evidence was sufficient to sustain county board of appeals' finding of mistake in county council's prior classification of property in comprehensive zoning map process as residential office, commercial rural, and rural residential so as to warrant granting of petition for interim site plan rezoning of property to light manufacturing, despite contention that finding of mistake rested primarily on testimony of one expert witness; planning board had recommended no change in existing zoning, and board found that it would have been impossible for council to have known or foreseen circumstances making zoning change appropriate.

12. Zoning and Planning ⇐194.1

Under Baltimore county code, burden is on entity seeking interim zoning reclassification on basis of mistake in comprehensive zoning to show conditions that made comprehensive zoning incorrect and failure of county council to have considered those conditions.

13. Zoning and Planning ⇐164

Under Baltimore county code, for entity seeking interim zoning reclassification on basis of mistake in comprehensive zoning to meet its burden to show conditions that made comprehensive zoning incorrect and to show failure of county council to have considered those conditions, hardship and economic disadvantage are insufficient, but rather, there must be showing that owner is deprived of all reasonable use of his property.

14. Zoning and Planning ⇐194.1

Under Baltimore county code, for entity seeking interim zoning reclassification on basis of mistake in comprehensive zoning to meet its burden to show conditions that made comprehensive zoning incorrect and to show failure of county council to have considered those conditions, expert opinion alone is insufficient unless there are sufficient facts to support it.

15. Zoning and Planning ⇐728

Baltimore county board of appeals *rule* requiring that three board members sit for purpose of conducting business of board did not require board decision by three members who were at hearing, on remand in proceeding on petition for interim rezoning of property, in which board had rendered initial decision and later, on remand after replacement of two of its three members, rendered subsequent decision without further hearing, where remand *order* indicated limited purpose, there was no adverse expert testimony on technical issue on remand, and evaluation of lay witness credibility was not material factor on remand.

16. Zoning and Planning ⇐728

Holding in Court of Appeals' decision in *Clark v. County Board of Appeals for Montgomery County*, that quorum for county board of appeals zoning decision should be present at public hearing, has not been violated when quorum participates in proceedings on remand after judicial review and when assessment of credibility of witnesses is not required.

17. *Zoning and Planning* ⇐199

In its decision granting petition for interim site plan zoning reclassification for property, county board of appeals sufficiently addressed factors relating to purposes of zoning regulations and maps as required by Baltimore county code provision by finding that reclassification would not impact transportation facilities, utilities, schools, solid waste disposal facilities, capital program, recreational facilities, trends, water supply facilities, or the environment.

18. Costs ⇐221

On appeal from circuit court's decision on review of county board of appeals' second zoning reclassification decision, Court of Special Appeals would deny appellants' motion for sanctions under rule governing prehearing procedure before Court of Special Appeals, even though appellee included in appendix to its brief copies of information reports filed in Court of Special Appeals prior to appellants' voluntary dismissal of their prior appeal in same proceeding, absent bad faith on part of appellee or its counsel, where Court of Special Appeals had not considered information reports in resolution of present appeal. Md.Rules 8–205, 8–206(e).

19. Records ⇐30

Information in reports filed pursuant to prehearing procedure rule governing information reports on appeal before Court of Special Appeals is confidential and its purpose is limited to settlement negotiations. Md.Rules 8–205, 8–206(e).

Peter Max Zimmerman (Carole S. Demilio, on the brief), Towson, for appellant, People's Counsel.

Michael P. Tanczyn, Towson, on the brief, for appellants, Glen Arm and Reier.

G. Scott Barhight (Julie D. Wright and Whiteford, Taylor & Preston, L.L.P., on the brief), Towson, for appellee.

Before HARRELL, EYLER and KENNEY, JJ.

EYLER, Judge.

[1] This appeal is from a judgment of the Circuit Court for Baltimore County affirming a decision by the County Board of Appeals (Board) in September; 1996 reclassifying, through the grant of a piecemeal application, certain property (the Property) from residential office/commercial rural (R.O./C.R.) and rural residential(R.C.5) to light manufacturing (M.L.). People's Counsel for Baltimore County,[1] Glen Arm Community Association, and T. Michael Reier, its president, appellants, inquire whether the subsequent countywide comprehensive rezoning by the County Council later in 1996, which retained the R.O./C.R. and R.C.5 classifications, superseded the Board's action. Appellants also inquire (1) whether the lack of planned water and sewer to the area in question requires reversal, (2) whether the Board's decision is unlawful because it violated its own rules, and (3) whether the evidence is legally sufficient to sustain the finding of mistake and the finding that the reclassification to M.L. was warranted. Appellee, The Prosser Company, Inc., inquires whether appellants, by virtue of the law of the case doctrine, are precluded from raising the issue relating to the lack of planned water and sewer and the issue relating to the legal sufficiency of the evidence to sustain the finding of mistake. We answer appellee's inquiry in the negative, reach all of appellant's issues, and answer the first two in the negative and the last one in the affirmative.

Facts

The Property in question consists of 5.2 acres and is located at the northeast corner of Glen Arm Road and Long Green Pike in Baltimore County. It was owned by Grumman Corporation for several years. The Property, located adjacent to Grumman's manufacturing facility, had three houses on it which were leased by Grumman Corporation at various times.

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1. People's Counsel is a party in interest. *See* Baltimore County Charter, § 524.1; *People's Counsel v. Maryland Marine Mfg. Co.*, 316 Md. 491, 496–97, 560 A.2d 32 (1989).

On July 15, 1992, appellee acquired the property and later razed the houses. There are businesses located on the west side of Long Green Pike and on Glen Arm Road, including appellee's existing facility located on the northwest corner of the two intersecting roads. The uses are residential and agricultural on the southeast side of the intersection.

The County Council engages in a countywide comprehensive zoning map process every four years. *See* Baltimore County Code § 26–123. As a result of the adoption of the 1992 comprehensive rezoning, 1.9 acres of the Property were zoned R.O./C.R. and 3.3 acres were zoned R.C.5. The C.R. designation was added as part of that zoning process on the recommendation of the Office of Planning & Zoning staff.[2]

On August 31, 1993, appellee filed a petition with the Board to reclassify the Property from R.O./C.R. and R.C.5 to M.L., contending that there was a mistake in the 1992 comprehensive zoning map process. Appellee submitted a site plan showing its proposed use of the Property, specifically, the relocation of two of its subsidiaries from another site.

The Planning Board supported the requested change because it was consistent with the 1990 Master Plan and because the M.L. zone already abutted the Property on three sides. The Board explained the recommendation to add the C.R. designation in 1992 by stating that it was done as a matter of course and that the Office of Planning and Zoning staff review of individual properties had not been thorough.

The Board held a hearing on April 6, June 16, July 19, and September 20, and by majority vote (two to one) on December 13, 1994, granted the rezoning. The Board found that the proposed development was consistent with adjacent land uses and that there was no practical use for the parcel under its

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2. In Baltimore County, zones are "intended to provide broad regulation of the use and manner of use of land." Baltimore County Zoning Regulations § 100.1A.1. Districts are "intended to provide greater refinement in land-use regulation ... [and] are superimposed upon zones." Balto. Co. Zoning Regulations § 100.1B.1. The designations R.O. and R.C.5 are zone designations and C.R. is a district designation.

existing zoning. It also found that the proposed use was consistent with the 1990 Master Plan and with the 1992 Proposed Land Use Map (an amendment to the 1990 Master Plan). Consequently, the Board found that there had been a mistake in the 1992 comprehensive zoning.

At the time of the Board hearing, there were three residences on the Property, each with a failing septic system. The Board found that the County Council could not have known in 1992 that appellee would combine what were originally three separate parcels to form the 5.2 acre Property and could not have known of the failing septic systems. The Board stated that the parcels could only be used if the three septic systems were destroyed, and that the proposed use would remove the health hazard. Additionally, the Board found that the C.R. overlay was applied as a matter of course during the 1992 comprehensive rezoning and that the Office of Planning & Zoning staff had misled the County Council in its advice to apply it to the Property.[3]

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3. The majority opinion stated in part:

> After due consideration of all of this lengthy testimony and evidence, several basic facts present themselves to this Board. Mr. Prosser has purchased three small parcels and combined them into one 5–acre parcel for which he has produced a documented site plan that, in the opinion of this Board, is in keeping with the adjacent uses. Under their present zoning designations, there is little or no practical use for the three properties whatsoever, since no matter what the use proposed or undertaken, the septic systems cannot comply with Baltimore County regulations.
>
> The testimony of Mr. Long [staff member, Office of Planning & Zoning] is most compelling in this case. By virtue of the fact that the OPZ staff comments related to the applicable CR designation issue were applied in error "as a matter of course" without due consideration for each property affected by the issue, the OPZ staff unknowingly misled the Council in its advice to apply the CR designation on the instant site. The notion that a visit to each site by council Members mitigates unintentional misinformation and therefore erroneous conclusions by the Council is not persuasive. The Council relies upon information from several sources when considering issues such as the instant case. If the Council is uninformed or misinformed about conditions which would lead them to a conclusion, then the Council has erred if it does not consider all the salient facts which actually exist. Mr. Long and the OPZ staff are to be com-

Appellants filed a petition for judicial review in the Circuit Court for Baltimore County. Appellants challenged the legal sufficiency of the evidence to support the Board's finding of mistake but also argued that the Board lacked jurisdiction to consider the petition for reclassification. In support of the latter argument, appellants relied on Baltimore County Zoning Regulations § 1A00.3.A.1.a, applicable to rezoning petitions in all R.C. classifications, which provides:

> 1. No petition to reclassify an R.C. zone or portion thereof as other than an R.C. zone may be accepted for filing by the Zoning Commissioner unless—
>
> a. The Capital Program, duly adopted Baltimore County master or comprehensive plans, and the "county plan" required under Subtitle 5 of Title 9 in the Environment Article of the Annotated Code of Maryland 1987, as amended, show that the property under petition is to be serviced by public sewerage and water supply systems within TWO years after the date the petition is submitted.

According to appellants, there was no evidence before the Board demonstrating compliance with that section.

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mended for coming forth in the difficult position of exposing the error.

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

The dissenting member found insufficient evidence of a legal mistake in zoning. The dissenting opinion pointed out that the Council considered the Property in 1992 and added the C.R. designation to the parcel zoned R.O. At that time, the Council knew that the same owner owned all of the Property and that the Master Plan called for industrial use.

PEOPLE'S

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In an opinion and order dated December 7, 1995, the circuit court found the requirement in the zoning regulations that public water and sewer be planned in the area within two years to be jurisdictional in nature. Because the County Charter provides that the Board "shall have original and exclusive jurisdiction over all petitions for reclassification," *see* Baltimore Co. Charter § 602(e), the circuit court held that the zoning regulation in question conflicted with the Charter and was invalid. Consequently, the circuit court concluded that the Board had jurisdiction.

The circuit court also found that there was sufficient evidence to support the Board's finding that mistake had occurred and affirmed that portion of the Board's decision.

The circuit court stated in part:

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

(Footnotes omitted).

Although the circuit court affirmed the Board's jurisdiction and its finding of mistake, it held that the Board's findings were insufficient to determine if the reclassification to the new M.L. zone was warranted under Balto. Co.Code, § 2–356(j),

and specifically subsection (j)(2),[4] which sets forth findings required to be made by the Board prior to a reclassification. The circuit court remanded the case to the Board for further consideration of that issue.

Appellants filed a notice of appeal to this Court in January 1996, but after filing prehearing information reports pursuant to Rule 8–205, voluntarily dismissed the appeal in April 1996. The case was then remanded to the Board pursuant to the circuit court's order. Two of the three original Board members had resigned by that time. The remaining member issued an opinion granting the rezoning but subsequently rescinded the opinion after his legal right to do so was challenged by appellants. A new three-member panel was formed, which included the carry-over member from the original panel who had voted to approve the application previously. The new panel, after reviewing the transcript of the 1994 hearing, denied appellants' request to present new evidence. The Board, through the new panel, held public deliberations on June 5 and July 3 and, in an opinion dated September 19, 1996, determined that the reclassification was warranted and granted the rezoning.

In that opinion, the Board noted that the Office of Planning & Zoning staff and the Planning Board agreed that the requested reclassification was appropriate and consistent with

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4. *Balto. County Code* Section 2–356(j)(2) provides:

> That the prospective reclassification of the property is warranted by that change or error. Any finding of such a change or error and any finding that the prospective reclassification is warranted may be made only upon consideration of factors relating to the purposes of the zoning regulations and maps, including, but not limited to, all of the following: Population trends; availability and adequacy of present and proposed transportation facilities, water-supply facilities, sewerage, solid-waste-disposal facilities, schools, recreational facilities, and other public facilities, compatibility of uses generally allowable under the prospective classification with the present and projected development or character of the surrounding area; any pertinent recommendation of the planning board or office of planning and zoning; and consistency of the current and prospective classifications with the master plan, the county plan for sewerage and water-supply facilities, and the capital program.

the Master Plan in that the Property was noted as an industrial development area in the Master Plan. The Board found, in part, as follows:

> The Board also notes that the Petitioner brought a documented site plan and, with it, the restrictions associated with a documented site plan, which serves to provide safeguards against uses not specifically part of that documented plan. Mr. Jeffrey Long, of the former Office of Planning and Zoning, testified that the staff conclusion in review of the instant case is that the request was appropriate and was consistent with the Master Plan. The Planning Board agreed, subject to a revision with regard to the Landmarks Preservation Commission's concerns about the three existing houses on the instant site. Mr. Long specifically noted that the Glen Arm area is noted as an industrial development area as part of the Master Plan. At the time of the Office of Planning and Zoning review, the staff position was to eliminate proposed Building "B," in deference to septic issues raised by the Department of Environmental Protection & Resource Management (DEPRM) in its discussions with the Petitioner. Mr. Long testified that if the septic issue is remediated, then the staff has no problem with proposed Building "B."
>
> Ms. Ruth Macari, Chairman of the Landmarks Preservation Commission, testified that none of the three existing buildings on the instant site is on the Baltimore County Landmarks Preservation List, further stating that the property owner has the right to raze the existing structures. In light of the documented site plan, the known failing existing septic systems, and the improvements necessary to proceed in mitigating the existing septic problems for the new structures, the Board finds that adverse impacts to water supply facilities are mitigated by the proposed reclassification; that sewerage would be improved by the proposed reclassification; and that the general welfare of the community concerning environmental issues would be enhanced by the proposed reclassification and its resultant improvements on the property.

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

The Board notes that The Prosser Company is but part of three affiliated companies: The Amereihn Company, a miscellaneous metals manufacturing company located on Overton Avenue at Belair Road and Interstate 695 in Baltimore County, as well as El–Tex, an electrical control panel manufacturing facility. The expansion of Belair Road at Overton Avenue, as well as constraints at the El–Tex facility in Baltimore City, has the Petitioner in a position of not being able to expand to meet his company's needs and the needs of his clients. Mr. Peter Swanson, of the Baltimore County Department of Economic Development (DED), testified that DED supported the Petition, citing improved efficiency of the Petitioner, consistency with the Master Plan for the area, additional employment in Baltimore County, and an increased tax base.

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

The Board also notes that the Petition was supported by numerous residents of the area, despite opposition by a few,

as evidenced by the myriad of non-form letters of support. In finding the testimony of Messrs. Long, Gavrelis, Swanson, and Ford persuasive, this Board finds that the proposed reclassification, as limited in the documented site plan, is indeed warranted, and will so order.

Appellants filed a petition for judicial review of the second Board decision in the Circuit Court for Baltimore County. Prior to a hearing in that court, the County Council completed its 1996 comprehensive zoning map process, and in the new zoning map adopted on October 15, 1996, the Property retained its zoning classification as R.O./C.R. and R.C.5.

In Baltimore County during the quadrennial comprehensive zoning map process, the Planning Board, after complying with prescribed procedure, recommends a comprehensively revised version of the zoning map to the County Council. The map identifies as a separate "issue" each area or parcel considered for a change in zoning by the Planning Board. Balto. Co.Code § 26–123(d). Issues may be raised by the public, the Planning Board, or the County Council. There is a deadline applicable to each of the above entities for raising issues. Balto. Co. Code § 26–123(e).[5]

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5. That section provides:

(e) Beginning August 1, 1987, and August 1st of every fourth year thereafter and ending January 15, 1988, and January 15th of every fourth year thereafter, the following time periods for raising issues during the comprehensive zoning map process are hereby established:

	Beginning	*Ending*
Period 1. Public and planning director	August 1	October 31
Period 2. Planning board and planning director	November 1	November 30
Period 3. County council	December 1	January 15

During period 2, only members of the planning board and planning director may raise issues, and during period 3, only members of the county council may raise issues. No new issue may be raised by anyone after January 15th. The term "issue" or "issues" refers to a tract or parcel of land proposed for a change in zone or district classification.

In the 1996 comprehensive map review process, the Property was the subject of issues 6–001 and 6–017. The only information which has been supplied to us pertaining to those issues is as follows:

Baltimore County 1996 Comprehensive Zoning Map Issues

Issue Number	Owner, Petitioner	Location	Existing Zoning and Acres	Requested Zoning and Acres	Planning Board Recommendations	County Council Decisions	Comments
6-[illegible]	James F Prosser	Northeast side of Long Green Pike and Glen Arm Road. 12107 & 12109 Long Green Pike and 5338 Glen Arm Road.	RCS 3.100 RO CR 1.900 Total 5.200	ML 5.200 Total 5.200	RCS 3.100 RO CR 1.900 Total 5.200	RCS 3.100 RO CR 1.900 Total 5.200	11-1. CR-94-132 See Issue 6-01[illegible] and 6-018. Board of Appeals approved 9/19/96.

Issue Number	Owner, Petitioner	Location	Existing Zoning and Acres	Requested Zoning and Acres	Planning Board Recommendations	County Council Decisions	Comments
6-017	Long Green, Kingsville, Glen Arm Impr. Assoc.	Northeast corner of Long Green Pike and Glen Arm Road.	RCS 1.300 RO CR 1.920 Total 5.300	RC2 5.300 Total 5.300	RCS 3.300 RO CR 1.920 Total 5.220	RCS 3.300 RO CR 1.920 Total 5.220	See Issue 6-[illegible] and 6-018
6-018	Long Green, Kingsville, Glen Arm Impr Assoc	East and west sides of Long Green Pike, 500 north of Glen Arm Road	ML 47.000 Total 47.300	RC2 47.000 Total 47.300	ML 47.[illegible] Total 47.[illegible]	RC2 12.[illegible] ML [illegible] Total [illegible]	See Issue 6-001 and 6-[illegible] Overlay adopted

The County Council adopted the zoning map in accordance with Baltimore Co. Code § 26–124. The classification retained was in accordance with the Planning Board's recommendations with respect to issues 6–001 and 6–017, as reflected in the issue file reproduced above.[6]

Appellants, in the circuit court, moved to dismiss the appeal on the ground that the case was moot because the Council's action superseded the Board's action. The motion was denied by the circuit court. In an order dated March 7, 1997, the circuit court affirmed the Board's opinion, holding in relevant part that (1) the reclassification of the Property by the Board was not affected by the 1996 comprehensive zoning, (2) the first circuit court opinion constituted the law of the case and

6. Apparently, the County Council did not follow the Planning Board's recommendation with respect to issue 6–018, a property located north of the Property in question.

was binding on the parties, (3) alternatively, if the first opinion were not the law of the case, it was not in error, (4) that the Board's second opinion was not unlawful for failure to hold a *de novo* hearing, and (5) the evidence was legally sufficient to sustain the finding that the new zoning classification was warranted.

Questions Presented

As rephrased by us, appellants raise the following questions:

1. Was the Board's decision superseded by the County Council's approval of the 1996 zoning map?
2. Does the lack of planned public water and sewer service to the area in which the Property is located require reversal of the Board's decision?
3. Is the evidence legally sufficient to sustain the finding of mistake?
4. Was the Board's failure to hold an evidentiary hearing on remand unlawful?
5. Is the evidence legally sufficient to sustain reclassification of the Property to an M.L. zone?

Appellee raises the following question:

Are the appellants precluded from raising issues 2 and 3 because they were not pursued in the first appeal to this Court and not decided in the second Board decision or the second circuit court decision?

Standard of Review

[2] As we stated recently in *Colao v. Prince George's County*, 109 Md.App. 431, 675 A.2d 148, *aff'd*, 346 Md. 342, 697 A.2d 96 (1997), there are two general standards of review of a decision of a zoning board:

> In regard to findings of fact, the trial court cannot substitute its judgment for that of the agency and must accept the agency's conclusions if they are based on substantial evi-
> dence and if reasoning minds could reach the same conclu-

sion based on the record; when reviewing findings of law, however, no such deference is given the agency's conclusion.

Id. at 458, 675 A.2d 148 (quoting *Columbia Road Citizens' Assoc. v. Montgomery County*, 98 Md.App. 695, 635 A.2d 30 (1994)). *See also Liberty Nursing v. Department*, 330 Md. 433, 442–43, 624 A.2d 941 (1993)(discussing administrative review generally); *Caucus v. Maryland Securities*, 320 Md. 313, 323–24, 577 A.2d 783 (1990)(same).

Discussion

I.

As mentioned above, every four years Baltimore County performs a comprehensive review of its zoning map. Baltimore County Code §§ 26–122 to 26–125. During the review process, a property owner, Office of Planning & Zoning staff, Planning Board members, the County Council, or citizens at large may request zoning changes. All petitions filed are assigned an issue number. After public hearings, the County Council votes on each issue, and when they are all resolved, it adopts a new comprehensive zoning map. Merely because a property owner or other non-governmental entity does not file a timely issue does not mean necessarily that a particular property is beyond the reach of the comprehensive rezoning process.

In 1991, the Office of Planning & Zoning identified 2.3 acres of the Property zoned R.O. as an issue. As also mentioned previously, the C.R. designation was added and was approved by the County Council as part of the 1992 comprehensive zoning map process. Joseph Prosser, president of appellee, testified at the 1994 hearing before the Board that he did not participate in that process because he was unaware of it when he negotiated for and purchased the Property in 1992.

In the time period between each comprehensive zoning map process, the Board has the power to change the zoning classification of property. Baltimore County Code § 2–356. Section 2–356 effectively incorporates the so-called mistake or change rule. Section 2–356(j)(1) requires:

(j) *Findings prior to reclassification.* Before any property is reclassified pursuant to this section, the board of appeals must find:

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

See Coppolino v. County Board of Appeals, 23 Md.App. 358, 328 A.2d 55 (1974).

Additionally, § 2–356(j)(2) provides that the Board must find "that the prospective reclassification of the property is warranted by that change or error." It further requires that the prospective reclassification may be made only upon consideration of certain enumerated factors. *See* § 2–356(j)(2) at p. 8, n. 4.

A petition for reclassification in zoning may be filed with or without documentation relating to the proposed use of the property. Section 2–356(*l*). If such documentation (usually a site plan and/or architectural elevations) is filed and the request is granted, the property may be developed only in accordance with the plan included within that documentation. If it is not so developed within three years from the date of the final order granting the petition, the zoning classification reverts to the previous classification. Section 2–356(n). If a petitioner submits a site plan, a mistake/change and the warrant for the requested zone must still be shown before a reclassification will be granted. A reclassification conditioned on documentation under § 2–356(*l*) by the Board is specifically exempted, *see* § 2–356(n), from the uniformity requirement contained in Baltimore County Code § 26–122.[7]

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7. Section 26–122 provides that regulations governing the erection, construction, reconstruction, alteration, repair, and use of building structures and land "shall be uniform for each class or kind of building or structure throughout each district, division, or zone...."

This rezoning subject to documentation procedure, in the nature of conditional zoning, is not attacked by the parties herein as being unlawful. A reclassification based on a specific site plan has been discussed by this Court, *see People's Counsel v. Mockard*, 73 Md.App. 340, 533 A.2d 1344 (1987), but the issue of its validity has never been squarely adjudicated. Because the issue is not before us, we assume, without deciding, that it is valid.

Appellants assert that the provision for site plan rezoning was not intended to subvert comprehensive rezoning. They argue that an appellate court applies the law existing as of the time of its review, absent interference with vested rights or absent legislative intent to the contrary. *See Enviro–Gro v. Bockelmann*, 88 Md.App. 323, 594 A.2d 1190 (1991). *But see* the discussion in *Holland v. Woodhaven Building & Development*, 113 Md.App. 274, 687 A.2d 699 (1997). In the case before us, the County Council acted and, by ordinance dated October 15, 1996, chose by comprehensive rezoning the same zoning that existed prior to the Board's grant of the piecemeal reclassification petition. Appellants conclude that the Council's legislative act supersedes the Board's action and is presumptively correct. *See Coppolino*, 23 Md.App. at 369, 328 A.2d 55.

Appellee asserts that the County Council has evinced an intent not to apply the 1996 comprehensive rezoning to the Property, as shown in Baltimore County Code § 2–356(n). Subsection (n) is set forth verbatim, and we have underlined that portion of the subsection relied on by appellee. It provides:

> *Use of property.* Property may be reclassified under this section only upon making the findings required under section (j) of this section. Property may not be reclassified solely on the basis of documentation relating to the property's proposed use. However, any provision of section 26–122 to the contrary notwithstanding, if the petition to reclassify the property does include such documentation and is granted, the property may be used only in accordance with the plan included within that documentation; the zoning

classification of any such property will revert to the previous classification unless, within three (3) years after the date of the final order granting the petition, the property is being used in accordance with the plan or, in a case where development is necessary to implement the plan, unless the development either is completed or has been substantially undertaken and is being diligently pursued to completion. *The requirement that such a property be utilized in accordance with a plan and the provision that otherwise the classification of the property will revert will not be affected by the subsequent enactment of a zoning map, pursuant to section 26–124 or 26–125 of this Code unless the zone classification of the property is further changed by that map.*

(Emphasis added.)

Appellee asserts that a petition for reclassification granted by the Board pursuant to a documented site plan is not affected by the adoption of a subsequent comprehensive zoning map unless the Council changes the classification granted by the piecemeal rezoning process. According to appellee, because the Board's action was not final in the case before us, there was no "change" in the 1992 comprehensive zoning prior to the Council's action in 1996, and the Council did not "further change" the classification in 1996. By making no change, the County Council kept the same zoning, subject to the pending reclassification case. Appellee points out that if the Council's adoption of the 1996 zoning map negated the Board's approval of the reclassification petition, protestants would be able effectively to use the appeal process to delay approval of any piecemeal petition for reclassification until adoption of the next comprehensive zoning map. Appellee concludes that, if this Court determines that this issue is moot based on the County Council's action, it will "sound the death knell for interim rezoning," presumably in Baltimore County only.

[3] Very often in the litigation process, courts are asked to search for legislative intent, and we once again embark on that

journey. We frequently stop searching when we find words, aided by rules of construction, that reveal the legislative intent. In the case before us, we must journey further, as we are permitted to do, and look to the legislative scheme and the practice and procedure of the various entities involved in the Baltimore County zoning process. *See Linkus v. Md. State Board of Heating Ventilation, Air-Conditioning & Refrigeration Contractors,* 114 Md.App. 262, 274, 689 A.2d 1254 (1997). In doing so, we lament the absence of information in the record that would inform us as to the general practice and procedure in Baltimore County with respect to the process of documented site plan rezoning since it was adopted in 1978.[8] Such information might be relevant to legislative intent and might enlighten us with respect to the practical ramifications of our decision on day-to-day practice in Baltimore County.

We do know that the County Council engages in a comprehensive zoning map process every four years, and that the Board is delegated the power of interim rezoning via piecemeal applications. Baltimore County Code § 2–356. "For the purpose of considering contemporaneous zoning reclassification petitions in relation to each other and according to a standard schedule, ..." semi-annually recurring schedule periods are established as follows:

	April—October Cycle		*October—April Cycle*
Period I	April 16—May 31	and	October 16—November 30
Period II	June 1—July 31	and	December 1—January 31
Period III	August	and	February
Period IV	September 1—December 31	and	March 1—June 30

Section 2–356(c). Each petition for reclassification must be filed no later than 45 days prior to the beginning of the next

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8. Appellants have provided us with the Planning Board report dated October 20, 1977, in which the documented site plan process was proposed. The report apparently led to the adoption of the site plan provisions in 1978. See Baltimore County Code § 2–356(*l*) and (n). The report proposed that the law be changed so that the uniformity clause would not apply in the case of a petitioner who submits a plan showing how his property is to be used if rezoned. It is little help to us in resolving the specific issue in the case before us.

succeeding cycle. Section 2–356(b). Section 2–357 provides that petitions for reclassification may not be filed with the Board from April 16 to October 15 of the year in which the comprehensive zoning map process is to be completed. The section provides:

> **Suspension of reclassification petition *filing during* preparation of new or revised zoning map.**
>
> No reclassification petitions [other than those exempted] shall be received for filing by the board of appeals from April 16 through October 15 of any year in which the County Council is preparing or modifying the new or comprehensively revised zoning map then to be approved and adopted. Any request for zoning reclassification may be presented at the appropriate time of the planning board or county council during such a period, however, for consideration in the preparation or modification of the new or comprehensively revised zoning map then to be approved and adopted. The purpose of this section shall be to provide for the orderly *nonduplicate* consideration of reclassification requests within the context of a comprehensive zoning map, when such map is under review.

It is clear from § 2–357 that the County Council envisioned that the Board would handle interim rezoning requests filed with the Board prior to April 16 of the final year of the comprehensive zoning map process. Any petition for reclassification filed on April 16 through October 15 of any such year shall be considered by the Planning Board in its deliberations, but ultimately is folded into the comprehensive zoning process to be acted on by the Council. The Council, it seems, effectively delegated interim rezoning authority and all site plan rezoning authority to the Board.

[4] Consequently, the petition in the case before us was properly before the Board, and the fact that the Council did not change the zoning in accordance with the Board's action, which was not final, does not evidence a legislative intent to disapprove the site plan reclassification approved by the Board. This result is consistent with the fact that the Council, in delegating the interim power to change the zoning classifi-

cation of property in § 2–356, specifically exempted the Board from the uniformity requirement in § 26–122, *see* § 2–356(n), but did not exempt itself from the requirements contained in § 26–122. Because the Board's action on September 19, 1996, was not final [9] at the time of the Council's action,[10] the Council, compelled as it was to honor the uniformity provision, could not change the classification of the Property, as had the Board, and still have it be subject to the site plan.

We note that, in the proceedings before the Board, the Planning Board recommended that the petition for reclassification be granted but, in its report to the County Council, recommended no change in the existing zoning. In light of the potential "reversion" to the "previous classification" if the property is not developed in accordance with the site plan within three years, the action of the Planning Board and the retention of that classification is consistent with our understanding of the legislative scheme. In other words, the Council's "no change" in zoning is consistent with the Planning Board's recommendation to the Board and the Board's action.

[5] We hold that when a petition for reclassification, supported by a site plan, is filed with the Board prior to April 16 of a year in which the County Council concludes the comprehensive zoning map process and there has been no final decision by the Board, in both a procedural and vesting sense,[11] prior to action by the County Council on the compre-

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9. The Board's action was not final because it was subject to judicial review and because a documented site plan rezoning "will revert to the previous classification unless, within three years after the date of the final order granting the petition, the property is being used in accordance with the plan or, in a case where development is necessary to implement the plan, unless the development either is completed or has been substantially undertaken and is being diligently pursued to completion." Baltimore County Code § 2–356(n).

10. We were informed at oral argument that the practice in Baltimore County is that a documented site plan rezoning by the Board is not reflected on the official zoning map until the Board's action is final in both a procedural and vesting sense. See the preceding note.

11. See n. 9 and n. 10, *supra*.

hensive map proposal, the County Council's action does not supersede the action or ultimate action of the Board granting the petition unless the Council changes the existing zoning classification or otherwise expressly indicates a disagreement with the proposed conditional rezoning. We reach this conclusion because there is no specific mechanism in the Code for the Council to indicate that it wants to retain the existing zoning but without the conditional rezoning. In this case, there was no change in classification and we have not been presented with nor can we find such express indication.

[6, 7] In a given case, if the Board's action is final, in both a procedural and vesting sense, before the comprehensive rezoning is adopted, the Board's decision has the effect of law. If the Board granted the petition, then the zoning classification was "changed" prior to Council action. In that event, the new classification subject to the site plan prevails unless the new classification is changed by the Council. As a practical matter, this means that any person interested in ascertaining the existing or inchoate zoning classification of a particular property must check, at a minimum, the zoning map and the records of the Board. A person interested in possible rezoning will also have to check the record of pending Board matters. As pointed out at oral argument, this process generates two sets of zoning maps, only one of which is the "official" zoning map. Such a result is unsettling, but as indicated above, we have assumed the validity of this scheme of zoning.

II.

Appellants contend that the prerequisite of Baltimore County Zoning Regulation 1A00.3.A.1.a is valid and that it should have resulted in disqualification of the petition for reclassification because there is no planned public water and sewer service in the area within two years. Section 1A00.3.A.1.a is applicable to R.C. zones and provides that no petition to reclassify an R.C. zone or portion thereof may be accepted for filing by the "zoning commissioner" unless there is planned

public water and sewer service to the area within two years after the date the petition is submitted.

[8] Appellee asserts that this issue is not properly before us because the issue was decided in the first Board decision and not in the second decision. Appellee, relying on the law of the case doctrine as applied in *Fiol v. Howard County Board of Appeals*, 67 Md.App. 595, 508 A.2d 1005 (1986), asserts that the scope of review in this case is limited to the matters decided in the second Board decision and the second circuit court decision.

In our view, *Fiol* is distinguishable. In *Fiol*, the following sequence occurred: the Board of Appeals issued its decision; it was appealed to the circuit court; the circuit court remanded the case to the Board; the circuit court's decision was appealed to this Court; this Court affirmed; after remand, the Board's decision was again appealed to the circuit court; and the circuit court's decision was again appealed to this Court. We held that matters which could have been raised in the first appeal were not properly before us on the second appeal. The significant distinction from the case before us is that the *Fiol* matter was before us the second time.

We believe that *Loveday v. State*, 296 Md. 226, 462 A.2d 58 (1983), while not on point, is more instructive to our present case. In *Loveday*, the following sequence of events occurred: an appeal from the circuit court to this Court; this Court vacated the criminal sentence imposed below and remanded the case; a writ of *certiorari* was not requested; the case was again appealed to this Court; this Court affirmed the judgment; *certiorari* was requested and granted. The Court of Appeals held that it could review all actions of subordinate courts and make rulings consistent with applicable law. The Court distinguished situations in which the case had been before it on a prior occasion, stating that in the latter instance, *the law of the case* applies to all issues decided in the first appeal or which could have been raised and decided in the first appeal.

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[9] In the case before us, the opinion and order of the circuit court, even though it included an order of remand, was a final appealable judgment. *See Md. Comm'n on Human Relations v. Baltimore Gas & Electric Company,* 296 Md. 46, 459 A.2d 205 (1983). Indeed, appellants noted an appeal but dismissed it prior to briefing and any action by this Court. The dismissal of the appeal was voluntary pursuant to Rule 8–601. The second petition for judicial review was filed and considered in the same case as the first petition for judicial review. The only issue before the circuit court was whether the new zoning classification was warranted. The case is now before us for the first time. In our view, we are not precluded from reaching and deciding the issues presented. *See Prince George's County v. Zayre Corp.,* 70 Md.App. 392, 403, 521 A.2d 779 (1987); *Breedon v. Md. Dep't of Education,* 45 Md.App. 73, 86, 411 A.2d 1073 (1980).

In *Zayre* and *Breedon,* the doctrine of issue preclusion was held not to apply on a second circuit court review of an administrative agency's decision when the first review resulted in a remand. *Zayre* and *Breedon* were decided under the Administrative Procedure Act, but the rationale is applicable to this case. We see no difference between the pertinent provisions of that Act [12] and Md. Rule 7–209, which governs this case. Rule 7–209 provides:

> Unless otherwise provided by law, the court may dismiss the action for judicial review or may affirm, reverse, or modify the agency's order or action, remand the action to the agency for further proceedings, or an appropriate combination of the above.

If and when a case returns to the circuit court after any "further proceedings" under the Administrative Procedure Act or Rule 7–209, it is a continuation of the prior proceeding.

[10] We now turn to the merits of appellants' second issue. The Baltimore County Charter, Article VI provides for the

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12. *See* Md.Code, State Government, § 10–222(h). A court may affirm, reverse, or modify the decision or "remand ... for further proceedings."

establishment, powers, and functions of the Board of Appeals. Section 602(e) provides:

> (e) The county board of appeals shall have original and exclusive jurisdiction over all petitions for reclassification.

Baltimore County Zoning Regulation § 1A00.3.A.1.a, by its terms, applies to the "zoning commissioner." Even if the regulation were applicable to the Board of Appeals, it would be invalid for two reasons. First, the Charter prevails over the Code in case of a conflict. *See* Baltimore County Charter § 1010. Second, § 2–356, part of the Baltimore County Code, requires that the Board consider the availability of public water and sewer but does not mandate its availability within any prescribed period of time. The Code prevails over regulations in the event of a conflict. *See* Baltimore County Code § 26–117.

With respect to the narrow issue of the availability of public water and sewer, the finding of the Board is supportable in that it is apparently uncontradicted that public water and sewer is unnecessary for appellee's proposed development.

* * *

III.

* * *

With respect to appellants' third issue, appellee again argues that the issue is not before us for the same reasons asserted with respect to appellants' second issue. The discussion in that context applies with equal force here.

[11] Regarding the merits, appellants argue that the finding of mistake rests primarily on the testimony of one witness, George Gavrelis. Appellants argue that Gavrelis's opinions were conclusory or quasi-conclusory and, thus, insufficient. Asserting that this case is controlled by this Court's decision in *People's Counsel v. Beachwood*, 107 Md.App. 627, 670 A.2d 484 (1995), appellants argue that the petitions in this case and in *Beachwood* both premise mistake on conclusory planning opinions, documented site plans, a planning staff report, advice in the master plan, economic needs, and management of sewerage systems.

[12–14] In order to find legal mistake, there must be evidence that assumptions or premises relied on by the County Council were invalid. *Beachwood*, 107 Md.App. at 645, 670 A.2d 484. This situation is different from the exercise of bad judgment based on complete and accurate information. *Id.* The burden is on the entity seeking reclassification to show the conditions that made the comprehensive zoning incorrect and the failure of the Council to have considered those conditions. *Id.* Hardship and economic disadvantage are insufficient; in that connection, there must be a showing that the owner is deprived of all reasonable use of his property. *Beachwood*, 107 Md.App. at 653, 670 A.2d 484. An expert opinion alone is insufficient unless there are facts to support it.

Although the recommendation of the Planning Board and the consistency of the proposed use with the Master Plan would have been insufficient alone, the Board, in this case, found that it would have been impossible for the County Council to have known of or to have foreseen in 1992 that the septic systems would fail, that the parcels could only be developed if combined, and that in fact they would be combined for that purpose. Whether we would have reached the same conclusion based on those facts is not the issue. The question is whether there is legally sufficient evidence to support the Board's conclusion, and while it barely meets the test, we hold that it does so.

IV.

[15] Board Rule 1(c) provides that, with exceptions not relevant here, three members of the Board must sit for the purpose of conducting the business of the Board. Relying on *Clark v. County Board of Appeals for Montgomery County*, 235 Md. 320, 201 A.2d 499 (1964), appellants argue that the rule requires a decision by three members who were at trial.

Clark involved an appeal from an order affirming a decision by the Montgomery County Board of Appeals granting a special exception. The Montgomery County Code required a public hearing prior to decision and required that at least

three members must concur in all decisions. Two members were present at the hearing and a third member concurred in the decision after reading the transcript and reviewing the exhibits.

The Court of Appeals discussed the practice in the federal system and in some states for absent members of administrative agencies to participate in decisions based on a review of transcripts. The Court also recognized the practice in some states of requiring the presence at the hearing of all members who participated in the decision. In the case before it and based on its construction of the county ordinance, the Court concluded that at least enough members to constitute a quorum for decision should be present at the public hearing.

On remand of the case before us, the first decision issued by the one remaining panel member was subsequently rescinded and is not before us. The decision by the three members that was ultimately appealed and is before us was rendered in accordance with the limited purpose contained in the order for remand entered by the circuit court. Fulfillment of that purpose did not require a new hearing.

[16] The Board recognized that there was no adverse expert testimony on the issue on remand and that the issue was of a technical nature. The Board noted that the evaluation of lay witness credibility and demeanor was not a material factor in determination of the issue before it. We believe that the Board could have properly premised its decision on a review of the transcript and the remainder of the written record. In our view, the holding in *Clark* has not been violated when a quorum participates in the proceedings on remand and when an assessment of credibility of witnesses is not required. *See Prince George's County*, 70 Md.App. at 400–402, 521 A.2d 779; *Van Teslaar v. Bender*, 365 F.Supp. 1007 (D.Md.1973).

V.

[17] Appellants' final contention is that the second Board opinion did not articulate findings as required by Baltimore

County Code § 2–356(j)(2). We disagree. The Board found that reclassification of the Property would not impact transportation facilities, utilities, and schools, would not impact solid waste disposal facilities, would not impact the capital program, would not impact recreational facilities, schools, or population trends, and would not adversely affect water supply facilities and the environment. In short, the Board addressed the pertinent requirements contained in § 2–356(j)(2).

[18, 19] Appellants have filed a motion for sanctions pursuant to Rule 8–206(e). The basis of the motion is that appellee included in the appendix to its brief copies of the information reports filed in this Court after a notice of appeal was filed from the first circuit court decision and prior to its voluntary dismissal. Information in reports filed pursuant to Rule 8–206 is confidential and its purpose is limited to settlement negotiations. We have not considered the information reports in the resolution of this appeal. We perceive no bad faith on the part of appellee or its counsel, and we deny the motion for sanctions.

JUDGMENT AFFIRMED; COSTS TO BE PAID BY APPELLANTS.

* * *

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704 A.2d 499

MARYLAND STATE DEPARTMENT OF EDUCATION

v.

Douglas SHOOP.

No. 614, Sept. Term, 1997.

Court of Special Appeals of Maryland.

Jan. 13, 1998.

Automobile mechanics instructor in Maryland Correctional Training Center (MCTC) appealed his suspensions and

RECEIVED POST-HEARING
DAY ONE

Patrick A. Ford
7925 Chipper Road
Baltimore, MD. 21244

November 9, 2001

01 NOV 13 PM 3:01

Mr. Charles L. Marks, Chairman
Baltimore County Board of Appeals
Old Courthouse, Room 49
400 Washington Avenue
Towson, MD. 21204

Re: Penrose Properties Zoning Reclassification
Case No. CR-02-120-A

Sir:

I have only resided at 7925 Chipper Road for approximately one year. I was recently informed by one of my neighbors of a proposed Senior Citizen complex located in our immediate area. There are several areas of concern. First, the immediately area already has a mixture of new, fairly new and old communities and housing. To allow a senior citizen complex would crowd the already cramped space. Secondly, Rolling Road at the proposed site can not accommodate more traffic. At present traffic jams are in the peak morning and evening hours. Last, what will this do to the property value of the homeowners. People come to areas and communities, such as this one, to own a home and escape from the hustle and bustle of everyday life.

I understand senior citizens deserve a place to stay, but I don't think the complex should be built at the proposed site. I feel the complex would crowd the existing community and add to the existing problem of traffic. I am sure there are more suitable sites in the area.

Sincerely,

Patrick A. Ford

Patrick A. Ford

October 29, 2001

Chairman,
County Board of Appeals
Courthouse
400 Washington Avenue
Towson, Maryland

Re: Rolling Road Zoning Case scheduled for October 30, 2001

Dear Mr. Chairman:

As a resident of the surrounding area in which this zoning change has been proposed, we are very concerned about the congestion on Rolling Road, which already has an extreme amount of traffic on the stretch between Clays Lane and Liberty Road. It is very narrow, so much so that a car behind a car waiting to make a left hand turn, cannot go around. Also, because of the increase in housing, the entrances onto and exits from Rolling Road are becoming more and more dangerous. There are long lines of traffic waiting to get through the light at the intersection of Windsor and Rolling Roads at the morning and evening commute. Entering and exiting the Arlington Baptist Church and School complex has also become quite a problem. The proposed complex would significantly add to the increased congestion on an already too narrow road. Another concern is the traffic that cuts through to Rolling Road from Liberty Road via Abbie Place.

We ask for every consideration to keep further development in this area to a minimum.

Thank you,

John W Brown Joanne M. Brown

John and Joanne Brown
3508 Abbie Place
Baltimore, Maryland 21244
410-655-2473

cc: Peter Zimmerman
Peoples Council

RECEIVED
POST-APPEAL

X10

Liberty Randallstown Coalition, Inc.

"United for the Future"

ELLA W. CAMPBELL
President

CHERYL PASTEUR
First Vice President

KENNETH N. OLIVER
Second Vice President

BILL OBRIECHT
Third Vice President

ROBERT W. FISCHER
Treasurer

MIKE CHAPMAN
Recording Secretary

CHRISTINE CYPRESS
Financial Secretary

BARRY L. SCHLEIFER
Executive Director

October 25, 2001

Ms. Catherine Caskey
Pennrose Properties, Inc.
901 Druid Park Lake Drive
Suite 100
Baltimore, Maryland 21217

Re: 3134 Rolling Road

Dear Ms. Caskey:

Please accept this letter from Liberty Randallstown Coalition to be your partner in the redevelopment of 3134 Rolling Road, and to be the coordinator of the tenant services that will provided at the finished development. We look forward to building on the success of recent developments in the area, and, further, to help with adding much needed senior housing. We have sent you a detailed tenant service package, which include all our services to be provided at the new development. We understand that we will receive $50,000 (over a 5 year period) for this work.

The community believes that this project will provide quality housing conducive to the revitalization of the neighborhood. Therefore, the Liberty Randallstown Coalition is in support of the development teams' plan to newly construct 119 units of new, affordable, senior housing at the subject site.

Sincerely,

Barry L. Schleifer
Executive Director

Liberty Road Community Council
2137 Gwynn Oak Ave.
Baltimore, Md. 21207

01OCT 29 PM 2:25

October 25, 2001

Board of Appeals
400 Washington Ave. Room 49
Towson, Md. 21204

Re: CR-02-120-A

The Liberty Road Community Council has supported the Housing for the Elderly at 3134 Rolling Road. Since that time questions have been raised about whether multifamily units for residents of any age could be operated at that address at some future date. In addition concerns have been expressed about the size of the buffer between the building and the adjacent DR 5.5 properties.

Consequently I have requested that several provisions be part of the proposal in order to protect the neighbors. These are included in the attached document.

Baltimore County has had a number of meetings with the developer about this project and I am sure the county has a strong interest in protecting the community residents. Therefore I am asking you to assist me in insuring that Baltimore County includes these safegaurds for our community.

Sincerely,

William Obriecht

William Obriecht, President.

Comments on the Proposed Rolling Road Senior Community @ 3134 Rolling Road

The purpose of Zoning is to protect the quality of life of the residents while meeting the needs for the various uses needed for a society. This proposal meets a need for senior housing but does impact the surrounding area which is DR 5.5 with some BR to the south.

The following should be part of the proposal in order to protect the neighbors:

1. Both the developer and Baltimore County should provide a concrete statement that the property can be used only for the stated purpose of senior housing and that the property will revert to DR 5.5 if senior housing does not succeed.

2. There should be no exceptions to the regular protections such as buffer zones and landscaping. The project should include 50 foot landscaped buffers on the north and south sides of the building.

3. The number of residents for the development has been reduced to 119. Since DR 10.5 would allow 118 residents, the added protection for the neighbors of reclassifying the property to DR 10.5 should be accomplished as soon as possible.

4. There should be a commitment by Baltimore County that the Liberty Road community will receive no more than 25% more residential units for seniors than one would expect based on the population of the Liberty Road community compared to the population of Baltimore County. If Liberty road has 10% of the population, no more than 12.5% of the residential units in Baltimore County will be approved for the Liberty Road community.

William Obriecht, President LRCC

Development of such housing can have a positive impact on an older community as the development is seen as evidence of the continued desirability of the neighborhood.

There is a need for housing affordable to moderate income seniors in this community, and the proposed project would contribute to the overall enhancement of the neighborhood.

Liberty Road Community Council
2137 Gwynn Oak Ave.
Baltimore, Md. 21207

01OCT 29 PM 2:25

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Board of Appeals
400 Washington Ave. Room 49
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William Obriecht, President LRCC

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2137 Gwynn Oak Ave.
Baltimore, Md. 21207

01 OCT 26 AM 11:48

October 25, 2001

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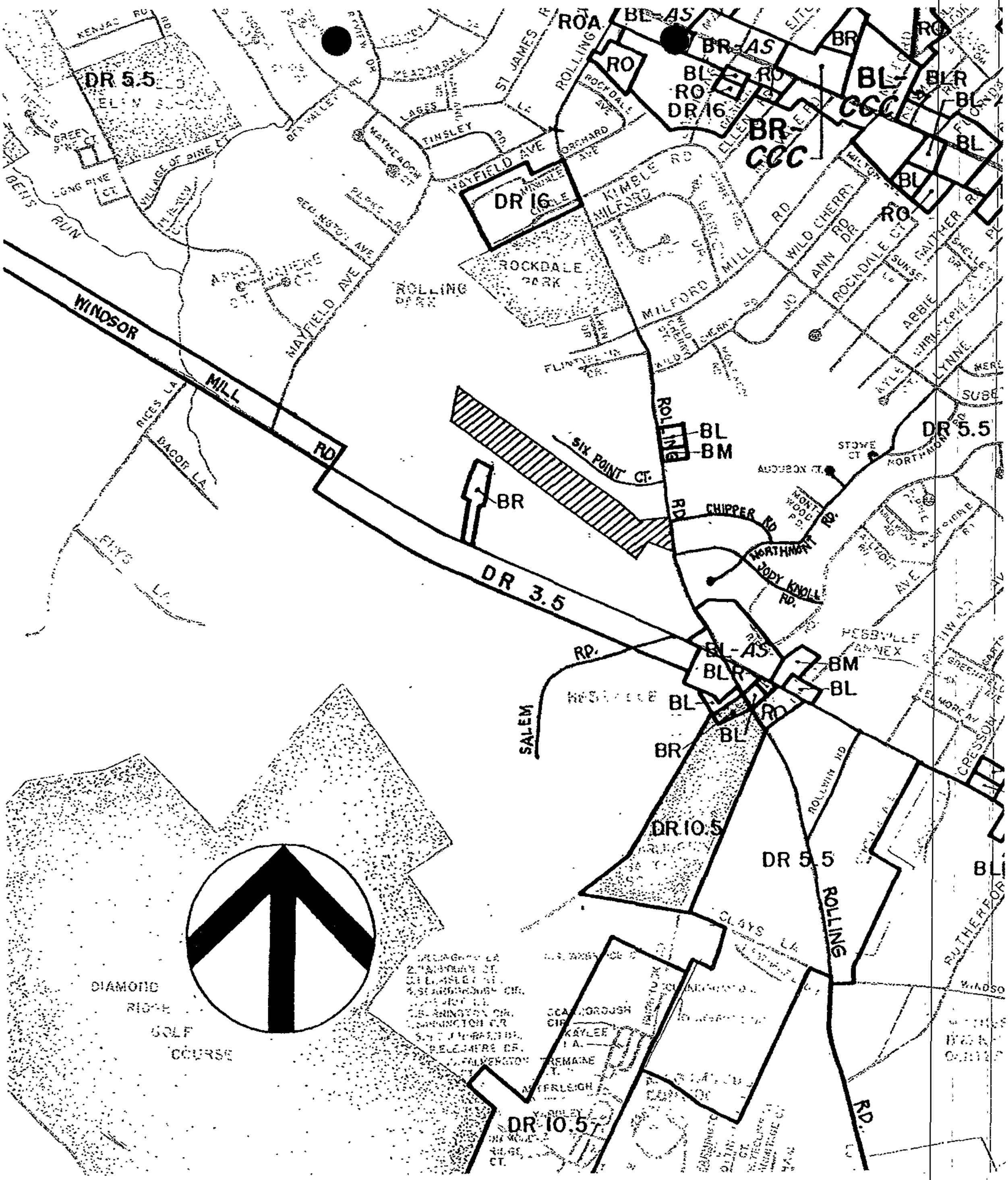
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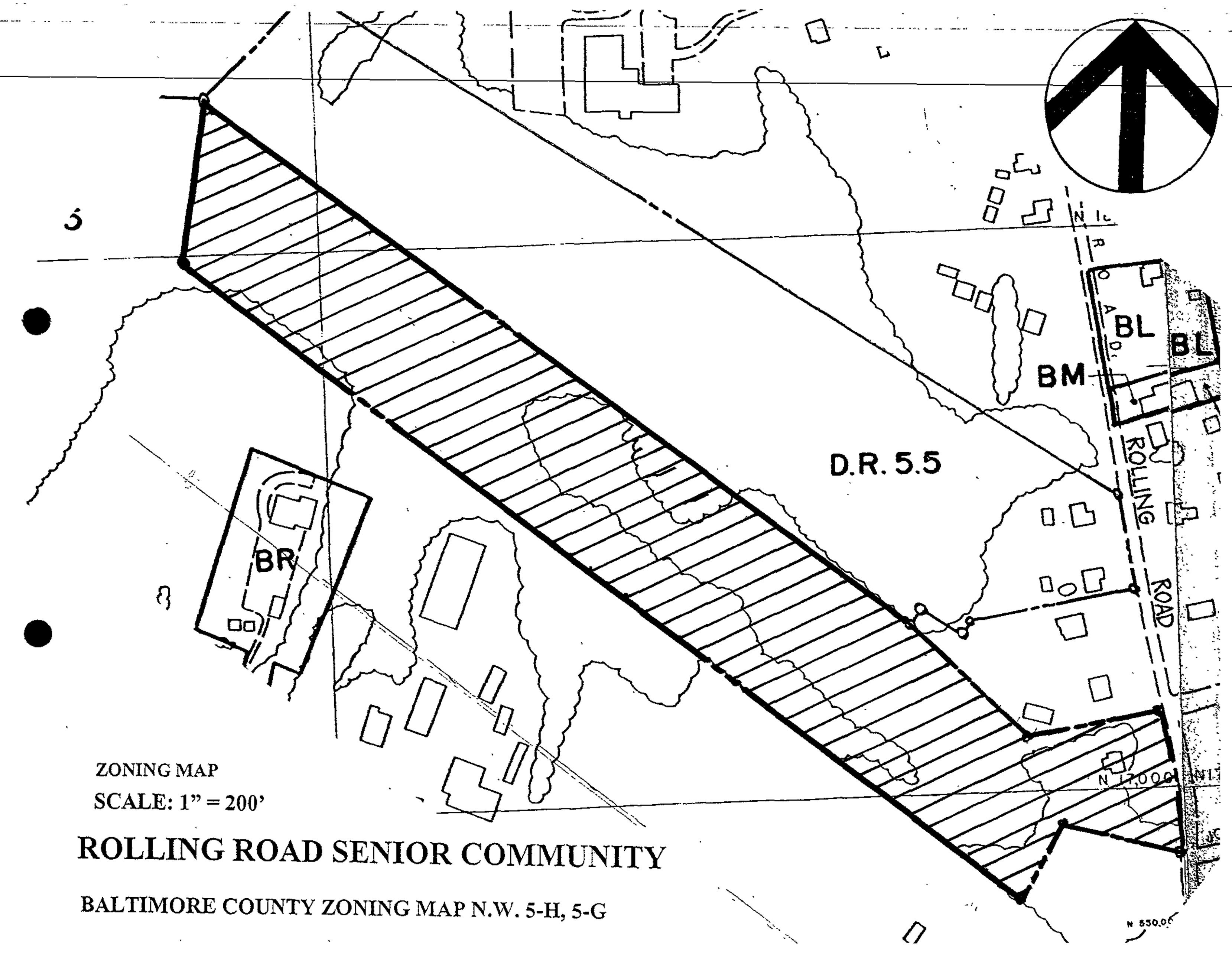
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William Obriecht, President LRCC


DR 5.5
DR 16
DR 16
BR
BL
BL
BL



ZONING MAP

SCALE: 1" = 200'

ROLLING ROAD SENIOR COMMUNITY

BALTIMORE COUNTY ZONING MAP N.W. 5-H, 5-G

CR-02-120

D.R. 5.5

POSTED
10-15-01
10:30AM
OF

ADC MAP 32 K2

Sign needs to be up
by 10/15/01

D.R. 3.5

N 18,000

N 17,000

N 550,000

BL

BL

BM

BM

ROLLING RD

CHIPPER

JODY

KNOLL

WINDSOR MILL RD

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 9, 2001

2001 NOV 9 PM 2:42
BALTIMORE COUNTY, MARYLAND

Charles L. Marks, Panel Chairman
County Board of Appeals
of Baltimore County
400 Washington Avenue, Room 49
Towson, MD 21204

Hand-delivered

Re: Petitions for Reclassification and Variance
3134 Rolling Road
W/S Rolling Rd between Chipper Rd and Jody Knoll Rd,
2nd Election District, 2nd Councilmanic
Legal Owner: Dr. Mirza Hussain Ali Baig
Contract Purchaser: Pennrose Properties, Inc.
Case No.: CR-02-120-A

Dear Mr. Marks:

As instructed by the Board at the conclusion of the October 31, 2001 hearing, we enclose for the Board's consideration the following cases:

Rezoning Cases

1. People's Counsel for Baltimore County v. Beachwood I L.P., 107 Md.App. 627, 670 A.2d 484 (1995) – Comprehensive Zoning; Mistake; Expert testimony.

2. Coppolino v. County Board of Appeals, 23 Md.App. 358, 328 A.2d 55 (1974) – Baltimore County's Quadrennial Comprehensive Zoning; Mistake.

3. Heller v. Segner, 260 Md. 393, 272 A.2d 374 (1971) – Rezoning; Mistake; Need; Spot zoning.

4. Miller v. Abrahams, 257 Md. 126, 262 A.2d 524 (1970) – Rezoning; Mistake; Need; Spot zoning.

5. Minor v. Shifflett, 252 Md. 158, 249 A.2d 159 (1969) – Rezoning; Spot zoning.

6. Hewitt v. County Comm'rs. of Baltimore County, 220 Md. 48, 151 A.2d 144 (1959) – Rezoning; Spot zoning.

7. Cassel v. Mayor & City Council of Baltimore, 195 Md. 348, 73 A.2d 486 (1950) – Rezoning; Spot zoning.

Variance Cases

8. Easter v. Mayor & City Council of Baltimore, 195 Md. 395, 73 A.2d 491 (1950) – Variances; Uniqueness; Difficulties and hardships.

9. Daihl v. County Board of Appeals, 258 Md. 157, 265 A.2d 227 (1970) – Variances; Difficulties and hardships; Financial hardships.

We also enclose the BCZR Section 101 definition of "Environmental Impact Statement" (EIS) so that the Board may review the sufficiency of the EIS filed by Petitioner.

Thank you for your consideration.

Very truly yours,

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio
Deputy People's Counsel

PMZ/CSD/caf
Enclosures

cc: G. Scott Barhight, Esq., Attorney for Petitioners

§ 541(c)(3) is likewise zero. The circuit court was thus correct in holding that Hartford has no obligation to Scott.

In this Court, General Accident argues that *the terms of the Hartford policy*, irrespective of § 541(c)(3), entitle Scott to coverage. General Accident did not present this argument to the circuit court. Therefore, we decline to consider it here. *See* Md.Rule 8–131(a).

JUDGMENT AFFIRMED. COSTS TO BE PAID BY APPELLANT.

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670 A.2d 484

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, et al.

v.

BEACHWOOD I LIMITED PARTNERSHIP.

No. 239, Sept. Term, 1995.

Court of Special Appeals of Maryland.

Dec. 1, 1995.

Reconsideration Denied Jan. 30, 1996.

People's counsel for county and neighbors of tract in question appealed decision of county board of appeals granting zoning reclassification which lowered permitted residential density as requested by developer. The Circuit Court, Baltimore County, John Grason Turnbull, J., affirmed. Counsel and neighbors appealed. The Court of Special Appeals, Moylan, J., held that: (1) evidence before board was not sufficient to generate fairly debatable issue that county council made mistake as to zoning of tract; (2) in granting reclassification, board failed to satisfy county code's requirements as to factors that must be considered in making reclassification, and as to written findings required for reclassifications involving land within certain critical area; and (3) reclassification would not be treated as instance of contract zoning.

Reversed.

Cathell, J., concurred and filed opinion.

1. Zoning and Planning ⇐672

As policy decision made by legislative branch of charter county, comprehensive zoning required no further justification to support it; it was presumptively correct.

2. Administrative Law and Procedure ⇐751

Ordinarily, when judicial branch of government is called on to review decision made by administrative agency, the watchword is deference.

3. Constitutional Law ⇐70.1(1), 72

Courts, at all levels, are enjoined not to substitute their judgment for that of the coordinate branch of government to whom such judgment has been, in our scheme of divided government, primarily entrusted.

4. Administrative Law and Procedure ⇐788

Courts must strive to uphold decision of administrative agency, if there is any evidence which can be said to have made issue for decision by agency fairly debatable; the same standard applies in both Court of Special Appeals and Circuit Court.

5. Zoning and Planning ⇐605

Deference due to administrative body was exponential, where trial court and Court of Special Appeals were called on to determine whether county board of appeals was appropriately deferential when receiving county council's zoning decision.

6. Zoning and Planning ⇐354

County board of appeals could not substitute its judgment for that of county council, even if it, had it been so empowered, might have made diametrically different decision; circumstances under which it might overturn or countermand decision of county council were narrowly constrained, and it could never simply second-guess.

7. Counties ⇐58
Zoning and Planning ⇐354

Deference that is due by courts and county board of appeals to decisions of county council was explained in part by Jeffersonian homage that we pay to legislative branch of government generally; for ordinary rightness or wrongness of their decisions, legislators are answerable only to their electorates.

8. Zoning and Planning ⇐151

For county board of appeals to believe, as value judgment or policy determination, that county council decision under

review was wrong, was not ipso facto to believe that wrongful decision was necessarily "mistake" or was based on "error," for purposes of ordinance providing for reclassification by board if county council established prior classification in error. Baltimore County, Md. § 2–356(j).

9. Zoning and Planning ⇐233

"Mistake" and "error" are interchangeable terms as used in zoning law.

10. Zoning and Planning ⇐199

County council's failure to justify change it made from status quo when it enacted comprehensive rezoning could not constitute mistake or error, without proper finding that change was unjustified, for purposes of ordinance providing for reclassification by county board of appeals if prior classification was established in error; council was under no obligation to give specific reason for change. Baltimore County, Md. § 2–356(j).

11. Zoning and Planning ⇐151

Presumption of validity accorded to comprehensive zoning is overcome, and error or mistake is established, for purposes of ordinance providing for reclassification by county board of appeals if county council has established prior classification in error, when there is probative evidence to show that assumptions or premised relied upon by council at time of comprehensive rezoning were invalid. Baltimore County, Md. § 2–356(j).

12. Zoning and Planning ⇐151

Error can be established, for purposes of ordinance providing for reclassification by county board of appeals if county council has established prior classification in error, by showing that, at time of comprehensive zoning, council failed to take into account then existing facts, or projects or trends which were reasonably foreseeable of fruition in the future, so that council's action was premised initially on misapprehension. Baltimore County, Md. § 2–356(j).

13. Zoning and Planning ⇐151

Finding of "mistake" or "error" in zoning classification is not so much concerned with logical validity or merit of the ultimate conclusion-drawing as it is with adequacy and accuracy of factual premises that underlie the conclusion-drawing; conclusion based on factual predicate that is incomplete or inaccurate may be deemed mistake or error, but allegedly aberrant conclusion based on full and accurate information is simply case of bad judgment, which is immunized from second-guessing.

14. Zoning and Planning ⇐151

Those seeking zoning reclassification from county board of appeals on ground that county council established comprehensive zoning classification in error have burden of showing both the then-existing conditions that allegedly made comprehensive zoning incorrect, and the literal failure of county council to have considered those conditions. Baltimore County, Md. § 2–356(j).

15. Zoning and Planning ⇐151

It is presumed, as part of presumption of validity accorded comprehensive zoning, that at time of adoption of comprehensive zoning map, county council had before it and considered all relevant facts and circumstances then existing, for purposes of ordinance providing for reclassification by county board of appeals if council has established prior classification in error. Baltimore County, Md. § 2–356(j).

16. Zoning and Planning ⇐151

To establish error based upon county council's failure to take existing facts or events reasonably into account, for purposes of ordinance providing for reclassification by county board of appeals if council has established prior classification in error, it is necessary not only to show facts that existed at time of comprehensive zoning, but also which, if any, of those facts were not actually considered by council; this evidentiary burden can be accomplished by showing that specific physical facts were not readily visible or discernible at time of comprehensive zoning. Baltimore County, Md. § 2–356(j).

17. Counties ⇐58

Zoning and Planning ⇐605

When reviewing legislative action by county council, such as comprehensive zoning, even the courts, with broad inherent powers not vested in county board of appeals, are limited in their power of review.

18. Zoning and Planning ⇐354

County board of appeals may not pass on wisdom of zoning ordinances.

19. Zoning and Planning ⇐157, 675

Broad test of validity of comprehensive rezoning is whether it bears substantial relationship to public health, comfort, order, safety, convenience, morals and general welfare, and such zoning bears strong presumption of validity and correctness.

20. Zoning and Planning ⇐157, 161

Property owner has no vested right to continuance of zoning status of his or her neighboring property, but merely the right to rely on rule that change will not be made unless it is required for public good.

21. Counties ⇐58

Courts have ultimate authority to determine whether action of county council was arbitrary, capricious, discriminatory, or illegal.

22. Zoning and Planning ⇐354

County board of appeals' original jurisdiction over zoning reclassification petitions was not coterminous with appellate jurisdiction over zoning actions of county council. Baltimore County Charter, Md. § 602(e); Baltimore County, Md. § 2–356(a, j).

23. Zoning and Planning ⇐167.1

Evidence before county board of appeals was not sufficient to generate fairly debatable issue that county council made "mistake" as to zoning of certain tract in comprehensive rezoning, and board thus improperly granted reclassification

to allow for greater residential density; mistake was not indicated by fact that comprehensive zoning departed from earlier comprehensive zonings, fact that zoning of tract was out of character with surrounding zoning, fact that county master plan may have suggested more intensive zoning, or fact that more intense residential zoning would have made development of tract more economically advantageous to property owner, and, moreover, none of those circumstances was unknown to council at time of comprehensive rezoning. Baltimore County, Md. § 2–356(j).

24. Zoning and Planning ⇐167.1, 199

In granting reclassification of certain tract to allow for greater residential density, county board of appeals failed to satisfy county code's requirements as to factors that must be considered in making reclassification, and as to written findings required for reclassifications involving land within certain critical area; board's incorporation of expert's testimony was inadequate to fulfill such requirements. Baltimore County, Md. § 2–356(j)(2), (j)(3)(b).

25. Zoning and Planning ⇐151

In review of zoning reclassification, it was not responsibility of Court of Special Appeals to search record before county board of appeals in effort to construct possible rationale that might support reclassification.

26. Zoning and Planning ⇐160

Zoning reclassification by county board of appeals would not be treated as instance of contract zoning, since neither the comprehensive zoning of county council nor the zoning reclassification contained any forbidden quid pro quo.

27. Zoning and Planning ⇐160

In the broadest of senses, both "contract zoning" and "conditional zoning" involve some sort of understanding between governmental unit and developer, whereby the doing of certain acts by developer will result in favorable rezoning treatment by governmental unit.

Peter Max Zimmerman (Carole S. Demilio, on the brief), Towson, for appellant, People's Counsel.

Francis X. Borgerding, Jr. (DiNenna and Breschi, on the brief), Towson, for appellants, Weber and Dembow.

John B. Gontrum (Romadka, Gontrum & McLaughlin, P.A., on the brief), Baltimore, for appellee.

Argued before MOYLAN, WENNER and CATHELL, JJ.

MOYLAN, Judge.

The appellants, People's Counsel for Baltimore County and various neighbors of the property in question, initially appealed to the Circuit Court for Baltimore County the decision of the County Board of Appeals to grant a Petition for a Zoning Reclassification that had been submitted by the appellee, the Beachwood I Limited Partnership (Beachwood). In the circuit court, Judge John Grason Turnbull, II affirmed the decision of the Board of Appeals. This appeal has followed. The appellants present, in effect, three questions for resolution:

1) Was there substantial evidence to support the finding of the Board of Appeals that the County Council had made a mistake in its earlier comprehensive zoning decision?

2) Did the Board of Appeals fail to make the specific findings necessary to justify its decision?

3) Did the Board of Appeals participate in impermissible "contract zoning" in contravention of both the Maryland case law and Baltimore County regulations?

The 148–acre property, of which 144.9 acres were the subject of the reclassification petition, is located in the North Point area of southeastern Baltimore County along the Back River, a tributary of the Chesapeake Bay. The property is bound to the west by Morse Lane (a county road) and to the north and east by a small road called Todds Point (or "Shore") Road. The property is reached via a nearby intersection between Morse Lane and North Point Boulevard, a large state

road with between four and six lanes. The intersection lies just to the south of the property.

Zoning History of the Tract

Prior to 1984, the property was zoned M.H.–I.H. (Manufacturing, Heavy—Industrial, Heavy), the most intense zoning classification in Baltimore County. The property was owned through the 1970's by the Bethlehem Steel Corporation. In the early 1980's, subsequent owners made efforts to develop the tract industrially, but the efforts came to naught. The tract is, in major measure, an isolated and undeveloped area that has been passed over by the industrial development of Sparrows Point and North Point Boulevard.

As part of its quadrennial comprehensive zoning process, the Baltimore County Council in 1984 changed the zoning classification of the property from M.H.–I.H. to D.R. 5.5, a classification that allows for residential development at a density of up to 5.5 dwelling units per acre. As part of the subsequent 1988 comprehensive zoning, the County Council continued the zoning classification of D.R. 5.5.

In 1988, the Chesapeake Bay Critical Areas Program went into effect and the subject property, located as it was near a tributary river, was designated a "limited development area." In such a limited development area, the permitted residential density ranges from a low of 1 unit per 5 acres up to a high of 4 units per acre. The then existing D.R. 5.5 zoning was denser than what was allowed in a limited development area.

Comprehensive Zoning of 1992

[1] As part of the comprehensive zoning of 1992, the Baltimore County Council changed the zoning on the subject property from D.R. 5.5 to D.R. 1, thereby lowering the permitted residential density to 1 dwelling unit per acre. As a policy decision made by the legislative branch of a charter county, that comprehensive zoning requires no further justification to support it. It is presumptively correct. *Trainer v. Lipchin*, 269 Md. 667, 672–73, 309 A.2d 471 (1973); *Stratakis v. Beauchamp*, 268 Md. 643, 652–53, 304 A.2d 244 (1973). To place the remaining discussion in some context, however, we shall note at least several criticisms that could arguably be made of that 1992 legislation, just as we shall also note several arguments that could be made in support of it.

Two neighboring communities, Edgemere and Todd's Point, are both zoned D.R. 5.5. Land immediately to the west of the subject property is zoned for manufacturing and industrial purposes. The nearest significant D.R. 1 zone in Baltimore County is located some five miles away.

On the other hand, the community of Edgemere is separated from the subject property by a body of water, Greenhill Cove; the small community of Todd's Point, moreover, was in existence before either zoning or the Critical Area law came to Baltimore County. It is also of significance that a density of 1 unit per acre falls, in terms of the Chesapeake Bay Critical Area requirements, about halfway between the lowest permitted density of one unit per 5 acres and the highest permitted density of 4 units per acre. It may also be noted that other undeveloped areas along the shoreline of Back River are in one instance zoned D.R. 1 and in other instances subject to the more restrictive zoning of R.C. 20, a Resource Conservation Zone, permitting only 1 dwelling unit per 20 acres.

In any event, the County Council's comprehensive zoning of 1992 was presumptively correct and it is, therefore, the *status quo ante* from which we proceed in assessing the propriety of any changes made therefrom.

The County Board of Appeals

The comprehensive zoning of the subject parcel as D.R. 1 was promulgated by the Baltimore County Council as part of the Comprehensive Zoning Map it adopted on October 15, 1992. Four-and-a-half months later, on March 1, 1993, Beachwood petitioned the County Board of Appeals to reclassify the property from D.R. 1 to D.R. 3.5. It assigned as its reason for the reclassification the alleged error by the County Council in the Comprehensive Zoning Map process of 1992. The thrust

of the allegation of error was that the 1992 "zoning is out of character with the zoning of the surrounding area." It was further alleged that it would be an economic hardship on the developer, effectively amounting to confiscation, to be required to develop the property at so low a level of residential density:

> To be developed the site will require the construction of a sewage pumping station. Such facilities are impractical at the density of one dwelling per acre as limited in a D.R. 1 zone. The zone has the practical effect of making the property commercially undevelopable.

The Board of Appeals heard two days of testimony on the proposed reclassification, on November 2 and November 24, 1993. On January 21, 1994, the Board, by a vote of 2–to–1, granted Beachwood's petition and reclassified the property as D.R. 3.5. The majority opinion found as a matter of fact that the County Council was in error when it zoned the property D.R. 1:

> The Board has carefully reviewed and considered the evidence and testimony presented in these proceedings, and finds that the testimony presented by the Petitioner and, particularly, the expert testimony given by Mr. Crozier with his supporting reasons, supports *a finding of fact that the subject property was erroneously zoned by the County Council*, and that there is no logical reason for the property to be down-zoned from D.R. 5.5 to D.R. 1. We find that the facts presented by the Petitioner in its case indicate that *the D.R. 1 zoning is in fact in error*, and the Board will therefore find that the requested reclassification from D.R. 1 to D.R. 3.5 should be granted and will so order. (Emphasis supplied.)

The dissenting opinion concluded that no "error" had been committed by the County Council, as that term of art is defined in zoning law:

> I have no doubt that the D.R. 1 zoning placed on this site following the recommendation of the Planning Board resulted from the intentional action of the Council and not as a result of any mistake, nor as the result of an error as the same is defined in the body of case law in Maryland interpreting that zoning concept.

The dissenting Board member concluded that the D.R. 1 zoning classification

> result[ed] from the contemplative and deliberative process of the County Council, and not from any mistake or error, particularly in light of the fact that the D.R. 1 zoning permits a reasonable use of the land and residential development.

People's Counsel, along with protesting neighbors, appealed that reclassification to the Circuit Court for Baltimore County. On October 12, 1994, the Circuit Court ruled that the issue of whether the County Council had made an error or mistake in the 1992 comprehensive zoning was fairly debatable. It, therefore, affirmed the reclassification order of the County Board of Appeals.

Deferential Review: To Whom Is Due the Deference?

[2–4] Ordinarily, when the judicial branch of government is called on to review a decision made by an administrative agency, the watchword is deference. Courts, at all levels, are enjoined not to substitute their judgment for that of the coordinate branch of government to whom such judgment has been, in our scheme of divided government, primarily entrusted. *Red Roof Inns, Inc. v. People's Counsel*, 96 Md.App. 219, 224, 624 A.2d 1281 (1993). Courts must strive, rather, to uphold the decision of the administrative agency, if there is any evidence which can be said to have made the issue for decision by the agency fairly debatable. *Eger v. Stone*, 253 Md. 533, 542, 253 A.2d 372 (1969). "[T]he same standard applies in both this court and the circuit court." *Relay v. Sycamore*, 105 Md.App. 701, 713, 661 A.2d 182 (1995).

[5, 6] In the less routine institutional configuration of this case, however, the deference that is due is exponential. Both the trial court and this Court are called upon to determine, albeit deferentially, whether the Baltimore County Board of Appeals was, in its turn, appropriately deferential to the

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

[7] The deference that is due by all, including the County Board of Appeals, to the decisions of the County Council is explained in part by the Jeffersonian homage that we pay to the legislative branch of government generally. Within its appropriate governmental sphere, the Baltimore County Council is the legislature for the citizens of Baltimore County. MARYLAND CONSTITUTION, Art. XI–A, § 3; *Ritchmount Partnership v. Board of Supervisors*, 283 Md. 48, 62–63, 388 A.2d 523 (1978) ("The effect of the language in the opening sentence of Sect. 3 is to render the council the ultimate repository of all legislative power possessed by the county.") When it undertakes, every four years, its comprehensive zoning function, it speaks with the voice of the people. *Hyson v. Montgomery County*, 242 Md. 55, 63, 217 A.2d 578 (1966). As with all legislative bodies, it may sometime make policy decisions that are, in the eyes of some observers, wrong. For the ordinary rightness or wrongness of their decisions, however, legislators are answerable only to their electorates at the next election—not to the courts and not to the County Board of Appeals.

Even in the face of comprehensive zoning or rezoning by the County Council, however, there are certain powers delegated to the County Board of Appeals to effect zoning reclassifications with respect to particular pieces of property. The BALTIMORE COUNTY CODE (1978), § 2–356(a)(1) provides, in pertinent part:

> The board of appeals shall have the power to make a change as to the district, division, or zone within which a particular piece of property is classified (zoning reclassification) as hereinafter provided.

Section 2–356(j) then imposes the limits on that power. The Board of Appeals may reclassify *only* if it is able to find at least one of two possible preconditions satisfied. Subsection (j) provides, in pertinent part:

> Before any property is reclassified pursuant to this section, the board of appeals must find:
>
> (1) That ... there has occurred a substantial change in the character of the neighborhood in which the property is located since the property was last classified *or that the last classification of the property was established in error.* (Emphasis supplied.)

It is the second of the two preconditions that is involved in this case. The petition for the reclassification came a scant 4½ months after the adoption of the 1992 Comprehensive Zoning Map, and it is clear that no substantial change occurred in the character of the neighborhood during those four months. Indeed, Beachwood made no allegation of substantial change. See, moreover, BALTIMORE COUNTY CODE (1978), § 2–356(k). The only question is whether the County Council was guilty of a *mistake* or *error* in the course of its 1992 comprehensive zoning. The issue is precisely as we posed it in *Boyce v. Sembly*, 25 Md.App. 43, 44, 334 A.2d 137 (1975):

> 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.

The Strong Presumption of Validity

[8] When it undertakes to grant a zoning reclassification, the Board of Appeals does not enjoy the luxury of writing on a clean slate. For it to believe, as a value judgment or as a policy determination, that the County Council decision under review was wrong is not *ipso facto* to believe that the wrongful decision was necessarily a "mistake" or was based on an "error."

The deference in this regard due to the decision of the County Council by the Board of Appeals was well expressed by the Court of Appeals in *Stratakis v. Beauchamp*, 268 Md.

643, 304 A.2d 244 (1973). In that case, as here, the Baltimore County Board of Appeals issued a zoning reclassification pursuant to a reclassification petition. There, as here, the petition for reclassification was filed a bare four months after the County Council had promulgated its quadrennial comprehensive rezoning. There, as here, the comprehensive rezoning had lowered the permitted density of a parcel of land. There, as here, the reclassification by the Board of Appeals merely returned the zoning to a density more closely approaching its original classification. The Board of Appeals, as here, ruled that the County Council had been guilty of a mistake or error in its "down-zoning" of the property. The Court of Appeals held that there was not sufficient evidence of a mistake on the part of the County Council to have made that issue fairly debatable. Judge Levine set out the stern standard of review:

> 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, whose application followed the comprehensive rezoning by merely four months, is manifestly a difficult one.

268 Md. at 652–53, 304 A.2d 244. (Emphasis in original) (Citations omitted). *See also Trainer v. Lipchin*, 269 Md. 667, 672–73, 309 A.2d 471 (1973); *Pattey v. Board of County Commissioners*, 271 Md. 352, 359, 317 A.2d 142 (1974).

Another articulation of the strong presumption of validity attaching to comprehensive zoning is found in *Wells v. Pierpont*, 253 Md. 554, 253 A.2d 749 (1969). That also was a case in which the Baltimore County Board of Appeals issued a zoning reclassification changing what the Baltimore County Council had earlier done in adopting its Comprehensive Zoning Map. In that case, the Board of Appeals found evidence

of a substantial change in the intervening three-year period and the circuit judge affirmed that reclassification by the Board of Appeals. The Court of Appeals reversed the circuit court, holding that the heavy burden cast upon one seeking a zoning reclassification had not been satisfied. Judge McWilliams there described the weight of the presumption of validity attending comprehensive rezoning:

> It is now firmly established that there is a strong presumption of the correctness of original zoning and of comprehensive rezoning, and that to sustain a piecemeal change therefrom there must be produced strong evidence of mistake in the original zoning or comprehensive rezoning or else evidence of substantial change in the character of the neighborhood.... And, of course, the burden of proof facing one seeking a zoning reclassification is quite onerous.

253 Md. at 557, 253 A.2d 749. (Citations omitted). *See also Mayor and Council of Rockville v. Henley*, 268 Md. 469, 302 A.2d 45 (1973); *Heller v. Prince George's County*, 264 Md. 410, 412, 286 A.2d 772 (1972); *Cabin John Ltd. v. Montgomery County*, 259 Md. 661, 271 A.2d 174 (1970); *Creswell v. Baltimore Aviation*, 257 Md. 712, 721, 264 A.2d 838 (1970).

What Is A "Mistake" or An "Error"?

[9] As helpful as the case law otherwise was in describing 1) the strong presumption of validity attending comprehensive zoning or rezoning by a county council and 2) the "onerous" burden on a landowner to show an error or mistake in the comprehensive zoning, it was only with a series of three opinions by Judge Rita Davidson, two for this Court and one for the Court of Appeals, that we at last got a firm handle on precisely what was meant by the terms of art "mistake" and "error." In the first place, "mistake" and "error" are "interchangeable terms [as] used in zoning law." *Boyce v. Sembly*, 25 Md.App. 43, 44, 334 A.2d 137 (1975).

1. "Change or Mistake" Rule Inapplicable to Comprehensive Rezoning:

[10] It is Judge Davidson's opinion in *Coppolino v. County Board of Appeals*, 23 Md.App. 358, 328 A.2d 55 (1974) that is

particularly helpful in pinpointing which decision, in a series of possibly flip-flopping decisions, enjoys the strong presumption of validity and is due the deference of subsequent decision makers. That is the place where the mistake must be found.

In *Coppolino*, as in this case, the property owner had enjoyed a classification under an earlier comprehensive zoning that would have permitted a more intense development of the property. There, as here, a subsequent comprehensive zoning "downzoned" the property. In *Coppolino*, the 1971 comprehensive zoning downzoned to D.R. 5.5 Parcel C, which had enjoyed a D.R. 16 classification under the 1966 comprehensive zoning. In this case, the 1992 comprehensive zoning downzoned to D.R. 1 Beachwood's property, which had enjoyed a D.R. 5.5 classification under the comprehensive zonings of 1988 and 1984. In *Coppolino*, moreover, the 1971 downsizing by the County Council was not only a departure from the earlier 1967 comprehensive zoning, but was also contrary to the recommendations of the Planning Staff and the Planning Board. Moreover, "[t]he reason for these [downzoning] actions [did] not appear in the record." 23 Md.App. at 364, 328 A.2d 55. There, as here, the Baltimore County Board of Appeals, by a similar two-to-one vote, ruled that the County Council's comprehensive zoning had been flawed by a mistake or error.

But what, precisely, was the nature of the purported mistake or error which the Board of Appeals believed to have fatally infected the County Council's comprehensive zoning? The owners argued that the earlier "comprehensive zoning of 1966 [was] presumed to be correct," 23 Md.App. at 368, 328 A.2d 55, and "that there was error in the 1971 comprehensive zoning" for failing to honor that presumptive validity of the earlier comprehensive zoning:

> 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. 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. 23 Md.App. at 368–69, 328 A.2d 55. (Footnote omitted) (Emphasis supplied).

In just such a fashion, the County Board of Appeals in the present case seemed to cast on the County Council a burden to justify why its 1992 comprehensive zoning had departed from its presumptively correct 1988 comprehensive zoning:

> Originally the property was zoned Manufacturing Heavy (M.H.). In 1984 the property was rezoned from M.H. to D.R. 5.5, and the D.R. 5.5 zoning was reaffirmed in the 1988 map process. *The Board can find,* from the testimony and evidence received, *no specific reason for this down-zoning.*
>
> . . . . .
>
> *[T]here is no logical reason for the property to be down-zoned* from D.R. 5.5 to D.R. 1. (Emphasis supplied.)

The circuit court, as well, seemed to cast a burden on the County Council to justify its 1992 departure from its earlier comprehensive zoning:

> It is inconceivable to this Court that the Council could downgrade this property to D.R. 1 when that zoning would be completely incompatible with the surrounding zoning in this area. *This Court questions why this property was ever changed* from D.R. 5.5 . . . (Emphasis supplied.)

Coppolino, however, rejected such an approach, which, in effect, would have allocated to the County Council the burden of justifying any change it made in 1992 from the pre–1992 *status quo*. *Coppolino* pointed out that the "Court of Appeals and this Court have consistently held that the 'change or

mistake' rule is not controlling in cases involving comprehensive rezoning." 23 Md.App. at 369, 328 A.2d 55. *See also Scull v. Coleman*, 251 Md. 6, 12, 246 A.2d 223 (1968); *Trustees v. Baltimore County*, 221 Md. 550, 560–61, 158 A.2d 637 (1960); *Roberts v. Grant*, 20 Md.App. 247, 253, 315 A.2d 103 (1974). A subsequent comprehensive zoning is not, therefore, to be charged with mistake or error because of its failure to have found a mistake or error in earlier comprehensive zoning which it changed. It has no such burden. *Coppolino*'s holding in this regard was clear:

> [W]e 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.

23 Md.App. at 370, 328 A.2d 55. *McBee v. Baltimore County*, 221 Md. 312, 317, 157 A.2d 258 (1960), spoke to the same point:

> When such a new [comprehensive zoning] map is adopted, it is entitled to the same presumption that it is correct as is an original zoning.

The Board of Appeals' finding in this case of "no specific reason for this down-zoning" is, therefore, readily explained by the self-evident fact that the County Council was under no obligation to give any specific reason for the downzoning. In no event does it constitute the requisite mistake or error, without a proper finding of which the reclassification made by the County Board of Appeals was unjustified.

2. ***Mistake or Error is Something Other Than a Questionable Choice:***

[11, 12] It was in the second of the series of three opinions, *Boyce v. Sembly*, 25 Md.App. 43, 334 A.2d 137 (1975), that Judge Davidson set out explicitly that a conclusion on the part of the County Board of Appeals that the comprehensive zoning of the County Council under review was wrong, ill-advised, or unsuitable is not an adequate finding of an *actual mistake or error* within the contemplation of zoning law. The legal meaning of "mistake" or "error" is far more restricted:

> 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.*

25 Md.App. at 50–51, 334 A.2d 137. (Emphasis supplied).

[13] To grasp this limited content of the terms "mistake" and "error" in zoning law, it may be helpful to draw an analogy to a flaw in the syllogistic process. The finding of a mistake or error is not so much concerned with the logical validity or merit of ultimate conclusion-drawing as it is with the adequacy and accuracy of the factual premises that underlie the conclusion-drawing. A conclusion based on a factual predicate that is incomplete or inaccurate may be deemed, in zoning law, a mistake or error; an allegedly aberrant conclusion based on full and accurate information, by contrast, is simply a case of bad judgment, which is immunized from second-guessing.

[14–16] *Boyce* furthermore makes it clear that the burden is on those seeking a reclassification to show *both* 1) the then-existing conditions that allegedly made the comprehensive zoning incorrect *and also* 2) the literal failure of the County Council even to have considered those conditions:

> *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 . . .

25 Md.App. at 51–52, 334 A.2d 137. (Emphasis supplied).

In the present case, there is no shred or hint of suggestion in either the opinion of the circuit court or the majority opinion of the County Board of Appeals that at the time of the comprehensive zoning in 1992 there were then existing conditions with respect to the Beachwood property or with respect to surrounding areas that were not known to the County Council. There was, *ipso facto,* no showing of the requisite mistake or error on which a reclassification would necessarily depend. We find appropriate in this regard the conclusion we reached under similar circumstances in *Boyce:*

> 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."*

25 Md.App. at 52, 334 A.2d 137. (Footnote omitted) (Emphasis supplied).

A classic instance in which the Baltimore County Board of Appeals erroneously attributed a "mistake" to the County Council simply on the basis of the Board's conclusion that the Comprehensive Zoning had involved a questionable choice was the case of *Trainer v. Lipchin,* 269 Md. 667, 309 A.2d 471 (1973). The Board of Appeals "concluded that the Council had been 'at least partially in error' in placing the front part of the property in D.R. 16, since it had 'completely lost its residential character.'" 269 Md. at 670, 309 A.2d 471. In substituting its judgment for that of the County Council, the Board of Appeals relied on one expert witness who testified "that it would not be 'practical' to build apartments on the subject parcel," 269 Md. at 674, 309 A.2d 471, and another witness who offered his conclusion that the Comprehensive Zoning was erroneous because "in our estimation the best suitable use for that is commercial." 269 Md. at 675, 309 A.2d 471. The Court of Appeals held that such evidence was insufficient to make the issue of mistake fairly debatable. Indeed, Judge Levine disdainfully characterized the case as "yet another assault on the county-wide Comprehensive Zoning Maps adopted by the Baltimore County Council." 269 Md. at 668, 309 A.2d 471.

And see Shadynook Imp. Ass'n v. Molloy, 232 Md. 265, 192 A.2d 502 (1963), as yet another occasion 1) on which the Baltimore County Board of Appeals, in effect, second-guessed the County Council, essentially because of its conclusion that the Comprehensive Zoning had been wrong; 2) on which the Baltimore County Circuit Court affirmed the zoning reclassification by the County Board of Appeals; and 3) on which the Court of Appeals reversed both the Circuit Court and the Board of Appeals, holding that the evidence before the Board of Appeals was not legally sufficient to make the issue of a possible mistake on the part of the County Council even fairly debatable.

[17, 18] When reviewing a legislative action by the County Council, such as comprehensive zoning, even the courts, with broad inherent powers not vested in the County Board of Appeals, are limited in their power of review. In *County Council for Montgomery County v. District Land Corp.,* 274 Md. 691, 337 A.2d 712 (1975), the Court of Appeals pointed out:

> It is well settled that the judicial branch of government cannot institute an inquiry into the motives of the legislature in the enactment of laws, lest the legislature be subordinated to the courts . . .

274 Md. at 704, 337 A.2d 712. The *District Land* opinion quoted with approval from C. Rhyne, *Municipal Law*, § 9–4 at 229–30 (1957):

"As a general rule, the motives, wisdom or propriety of a municipal governing body in passing an ordinance are not subject to judicial inquiry. . . ."

274 Md. at 705, 337 A.2d 712. Judge Singley then made it clear that the same deference was due by courts to the passing of zoning ordinances:

The same principle applies to zoning ordinances, which are presumed to be valid. As a consequence, *courts will not pass on the wisdom of such measures.* (Emphasis supplied.)

Id. A fortiori, the County Board of Appeals may not "pass on the wisdom of such measures."

[19, 20] This is not to say that the County Council may operate with impunity without any restraints on its legislative function. The general guidelines within which it must operate when engaged in comprehensive zoning were well spelled out by Chief Judge Hammond in *Norbeck v. Montgomery County*, 254 Md. 59, 66, 254 A.2d 700 (1969):

The broad test of the validity of a comprehensive rezoning is whether it bears a substantial relationship to the public health, comfort, order, safety, convenience, morals and general welfare, and such zoning enjoys a strong presumption of validity and correctness. A property owner has no vested right to the continuance of the zoning status of his or neighboring property, merely the right to rely on the rule that a change will not be made unless it is required for the public good.

(Citations omitted). *See also County Council for Montgomery County v. District Land Corp.*, *supra*, 274 Md. at 699–702, 337 A.2d 712.

[21] There resides in the courts the ultimate authority to determine whether the action of the County Council was "arbitrary, capricious, discriminatory, or illegal." *Ark Readi-Mix Concrete Corp. v. Smith*, 251 Md. 1, 4, 246 A.2d 220 (1968); *Hewitt v. Baltimore County*, 220 Md. 48, 56–57, 151 A.2d 144 (1959); *Wakefield v. Kraft*, 202 Md. 136, 141, 96 A.2d 27 (1953). The County Board of Appeals, however, does not enjoy any supervisory power or appellate jurisdiction over the actions of the Baltimore County Council. Express Powers Act, MD.CODE (1957, 1994 Repl.Vol.), ART. 25A, § 5(V); BALTIMORE COUNTY CHARTER, § 602(a); *United Parcel v. People's Counsel*, 336 Md. 569, 587–590, 650 A.2d 226 (1994).

[22] With respect to petitions for zoning reclassifications, the County Board of Appeals enjoys "original and exclusive jurisdiction." BALTIMORE COUNTY CHARTER, § 602(e); *United Parcel v. People's Counsel*, 336 Md. at 587, 650 A.2d 226. That original jurisdiction is, however, expressly confined by the provisions of BALTIMORE COUNTY CODE, §§ 2–356(a) and (j), which limit the reclassifying authority of the County Board of Appeals to those instances wherein they find evidence of either "a substantial change in the character of the neighborhood" or a "mistake" or "error" in the comprehensive zoning. That is a far cry from appellate jurisdiction over the comprehensive zoning of the County Council on the ground that it may have been "arbitrary, capricious, discriminatory, or illegal." Original jurisdiction over zoning reclassification petitions is not coterminous with appellate jurisdiction over the zoning actions of the County Council.

3. *The Conclusion of an Expert That a Mistake Was Made:*

The third of the series of opinions by Judge Davidson clarifying the concept of "mistake" or "error" was *Howard County v. Dorsey*, 292 Md. 351, 438 A.2d 1339 (1982). In part, the *Dorsey* opinion served to place the *imprimatur* of the Court of Appeals on the definition of mistake or error that Judge Davidson had earlier hammered out for this Court in *Boyce v. Sembly*. A significant part of the *Dorsey* opinion, 292 Md. at 356–359, 438 A.2d 1339, consisted of extensive quotation, with approval, from the *Boyce v. Sembly* opinion, 25 Md.App. at 50–53, 334 A.2d 137.

A part of that *Boyce v. Sembly* opinion, 25 Md.App. at 53, 334 A.2d 137, not yet discussed in this opinion, and quoted with approval by the *Dorsey* opinion, observed:

> 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.

292 Md. at 359, 438 A.2d 1339.

The appellate decisions holding that the testimony of an expert that a "mistake" had been made in comprehensive zoning was not sufficient to generate a fairly debatable issue as to "mistake" have done so for various reasons, sometimes for a confusing admixture of reasons in a single case. In the furtherance of analytic clarity, however, some of those reasons can be sorted out into discrete sub-groups.

a. Inadequate Expert Testimony: Conclusory or Quasi–Conclusory Opinions

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. Illustrative of the principle that the opinion of an expert is of little or no weight in the absence of strong supporting facts is *Mayor and Council of Rockville v. Henley*, 268 Md. 469, 473–74, 302 A.2d 45 (1973):

> The only testimony of the question was the bald assertion by appellee's expert witness, Mr. Dieudonne, a qualified realtor and appraiser, who simply responded to the question "do you think the present zoning is the correct zoning, R–60" by saying "No, sir, I think that is wrong." And then, when asked what would be the proper classification, answered, "I–1, and I think that would stabilize that area and I don't believe there would be an infiltration into the Lincoln Park sector of residential homes." These naked declarations, unsubstantiated by facts, are insufficient to

> overcome the presumption of correctness which attaches with the adoption of a comprehensive zoning plan.

See also Smith v. County Comm'r of Howard County, 252 Md. 280, 249 A.2d 708 (1969).

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 County Board of Appeals, finding a mistake on the basis of such opinions, were overturned. *Pahl v. County Bd. of Appeals*, 237 Md. 294, 206 A.2d 245 (1965); *Brenbrook Const. Co. v. Dahne*, 254 Md. 443, 255 A.2d 32 (1969); *Creswell v. Baltimore Aviation*, 257 Md. 712, 264 A.2d 838 (1970); *Stratakis v. Beauchamp*, 268 Md. 643, 304 A.2d 244 (1973). 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, 233 A.2d 757 (1967).

b. Inadequate Expert Testimony: Predicated on Economic Disadvantage

Sometimes, by contrast, the expert opinion that a "mistake" had been made in the comprehensive zoning was based on a clearly identified and extensively developed predicate. Even in some of those cases, however, the expert opinions have been dismissed as insufficient to generate a fairly debatable issue as to "mistake" for the very different reason that the predicates themselves are *immaterial* on the issue of actual "mistake" or "error," as those precise terms of art are used in zoning law.

One particular type of support for an expert opinion that has generally been found to have been inadequate to show "mistake" is the expert's conclusion that the Comprehensive Zoning in question will render the property unsuitable for development at all or, at least, unsuitable for development with economic feasibility.

In *Coppolino*, the developers had offered as an alternative, or additional, reason why the County Council had been guilty of a mistake in downzoning the subject property the testimony of a "number of expert witnesses express[ing] 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." 23 Md.App. at 370, 328 A.2d 55. This Court pointed out, however, that the experts had "conceded that single-family houses could be developed on the property" and concluded that the mere fact that the property might not be suitable for development in a more economically advantageous way was not evidence of mistake in the Comprehensive Zoning. In overturning the reclassification by the County Board of Appeals, we held that the evidence was not sufficient to make the issue of mistake fairly debatable. 23 Md.App. at 371–72, 328 A.2d 55.

In a similar vein, Beachwood argues in this case that the County Council was guilty of a "mistake" in zoning the property D.R. 1 because of its "erroneous assumption" that the property could be developed in an economically feasible way with that density. Beachwood's brief before us is very clear in this regard:

> A final *erroneous assumption* of the Council was *that the property could be developed at all at a D.R. 1 density.* As the testimony indicated, the property needed public sewer service. If the cost of the road improvements required by the County after the fiftieth unit is built is added to the cost of the sewer needed both to serve the project and the surrounding houses, then the infrastructure alone mandates that *to have marketable prices on homes more density than D.R. 1 permits is necessary to build the project.* Without the D.R. 3.5 zone making the necessary improvements to the roads and bringing sewer to the site becomes virtually impossible. These *financial considerations alone would justify rezoning based on the incorrect assumptions of the Council.* (Emphasis supplied.)

Indeed, in *Coppolino*, the County Board of Appeals had gone so far as to rule not simply that the comprehensive downzoning had been a "mistake" but also that it had amounted to a confiscation of the property. In pointing out that economic disadvantage is not synonymous with confiscation, we concluded:

> 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. 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.* Viewed in this light the expert testimony presented here does not pass muster.

23 Md.App. at 371–72, 328 A.2d 55. (Citations omitted) (Emphasis supplied). *Cabin John, Ltd. v. Montgomery County*, 259 Md. 661, 671, 271 A.2d 174 (1970), also observed:

> Neither the fact that rezoning may result in a more profitable use of land nor that hardship may follow the retention of an existing classification is sufficient justification for rezoning.

In *Boyce*, the developers, in an effort to show that the County Board of Appeals had been correct in finding a mistake in the Comprehensive Zoning, offered a number of conclusory arguments as to why "the subject property was then unsuitable for residential development." 25 Md.App. at 53–54, 334 A.2d 137. In addition, they offered a "witness qualified in the fields of real estate and real estate appraisal and the contract purchaser of the subject property [who] testified that it was 'unsuitable' for residential development because of its physical characteristics and its proximity to the railroad tracks." 25 Md.App. at 54, 334 A.2d 137. This Court

concluded that the evidence was not legally sufficient to make the issue of mistake or error fairly debatable for two reasons. The second of these, the absence of any evidence that the County Council had been unaware of these conditions, has already been discussed.

We offered as our initial reason, however, the fact that the conclusory arguments and even the quasi-conclusory testimony of the expert had not been enough to overcome the strong presumption of validity in the Comprehensive Zoning:

> 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.

25 Md.App. at 55, 334 A.2d 137.

c. Inadequate Expert Testimony: Predicated on Incompatibility With Surroundings

It is frequently the case, as in the situation now under review, that an expert opinion that a mistake was made in the comprehensive zoning is based on the expert's observation that the zoning of the parcel in question is incompatible with the zoning of surrounding tracts or parcels. Frequently, that conclusion as to incompatibility is buttressed by graphs, charts, diagrams, maps, and aerial photographs. Incompatibility in the end result, however, has been held to be immaterial on the issue of a mistake or error in the County Council's decisional process.

In *Howard County v. Dorsey*, 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.'" The Court of Appeals concluded that expert opinion, based only on the *incompatibility* between the residential property in question and the surrounding industrial

property was "insufficient to make the question of 'error' or 'mistake' fairly debatable." 292 Md. at 364–65, 438 A.2d 1339.

The *Howard County v. Dorsey* situation, in that regard, bears a strong resemblance to the situation before us, in which a similar opinion as to "incompatibility" also played a major role. In this case, the only testimony before the County Board of Appeals to the effect that the County Council's 1992 Comprehensive Zoning had been a mistake was that of Samuel Crozier, an expert land planner. Indeed, this was the only basis for the finding by the Board of Appeals that a mistake had been made by the County Council:

> The Board ... finds that the testimony presented by the Petitioner and, particularly, the expert testimony given by Mr. Crozier with his supporting reasons, supports a finding of fact that the subject property was erroneously zoned by the County Council.

Early in its majority opinion, the County Board of Appeals summed up in full detail the testimony of Mr. Crozier:

> Samuel Crozier, an expert land planner, testified that he has studied this site, and it was his opinion that the D.R. 1 zoning is in error. *He noted that one has to go almost 5 miles from the site to find any D.R. 1, which makes it totally out of character with the area.* He further testified that it is recommended for low density urban residential, and low density refers to 3.5. He further testified that the Growth Management Plan should conform to the "built-out" area nearby, and that D.R. 1 does not comply with this and D.R. 3.5 does. *It was his expert opinion that* there is no reason to zone this property D.R. 1 since all services are available, there are no problems D.R. 3.5 under the documented site plans, *the proposed use is compatible with all other uses in the area*, and D.R. 3.5 and not D.R. 1 was the proper zoning for this parcel. (Emphasis supplied.)

A large part of Mr. Crozier's testimony consisted simply of describing the zoning of surrounding tracts and pointing out that the nearest D.R. 1 zone was approximately five miles away. His conclusion was that the proposed reclassification of

D.R. 3.5 was compatible with the surrounding area and not that the comprehensive D.R. 1 zoning was, *per se*, incompatible. In any event, all of the facts as to which Mr. Crozier testified would not establish mistake or error for the reason noted by *Howard County v. Dorsey:*

> 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 classification for the subject property were erroneous.

292 Md. at 365–66, 438 A.2d 1339.

With respect to the failure of an applicant for rezoning to show mistake or error based on alleged incompatibility with surrounding zoning classifications, *Boyce* similarly concluded:

> 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.

25 Md.App. at 56, 334 A.2d 137.

d. Inadequate Expert Testimony: Predicated on Divergence From Master Plan

The testimony of Mr. Crozier also made it clear that his conclusion that the 1992 Comprehensive Zoning had been a mistake was based in part on its failure to conform to the Baltimore County Master Plan and with the attendant Growth Management Program Guidelines. He pointed out that the Baltimore County Master Plan, adopted in February of 1990, labeled the area under discussion as "Low Density Urban Residential," which is defined as zoning between D.R. 3.5 and

D.R. 5.5. He further pointed out that the Baltimore County residential zoning guidelines state that residential zoning should be equivalent to the existing ("built out") density within the surrounding area or neighborhood and that the surrounding densities to the Beachwood tract were considerably greater than D.R. 1.

Howard County v. Dorsey, however, was very emphatic that

> there is no requirement that a comprehensive zoning plan must conform to the recommendations of an applicable master plan.

292 Md. at 363, 438 A.2d 1339. Holding to a similar effect was *Pattey v. Board of County Commissioners,* 271 Md. 352, 360, 317 A.2d 142 (1974):

> As we have said, a master plan is only a guide and is not to be confused with a comprehensive zoning, zoning map, or zoning classification.

In *Montgomery County v. Woodward & Lothrop,* 280 Md. 686, 704, 376 A.2d 483 (1977), Chief Judge Murphy observed:

> Nor is there any requirement, absent a statute, that the map amendment must adhere to the recommendations of the General or Master Plan. Such land use planning documents represent only a basic scheme generally outlining planning and zoning objectives in an extensive area, and are in no sense a final plan; they are continually subject to modification in the light of actual land use development and serve as a guide rather than a strait jacket.

See also People's Counsel v. Webster, 65 Md.App. 694, 701–03, 501 A.2d 1343 (1986); *Floyd v. County Council of Prince George's County,* 55 Md.App. 246, 258–59, 461 A.2d 76 (1983).

A definitive statement on this subject is that found in *Nottingham Village v. Baltimore County,* 266 Md. 339, 292 A.2d 680 (1972). In that case, Nottingham Village and The Rouse Company sought a declaratory judgment that the comprehensive zoning promulgated by the Baltimore County Council in 1971 was invalid because of its failure to conform to the Master Plan for Baltimore County. In rejecting the

argument made by the developers, Judge Singley stated for the Court of Appeals:

> Underlying this argument is a common misconception—a confusion between the planning function, the end product of which is the Master Plan, specifically provided for in County Code, Art. II. Planning, §§ 22–12 through 22–17, and the zoning function, covered by Code, Art. III. Zoning, §§ 22–18 through 22–31. Zoning or rezoning in accordance with a comprehensive plan is a legislative function. *There is no requirement that the comprehensive plan adopted by the legislative body must conform to the recommendations of the Master Plan.*

266 Md. at 354, 292 A.2d 680. (Citations omitted) (Emphasis supplied).

Particularly pertinent to the case now before us was the further observation of the Court of Appeals:

> While it is true that other jurisdictions have by statute required that zoning ordinances be in accordance with the master plan, Baltimore County has not.

Id. (Citation omitted).

No Fairly Debatable Issue As To "Mistake" In Comprehensive Zoning

[23] We hold that the evidence before the County Board of Appeals was not sufficient to generate a fairly debatable issue that there had been a mistake in the 1992 Comprehensive Zoning of the County Council. Absent such mistake, the County Board of Appeals should not have granted the rezoning classification and the Circuit Court for Baltimore County should not have affirmed that action by the Board of Appeals.

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 economically advantageous to the property owner does not establish a mistake in the Comprehensive Zoning.

Independent of all other considerations, moreover, is the over-arching consideration that none of the circumstances argued by Beachwood were shown to have been unknown to the County Council at the time of the 1992 Comprehensive Zoning. It follows that the issue of mistake was not fairly debatable before the County Board of Appeals and its decision cannot be sustained.

People's Counsel v. Mockard: The Procedural Flaw

[24] Our reversal of the Circuit Court for Baltimore County and, indirectly, our overturning of the zoning reclassification granted by the Baltimore County Board of Appeals rests on two independent grounds. We conclude not only that the *decision* of the County Board of Appeals was *substantively flawed* because the issue of "mistake" was not fairly debatable, but also that the *opinion* announcing the decision was *procedurally flawed*. Dispositive of this fatal procedural flaw is our decision in *People's Counsel for Baltimore County v. Mockard*, 73 Md.App. 340, 347–51, 533 A.2d 1344 (1987).

BALTIMORE COUNTY CODE (1978), § 2–356(j) explicitly spells out what must be done by the County Board of Appeals before the zoning of a property may be reclassified:

> (j) *Findings prior to reclassification.* Before any property is reclassified pursuant to this section, the board of appeals must find . . .

Subsection (j)(1), as has already been discussed, requires an explicit finding of either "a substantial change in the character of the neighborhood" or "that the last classification of the property was established in error." It is subsection (j)(2) that then sets forth in detail a list of the factors that must be

considered and as to which findings must be made. The factors must be considered and the findings must be made, moreover, *both* with respect to the finding of change or mistake, in the first instance, *and also* with respect to the prospective reclassification of the property that is to be made, in the second instance. Subsection (j)(2) requires a finding:

> [t]hat the prospective reclassification of the property is warranted by that change or error. Any finding of such a change or error and any finding that the prospective reclassification is warranted may be made only upon consideration of factors relating to the purposes of the zoning regulations and maps, including but not limited to all of the following: Population trends; availability and adequacy of present and proposed transportation facilities, water-supply facilities, sewerage, solid-waste-disposal facilities, schools, recreational facilities, and other public facilities, compatibility of uses generally allowable under the prospective classification with the present and projected development or character of the surrounding area; any pertinent recommendation of the planning board or office of planning and zoning; and consistency of the current and prospective classifications with the master plan, the county plan for sewerage and water-supply facilities, and the capital program.

With respect to the property that was reclassified in this case, there was an additional set of procedural requirements imposed on the opinion of the County Board of Appeals. Since 1988, most of the tract involved in this litigation has been designated as a "limited development area" within the Chesapeake Bay Critical Area. Subsection (j)(3) provides that any "reclassification pertaining to land within the Chesapeake Bay Critical Area is subject to" additional limitations. The additional limitation pertinent in this case is contained in subsection (j)(3)(b):

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

The opinion of the Board of Appeals abjectly failed to satisfy the requirements of either subsection (j)(2) or subsection (j)(3)(b). Indeed, the feeble argument that Beachwood makes in this regard is based on the single sentence at the end of the Board's opinion:

> The Board has carefully reviewed and considered the evidence and testimony presented in these proceedings, and finds that the testimony presented by the Petitioner and, particularly, *the expert testimony given by Mr. Crozier with his supporting reasons, supports a finding of fact that the subject property was erroneously zoned by the County Council.* (Emphasis supplied.)

Its inadequacy to satisfy the Code provision is palpable. Quite aside from the almost cavalier attempt to finesse the requirement of precise and considered findings of fact by the casual incorporation of all of the testimony of Mr. Crozier into a brief allusion to it, it is transparent that even that attempted incorporation is offered only to support "a finding of fact that the subject property was erroneously zoned by the County Council." It does not even purport to deal with the additionally required companion finding that, even following a finding of error in the Comprehensive Plan, the reclassification itself was warranted. It does not, moreover, even remotely allude to the required findings of subsection (j)(3)(b) with respect to a reclassification in the Chesapeake Bay Critical Area.

In *People's Counsel v. Mockard*, this Court analyzed at length the requirements spelled out in subsection (j)(2) and

concluded that a zoning reclassification by the Baltimore County Board of Appeals must be reversed because of the failure of the Board's opinion to satisfy the requirements of the subsection. In that opinion, Judge Rosalyn Bell very explicitly set out:

> Under that provision, the Board must make two findings: 1) that there was error in the comprehensive zoning, and 2) that the prospective reclassification is warranted. Both of those findings may be made "only upon consideration of factors ... including, but not limited to, all of the following...."

73 Md.App. at 347, 533 A.2d 1344.

The appellees in that case, very much as Beachwood here, suggested that it would be enough to satisfy the subsection if the Board, in the course of listening to the evidence, could thereby be deemed to have "considered" each of the required factors. It argued that the subsection by no means requires specific findings on the record. We squarely rejected that argument:

> Appellees filed a cross-appeal, arguing that § 2–58.1(j)(2) does *not* require the Board to enter specific findings as to each factor. They claim that the Board is only required to "consider" the factors....
>
> [T]hey claim that the Baltimore County Board need only "consider" certain factors, hence the Board did not need to objectively deal with the factors. We do not agree with appellees' conclusion.

73 Md.App. at 348, 533 A.2d 1344 (Emphasis in original).

Judge Bell analyzed in detail why clear findings of fact are necessary when dealing with appeals from administrative agencies. She quoted from *United Steelworkers of America AFL–CIO, Local 2610 v. Bethlehem Steel Corp.*, 298 Md. 665, 679, 472 A.2d 62 (1984):

> "Judicial review of administrative action differs from appellate review of a trial court judgment. In the latter context the appellate court will search the record for evidence to support the judgment and will sustain the judgment for a reason plainly appearing on the record whether or not the reason was expressly relied upon by the trial court. However, in judicial review of agency action, the court may not uphold the agency order unless it is sustainable on the agency's findings and for the reasons stated by the agency."

73 Md.App. at 348–49, 533 A.2d 1344.

Judge Bell pointed out that in dealing with administrative appeals, the appellate court may not supply factual findings which were not made by the administrative agency. It would only be when the findings of the Board of Appeals were uncontradicted and where only one conclusion could be reached that a lack of such findings would not warrant remand. *See also Ocean Hideaway Condominium Ass'n v. Boardwalk Plaza Venture*, 68 Md.App. 650, 664–65, 515 A.2d 485 (1986); *Gough v. Board of Zoning Appeals for Calvert County*, 21 Md.App. 697, 704, 321 A.2d 315 (1974).

[25] It is not for us to search the record before the County Board of Appeals in an effort to construct a possible rationale that might support its zoning reclassification. Robert M. Anderson, 3 *American Law of Zoning* (3d ed. 1986), § 16.41 succinctly states the reason why administrative agencies are required to make express findings:

> Given express findings, the court can determine whether the findings are supported by substantial evidence, and whether the findings warrant the decision of the board. If no findings are made, and if the court elects not to remand, its clumsy alternative is to *read* the record, *speculate* upon the portions which probably were believed by the board, *guess* at the conclusions drawn from credited portions, *construct a basis* for decision, and *try to determine* whether a decision thus arrived at should be sustained. In the process, the court is required to do much that is assigned to the board, and the latter becomes a relatively inefficient instrument for the construction of a record. (Emphasis supplied.)

In the absence of required findings by the Board, the conclusion of this Court in *Mockard* was clear:

Hence, we hold that "consideration of factors" requires an articulation of the findings as to each of the applicable factors contained in [§ 2–356(j)(2)]. The Board must make such findings in *both* a finding of error in the comprehensive plan and in a decision that the reclassification was warranted.

73 Md.App. at 349, 533 A.2d 1344. (Emphasis in original).

We there rejected the finding of error in the comprehensive zoning because of the failure of the Board of Appeals to render an opinion in compliance with § 2–356(j). We held that the opinion of the Board was "conclusory in nature and lack[ed] sufficient indication of which, if any, factors the Board considered in making its determination." 73 Md.App. at 350, 533 A.2d 1344. It is not enough, moreover, for the findings of the Board to be implicit. We made the requirement for express and precise findings very clear:

As discussed earlier, in finding error or that a reclassification is warranted, the Board must considered factors, "including, *but not limited to,* all of the following . . . ." Section 2–58.1(j)(2). This means that, in order to make either of those findings, the Board must *at least* articulate its findings as to the 13 identified factors.

Id. (Emphasis in original).

The Spectral Apparition of Contract Zoning

[26] There hovers on the edges of this case, albeit only in the shadows, the almost spectral apparition of contract zoning. Because neither the comprehensive zoning of the County Council nor the zoning reclassification of the County Board of Appeals expressly contains any forbidden *quid pro quo,* we do not treat what is before us as an actual instance of contract zoning. *Somerset v. Montgomery County,* 229 Md. 42, 50–52, 181 A.2d 671 (1962); *Pressman v. Baltimore,* 222 Md. 330, 343–45, 160 A.2d 379 (1960). So strong, however, is the sense of the unseen presence that it ill behooves us to depart the scene without at least acknowledging the apparition.

To change the metaphor, Beachwood raises the weapon of contract zoning very gingerly. This is understandable, for it is, most assuredly, a two-edged sword. After suggesting that Baltimore County, through its Office of Planning and Zoning, sought to use the comprehensive zoning and reclassifying processes as a means to pressure Beachwood into financing an off-site traffic improvement, Beachwood, in its brief before us, noted the impropriety:

Appellants . . . may be correct in that the county's motivation and means may be improper. The comprehensive zoning process approach to this site to coerce improvements that are truly the responsibility of government was improper.

Whether the suggested contract zoning that permeates the atmosphere of this case was real or imaginary, proved or unproved, proper or improper, it is clear that the subject matter of the alleged zoning contract was an off-site traffic improvement to an intersection near the Beachwood property. Were the Beachwood property to be developed residentially, most of the residents would use, on a regular basis, the nearby intersection of Morse Road and North Point Boulevard. It is conceded by all parties that there is at that intersection an undesirable configuration that creates a potential traffic hazard.

It is not, however, a problem that would *per se* be *created* by more intensive traffic use nor one that would *per se* be *eliminated* by less intensive traffic use. It is a problem that would exist whether one car per day or 5,000 cars per day should use the intersection. It is described as a "sight-distance" problem with respect to vehicles moving onto Morse Road from North Point Boulevard and vehicles moving onto North Point Boulevard from Morse Road. Both suffer obstructions to their line of vision as they prepare to make the necessary turn.

Self-evidently, the more cars that pass through the intersection, the greater the likelihood that an accident may occur. Although the traffic problem is not the result of traffic volume,

an increase in traffic volume would quite obviously exacerbate the problem, just as a decrease in traffic volume would quite obviously mitigate it.

Nowhere in the majority opinion of the Board of Appeals is there an indication that its finding that the County Council's comprehensive zoning had been a mistake in any way hinged on the existence of the traffic hazard or its possible amelioration. Notwithstanding that silence on the subject in explaining the rationale for its decision, the majority opinion, in summarizing the testimony of the witnesses before it, was nonetheless very generous in its allusions to the traffic situation.

One key witness before the County Board was John J. Stamm, a civil engineer working with Beachwood in its projected development of the property. It was Mr. Stamm who estimated that the cost for the traffic improvement would be in the neighborhood of $125,000. It was through Mr. Stamm that there was introduced a January 29, 1993 letter from the Maryland State Highway Administration with respect to Beachwood's site plan for the property and with respect to the traffic problem. That letter included the following paragraph:

> SHA currently has no plans for funding improvements to MD 151 within this area. The developer's representative indicated a willingness to fund the above improvements in previous meetings. However, since the developer does not require direct access onto MD 151, we must request that the county require the developer fund and construct these improvements as a condition of plan approval.

Another key witness before the County Board was Stephen Weber, the Chief of the Division of Traffic Operations for Baltimore County. After testifying with respect to the traffic hazard and the disinclination of the State to fund any improvement to the intersection, it was Mr. Weber, in a conversation with a representative of the County Planning Office, who suggested a possible way to persuade Beachwood to pay for the traffic improvement. Mr. Weber testified:

> The issue is because [that] had been offsite improvement, *how could the county reasonably get those improvements from the developer?*
>
> Sometimes [they] may be successful if the developer is willing to cooperate, but *there's no certainty that the county would be able to force the developer to do offsite improvements* to rectify the problem.
>
> When I spoke with Ms. MacMillan, I said, well, *certainly, one very [roundabout] way that could possibly be done, to force the issue, would be to go ahead and recommend downzoning of the property* based on the current limitations; if they could come back to the cycle zoning process and certainly *they could submit a documented site plan showing how the traffic would be accommodated*, or what geometric improvements could be made to safely accommodate that additional development, and *that way those improvements could then be tied to the development plan* showing how, one, how the improvements would be able to support the proposed development.
>
> *I'm not saying that's a good way of doing it, but it was certainly one method that could be done or used.* (Emphasis supplied.)

A third witness before the Board of Appeals was Jeffrey Long, a planner with the Baltimore County Office of Planning and Zoning. His testimony indicated that the positions taken by his office implemented the strategy suggested by Mr. Weber. The members of the planning staff and the Planning Board itself took various positions on the zoning of the Beachwood property, sometimes in favor of the comprehensive downsizing and at other times in favor of the requested reclassification. One question to Mr. Long was very point blank, "Would it be safe to say that the planning staff and planning board agreed to disagree?" He frankly responded, "Yes, I think that would be a fair statement to make." His position was to be against the proposed reclassification to D.R. 3.5 initially, but then to change positions once Beachwood had committed itself to funding the improvement to the off-site intersection:

Well, obviously, rezoning to D.R. 3.5 would result in increased trips. It would, you know, exacerbate any existing deficiency.

So we felt *it was essential to have the developer agree to make these improvements prior to any rezoning of the property.*

And that was accomplished through the filing of the documented site plan. (Emphasis supplied.)

[27] One reason the allusions to contract zoning in this case have such a phantom-like quality is that neither the case law, here and abroad, nor the academic commentary seems to have a firm grip on exactly what is meant by the term "contract zoning" or by its doctrinal doppelganger, "conditional zoning." In the broadest of senses, both involve some sort of *understanding* between the governmental unit and the developer, whereby the doing of certain acts by the developer will result in favorable rezoning treatment by the governmental unit. Beyond that, the definitions begin to blur.

Some academic authorities treat "contract zoning" as the more generic phenomenon, with "conditional zoning" as a special instance thereof. Donald G. Hagman, *Urban Planning and Land Development Control Law* (1975), § 94 at 74–75. Others treat "conditional zoning" as the generic phenomenon, with "contract zoning" as the special instance. Robert M. Anderson, 2 *American Law of Zoning* (3d ed. 1986), §§ 9.20 and 9.21 at 159–72. Yet other authorities treat the two terms as closely-related but distinct phenomena, with "contract zoning" being beyond the pale of legality but with "conditional zoning" slowly emerging therefrom into general acceptance. Arden H. Rathkopf and Daren A. Rathkopf, 2 *The Law of Zoning and Planning,* § 29A.03 at 29A–22 through 29A–30.

The Maryland cases have treated "contract zoning" narrowly as a situation wherein the developer of property enters into an express and legally binding contract with the ultimate zoning authority. In such circumstances, the Maryland cases have not hesitated to hold such contract zoning to be null and void. Part of the reason why the governmental authority may not enter into such a contract is because the governmental unit may not bargain away its future use of the police power. Maryland's treatment of contract zoning is consistent with the definition of "illegal contract zoning" set out in Arden H. Rathkopf and Daren A. Rathkopf, 2 *The Law of Zoning and Planning,* § 29A.03[b] at 29A–25:

> Illegal contract rezoning is said to involve the process by which a local government enters into an agreement with a developer whereby the government exacts a performance or promise from the developer in exchange for its agreement to rezone the property. The developer may agree to restrict development of the property, make certain improvements, dedicate a portion of land to the municipality, or make payments to the municipality. Numerous state court decisions have held such express or implied agreements invalid as illegal contract zoning. (Footnotes omitted.)

The first Maryland case to find that illegal contract zoning had occurred was *Baylis v. City of Baltimore,* 219 Md. 164, 148 A.2d 429 (1959). The vocabulary was still in a state of flux but the decision was clear. The Baltimore City Council, the repository of ultimate zoning authority, granted a zoning reclassification to a property owner, conditioned on a binding agreement by the property owner to use the benefit of the reclassification only for the purpose of building a funeral home. The City Council Ordinance that granted the reclassification expressly incorporated the agreement by the property owner that was the consideration for the reclassification:

> In its final form, the Ordinance made the reclassification conditional upon the execution of an agreement, set out in the Ordinance, between the owners and the City, and the recording of such agreement among the Land Records of Baltimore City, so as to be binding upon the property owners, their successors, heirs and assigns.
>
> The agreement provided that, in consideration of the rezoning, the owners would develop and maintain the property as a funeral home only . . .

219 Md. at 166, 148 A.2d 429.

Without using the term "contract zoning" *per se,* the Court of Appeals held that the zoning was illegal. Among its

reasons was the fact that "the resulting 'contract' is nugatory because a municipality is not able to make agreements which inhibit its police powers." 219 Md. at 170, 148 A.2d 429.

In stark contrast to *Baylis v. City of Baltimore* is *Pressman v. City of Baltimore*, 222 Md. 330, 160 A.2d 379 (1960). Whereas in *Baylis* the Baltimore City Council had entered into an express zoning contract, in *Pressman* it did not. The property owners, Food Fair and Stewart's, did, however, enter into a formal and undisputed Agreement with the Baltimore City Planning Commission. The property owners made certain commitments "in consideration of the Planning Commission's approval of the rezoning." Pursuant to that Agreement, the Planning Commission recommended to the City Council that the rezoning be granted. The rezoning was subsequently granted.

In declining to hold that the Agreement constituted illegal contract zoning, the Court of Appeals restricted the application of the ban on contract zoning to those instances wherein the legislative body itself, as opposed to some other governmental agency, is a party to the illegal contract. Chief Judge Brune pointed out for the Court of Appeals:

> Whatever the reasons for the Council's omission of reference to the Agreement may have been, it is clear that in this case, unlike *Baylis*, the legislative body has not itself sought to impose conditions and has certainly not stated that its own action is dependent upon compliance with any conditions.

222 Md. at 343, 160 A.2d 379 (Citations omitted).

The Court of Appeals also distinguished the Planning Commission, which possessed only the power to make recommendations, from the City Council, which alone possessed the power to pass a zoning ordinance:

> We thus have a situation in which the City Council was not bound by the recommendations of the Planning Commission, in which that Commission sought to impose conditions that it was not authorized to exact and that are therefore invalid, and in which the Council did not undertake or attempt to incorporate the invalid conditions in its rezoning ordinances and did not even refer to them.

222 Md. at 344, 160 A.2d 379.

In *Beshore v. Town of Bel Air*, 237 Md. 398, 206 A.2d 678 (1965), the Court of Appeals also held that no illegal contract zoning had occurred. In that case, however, it was not because the alleged contract had not been struck between the property owner and the arm of government empowered to carry out the ultimate rezoning. The Town Commissioners of Bel Air were so empowered. What was missing in *Beshore* was definitive evidence that the Bel Air Town Commissioners had entered into such an illegal zoning contract. The evidence put forth by the protestants was circumstantial, based essentially on the principle of *post hoc, ergo propter hoc*. The Court of Appeals commented on the speculative nature of the evidence:

> There is no evidence supporting the appellants' assertion that the property owners and the town of Bel Air entered into any agreement in regard to the zoning of their respective properties. The most that can be extracted from the record is that the property owners let their desires in regard to zoning be known and that the town fulfilled these desires. Ordinance No. 157 makes no reference to any agreement and cannot be termed special interest legislation since it applies to any property which is proposed to be annexed. Nor does Resolution No. 20 make any reference to any agreement, or state any conditions to the annexation or zoning.

237 Md. at 415–16, 206 A.2d 678.

The Court of Appeals attached great significance to the fact that the zoning act in question contained no reference to the allegedly illegal agreement:

> We think the case before us presents no problem of zoning by contract, since the legislative body of Bel Air has made no provision in Ordinance No. 157 or Resolution No.

20 conditioning their action in zoning on annexation upon any acts of the property owners.

237 Md. at 416, 206 A.2d 678.

In the case before us, Beachwood argues that the Baltimore County Council, in its 1992 comprehensive zoning, somehow engaged in illegal contract zoning. What pertinence that would have, even if true, to the limited decision before the County Board of Appeals is not clear. More to the point, however, is the fact that, just as in *Pressman* and just as in *Beshore*, there was no reference in the 1992 comprehensive zoning act to any agreement with Beachwood or to the fact that the 1992 zoning was in any way related to any past or future commitment by Beachwood. The evidence of contract zoning is even more bereft than was such evidence in *Beshore*, which was found to have been only speculative.

The point that Beachwood seems to be trying to make is that the Baltimore County Planning Board brought pressure to bear on Beachwood, thereby forcing Beachwood to enter into an unlawful zoning contract with the Planning Board. The contract would have been a favorable zoning recommendation by the Planning Board in consideration of a $125,000 commitment by Beachwood to improve the intersection. Where Beachwood seeks to go with the argument is by no means clear, especially in the light of *Greenbelt v. Bresler*, 248 Md. 210, 236 A.2d 1 (1967). The situation of the Baltimore County Planning Board in this case is indistinguishable from the situation of the City of Greenbelt in that case. In *Bresler*, the ultimate zoning authority resided in the Prince George's County Council, as in this case it resided in the Baltimore County Council. In that case, the Prince George's County Council was required, before engaging in any reclassification of its zoning, to submit the proposed change "to the governing body of the municipality [the City of Greenbelt] for its recommendation." 248 Md. at 215, 236 A.2d 1. Such a recommendation, however, was only of "an advisory nature . . . and not binding on the [County] Council." *Id.*

In the *Bresler* case, the Court of Appeals held that the City of Greenbelt had entered into a binding contract with the Breslers. "As an inducement to obtaining favorable recommendation from the City, the Breslers entered into two agreements." 248 Md. at 212, 236 A.2d 1. In one of those agreements, the Breslers entered into a sealed declaration of covenants and recorded them among the Land Records. In the second agreement, the Breslers agreed to donate 3.3 acres of land to the City of Greenbelt for use as a park and recreational area. "This agreement was expressly conditioned upon the favorable granting of the requested rezoning." 248 Md. at 213, 236 A.2d 1. Pursuant to the agreements, the City of Greenbelt forwarded its favorable recommendation to the Prince George's County Council, which, in turn, granted the Bresler's rezoning application. The Breslers subsequently argued that the agreements were null and void as an instance of illegal contract zoning. The Court of Appeals thoroughly reviewed the case law dealing with illegal contract zoning and pointed out that contract zoning only takes place when the contract is with the ultimate zoning authority and not with some other governmental entity that is only empowered to make recommendations:

> However all of the foregoing cases involve a contract with the deciding authority, the agency which had final control over the granting or denial of the requested zoning reclassification. We think there is a significant distinction between those cases where the contract is made between the developer and the zoning authority, and those cases involving a contract entered into in good faith between the developer and a municipality which does not have control over the classification and whose authority is limited to recommendation.

248 Md. at 215–216, 236 A.2d 1.

A similar result was reached in *Funger v. Town of Somerset*, 249 Md. 311, 239 A.2d 748 (1968). The Court of Appeals agreed that a contact had been entered into by the property owners and the Town of Somerset. The Town of Somerset agreed to recommend to the Montgomery County Council the

rezoning sought by the property owners. The property owners, in return, made commitments to the Town of Somerset. Significantly, however, the contract was only made with a governmental entity with the power to pass on a recommendation and not with a governmental entity empowered to enact the rezoning. The Court of Appeals held, citing *Greenbelt v. Bresler*, "This agreement was valid and was not contract zoning." 249 Md. at 328, 239 A.2d 748.

Because it is the only form of suspect zoning charged by Beachwood in this case, we have confined our analysis to contract zoning specifically and not to conditional zoning generally, a full analysis of which must abide some future occasion. *See*, however, *Wakefield v. Kraft*, 202 Md. 136, 96 A.2d 27 (1953); *Rose v. Paape*, 221 Md. 369, 376–77, 157 A.2d 618 (1960); *Carole Highlands Citizens Assoc. v. Prince Georges County*, 222 Md. 44, 158 A.2d 663 (1960); *Montgomery County v. Nat'l Capital Realty*, 267 Md. 364, 373–75, 297 A.2d 675 (1972); *Bd. of County Commr's v. Holtz*, 65 Md.App. 574, 501 A.2d 489 (1985); *People's Counsel v. Mockard*, 73 Md.App. 340, 343–47, 533 A.2d 1344 (1987).

Whatever may have been the twistings and turnings of the Planning Board, there is no suggestion, let alone compelling evidence, and certainly no suggestion in the majority opinion of the Board of Appeals that the County Council, in its comprehensive zoning of 1992, was implicated in those twistings and turnings. There was no evidence that the County Council was involved in any scheming and plotting, let alone any contract zoning, to procure funding for the desired highway improvement. For all of the reasons discussed, the allegation of improper contract zoning is a non-issue in this case.

Were the ban on contract zoning far broader in its sweep, as seems to be urged by Beachwood, the allegation of contract zoning in this case would, indeed, be a two-edged sword. If we were to speculate that it was not the Planning Board specifically but Baltimore County generally, operating through all of its governmental arms, that sought to enter into a

contractual relationship with Beachwood, we might have an instance of contract zoning far more subtle and far more devious than any that we have thus far encountered in the case law. Ordinarily, a disfavored zoning contract consists of a single governmental agency offering favorable zoning in return for a commitment by the property owner.

The speculative scheme in this case, by contrast, would involve two separate actions by the County government undertaken by two different arms of that government. The first would consist of the County Council's taking away of preexisting favorable zoning. The second would then consist of the Board of Appeals's offering to give it back, totally or nearly, in return for a $125,000 contribution to highway improvement. Ironically, Beachwood charges the County Council with engaging in forbidden contract zoning even as the appellants charge the Board of Appeals and Beachwood with violating the same taboo.

If the plot were as widespread as the appellants and the appellee, in combination, suggest, Beachwood would find itself on the horns of a dilemma. If the comprehensive zoning of the County Council could be faulted for having set up an illegal contract zoning "deal," then the reclassification by the County Board of Appeals could with equal fervor be faulted for having consummated that "deal." Mercifully, this is a non-issue.

JUDGMENT REVERSED; COSTS TO BE PAID BY APPELLEE.

Concurring opinion by CATHELL, J.

CATHELL, Judge, concurring.

I agree with that portion of the opinion that holds that the Board, in its reclassification, failed to make sufficient findings required by the Chesapeake Bay Critical Area law. While the case law as to findings runs the gauntlet from "complete and comprehensive" to "findings sufficient to apprise one of the reasons for an administrative decision," what occurred here, in respect to the additional requirements of the "critical area"

law, fails to meet any "findings of fact conclusions of law" standard. Thus, while I do not *necessarily* agree with all of the reasoning of the balance of the opinion nor with *its* interpretations of the late Judge Davidson's triad of cases, *i.e.*, *Coppolino, Boyce, Dorsey,* I concur with the result reached. I also would reverse.

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670 A.2d 959

Candie Jean MAXWELL

v.

Bruce E. INGERMAN.

No. 1332, Sept. Term, 1995.

Court of Special Appeals of Maryland.

Jan. 30, 1996.

In civil action, the Circuit Court, Baltimore County, entered judgment non obstante veredicto in favor of defendant. Plaintiff appealed, and defendant filed motion for reconsideration of dismissal of defendant's cross-appeal. The Court of Special Appeals, Wilner, C.J., held that plaintiff's failure to serve notice of appeal on defendant until after expiration of time to file cross-appeal excused untimeliness of filing of cross-appeal.

Motion granted.

1. Appeal and Error ⇐456

If appeal is timely noted, Court of Special Appeals acquires appellate jurisdiction over entire case.

2. Appeal and Error ⇐356

If timely cross-appeal is not filed, Court of Special Appeals will ordinarily review only those issues properly raised by appellant. Md.Rule 8–202(e).

3. Appeal and Error ⇐356, 357(2)

If cross-appeal is filed, but is not timely, Court of Special Appeals will ordinarily regard issues sought to be raised in cross-appeal as not being properly preserved for appellate review, and thus dismiss cross-appeal for that reason, but if good cause is shown for untimeliness, Court of Special Appeals may, in its discretion, excuse untimeliness and consider issues raised in cross-appeal. Md.Rule 8–202(e).

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*

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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*.

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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*

260 Md. 393

Lou HELLER et al.

v.

Charles SEGNER et al.

No. 199.

Court of Appeals of Maryland.

Jan. 13, 1971

County Board of Appeals granted changes in zoning classifications from residential to commercial to permit filling station and shopping center on the property, and neighbors in the area protested. The Circuit Court for Anne Arundel County, W. Harvey Beardmore, J., set aside the changes, and parties seeking the rezoning appealed. The Court of Appeals, Hammond, C. J., held that growth in residential use surrounding the property and resultant population increase of area, and intensification of commercial use near intersection on which property was located were not type of changes of character of neighborhood which would justify reclassification.

Order affirmed.

1. Zoning ⇐168

Construction of school and one million gallon water tank were uses legislatively permitted as compatible in a residential area, and were not the type of change of character of a neighborhood which would justify reclassification of property at nearby intersection from residential to commercial.

2. Zoning ⇐168

Where area of intersection contained a filling station and various stores at time of *previous rejection of application* for rezoning of residential land on intersection to commercial, subsequent building of second gasoline station, rezoning for store near intersection and intensification in use of the commerical strip along one street near intersection did not effect any real change in character of the surrounding land which would justify the rezoning sought.

3. Zoning ⇐168

Intensification of residential uses of surrounding property, resulting in large population growth adjacent to residential property sought to be rezoned to commercial, to permit filling station and shopping center, would not of itself justify or support the commercial rezoning, and matter of need would become pertinent only after sufficient change to permit rezoning to commercial could be shown.

Charles C. W. Atwater, Baltimore (David A. Carney and Mylander & Atwater, Baltimore, on the brief), for appellants.

Malcolm B. Smith, Annapolis (Smith & Wohlgemuth, Annapolis, on the brief), for appellees.

Argued before HAMMOND, C. J., and McWILLIAMS, FINAN, SINGLEY and DIGGES, JJ.

HAMMOND, Chief Judge.

The appellants (who seek a rezoning in Anne Arundel County from residential to commercial) used the spear of perseverance to attack, advancing beneath their banner proclaiming: "If at first you don't succeed, try, try, try again,"[1] and the appellees (protesting neighbors) defended with the shield of res judicata, waving their flag *inscribed: "The more things change,* the more they remain the same."[2] In 1962 the County Commissioners granted the petition of the owner of a 5.6 acre plot of ground at the northwest corner of Benfield Road (which runs east and west) and Jumpers Hole Road (which runs north and south) *to rezone the property for commercial use.* The comprehensive zoning in 1952 had put 300 feet by some 200 feet at all four corners of the intersection in the Light Commercial zone. The 1962 application sought—and the Commissioners granted—a change at the northwest corner to Heavy Commercial (for use as a filling station) and a change of the rest of the property from Agricultural to Light Commercial for use as the site of a shopping center.

Judge Duckett, in the Circuit Court for Anne Arundel County, nullified the actions of the Commissioners, ruling that there had been shown no substantial change in the character of the neighborhood since the original comprehensive zoning of 1952. On appeal, this Court affirmed. Judge Henderson said for the Court in County Comm'rs of Anne Arundel County v. Fairgrounds, 230 Md. 569, 572, 187 A.2d 845, 846:

"We think the Chancellor was correct in holding that the rezoning was not supportable on the record. The neighborhood is almost solidly residential. There is a tavern on one corner and a filling station on another * * *. The lot in question abuts a proposed elementary school of 24 rooms and is directly across the road from a country club. There was no evidence at all of mistake in the original zoning in the comprehensive plan adopted in July 1952. The change sought to be established in order to justify rezoning to permit the shopping center, was that in recent years some property, formerly farm land, had been utilized for the building of residences, with a consequent increase in the population. But as the Chancellor pointed out, a mere increase in population does not prove a change in the character of the neighborhood to justify another type of zoning. See Didlake v. Potect, 228 Md. 591, 180 A.2d 828. It was also argued that because of the increase in population a need for additional shopping facilities was demonstrated. But there was precise testimony that shopping facilities in the neighborhood were more than adequate, and the testimony as to public need was based upon general conclusions from population figures that were not even put in evidence. The protestants argued, with some force, that the increase in shopping facilities and service stations in the area defined exceeded the increase in population The Board made no finding of fact on this point but only a general finding that 'conditions have changed'."

In 1969 the County Board of Appeals granted precisely the same changes in classifications to permit the filling station and the shopping center that the Commissioners had granted in 1962. Judge Beardmore set aside the action again, saying:

"[T]his court does not feel that the [burden] has been met by the applicant in this case. The requested reclassifications are not substantiated by the requisite changes in the character of the neighborhood. If anything, the neighborhood has become more residential since 1962."

Judge Brune for the Court found in Whittle v. Bd. of Zoning Appeals, 211 Md. 36, 45, 125 A.2d 41, 46, that the doctrine of res judicata applied to the decision of a court in a zoning appeal, saying:

"It is our view that * * * if there have been substantial changes in fact and circumstances between the first case and the second, the doctrine of *res judicata* would not prevent the granting of the special permit [for a funeral home on York Road in Baltimore County] sought by the appellees."

The changes in the circumstances upon which the appellees relied in *Whittle* were summarized in the opinion as follows: (1) increased commercialization in the area; (2) increased population; (3) decreased neighborhood opposition; and (4) addi-

1. William Edward Hickson, Try and Try Again, quoted in The Home Book of Quotations (10th ed. 1967), p. 1488. The true authorship of the famous line has proven elusive. One T. H. Palmer is credited in H. Ferris, Favorite Poems, *Old and New* (1957), p. 540, while Woods, A Treasury of the Familiar (1959), p. 104, has it that the original author remains unknown.

2. "Plus, ça change, plus c'est la même chose." Alphonse Karr, Les Guêpes (January 1849).

tional conditions attached to the grant of the special permit.

The Court in *Whittle* held that the construction of a new stone church to replace a wooden one and the addition of a filling station in an area already commercial and containing two such stations did not "show any substantial change or increase in commercialization between 1949 and 1954"; that increase in population had been urged in the first case; that zoning cannot be made to depend on a plebiscite of neighbors; and that the matter of the more stringent conditions had no significance.

In Woodlawn Area Citizens Ass'n v. Board, 241 Md. 187, 199, 216 A.2d 149, 157, we reaffirmed the holdings of *Whittle* that there must be significant and substantial change in the character of the neighborhood or such a change in the applicable law if the second judicial decision is not to be the same as the first, and indicated the pragmatic test of significance to be whether the properties relied on as changes would "if developed in actual use under their new classifications, have any real effect upon or make any real change in the character of the neighborhood as [residential]." See also Chatham Corporation v. Beltram, 243 Md. 138, 220 A.2d 589.

The changes that have occurred within 2,000 feet of the intersection of Benfield Road and Jumpers Hole Road—and indeed within a radius of two miles of the intersection—have been very largely those of permitted intensification of residential uses, such as changes from agricultural use to cottages or manor type houses, with a consequent large increase in population. The *record fully supports Judge* Beardmore's finding that "If anything, the neighborhood has become more residential since 1962."

[1] To support the argument that the great growth in residential use surrounding the property involved raises a need for a shopping center that should be satisfied by the rezoning sought, the appellants rely on various commercial and public changes that have occurred since 1962. First is the intensification of light commercial uses along the south side of Benfield Road running east from Jumpers Hole Road for perhaps 1500 feet, such as the building of a Seven-Eleven Store; second is the reclassification from light commercial to heavy commercial of the lot on the south side of Benfield Road just east of Jumpers Hole Road to permit the building of a filling station; third, the rezoning to light commercial of a lot on the east side of Jumpers Hole Road north of Benfield Road to permit the building—not yet realized—of an Acme Store; and, finally, the building *by the County of a 1,000,000 gallon* water tank 500 feet north of Benfield Road on Jumpers Hole Road and of a school well beyond the tower which fronts on another road. Discussing them in inverse order, the tank and the school are uses legislatively permitted as compatible in a residential area; we so held in France v. Shapiro, 248 Md. 335, 343, 236 A.2d 726, 730:

"It is well recognized that the location in a residential zone of improvements of a character permitted by the ordinance, even although not necessarily compatible with a residential development, is not the type of change of character of a neighborhood which will justify reclassification. Agneslane, Inc. v. Lucas, supra [247 Md. 612, 233 A.2d 757] (fire house); Baker *v. Montgomery County Council*, supra [241 Md. 178, 215 A.2d 831] (school); Levy v. Seven Slade, Inc., 234 Md. 145, 198 A.2d 267 (1964) (synagogue, school, parking lot, powerhouse); Kaslow v. Mayor and Council of Rockville, 236 Md. 159, 202 A.2d 638 (1964) (church), Montgomery County v. Ertter, 233 Md. 414, 197 A.2d 135 (1964) (armory, motor shed, paved area)."

[2, 3] As far as the building of the second gasoline station on the south side of Benfield Road east of Jumpers Hole Road—there was one on the north side in 1962—and the rezoning for the Acme store are concerned, we paraphrase the Court's words in *Whittle*, p. 46 of 211 Md., p. 46 of 125 A.2d as follows:

"The other [change claimed to be significant] is the addition of one filling station [and one store site] in an area already commercial and already containing [one] such [station] [and various stores] * * *. [T]he area is residential. * * [N]one of the new commercial developments along *the* * * *[r]oad* * * * have had any effect upon the residential character of the neighborhood where the protestants live. That one new filling station [and one more store site] * * * at or near a busy intersection already having [one filling station and various stores] does not, in our judgment, show any substantial change or increase in commercialization between [1962 and 1969]."

The intensification in use of the commercial strip along Benfield Road likewise did not effect any real change in the character of the land to the west or the south or north or east, which since 1952 has been almost entirely residential, with the four corners of the intersection at Benfield Road and *Jumpers Hole Road and a strip along Ben*field Road for a short distance to the east a commercial enclave in its midst (although the two corners to the west have not been actually developed). As far as need is concerned in relation to increased population, in some six cases at least in the last two years, we have held that intensification, even heavy intensification resulting in large population growth, of residential uses adjacent to or surrounding a residential property sought to be rezoned to commercial use (often for a shopping center) will not of itself justify or support the commercial rezoning, and that the matter of need becomes pertinent only after sufficient change to permit rezoning to commercial has been shown. See Wright v. McCubbin, Md., 271 A.2d 365 (1970) [decided December 8, 1970]; *Wells v. Pierpont*, 253 Md. 554, 253 A.2d 749; Miller v. Abrahams, 257 Md 126, 262 A.2d 524; Chapman v. Montgomery County, 259 Md. 641, 271 A.2d 156, Hardesty v Dunphy, 259 Md. 718, 271 A.2d 152; Cabin John Ltd. Partnership v. Montgomery Co., 259 Md. 661, 271 A.2d 174; Harley v. Aluisi, 259 Md. 275, 269 A.2d 575.

Judge Beardmore was right in holding the rezoning by the Board to be arbitrary, capricious and illegal.

Order affirmed, with costs.



260 Md. 400

ONE TWENTY REALTY COMPANY, Inc. et al.

v.

Eric BAER et al.

No. 201.

Court of Appeals of Maryland.

Jan 13, 1971.

Actions in which broker sought to recover commissions from vendor and vendor *sought damages from* broker. The Circuit Court for Frederick County, Irving A. Levine, J., rendered judgments for vendor, and broker appealed. The Court of Appeals, Hammond, C. J., held, inter alia, that agency of broker, whose commission depended on consummation of purchase and who was employed by vendor as attorney in pending proceeding to procure rezoning, did not terminate upon execution of option contract and broker breached his duty to vendor by failing to disclose facts and information about optionee's financial condition and concerning manipulations *which* resulted in broker's becoming vendor to third party and in profit that otherwise might have accrued to vendor.

Affirmed.

1. Vendor and Purchaser ⇐18(1)

Agreement for sale of land whereunder purchaser was required to make certain

Moreover, we have held that where, as here, the Planning Commission's technical staff in a reasoned report recommends against a zoning change, the report in itself constitutes probative evidence making the issue fairly debatable and will justify a denial by the District Council of the requested rezoning. Franklin Constr. Co. v. Welch, 251 Md. 715, 248 A.2d 639 (1968); Montgomery County Council v. Shental, *supra*.

II

"To prevail in their contentions that the Council's action amounted to an unconstitutional confiscation of their property, the appellants must show that the denial of the reclassification precludes the property's use for any purpose to which it is reasonably adapted. If an owner affirmatively demonstrates that the legislative or administrative action deprives him of all beneficial use of his property, the action will be held unconstitutional. However, it is not enough for the property owners to show that the exercise of the police power, which is an essential attribute of sovereignty, results in substantial loss or hardship upon some individuals. The restriction on the property imposed by the zoning action must be such that it can not be used for any reasonable purpose." (Citations omitted.) DePaul v. Board, 237 Md. 221, 227, 205 A.2d 805, 808 (1965).

[7, 8] It is clear that the appellants have not sustained their heavy burden of showing that the Council's action prohibited them from using the property for any purpose for which it is reasonably adapted. On the contrary, there is testimony that the five acres can be developed with single family homes or for other purposes directly permitted or with special exceptions permitted under the R–R zone. Franklin Constr. Co. v. Welch, 251 Md. 715, 722, 248 A.2d 639 (1968). Here the existing zoning is not unconstitutional confiscation since appellants not only failed but in fact made no effort to show that the subject property could not be used for *any* of the permitted uses under its present classification. Montgomery County v. Laughlin, 255 Md. 724, 735–736, 259 A.2d 293 (1969).

Order affirmed. Appellants to pay the costs.



237 Md. 126

Bernard H. MILLER

v.

Albert ABRAHAMS.

No. 216.

Court of Appeals of Maryland.

March 3, 1970.

Action by property owner for zoning reclassification. The zoning commissioner denied petition, the board of appeals reversed and the Circuit Court for Baltimore County, John N. Maguire, J., affirmed and appeal was taken. The Court of Appeals, McWilliams, J., held that landowner was not entitled to have property rezoned from residential to business-local where he failed to establish that in five years since comprehensive zoning was adopted character of neighborhood had sufficiently changed to warrant reclassification; contention that area residents should be able to walk to a shopping center rather than drive to existing shopping centers situated some 2¼ and 3 to 3¾ minutes away or the eight reclassifications to residence-apartments, which were not yet constructed, had been granted did not justify reclassification.

Order reversed.

Zoning ⇐168

Landowner was not entitled to have property rezoned from residential to business-local where he failed to establish that in five years since comprehensive zoning was adopted, character of neighborhood had sufficiently changed to warrant reclassification; contention that area residents should be able to walk to a shopping center rather than drive to existing shopping centers situated some 2¼ and 3 to 3¾ minutes away or that eight reclassifications to residence-apartments, which were not yet constructed, had been granted did not justify reclassification

Marvin I. Singer, Baltimore (Sullivan, Wiesand & Singer, Baltimore, on the brief), for appellant.

W. Lee Harrison, Towson, for appellee.

Before HAMMOND, C. J., and McWILLIAMS, FINAN, SINGLEY and SMITH, JJ.

McWILLIAMS, Judge.

This is indeed a twice-told tale. The first telling will be found in *Miller v. Abrahams*, 239 Md. 263, 211 A.2d 309 (1965). In this, the second telling, the parties are the same; the property is the same; the same reclassification is being sought; the Zoning Commissioner again denied the petition; the Board of Appeals repeated its reversal of the Commissioner; the circuit court once more affirmed the action of the Board of Appeals; and, as we did before, we shall reverse the order of the trial court.

In March 1962 the appellee (Abrahams) paid $46,000 for a 9.1967 acre tract of R–6 (Residential, 6000 square feet minimum) land on the north side of Old Court Road in the Second Election District of Baltimore County, about midway between Liberty Road and Reisterstown Road. For some months before Abrahams bought the property the Planning Board had been engaged in the preparation of a preliminary map delineating the recommendations it proposed to make to the County Council for the impending Comprehensive Rezoning of the Western Planning Area. As shown on that map, Old Court Road was relocated so as to eliminate a "dog-leg" and widened from 16 feet to 60 feet. As relocated Old Court Road bisected the 9.1967 acre tract. The zoning classification indicated on the map for the 5.2 acre portion on the north side of the road was B–L (Business-Local). The portion on the south side was itself bisected by the proposed extension of Rolling Road which, as shown, would intersect relocated Old Court Road. Abrahams was aware of all this and there is no doubt that, in deciding to acquire the property, he found it quite persuasive. The Council, however, rejected the Planning Board's zoning recommendation and when, on 15 November 1962, it adopted the comprehensive zoning map the R–6 classification was continued. Two months later Abrahams sought the reclassification of the 5.2 acre parcel to B–L claiming original mistake. The details of his unsuccessful campaign will be found in Miller v. Abrahams, *supra*. In May 1967 Abrahams embarked on another sortie to obtain the B–L classification, this time claiming change in the character of the neighborhood. The Zoning Commissioner denied his petition; the Board of Appeals reversed the Commissioner; the court below affirmed the Board, and here we all are again.

It is conceded that the only issue before us is whether Abrahams has produced evidence of a change in the character of the neighborhood sufficient to justify, i. e., make fairly debatable, a reclassification from R–6 to B–L. If not conceded, at least no one disagrees that the area between Liberty Road and Reisterstown Road, in the vicinity of the Abrahams property, has been and is now devoted almost exclusively to residential use. About the only exception is a service station at Old Court Road and Church Lane, a mile or so from the Abrahams property. Newly constructed Old Court Junior High School and a $300,000 church are on the south side of Old Court Road, now 60 feet wide and

built in the precise location shown on the 1962 map. The appellant (Miller) still lives on the five acre tract adjoining Abrahams' property to the west.

The evidence of change to which Abrahams seems to attach the greatest significance is the increase, since 1962, in population in the vicinity of his property. A claim of 11,000 is made; this, to be sure, is an obvious exaggeration. There can be no doubt, however, that a number of people have moved into the neighborhood but, as the trial judge, Maguire, J., observed, "the testimony seems unable to narrow the area in which the increase occurred beyond the second district in general," an area of about 60 square miles. We have held, of course, that "a mere increase in population does not prove a change in the character of the neighborhood to justify another type of zoning." County Commissioners of Anne Arundel County v. Fairwinds Beach Club, 230 Md. 569, 572, 187 A.2d 845, 846 (1963). By way of riposte Abrahams quotes from the opinion of Judge Barnes, who spoke for the Court in Bosley v. Hospital for Consumptives, 246 Md. 197, 204, 227 A.2d 746, 750 (1967). The excerpt is as follows:

> "The substantial development of housing units and the concurrent growth in population could reasonably lead to *need* for additional commercial zoning in the area to supply the wants of the increased population" (Emphasis ours.)

He buttresses the excerpt quoted above with a quotation from Cassell v. Mayor & City Council of Baltimore, 195 Md. 348, 355–356, 73 A.2d 486, 489 (1950):

> "On the other hand, it has been decided that a use permitted in a small area, which is not inconsistent with the use to which the larger surrounding area is restricted, although it may be different from that use, is not 'spot zoning' when it does not conflict with the comprehensive plan but is in harmony with an orderly growth of a new use for property in the locality. The courts have accordingly upheld the creation of small districts within a residential district for use of grocery stores, drug stores and barber shops, and even gasoline filling stations, for the accommodation and convenience of the residents of the residential district. [Citing cases.]"

Counsel should know that the quotation from *Cassell* is mere comment, well below the level of *obiter dictum*. Indeed we held, in *Cassell*, that the reclassification of a single property so as to allow its use as a *funeral home in a residential area* was "spot zoning," especially since there was no showing of a public need for it. See Minor v. Shifflett, 252 Md 158, 249 A.2d 159 (1969). In *Bosley* the construction of Goucher Boulevard and Prince Road, the locations of which had not been determined when the zoning map was adopted, effected a dramatic change in the character of the neighborhood; moreover, there was proof of a need for additional commercial zoning In the record before us the "evidence" of public need is little more than wishful thinking and, in our judgment, too thin to make the issue fairly debatable. In fact, it was conceded that there are "extensive shopping facilities of all kinds on Liberty Road [2¼ minutes away] and on Reisterstown Road [3 to 3¾ minutes away]." *Much was made of the notion* that residents of the area would be able to *walk* to Abrahams' shopping center. The short and melancholy answer to this is the common knowledge that it is a poor and disadvantaged citizen indeed who walks to a shopping center in this day and age. Mr. W. Worthington Ewell, a traffic expert, testified to that general effect.

Frederick P. Klaus and Bernard Willemain, familiar names in the folklore of zoning,[1] testified, as experts, in respect of eight reclassifications, said to be significant, seven of which were from R–6 to R–A (Residence-Apartments). The first was 700 feet from the Abrahams *property*; the second was 1200 feet distant; the third, 2100 feet. The rest were a mile or more away. Although most of the properties had been reclassified several years before the hearing none of them had been built upon and no one could say when construction of any kind would be commenced. Although Mr. Willemain insisted the apartment zoning would bring more people to the area, thereby creating a need for commercial facilities, he conceded the residential character of the neighborhood; he even went so far as to say that the reclassification of Abrahams' property to B–L would *not* change its character.

We think it is quite clear that further comment in respect of the significance of *these* reclassifications has been made unnecessary by our decisions in Wells v Pierpont, 253 Md. 554, 253 A.2d 749 (1969), and Randolph Hills v. Whitley, 249 Md. 78, 238 A.2d 257 (1968).

Abrahams contends, albeit halfheartedly, that the *realignment and widening of* Old Court Road, as actually accomplished in 1966, contributed in large measure to a change in conditions which, in turn, effected a substantial change in the character of the neighborhood. The same argument in *respect* of an almost identical situation was made, and rejected, in Wells v. Pierpont, *supra*. See also Dorf v. Mullendore, 255 Md. 367, 258 A.2d 223 (1969).

Once more we repeat that

> "[i]t is now firmly established that there is a strong presumption of the correctness of * * * comprehensive rezoning, and that to sustain a piecemeal change therefrom there must be produced strong evidence of * * * substantial change in the character of the neighborhood. * * * [and] the burden of proof facing one seeking a zoning reclassification is quite onerous." Wells v. Pierpont, *supra*, 253 Md. at 557, 253 A.2d at 751.

As Abrahams failed to sustain the burden of proving mistake in the "first telling," so has he failed here to sustain the burden of proving a substantial change in the character of the neighborhood. As we *said at the outset*, Judge Maguire's order will be reversed.

Order reversed.

Costs to be paid by appellee.

1. *See, e. g.*, Wells v. Pierpont, 253 Md 554, 253 A.2d 749 (1969); Carey v. Martin, 251 Md. 446, 248 A.2d 96 (1968); Ark Readi-Mix Concrete Corp. v. Smith, 251 Md. 1, 246 A.2d 220 (1968); France v. Shapiro, 248 Md. 335, 236 A.2d 726 (1968); Agneslane, Inc. v Lucas, 247 Md 612, 233 A.2d 757 (1967); Lambert v. Seabold, 246 Md. 562, 229 A.2d 116 (1967); Bosley v. Hospital, etc., 246 Md. 197, 227 A.2d 746 (1967); Finney v. Halle, 241 Md. 224, 216 A.2d 530 (1966).

WEST KEY NUMBER SYSTEM

257 Md. 100
Tallman JOHNSON
v.
CLIFTON T. PERKINS STATE HOSPITAL.
No. 76.

Court of Appeals of Maryland.
March 3, 1970.

Prosecution for breaking and entering and grand larceny Defendant was found not guilty by reason of insanity by the Circuit Court for Howard County, James Macgill, C. J., and was ordered committed to custody of Department of Mental Hygiene, and he appealed. The Court of Appeals held that posttrial order of commitment and determination that defendant was not guilty by reason of insanity superseded pretrial order committing defendant to state hospital for further examination and treatment and made moot posttrial appeal from that order, but, in any event, posttrial commitment and detention was on entirely *different statutory* basis from pretrial com-

"THE COURT: Then you don't have any?

"MR. O'BRIEN: Of course not.

"THE COURT: I am home free."

One hour later the jury returned with a verdict in favor of Mrs. Saunders.

Mrs Glover, within the time allowed, moved for a judgment n. o. v. and, alternatively, *for a new trial. Of the 9 reasons* cited in support thereof only No. 4 is now significant. It is as follows:

"(4) The trial court erred in not granting plaintiff's motion for directed verdict as to liability herein, based upon the Maryland 'boulevard law'."

[1] In this Court Mrs. Glover contends Judge Meloy erred when he denied her motion for judgment n. o. v.

Maryland Rule 563 a 1 provides as follows:

"Rule 563. Judgment N. O. V.

"a. *Motion.*

"1. When to be Filed—3 Days.

"*Where a motion for a directed verdict made by a party at the close of all the evidence is denied* then (1) within three days after the reception of a verdict, such party may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed *verdict, or (2) if a verdict was not* returned, such party, within three days after the jury has been discharged, may move for a judgment in accordance with his motion for a directed verdict." (Emphasis added)

We have examined the transcript very carefully but we have not found anything suggesting a motion, by either party, for a directed verdict or the denial of any such motion. Perhaps some such motion may have been made and denied in chambers or in a colloquy at the bench If so the transaction certainly was not inserted into the record. A motion for a judgment n. o. v. cannot be considered, much less acted upon, unless the record discloses the denial of a motion for a directed verdict "made * * * at the close of all the evidence."

In Rockville Investment Corp. v. Rogan, 246 Md. 482, 484–85, 299 A.2d 76, 77 (1967), Judge Marbury said, for the Court:

"There is nothing before this Court to review. After making its motion for a directed verdict at the close of appellees' case, which motion was denied, appellant offered evidence to support its theory of the case and to rebut the evidence presented by appellees. The motion for directed verdict was withdrawn by the appellant's presentation of evidence. Maryland Rule 552 b. Schmidt v. Millhauser, 212 Md 585, 130 A.2d 572; Smith v. Carr, 189 Md. 338, 56 A.2d 151. At the close of all the evidence appellant made a motion for a directed verdict without stating the grounds therefor, as he had done previously for the motion made at the close of the evidence offered by appellees. The record indicates that there was argument on this motion, but it does not reveal any portion of that argument nor the grounds for this motion. A party has the obligation to state for the record the grounds of his motion for a directed verdict in order to inform the court and the counsel for the nonmoving party. Rule 552 a; Levin v. Cook, 186 Md. 535, 47 A.2d 505; Slaska v. Idzi, 186 Md. 530, 47 A.2d 503, and cases cited therein. The second motion was defective, and having failed to properly renew the first motion and the reasons therefor, appellant can not now rely upon either on appeal. Appellant also failed to object to any instructions given the jury. Since appellant offered evidence after making its motion for a directed verdict at the close of appellees' testimony, but failed to properly renew the motion at the close of all the evidence or to object to instructions with reference to the issues raised in the trial, the rulings on the motions and the instructions to the jury became the law of the case and the questions raised by the appellant are not properly before this Court for decision. Montauk Corp. v. Seeds, 215 Md. 491, 138 A.2d 907; Smith v. Carr, supra."

[2] While for what has been said Mrs. Glover's appeal must fail, that would have been its eventual fate in any event. We understand her to be arguing that since the presence of the stop sign made New Hampshire Avenue a boulevard the green light conferred upon Mrs Saunders nothing more than the right to enter New Hampshire Avenue as an unfavored driver. Despite the many cases cited by Mrs. Glover, we are not persuaded by this argument. We think Mrs. Saunders' right to enter the intersection was controlled by Code, Art 66½, § 242(c) which reads as follows:

"Duty of driver.—Every driver of a vehicle shall come to a full stop at such [stop] sign or at a clearly marked stop line before entering an intersection and yield the right-of-way to vehicles approaching on the intersecting highway *except when directed to proceed by a peace officer or traffic-control signal.*" (Emphasis added.)

[3] Mrs Saunders' right to proceed, of course, was limited by Code, Art. 66½, § 193 (a) (1) which provides:

"(a) *Green alone or 'go.'*

"(1) Vehicles facing the signal may proceed straight through or turn right or left unless a sign at such place prohibits either such turn. All vehicles shall yield the right-of-way to *other vehicles* and to pedestrians *lawfully within the intersection at the time such signal is exhibited.*" (Emphasis added.)

See Smack v. Whitt, 249 Md 532, 538, 240 A.2d 612 (1968). Whether Mrs. Glover was "lawfully within the intersection" at the time the light turned green for Mrs. Saunders, or even at the instant of collision is, in the circumstances, clearly a question for the jury. Perlin Packing Co. v. Price, 247 Md. 475, 484, 231 A.2d 702 (1967); Eastern Contractors, Inc v. State ex rel. Seifert, 225 Md. 112, 169 A.2d 430 (1961).

Judgment affirmed. Costs to be paid by the appellant.

252 Md 158

Edward MINOR et al. and Conway Robinson et al.

v.

Cecil E. SHIFFLETT et al.

No. 7.

Court of Appeals of Maryland.

Jan. 15, 1969.

Proceeding by landowner operating an automobile junkyard to obtain zoning reclassification and granting of special exception to permit the junkyard use. The Zoning Commissioner of Baltimore County denied the request, and owner and others appealed. The County Board of Appeals of Baltimore County denied reclassification of the entire tract but granted reclassification of land on which junkyard was located and granted a special exception. Upon appeal, the Circuit Court for Baltimore County, John N. Maguire, J., affirmed the Board's decision. Upon appeal, the Court of Appeals, Smith, J., held that landowner would not be entitled to the reclassification and special exception where there was no evidence of any substantial change in character of neighborhood which was devoted to residential uses, original error in zoning was not shown, and request was for sole benefit of owner's private interests and for use inconsistent with uses to which rest of district was restricted.

Order reversed.

1. Zoning ⇐684

Burden of proof in a zoning case is on individual seeking zoning reclassification.

2. Zoning ⇐703

Where record on appeal in zoning reclassification case is so devoid of substantial supporting facts that it is incapable of raising a debatable issue, court will declare the legislative or administrative action invalid.

3. Zoning ⇐163

Presence of a nonconforming use in an area would not be evidence of error in original zoning requiring a change of classification.

4. Zoning ⇐536

Automobile junkyard operator seeking zoning reclassification of his property and granting of a special exception pursuant to the zoning law and regulations to permit a junkyard had burden of proof.

5. Zoning ⇐652

Evidence which, in proceeding by landowner operating an automobile junkyard for zoning reclassification and granting of special exception to permit the junkyard use, revealed only that county director of planning lacked *personal knowledge* of owner's industrial use of the land at time of adoption of zoning map was not sufficient to establish error in original zoning as to such use.

6. Zoning ⇐158, 536

Landowner operating an automobile junkyard would not be entitled to zoning reclassification and granting of a special exception to permit the junkyard use, where there was no evidence of any substantial change in character of neighborhood which was devoted to residential uses, original error in zoning was not shown, and request was for sole benefit of owner's private interests and for use inconsistent with uses to which rest of district was restricted.

Philip O. Foard and George W. White, Jr., Baltimore (Buckmaster, White, Mindel & Clarke, Baltimore, on the brief), for appellants.

Richard D. Payne, Towson, for appellees.

Before HAMMOND, C. J., and MARBURY, BARNES, McWILLIAMS, SINGLEY and SMITH, JJ.

SMITH, Judge.

Appellees (Shifflett) have operated an automobile junk yard at their present location in the extreme western section of Baltimore County since about 1932. The zone in which they are located is an R–40 zone. Their use has been a nonconforming use since the adoption of zoning in Baltimore County in 1945.

Shifflett is no stranger to this Court. See Shifflett v. Baltimore County, 247 Md. 151, 230 A.2d 310 (1967) wherein we upheld the validity of the Baltimore County ordinance adopted in 1962 requiring the elimination of junk yards in all residential zones of the county *within two years.*

Shifflett applied to the Zoning Commissioner of Baltimore County for a reclassification of his property to an MH zone and for the granting of a special exception pursuant to the Zoning Law and Zoning Regulations of Baltimore County permitting a junk yard. The reasons assigned were error in original zoning and change in the neighborhood The request was denied.

Appeal was entered to the County Board of Appeals of Baltimore County. That Board denied reclassification of the entire 30.5 acre tract but did grant reclassification of the five acre parcel of ground on which the junk yard was located. It likewise granted the special exception.

Appellants appealed to the Circuit Court for Baltimore County which court affirmed the decision of the Board of Appeals. This appeal followed. For the reasons hereinafter set forth we hold the reclassification should have been denied.

Junk yards are not permitted in any zone in Baltimore County except in an MH zone and then only by special exception.

The area in question lies just north of Patapsco State Park. It is located "as the crow flies" almost a mile from an MLR zone. With that exception, the land for quite some distance around the subject property is classified for residential use.

The zoning map in question was adopted on November 15, 1962. The area was zoned as residential, however, from the adoption of zoning in Baltimore County in 1945.

The MH classification (manufacturing heavy) is the most liberal of the zones in Baltimore County as to the uses permitted therein.

Shifflett presented testimony of five witnesses other than himself. Their testimony was devoted almost entirely to the long standing use of the property for junk yard purposes. It is conceded that the junk yard operation is carried on on the five acre portion for which the special exception was requested.

The Shifflett witnesses mentioned the one time existence of a quarry on subject property. The only portion of their testimony concerned with surrounding property was that of the witness Duvall who said there were about 20 houses in about a three mile section of Wright's Mill Road from Dogwood Road around the loop back to Old Court Road.

Access to subject property is by Wright's Mill Road, the paved portion of which was said to be nine feet in width at the subject property.

Although Mr. Gavrelis, Director of Planning for Baltimore County, connected with the County Planning Department since 1951, testified on cross examination (having been called as a witness by the protestants) that at the time of the adoption of the zoning map by the Planning Board he personally had no knowledge of the industrial use of Shifflett, and Shifflett regarded this in this Court as evidence of error in original zoning, no other evidence was presented as to the knowledge or lack of knowledge of the Baltimore County Zoning authorities as to the use of the land for junk yard purposes. The Board of Appeals found as a fact that the property had been used as an automobile junk yard since prior to 1945 and that if it were not for Section 200.16 of the Zoning Regulations it would presently enjoy a legal nonconforming use as a junk yard. In finding error in the original zoning the Board said:

"There was no testimony of any substantial change in the character of the neighborhood since the adoption of the map in 1962, however, the Board feels that the zoning on the subject property is erroneous in that the Planning Staff, prior to the adoption of the map, was apparently unaware of the existing commercial use on the property, and consequently did not even consider recommending zoning on the property that would allow the commercial use of the land to continue, even though apparently (from Cecil Shifflett's testimony) in 1962 the petitioner had an inventory of cars valued at $97,000 located on the property. It seems to the Board that to *properly adopt* a land use map the County should endeavor to determine existing land uses of properties, and in cases where feasible, adopt zoning that would allow existing businesses to continue their operation as long as they are not detrimental to the general health, safety, and welfare of the public. The testimony in this case indicated that very few, if any, persons can actually see the junk operation on the tract, and, as cited above, several witnesses testified that they knew of the use of the property but that *it had not adversely affected them.* Indeed, the overlooking of the existing use of this property by the Planning Staff would indicate that the junk operation is so remote and screened from public

view that very few people are even aware of its existence." (emphasis added)

In sustaining the action of the Board of Appeals the Circuit Court said in part:

"The evidence of original error *in the* instant matter seems crystal clear. The Junk Yard business was in existence long before the zoning map was adopted in 1962. Mr. George Gavrelis, Director of Planning for Baltimore County, admitted under oath, that his staff was not aware of the existence of the Junk Yard when they prepared the zoning map. Further, the owner, Cecil Shifflett, has a substantial investment in his business approaching $300,000."

A careful reading of the record does not disclose any statement on the part of Mr. Gavrelis wherein he said that his staff was not aware of the existence of the junk yard *when they* prepared the zoning map. Interestingly enough, no such statement is cited in Shifflett's brief. It is true, as Shifflett's brief stated, that in response to a question of Mr. Baldwin of the Board of Appeals Mr. Gavrelis stated that the Planning Board in making its recommendation normally considers the existing uses of the property. The next series of questions and answers went, however, as *follows*:

"Q And usually you try to recognize, say if I have a nonconforming gas station, or a grocery store, or something along the road, you usually try to recognize the existing commercial or industrial uses, don't you? A. In all fairness, I would have to say not always.

"Q. I don't mean in every case. A. They are identified, and from a planning viewpoint, and if it seems they do make sense as part of the zoning fabric, commercial zoning or what is recommended to the Board, but on the other hand, if the property has no zoning status, if it is a nonconforming use, and from a staff viewpoint, and from the Board viewpoint, it is felt that the establishment of zoning potentials is incompatible, the recommendation is made it retain its nonconforming status."

Mr. Gavrelis also testified as follows in response to a series of questions about the lack of an MH zone on the Western Area Map:

"Q. Wouldn't you, normally, in adopting a map, somewhat try to balance the land use? A. No, not at all. Again, if you examine the zoning regulations, I think you will find that the M–L–R, and the M–L zones, are rather permissive, and the distinction between essentially M–L and M–H is that the M–H starts to introduce the more, I will call it heavy type of industries, like steel mills, or refineries, or refractories, the ones that potentially have more nuisance and/or developed in very large complexes, and basically, I think that is the feeling of the planning staff, and I am sure the Planning Board, this kind of zoning, *which* perhaps has an inherent requirement for access to either rail or port, rather than simply the expressway system, just didn't seem to be appropriate in this portion of the county.

"I do recall we had some M–H zoning in the 13th District, where we had some concentration of rail access.

"Q. Certainly a 5-acre junk yard doesn't require access to rail or port, does it? A. Well, we are talking about M–H zoning broadly, and I answered the question in that vein.

"Q. (By Mr MacDaniel) Why do you require a junk yard to be in an M–H zone there? You are in favor of a junk yard in an M–H zone, aren't you? A. With the right circumstances, yes.

"Q. But if a junk yard exists in an M–H zone, do you feel that all the other requirements in an M–H zone must be there in order for there to be a junk yard existing in that area? A. Generally, yes

"Q. Why,—if they are not needed for the junk yard? A. You can go around and around and around."

Moreover, on the quarry aspect Gavrelis testified a quarry can exist with a special exception in R–10, R–20, and R–40 residential zones and in business and manufacturing zones where no blasting was required.

The only expert testimony before the Board of Appeals was that of Mr. Gavrelis who testified:

"The Board has neither reviewed or *acted on this petition. With respect to* the planning staff itself, we feel that the original recommendation for R–40 zoning was, in fact, correct, that again there is nothing inherent in the location, the topography, the environment of this particular property, which indicates to us that industrial zoning would be at all appropriate, pointing out that M–H zoning is the most permissive, the most liberal zone which we have on our books, allows the broadest gamut of potential uses, and from a planning staff viewpoint we do not at all feel that is an appropriate place for the establishment of these broad zoning potentials, to start with, having from a staff position rejected the concept of industrial zoning here, to start with, the business of dealing with junk yard becomes somewhat moot.

"From a staff position, however, we do not at all feel that junk yards are a felicitous or happy or compatible land use generally. They offer, very obviously, some very unique problems, and offer some very difficult relationships to adjoining properties, recognizing that junk yards in themselves are a problem, we do believe there are locations in Baltimore County which have the appropriate zoning, which could be utilized, and properly so, for this kind of use.

* * * * * *

"We do not recommend the establishment of a junk yard here."

[1] The burden of proof in a zoning case is on the individual seeking zoning reclassification. In Pahl v. County Board of Appeals, 237 Md. 294, 206 A.2d 245 (1965) we said:

"Under the well established rule in Maryland, '* * * there is a strong presumption of the correctness of original zoning and of comprehensive rezoning, and * * to sustain a piecemeal change therefrom, there must be strong evidence of mistake in the original zoning or in the comprehensive rezoning or else of a substantial change in conditions.' Shadynook Imp. Ass'n, Inc. v. Molloy, 232 Md 265, 269–270, 192 A.2d 502, 504. See also Greenblatt v Toney Schloss, Properties Corp., 235 Md. 9, 200 A 2d 70." Id. at 297, 206 A.2d at 247.

In Reese v. Mandel, 224 Md 121, 167 A 2d 111 (1961) we said:

"In testing the action of the Board of Appeals herein, we start off with a strong presumption of the validity of the classifications made when the comprehensive map was adopted, and those who attack the classifications bear a heavy burden of overcoming the presumption of their validity—heavier in the case of comprehensive zoning than in the case of piecemeal reclassification." Id. at 128, 167 A.2d at 115.

We further said there:

"When the validity of the action taken by the Board is reasonably and fairly debatable, as we have stated was the case here, the courts have no authority to overturn that action by substituting their judgment for that of the Board." Id. at 129, 167 A.2d at 116.

Stated in another way:

"'[T]he Courts may not substitute their judgment for that of the Board when the Board's decision is supported by substantial evidence and the issue before the Board was fairly debatable.' Bosley v. Hospital for Consumptives, 246 Md.

197, 204, 227 A.2d 746, 750 (1967) citing Vogel v. *McCosh*, 242 Md. 371, 219 A.2d 89 (1966). See also Agneslane, Inc. v. Lucas, 247 Md 612, 233 A.2d 757 (1967)." France v. Shapiro, 248 Md. 335, 342, 236 A.2d 726, 730 (1968)

See also, Goucher College v. DeWolfe, Md., 248 A.2d 379 [Decided December 6, 1968] citing *Agneslane*, supra.

[2] Judge Singley, in stating the law applicable to reclassification continued:

"However, the '[C]ourt will, where the record *is so devoid of* substantial supporting facts as to be incapable of raising a debatable issue, declare the legislative or administrative action invalid.' Baker v. Montgomery County Council, 241 Md. 178, 186, 215 A.2d 831, 855 (1966) citing Jobar Corp v. Rodgers Forge [Community Ass'n], 236 Md. 106, 202 A.2d 612 (1965), Leavitt and Sons [Inc.] v. Board of County Commissioners, 233 Md. 186, 195 A.2d 723 (1963)." *France*, supra, 248 Md. at 342, 236 A.2d at 730.

In Hewitt v. County Commissioners, 220 Md 48, 58, 151 A.2d 144, 149 (1959) Chief Judge Brune quoted, with approval, Huff v. Board of Zoning Appeals, 214 Md. 48, 57, 133 A.2d 83 (1957) wherein our present Chief Judge stated:

" 'Where a zoning ordinance or an amendment puts a small area in a zone different from that of the surrounding area, we have what may be called "spot zoning", using the term in a descriptive sense. Such zoning may be invalid or valid. *If it is an arbitrary and unreasonable devotion of the small area to a use inconsistent with the uses to which the rest of the district is restricted and made for the sole benefit of the private interests of the owner, it is invalid* Cassel v. Mayor and City Counsel of Baltimore, 195 Md 348, 355, 73 A.2d 486. On the other hand, if the zoning of the small parcel is in accord and in harmony with the comprehensive zoning plan and is done for the public good—that is, to serve one or more of the purposes of the enabling statute, and so bears a substantial relationship to the public health, safety, morals and general welfare, it is valid. Offutt v. Board of Zoning Appeals, 204 Md. 551, 561, 105 A.2d 219, Temmink v. Board of Zoning Appeals, 205 Md. 489, 495, 109 A.2d 85; Ellicott v. Mayor and City Council of Baltimore, 180 Md. 176, 183, 23 A.2d 649; Cassel v. Mayor and City Council of Baltimore, supra.' " (emphasis added)

There are certain exceptions to "spot zoning" recognized in the *Cassel* and *Temmink* cases, "such as the creation of small districts within a residential zone for the operation of such establishments as grocery stores, drug stores, barber shops, and even gasoline stations, for the accommodation and convenience of the residents of the residential zone. Cf. Ellicott v. Mayor and City Council of Baltimore, 180 Md 176, 23 A.2d 649." *Hewitt*, supra, 220 Md. at 60, 151 A.2d at 151.

The opinion in the Circuit Court for Baltimore County states in part:

"* * * We feel that the harm to the applicants outweighs a very nebulous benefit to the public by disallowing this business of substantial investment and longevity."

This position is in direct conflict with Chief Judge Hammond's comment in *Huff* which appeared in *Hewitt*, supra

If we were to assume, *arguendo*, that the Baltimore County Planning Department was unaware of the use made of the subject property, it would nevertheless be noteworthy that there was no expert testimony before the Board of Appeals as to the reasonable probability of a different zoning classification had the zoning authorities been aware of such use. It also is noteworthy that the only expert who testified before the Board stated with reference to an MH zone that he regarded an inherent requirement to be access to rail or port facilities There was no showing of such access.

[3] The presence of a nonconforming use in an area would not and could not be evidence of error in original zoning requiring a change of classification. To so hold would defeat the very purposes of zoning. Ordinarily, planners expect that nonconforming uses will wither on the vine, so to speak, and ultimately disappear. The usual zoning ordinance provides, as does the Baltimore County ordinance, that a discontinuance of a nonconforming use for a specified period of time shall be deemed an abandonment.

No evidence was presented that the use contemplated for the subject property was the only use for which it was fitted. In fact, the modern home of Shifflett was located thereon Although there was an allegation that the topography of the land was "rough and rugged", there was no showing that the 30.5 acres of land of Shifflett differed in its terrain from the many acres of residential land surrounding it.

[4-6] The burden of proof was on Shifflett. The Board of Appeals conceded that there was no evidence of any substantial change in the character of the neighborhood. The uncontradicted evidence is that the entire surrounding area is devoted to residential uses. We hold the record to be devoid of substantial supporting facts as to original error. The request here is squarely within the language of *Huff* and *Hewitt*, supra. The request was for the sole benefit of the private interests of the owner and is for a use inconsistent with the uses to which the rest of the district is restricted.

Order reversed, costs to be paid by the appellees.

BARNES, Judge (concurring).

I most reluctantly concur in the result this case. I only concur because I *must* result of the doctrine of *stare decisis*.

The result in the case on this appeal—contrary to the result reached both by the Board and by the Circuit Court—is based upon two lines of decision in this Court both of which I consider to be quite erroneous and contrary to a correct understanding of the constitutional provisions involved.

The first of these erroneous lines of decision is the Maryland "change in conditions—mistake in original zoning" rule. My comments upon this unfortunate rule in regard to its curious inception, its illogical character and its unhappy results, have already appeared at some length in earlier dissenting and concurring opinions See MacDonald v. Board of County Commissioners, 238 Md. 549, 557, 604, 210 A.2d 325, 329, 340 (1965). See also Wahler v. Montgomery County Council, 249 Md 62, 71, 238 A.2d 266, 271 (1968) and Randolph Hills, Inc. v. Whitley, 249 Md 78, 90, 238 A.2d 257, 264 (1968).

These comments need not be repeated again or even summarized here. The present case, however, appears to me to *be a good example of an unfortunate and* unsound result, emanating from this erroneous doctrine, which is gravely injurious to the property rights of Shifflett, the property owner, and to the public interest as well.

First of all, it is established that the junk use is a lawful use of private property, and does not create a nuisance *per se*. Mayor and Council of Town of Bladensburg, Inc. v. Berg, 216 Md. 292, 296, 139 A. 2d 703, 705–706, 140 A.2d 663 (1958).

Secondly, the private property involved in this case has been used for the lawful purpose since 1932, assuming, *arguendo*, that Section 200.16 of the Baltimore County Zoning Regulations is unconstitutional. The property owner has a substantial investment of approximately $300,000 in this property and the business conducted there. The use of this property for a lawful business is, in my opinion, a *vested* property

right. The lawful use provides substantial employment for 10 full-time employees, and two part-time employees, with a payroll of approximately $60,000 per year. The use not only is beneficial to the economy generally but specifically provides employment and advances the public interest in that important way.

Thirdly, the vesting of this property right occurred some 13 years before the original zoning in the area in 1945 and has continued without interruption until the present time.

What other property owner has been injured by this use? Some of the protestants in this case did not even know of the existence of the use when they acquired and moved into their properties. While others knew about the use, some could *not* see the subject property from their own properties, and not one testified in regard to any specific injury to him personally or even to any specific amount of depreciation in the value of his property resulting from Shifflett's use The terrain where the junk use is carried on is quite rough and at one time there was a quarry on the property. No nearby or other property owner has sought any relief in equity for any alleged nuisance, doubtless because there is no nuisance. And yet, notwithstanding this factual situation, his long-established lawful and beneficial use, by the terms of Section 200 16 of the Baltimore County Zoning Regulations, enacted by the County Council on November 17, 1962, must *be obliterated, with no provision for* just compensation, unless the Board could pursuant to its delegated legislative powers rezone a sufficient part of the subject property to enable the property owner to continue the use At this point the difference between what I conceive to be the proper constitutional doctrine which ought to be applied and the Maryland "change-mistake" rule becomes clearly apparent.

It is conceded that there has been no "change in conditions" since the last comprehensive rezoning to justify the Board in approving the rezoning. I must agree with the majority in its observation that the *proof* in the present case does not support *the Board's finding* that there was a "mistake in original zoning." There was no expert testimony to this effect introduced on behalf of Shifflett. Indeed, the *only* expert testimony in the case—that of Mr. Gavrelis—indicated (hypothetically, at least) that there was, in his opinion, no error in the original zoning. It is apparent, I think, that merely because there was a non-conforming use created at the time of the original zoning, which was not then made to conform by some type of zoning, there is not, *ipso facto*, a "mistake" in the original zoning.

If, however, the proper constitutional doctrine were applied, which, in my opinion, is *whether or not the rezoning action* of the Board was "arbitrary, unreasonable or capricious" and thus a denial of due process of law contrary to Article 23 of the Declaration of Rights in the Maryland Constitution—the usual test in other challenges to the exercise of legislative power (unless limited by the provisions of the delegation of the exercise of this power to an agency other than the legislative body itself),—it is clear to me that the *Board's action* in this case was not at all "arbitrary, unreasonable or capricious" but, on the contrary, was a reasonable decision, based on the preservation of vested property rights and calculated to advance the public interest In short, as I have indicated in the other opinions mentioned, the Maryland "change-mistake" rule confines the exercise of the legislative power in rezoning cases to a consideration of two factors only, and thus creates a new *constitutional limitation.* As I see it, there are a number of other equally important factors which the legislative body exercising the rezoning power could well take into consideration in reaching a reasonable decision, even though there may not be in the particular case a "change in conditions" or "mistake in original zoning" Indeed,

the tempering of the effect of a harsh and inequitable application of a general provision of the zoning law to a particular factual situation is one of the essential *functions of the Board in exercising its* rezoning functions, so long as the exercise of that necessary power does not result in arbitrary, unreasonable, discriminatory or capricious action. In my opinion, reasonable men could conclude that both justice to the property owner and the public interest required the granting of the rezoning in this case and it cannot properly be said that the Board's action offended the constitutional limitation of due process of law by being arbitrary, unreasonable or capricious or discriminatory. When this situation exists, we have no constitutional power to disturb the legislative action, unless there is some violation of another constitutional protection enjoyed by the property owner, e. g., when there is an attempt to take private property for public use without the payment of just compensation contrary to Article III, Section 40 of the Maryland Constitution.

This brings me to the second line of erroneous decision, which began with Grant v. Mayor and City Council of Baltimore, 212 Md. 301, 129 A.2d 363 (1957) and has unfortunately been continued with increasing vigor in Eutaw Enterprises, Inc. v. Mayor and City Council of Baltimore, 241 Md. 686, 217 A.2d 348 (1966) and Shifflett v. Baltimore County, 247 Md. 151, 230 A.2d 310 (1967).[1]

In my concurring opinion in Stevens v. City of Salisbury, 240 Md. 556, 573, 214 A.2d 775, 785 (1965), I indicated my distress at the Court's approval of its prior decision in *Grant* and expressed the hope that the *Grant* decision would be overruled by the Court as soon as possible or, at least, strictly limited to the facts in the *Grant* case. As indicated, neither hope was realized.

In *my concurring opinion in Stevens, I* quoted at some length from the "dissenting" opinion[2] of Judge Van Voorhis of the Court of Appeals of New York in Harbison v. City of Buffalo, 4 N.Y.2d 553, 564, 176 N.Y.S.2d 598, 606, 152 N.E.2d 42, 52 (1958), in which my views on this extraordinary doctrine of the constitutionality of the elimination by legislative provision of established non-conforming uses by the use of an "amortization" period in the statute, but without provision for the payment of just compensation, are fully articulated by Judge Van Voorhis. Again, I need not repeat these views here. When the right to use private property for a lawful use *vests*—as the right has, in my opinion, in this case,—*the only* constitutional way that vested right may be eliminated by the State or its political subdivisions against the will of the property owner is by the exercise of the power of eminent domain and the payment of just compensation. As Mr. Justice Holmes aptly stated in 1922 in Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 415, 43 S.Ct. 158, 160, 67 L.Ed 322, 326:

> "The protection of *private property in the* Fifth Amendment presupposes that it is wanted for public use, but provides that it shall not be taken for such use without compensation. A similar assumption is made in the decisions upon the Fourteenth Amendment. * * * When this seemingly absolute protection is found to be qualified by the police power, the natural tendency of human nature is to extend the qualification more and more until at last private property disappears. But that cannot be accomplished in this

1. By coincidence, by the operation of our general practice of sitting in panels of five judges, I did not sit in either Eutaw Enterprises, Inc. v. Mayor and City Council of Baltimore or in Shifflett v. Baltimore County. I would have dissented in both cases had I sat.

2. As pointed out in Note 1 in the concurring opinion in the Stevens case, the Van Voorhis opinion is not really a "dissenting" opinion as there was no majority opinion *in the Harbison case.*

way under the Constitution of the United States."

Quite apart from our obligation as I see it to protect Shifflett's property rights under the provisions of the Maryland Constitution, to fail to require payment to Shifflett for the deprivation of his right to continue to use part part of the subject property for his lawful use is, in my opinion contrary to the public interest.

Where will Shifflett get the necessary money to continue his business? Where will he locate his business, if he is fortunate enough to have sufficient private resources to re-establish his business at another location, in view of the very few locations in Baltimore County as a result of the present legislative and other restrictions? If he is forced out of business, who will perform the useful function accomplished by his business and where will his employees be employed and receive the wages necessary to support them and their families? If we had held that Section 200.16 of the Baltimore County Zoning Regulations, enacted November 17, 1962, was unconstitutional and void, as I firmly believe it to be, Shifflett would not have to seek answers to these questions and, in my opinion, the public interest would also be served.

Finally, it is not without irony that in the first of these erroneous lines of decision, we have, in my opinion, *placed a restriction* on the exercise of the legislative power *more stringent than permitted to us under the Maryland Constitution,* whereas in the second of these erroneous lines of decision, *we have declined to place a restriction* upon the exercise of the legislation which seems to me *to be clearly required* by the constitutional prohibitions against taking private property for public use without the payment of just compensation. In the sonorous words of Archbishop Cranmer in the General Confession in Morning and Evening Prayer in the Book of Common Prayer "* * * we have left undone those things which we ought to have done and have done those things which we ought not to have done * * *." I will not, however, add the next clause. I still hope that ultimately we will return to more orthodox constitutional doctrine in the two areas mentioned.

232 Md. 88

John William CAMPFIELD et al.

v.

Paul James CROWTHER.

No. 422.

Court of Appeals of *Maryland.*

Jan. 14, 1963

Action for personal injuries sustained by plaintiff when he was struck by an automobile owned by one defendant and allegedly driven by codefendant. The Circuit Court, Prince George's County, Samuel W. H. Meloy, J., entered judgment for plaintiff and defendants appealed. The Court of Appeals, Barnes, J., held that motorist who stopped his automobile after it had been sideswiped by defendant-owner's automobile which then stopped could not be considered contributorily negligent in leaving his automobile and approaching stopped automobile, and in failing to avoid being struck by such vehicle after it suddenly, and without warning, moved from its stopped position, and traveled in the wrong direction down the wrong side of the highway.

Affirmed.

1. Negligence ⇐136(26)

Ordinarily the issue of contributory negligence is for the jury, and it is only when minds of reasonable persons cannot differ on the issue of contributory negligence that a court is justified in deciding the issue as a matter of law.

2. Negligence ⇐65

"Contributory negligence" is the neglect of duty imposed upon all men to observe ordinary care for their own safety, and is the doing of something that a person of ordinary prudence would not do, or the failure to do something that a person of ordinary prudence would do, under the circumstances.

See publication Words and Phrases for other judicial constructions and definitions.

3. Negligence ⇐82

Conduct of a plaintiff which falls below standard of care of a person of ordinary prudence must be a legally contributing cause cooperating with defendant's negligence in bringing about injury to the plaintiff, to be considered "contributory negligence."

4. Automobiles ⇐213

A motorist who stopped his automobile after it had been sideswiped by another automobile which then stopped could not be considered contributorily negligent in leaving his automobile and approaching the stopped automobile, and in failing to avoid being struck by such vehicle after it suddenly, and without warning, moved from its stopped position, and traveled in the wrong direction down the wrong side of the highway.

5. Automobiles ⇐245(26)

Defendant owner of an automobile which struck a pedestrian was not entitled to a directed verdict in his favor on count in pedestrian's declaration against owner and driver of the vehicle based on negligent entrustment, on theory driver had intentionally struck pedestrian, where there was no evidence to support a finding that driver had intentionally struck pedestrian.

6. Appeal and Error ⇐974(1)
Trial ⇐349(2)

Submission of special issues to jury is matter within sound discretion of the trial court, and such discretion will be reversed only if abused.

7. Trial ⇐350(6)

Refusal to submit special issue to jury as to whether driver of owner's automobile had acted intentionally in striking pedestrian was not an abuse of discretion, in view of the evidence. Maryland Rules, Rule 560.

8. Automobiles ⇐242(6), 245(30)

It is presumed that the operator of an automobile is the agent, servant or employee of the owner of the vehicle acting within the scope of his employment, and although such presumption is rebuttable, to rebut the presumption as a matter of law, the evidence must be both uncontradicted and conclusive.

9. Automobiles ⇐245(28)

Evidence, in action for injuries sustained by pedestrian when struck by owner's automobile, was sufficient to present question for the jury as to whether operator of the automobile was agent of owner.

10. Automobiles ⇐245(26)

Evidence, in action for injuries sustained by pedestrian when struck by an automobile allegedly operated by defendant, was sufficient to present question for jury as to whether alleged operator was in fact driving the automobile at time of the accident.

11. Evidence ⇐207(4)

An admission of guilt in a traffic court is admissible in evidence in a subsequent civil proceeding arising out of the same accident.

12. Evidence ⇐207(2)

A judicial admission by an attorney in presence of his client is admissible in subsequent litigation.

tled in this State that a defendant charged with both offenses may be convicted of a larceny as well as a breaking with *intent to steal* arising out of the same transaction, and may be sentenced separately on both convictions [Williams v. State, 1954, 205 Md 470, 109 A.2d 89], we agree that a defendant should not be convicted and given separate sentences for *breaking and stealing* under one count as well as for *larceny* under another count in a case such as this where the *larceny* consists of the same act as the *stealing* charged in the other count.[1] The reason the two offenses are distinguishable is obvious. A breaking with *intent to steal* has separate elements and is a complete offense without regard to a larceny. On the other hand, besides the breaking, the State must also prove the added ingredient of stealing in order to convict for breaking *and* stealing. Quoting 1 Bishop Criminal Law § 1062 (9th Ed 1923), it was said in *Williams v. State*, supra, 205 Md. at page 476, 109 A.2d at page 93:

"'An allegation simply of breaking, entering, and stealing states the burglary in a form which makes it single, and a conviction therefor will bar an indictment for the larceny or the burglary alone. But equally well a first count may set out a breaking and entering with intent to steal, and a second may allege the larceny as a separate thing, and thereon the defendant may be convicted and sentenced for both.'"

See also Commonwealth v. Hope, 1839, 22 Pick., Mass., 1; Kite v. Commonwealth, 1846, 11 Metc., Mass., 581; Breese v. State, 1861, 12 Ohio St 146; State v McClung, 1891, 35 W Va. 280, 13 S.E. 654, Benton v. Commonwealth, 1895, 91 Va. 782, 21 S E. 495.

We think that the imposition of sentence for breaking and stealing made the sentence imposed for larceny improper. Cf. Bell v. State, *supra*, where *only* one sentence was imposed. For that reason we will remand the case for the entry of an order striking out the judgment and sentence on the second count in the indictment. Rule 871b. The judgment on *the first count will be* affirmed.

Judgment as to first count affirmed; judgment as to second count reversed and case remanded for entry of an order striking out judgment and sentence.

1. See, however, Debinski v. State, supra, where a similar conviction was affirmed when the point was not raised.

220 Md. 48

Elwood C. HEWITT et al.

v.

COUNTY COMMISSIONERS OF BALTIMORE COUNTY, Robert R. Gill et al., and John C. Fowble et al.

No. 192.

Court of Appeals of Maryland.

May 11, 1959

As Modified on Denial of Rehearing July 2, 1959.

Suit to enjoin the use of residential property for commercial purposes and to require the County Commissioners to restore to residential use classification recommended by the zoning commissioner. From a judgment for the Commissioners in the Circuit Court for Baltimore County, John E. Raine, Jr., J., the plaintiffs appealed. The Court of Appeals, Brune, C. J., held that the action of the Commissioners was not invalid on the ground that notice of *the hearing was insufficient*; that additional hearings were not required; and that the evidence established that the action of the County Commissioners in classifying the properties as business was invalid as "spot zoning".

Reversed and remanded for further proceedings.

1. Municipal Corporations ⇐601(15)

Action of the county commissioners in approving change in zoning regulations so as to carve out of an otherwise exclusive residential area, an area for business purposes, was not insufficient on ground of failure to apprise the public that substantial changes might be made in a zoning map, in view of the contents of the published notice of the hearing; commissioners not being required by the County Code to state in advance the exact nature of any action which they might take with regard to matters to be brought to their attention at the contemplated hearing. Code Pub.Loc Laws *1955, § 532(c)*.

2. Municipal Corporations ⇐601(15)

Objecting property owners to change in classification from residential to business had no right to assume that the legislative *body entrusted with the sole power to* enact the comprehensive zoning of rezoning ordinance in the county was bound to adopt the proposal or recommendations submitted by the zoning commissioner.

3. Municipal Corporations ⇐601(15)

The Baltimore County Code with respect to power of county commissioners to change regulations adopted by them providing that the zoning commissioner holds a public hearing or hearings, does not require additional hearings with respect to any substantial changes or important alterations made by the county commissioners in zoning matters and choice of whether to have one hearing or more than one is left to the county commissioners. Code Pub. Loc.Laws 1955, § 532(c).

4. Injunction ⇐126

In suit by owners to enjoin the use of property for commercial purposes and to require the county commissioner to restore to residential classifications recommended by the zoning commissioner, burden rested on the owners attacking the classification to show that the action by the commissioners was arbitrary, capricious, discriminatory or illegal

5. Municipal Corporations ⇐601(9)

"Spot zoning" may be valid or invalid, depending upon the circumstances of each particular case.

6. Municipal Corporations ⇐601(9)

"Spot zoning", which singles out a parcel of land within the limits of a use district and marks it off into a separate district for the benefit of the owner, thereby permitting a use of that parcel inconsistent with the use permitted in the rest of the district, is invalid if not in accordance with the comprehensive zoning plan and is merely for private gain.

See publication Words and Phrases, for other judicial constructions and definitions of "Spot Zoning".

7. Injunction ⇐128

In action by owners to enjoin the use of residential property for commercial purposes and to require county commissioners to restore to residential use, classification which has been recommended by the zoning commissioner, where the property was situated immediately west of an expressway *which formed a substantial physical* barrier between property lying to the east of it and that lying to the west, evidence established that the action of the commissioners in establishing a line of demarcation between the industrial and commercial *zones to the east and residential zone to* the west of the expressway was not prohibited "spot zoning". Code Pub.Loc.Laws 1955, § 532(c).

8. Municipal Corporations ⇐601(9)

The mere fact that it would be more profitable to owners of certain properties to have them classified for commercial use rather than residential was not enough to require such classification, where it was not contended that the properties were not *usable for residential purposes.*

9. Evidence ⇐536

A member of board of county commissioners who changed the classification of the

properties to business, and who had been a member of the planning commission which had recommended that the properties be classified as residential, and had previously been zoning commissioner and was a consulting engineer and familiar with the properties, was qualified to testify as an expert, explaining his action as such.

10. Municipal Corporations ⇐601(8)

Where county commissioners were exercising a legislative power delegated to them by the General Assembly in zoning matters, such a power could validly be exercised only subject to the terms upon which it was delegated.

11. Municipal Corporations ⇐601(5)

Where county zoning was required to be in accordance with a comprehensive plan, a departure therefrom might involve both exceeding the power which had been delegated and discrimination which is violative of constitutional requirements.

12. Municipal Corporations ⇐601(5, 9)

Evidence established that the action of the county commissioners in classifying residential properties for business purposes was invalid "spot zoning" and as an arbitrary and unreasonable devotion of a small area to use inconsistent with the uses to which the rest of the district was restricted, and made for the sole benefit of the interests of the owners and not in accordance with a comprehensive plan. Code Pub.Loc.Laws 1955, § 532(a, c).

J Nicholas Shriver, Jr., Baltimore (J. Paul Bright, Jr. and Cross & Shriver, Baltimore, *on the brief*), *for appellants*

Kenneth C Proctor and Austin W. Brizendine, Towson (Proctor, Royston & Mueller, Johnson Bowie and A. Gordon Boone, Towson, on the brief), for appellees.

Before BRUNE, C. J., and HENDERSON, HAMMOND, and PRESCOTT, JJ.

BRUNE, Chief Judge.

This is an appeal from a decree of the Circuit Court for Baltimore County dismissing a bill of complaint which sought to enjoin the use of certain property for commercial purposes and to require the County Commissioners to restore it to the residential use classification which had been recommended by the Zoning Commissioner. The property consists of two adjoining residentially improved lots totaling approximately 19 acres and lying on the south side of Timonium Road immediately west of the Baltimore-Harrisburg Expressway in the Eighth Election District of Baltimore County. The appellants are neighboring property owners who reside along both sides of Timonium Road west of the Expressway.

Ever since the original zoning of Baltimore County in 1945 the subject properties as well as all of the parcels of land now owned by the appellants have been zoned for residential use ("A" Residential). On March 30, 1955, the County Commissioners of Baltimore County ("County Commissioners") upon recommendation by Zoning Commissioner pursuant to Section 366(c) of the Code of Public Laws of Baltimore County (1948 Ed.) (§ 532(c) of the 1955 Ed.) promulgated new zoning regulations and restrictions for the entire County Accordingly, the Baltimore County Planning Commission ("Planning Commission") prepared a new map for a large portion of the Eighth Election District proposing the boundaries of the new use districts on the basis of an extensive study of land uses begun in the latter part of 1952. See Huff v. Board of Zoning Appeals of Baltimore County, 214 Md. 48, 133 A.2d 83, and Fuller v. County Commissioners, 214 Md. 168, 133 A.2d 397, for comparatively recent zoning history in Baltimore County.

On the above map or plan, which was thereafter submitted to the Zoning Commissioner, the entire area of 15 to 20 square miles west of the Baltimore-Harrisburg Expressway bounded on the north by Tufton Avenue and Shawan Road, on the west by Greenspring Avenue and on the south by Seminary Avenue, was recommended for residential zoning. Mr. Malcolm Dill, who was then Director of the Planning Commission, testified that the Commission could see "no apparent need for commercial zoning west of the Expressway in view of the expected low density development in that extensive area." On the other hand, substantial areas east of the Expressway in the vicinity of Timonium Road and the subject properties were designated for commercial and industrial uses and are being partly utilized for such purposes at present.

The Zoning Commissioner, pursuant to the statute, prepared his preliminary report proposing certain minor changes in the Planning Commission's map, held a public hearing thereon on August 8, 1955, and on November 17, 1955, submitted his final report with recommendations to the County Commissioners. In this report he concurred in the conclusion of the Planning Commission that all the land to the west of the Expressway should be retained in a residential category, although he recommended that R-20 density be permitted throughout the major portion of a 3,000 foot strip west of the Expressway, which included the Fowble and Gill properties and part of the property of the appellants. He also recommended a higher density residential classification than that proposed by the Planning Commission for the property then known as "Emerald Acres", which lies across Timonium Road from the Gill and Fowble tracts. See Fuller v. County Commissioners, supra.

On December 6, 1955, pursuant to notice duly published, the County Commissioners held a public hearing for the announced purpose of hearing "objections and recommendations" with respect to the Zoning Commissioner's final report and proposed map. At that hearing the suggestion was made for the first time that the subject properties be classified for non-residential uses. Doctor Fowble, owner of the easternmost tract lying next to the Expressway (on a portion of which he had built a substantial residence in 1953), requested that his property be placed in an M. L. zone. It is not clear from the record as to exactly what classification his neighbor on the west, Mr. Gill, requested, but the trial court inferred from the fact that they were acting in concert that Gill sought a similar treatment for his property, and we understood at the argument in this Court that this inference was correct. No evidence was offered at the hearing in support of these requests nor was any objection thereto expressed by any of those present None of the appellants attended the hearing although they all had at least constructive notice that a hearing would be held on that date. Immediately thereafter, however, some of the appellants filed a protest against any change in classification of the Fowble and Gill properties from that previously proposed and requested an additional hearing by the County Commissioners on the matter. This request was not granted. Instead, a meeting was held between the County Commissioners and the Zoning Commissioner during which all requests which had been made at the public hearing were further discussed. Thereafter, on December 20, 1955, the County Commissioners approved a new zoning map for a portion of the Eighth Election District of Baltimore County under which the properties owned by Fowble and Gill were carved out of the otherwise exclusively residential area west of the Expressway and classified Business, Local (B.L.). Whether any other changes were made by the County Commissioners as a

result of the December, 1955, hearing is not clear and cannot be determined from the map. It seems that if any others were made, they were of a minor character. No others were shown to have been so made in the immediate area here involved.

The appellants attack the action of the County Commissioners on two grounds: (1) that the notice given of the hearing before the Commissioners was not sufficiently worded so as to apprise the public fairly that substantial changes might be made in the zoning map and that a further hearing should have been held on the Fowble and Gill requests; and (2) that the "last minute" change in zoning of the subject properties from residential to Business, Local was arbitrary, capricious, discriminatory, and illegal.

With regard to the questions of the sufficiency of the notice and of one hearing only by the County Commissioners, we note at the outset that comprehensive zoning or rezoning requires approval of the County Commissioners (now approval of the County Council which has succeeded to the legislative powers of the Commissioners). County Council of Baltimore County v. Egerton Realty, Inc., 217 Md. 234, 140 A.2d 510; Baltimore County v. Missouri Realty, Inc., Md., 148 A.2d 424; Charter of Baltimore County, Sec. 306.

Under Section 366(c) of the 1948 Edition of the Baltimore County Code (Sec. 532(c) of the 1955 Edition), the County Commissioners are empowered "from time to time, upon recommendation by the Zoning Commissioner, to amend, supplement or repeal the regulations or restrictions adopted by them, provided that the Zoning Commissioner shall hold a public hearing or hearings on any proposed change, and the County Commissioners shall follow the same procedure with respect to notice and public hearings as provided for the original regulations and restrictions * * *." Then follow provisions under which the County Commissioners can delegate to the Zoning Commissioner the power to amend or change the boundaries of zoning districts after a public hearing or hearings, but no amendment or change made by the Zoning Commissioner is to be effective until approved by the County Commissioners.

The pertinent provisions of Section 366 (c) relating to notice and hearing by the County Commissioners, governing original zoning and made applicable to rezoning, are as follows: "After the County Commissioners have received the final report [of the Zoning Commissioner], they shall hold a public hearing or hearings thereon, giving at least fifteen days' notice in a newspaper of general circulation throughout Baltimore County, of the place and time of the beginning of such hearing or hearings."

[1, 2] The published notice of the hearing stated that the Zoning Commissioner had prepared and submitted to the County Commissioners a Final Report with respect to proposed amendments, supplements and changes in the boundaries of the zoning districts within a portion of the Eighth Election District and that the County Commissioners would hold a public hearing on said Final Report at a specified time and place, at which time and place the County Commissioners would "hear objections and recommendations with respect to said Final Report." The notice also stated that the "Final Report consisting of a comprehensive zoning map setting forth in color the proposed amendments, supplements and changes" was on file and open to public inspection at the office of the County Commissioners during specified hours; and the notice described the area covered by the Final Report.

We do not think the statutory language could be construed as requiring the County Commissioners to state in advance (what they could hardly know) the exact nature of any action which they might take with regard to matters brought to their attention at the contemplated hearing. Indeed, it is difficult to see how (without either prejudgment or prophecy) the notice here given could have been much more explicit or informative than it was. The appellants certainly had no right to assume that the legislative body entrusted with the sole power to enact a comprehensive zoning or rezoning ordinance in Baltimore County was bound to adopt the proposals or recommendations submitted by the Zoning Commissioner. County Council of Baltimore County v. Egerton Realty, Inc., supra; Baltimore County v. Missouri Realty, Inc., supra; Vestry of St. Mark's on the Hill Episcopal Church v. Doub, Md., 149 A.2d 779.

[3] The appellants contend, however, that the use of the disjunctive "hearing or hearings" in the statute was intended to require additional hearings with respect to any "substantial changes" or "important alterations" made by the County Commissioners. No such language is used in Section 366(c), and we find no basis for reading it into the statute. The choice as to whether to have one hearing or more than one hearing seems to be left to the County Commissioners. A like contention to that here made by the appellants was rejected in Vestry of St. Mark's on the Hill Episcopal Church v. Doub, supra, and we reach a like decision. As to the absence of a requirement for a legislative hearing (other than such as may be prescribed) see County Council of Baltimore County v. Egerton Realty, Inc., supra; Mayor & City Council of Baltimore v. Biermann, 187 Md. 514, 50 A.2d 804. Cf. Benner v. Tribbitt, 190 Md. 6, 57 A.2d 346 (not a zoning case, legislative action by commissioners of a town).

The principal question is whether or not the legislative action of the County Commissioners in zoning or rezoning the Fowble and Gill properties as Business, Local, was arbitrary, capricious, discriminatory or illegal.

[4] Whether the adoption of a new land use map for a large portion of the Eighth Election District constituted original zoning or rezoning, the burden rests upon those attacking the classification of these properties as Business, Local, to show that the action under attack is arbitrary, capricious, discriminatory or illegal. The burden of overcoming the presumption of validity is a heavy one—heavier in the case of original zoning than in the case of rezoning. Eckes v. Board of Zoning Appeals, 209 Md. 432, 437, 121 A.2d 249 (change in classification approved by Board of Zoning Appeals); Walker v. Board of County Com'rs of Talbot County, 208 Md. 72, 93, 116 A.2d 393 (original zoning by County Commissioners); American Oil Co. v. Miller, 204 Md. 32, 102 A.2d 727 (rezoning by County Commissioners); Zang & Sons, Builders, Inc. v. Taylor, 203 Md. 628, 102 A.2d 723 (rezoning by County Commissioners); Fuller v. County Commissioners, supra (adoption by County Commissioners of the same land use map here involved).

In Huff v. Board of Zoning Appeals, supra, 214 Md. at page 52, 133 A.2d at page 85, we said that "[t]he County Commissioners determined in 1954 to rezone the whole of Baltimore County." In Fuller v. County Commissioners, supra, we did not draw a distinction between zoning and rezoning. In the present case, although the action of the County Commissioners would appear to be (as stated in the Huff case) rezoning, rather than zoning, we think that the same result would be reached in either aspect of the case.

[5] This Court has had occasion in a number of cases to consider the validity of a zoning classification of a relatively small tract which differs from that of a much larger tract of adjacent land. The problem is commonly discussed as one of "spot zoning". That term has probably acquired some popular connotation of invalidity. If, however, the term is used in a descriptive sense, "spot zoning" may be valid or invalid, depending upon the circumstances of each particular case. Huff v. Board of Zoning Appeals, supra; Baylis v. City of Baltimore, Md., 148 A.2d 429. As we said in the Huff case: "When a zoning ordinance or an amendment puts a

small area in a zone different from that of the surrounding area, we have what may be called 'spot zoning', using the term in a descriptive sense. Such zoning may be invalid or valid. If it is an arbitrary and unreasonable devotion of the small area to a use inconsistent with the uses to which the rest of the district is restricted and made for the sole benefit of the private interests of the owner, it is invalid. Cassel v. Mayor and City Council of Baltimore, 195 Md. 348, 355, 73 A.2d 486. On the other hand, if the zoning of the small parcel is in accord and in harmony with the comprehensive zoning plan and is done for the public good—that is, to serve one or more of the purposes of the enabling statute, and so bears a substantial relationship to the public health, safety, morals and general welfare, it is valid. Offutt v. Board of Zoning Appeals, 204 Md. 551, 561, 105 A.2d 219; Temmink v. Board of Zoning Appeals, 205 Md. 489, 495, 109 A.2d 85; Ellicott v. Mayor and City of Baltimore, 180 Md. 176, 183, 23 A.2d 649; Cassel v. Mayor and City Council of Baltimore, supra. The text writers and the Courts of many jurisdictions state the rule as the Maryland cases have stated it."

The Baltimore County Enabling Act (by Section 366(a) of the Code of 1948, Section 532(a) of the Code of 1955) requires that zoning regulations shall be made "in accordance with a comprehensive plan." A plan contemplates something more than a detailed zoning map, though such a map, at least ideally, should be in accordance with a comprehensive plan. See Haar, "In Accordance with a Comprehensive Plan", 68 Harvard L.Rev. 1154, at 1155–1158, 1172–1175.

This Court has consistently rejected spot zoning in its opprobrious sense. It has repeatedly referred to the statutory requirement, which is substantially the same under the general Enabling Act as under the Public Local Laws of Baltimore County, that zoning shall be in accordance with a comprehensive plan. In Mayor and City Council of Baltimore v. Byrd, 191 Md. 632, 62 A.2d 588, 590, this Court, in the majority opinion by Chief Judge Marbury, said: "Zoning is an exercise of the police power which, for the public good, takes away some of the rights of individuals to use their property as they please, and at the same time gives them rights to restrict injurious uses of the property of others. This cannot be done by piecemeal legislation. It can only be upheld as part of a general plan for a community which sets apart certain areas for residence purposes, and permits commercial business in other areas where it is established or where such use is obviously suitable. Such a plan must be attuned to the public health, welfare and safety. It must not be arbitrary nor can it be discriminating, except insofar as is necessary for the proper establishment of the various kinds of districts permitted."

Later in the same case, after referring to the statutory requirement of Section 3 of Article 66 B of the Code (1939) that zoning regulations shall be made in accordance with a comprehensive plan, the Court referred to Colati v. Jirout, 186 Md. 652, 47 A.2d 613, as giving a strict construction to provisions for non-conforming uses. The Court said (191 Md. 638, 62 A.2d 591): "This conclusion is based upon the same general conclusion that has been present in all of the zoning cases decided by this Court, that is that when the legislative body of a municipality adopts a comprehensive zoning plan, exceptions should be allowed only in such cases as are clearly exceptions in fact to the purposes of the ordinance, and without which there would be imposed a burden upon the owner of the property not justified by consideration of the public health, safety or welfare."

In the Byrd case, the Court also quoted the following from Benner v. Tribbitt, 190 Md. 6, 20, 57 A.2d 346, 353: "There is no magic in the word 'zoning', but there is a wide difference between exercise of the police power in accordance with a comprehensive zoning plan, which imposes mutual restrictions and confers mutual benefits on property owners, and arbitrary permission to A and prohibition to B to use their own

property, at the pleasure of neighbors or at the whim of legislative or administrative agencies." See also, Cassel v. Mayor and City Council of Baltimore, 195 Md. 348, 73 A.2d 486, and Temmink v. Board of Zoning Appeals of Baltimore County, 205 Md. 489, 109 A.2d 85

In Huff v. Board of Zoning Appeals, supra, we said: "A comprehensive plan has been said to be a general plan to control and direct the use of land and buildings by dividing the governmental area into use districts according to present and planned future conditions, so as to accomplish, as 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." The area covered by the map here involved was a large enough unit to satisfy the geographical requirement of a comprehensive plan. County Com'rs of Anne Arundel County v. Ward, 186 Md. 330, 46 A.2d 684, 165 A.L.R. 816.

[6] In the Cassel case above cited, it was said (195 Md. 355, 73 A.2d 489): "It is * * * universally held that a 'spot zoning' ordinance, which singles out a parcel of land within the limits of a use district and marks it off into a separate district for the benefit of the owner, thereby permitting a use of that parcel inconsistent with the use permitted in the rest of the district, is invalid if it is not in accordance with the comprehensive zoning plan and is merely for private gain."

[7] The facts in the present case show that the Baltimore-Harrisburg Expressway now forms a substantial physical barrier between the property lying to the east of it and that lying to the west at and in the neighborhood of its intersection with Timonium Road. It would be difficult, to say the least, to think of a more logical line of demarcation between the industrial and commercial zones to the east and the residential zone to the west of this barrier. We think it patent that any commercial use of land west of the Expressway in this vicinity would involve a departure from a comprehensive plan, and there is nothing in the evidence which would bring such a use of the tracts in question within the exceptions to "spot zoning" recognized in the Cassel and Temmink cases, such as the creation of small districts within a residential zone for the operation of such establishments as grocery stores, drug stores, barber shops, and even gasoline stations, for the accommodation and convenience of the residents of the residential zone. Cf. Ellicott v. Mayor and City Council of Baltimore, 180 Md. 176, 23 A.2d 649.

Because of the absence of any record of proceedings before the County Commissioners and because no copy of Dr. Fowble's letter which he read at the hearing has been offered in evidence, we have nothing in the record to show the basis upon which the County Commissioners acted in changing the classification of the Fowble and Gill properties, but it was stated at the argument that the owners' requests were based upon the same reasons as those developed in the testimony in this case.

[8] The mere fact that it would be more profitable to the owners of the Fowble and Gill properties to have them classified for commercial use rather than residential, is not enough to require such classification. Walker v. Board of County Com'rs of Talbot County, supra; Marino v. City of Baltimore, 215 Md 206, 137 A.2d 198 It is not contended that these properties are not usable for residential purposes. Indeed, Mr. Gill has moved another house onto his land for residential use.

[9] The appellees rely principally upon the testimony of Mr. Augustine J. Muller, who was a member of the Board of County Commissioners which changed the classification of the Fowble and Gill properties to B. L. and who had been a member of the Planning Commission (representing the County Commissioners) which had recommended that these properties be classified as residential. He had previously been the

Zoning Commissioner of Baltimore County and he was and is a consulting engineer. He was also personally familiar with the properties in question and lived not far from them. He was permitted, over objection, to testify as an expert, not as a legislator explaining his action as such. We think there was no error in admitting his testimony, though we do not find it persuasive.

The principal point which he sought to develop—and it was rather weakly supported by Mr. Adams, the present Zoning Commissioner of Baltimore County, on cross-examination—was that the proximity of the Expressway would create a demand for services to transients at the Timonium Road interchange, and that the Fowble-Gill properties were well located to supply such services.

Mr. Muller brushed off the traffic difficulties which would be created with the opinion that they would not be serious and could be controlled by the installation of an access road and a traffic light. If it were necessary to go fully into the problem of traffic congestion, there might be a serious question as to whether the requirements of Section 532(a) of the 1955 Code of Baltimore County (Section 366(a) of the 1948 Edition) relating to the reduction of "congestion in the roads, streets and alleys" has been complied with, since the entrance to the Fowble-Gill properties would be across Timonium Road opposite the ramps leading to and from the southbound lane of the Expressway, just west of the underpass and its large columns supporting the Expressway bridge. See Hardesty v. Board of Zoning Appeals, 211 Md. 172, 126 A.2d 621; Temmink v. Board of Zoning Appeals, 212 Md. 6, 128 A.2d 256; and Price v. Cohen, 213 Md. 457, 132 A.2d 125. Cf. Missouri Realty, Inc. v. Ramer, 216 Md. 442, 140 A.2d 655, and Vestry of St. Mark's on the Hill Episcopal Church v. Doub, supra.

When we examine the facts of this particular case, even if we assume that the Expressway will generate a need for tourist services near to it, the problem still remains of determining whether the legislative determination of the County Commissioners that a Business, Local area should be established on the 19 acres here involved is supportable on the basis that such a conclusion was (even if not supported by the weight of the evidence) at least fairly debatable. See Temmink v. Board of Zoning Appeals, supra, Hardesty v. Board of Zoning Appeals, supra.

The only evidence tending to show that the subject properties would be a logical place at which to satisfy commercial needs generated by the Expressway is the bare fact that they are located at what is presently the closest interchange to Baltimore. On the other hand, and even apart from questions of traffic hazards and congestion which might be involved at the Fowble-Gill properties, we think that the evidence shows that there is an ample area east of the Expressway and close to it, which is so zoned as to be able to satisfy any probable needs of transients. The Business, Local zoning of the tracts in question would by no means limit their use to meeting the needs of tourists, such as for a gasoline station or a motel. Numerous other uses would also be permitted which have no apparent relevance to tourist travel. We also observe that, despite Mr. Muller's personal knowledge of the properties in question and his knowledge of zoning and despite the fact that he lived near the properties here in question, the possible need of services for transients at this intersection does not appear to have occurred to him when he was considering the proposed new land use map of the district as a member of the Planning Commission. Likewise, we note that at the hearing before the County Commissioners, the classification which Dr. Fowble and Mr. Gill sought was not Business, Local, but Manufacturing, Light—a classification which seems to bear little relation to tourist trade.

No reason for making an exception to the residential zoning of the property west of the Expressway other than meeting the needs of transients was strongly, or indeed seriously, urged in support of the changes made by the County Commissioners.

The suggestion that the B. L. zoning of the Fowble-Gill properties would increase the value of these properties and would thus benefit the community through increased assessments and increased taxes hardly merits discussion. It is at best speculative and it ignores the depressing effect upon the value of nearby properties which this classification of the Fowble-Gill properties would probably have.

[10, 11] The County Commissioners were here exercising a legislative power delegated to them by the General Assembly. Such a power can be validly exercised only subject to the terms upon which it is delegated. One of the terms here applicable is that zoning shall be "in accordance with a comprehensive plan." A departure from a comprehensive plan may involve both exceeding the power which has been delegated and discrimination which is violative of constitutional requirements. See Huff v. Board of Zoning Appeals, supra, 214 Md at pages 56–57, 133 A.2d at pages 87–88, and Haar, op. cit., 68 Harvard L.Rev. at 1170–1173, where he notes the tendency of some cases to treat "comprehensive" as meaning "well considered" and then to equate comprehensive plan requirements with constitutional requirements. Both the constitutional and the statutory aspects of "spot zoning" are recognized in Cassel v. Mayor and City Council of Baltimore, supra, 195 Md. at page 355, 73 A.2d at page 489. Both, we think, are involved in the present case; but we consider it unnecessary to go beyond the statutory question in this case.

[12] Here we think that the action of the County Commissioners in classifying the Fowble and Gill properties falls within the description of invalid "spot zoning" given in the Cassel case, and largely restated in the Huff case, as an arbitrary and unreasonable devotion of a small area to a use inconsistent with the uses to which the rest of the district is restricted, made for the sole benefit of the private interests of the owner and not in accordance with a comprehensive plan. In the instant case the classification of the properties in question made by the County Commissioners seems irreconcilable with the meaning of "a comprehensive plan," as determined in the Huff case.

Accordingly, the decree of the Circuit Court dismissing the appellants' bill will be reversed and the case remanded for further proceedings not inconsistent with this opinion. The precise form of relief which might be granted against the County Commissioners or their successors, the County Council, was not passed upon by the trial court and was not fully argued here. In accordance with Hedin v. Board of County Commissioners, 209 Md. 224, 236–237, 120 A.2d 663, we shall not pass upon that question at this time.

Decree reversed and case remanded for further proceedings not inconsistent with this opinion; the costs to be paid by the appellees.

It appears from the testimony that the will in question was mutual or reciprocal, but there is nothing to suggest that it was executed pursuant to a contract. Whether such a will could be revoked is a question upon which there seems to be no authority in Maryland, but many cases are collected in a note, 169 A.L.R. 9. As the point was not raised below, we express no opinion on it here.

Rulings affirmed in part, reversed in part and case remanded for a new trial.



CASSEL *et ux* v. MAYOR & CITY COUNCIL OF BALTIMORE et al.

No. 172.

Court of Appeals of Maryland

May 11, 1950.

Suit in equity by R. Vernon Cassel and wife against Mayor and City Council of Baltimore, a municipal corporation, and others, to annul amendment to zoning ordinance and for other relief. The Circuit Court No. 2 of Baltimore City, Joseph Sherbow, J., rendered decree for defendants, and plaintiffs appealed. The Court of Appeals, Delaplaine, J., held that amendment creating separate commercial district of single lot located in residential use district to enable operation of funeral home was invalid.

Decree reversed and case remanded.

1. Injunction ⇐85(2)

Equity court has power to restrain enforcement of a void statute or ordinance at the suit of a person injuriously affected.

2. Injunction ⇐114(2)

Equity court has jurisdiction to grant injunctive relief against violation of a zoning ordinance on complaint of an individual sustaining special damage as result of such violation.

3. Injunction ⇐114(2)
Municipal corporations ⇐601(17)

Property owners residing within residential use district in which property in dispute was originally classified were "proper parties" to suit attacking validity of amending ordinance creating separate *first commercial use district of lot in residential district*, and praying for an injunction against use of property thereon as a funeral home.

See Words and Phrases, Permanent Edition, for other judicial constructions and definitions of "Proper Parties".

4. Municipal corporations ⇐601(1)

Zoning by city is permissible only as an exercise of police power of the state. Code 1939, art. 66B, §§ 3, 21.

5. Municipal corporations ⇐601(1)

When zoning power is exercised by city, it is confined by limitations fixed in grant by the state and to the accomplishment of the purposes for which state authorized city to zone. Code 1939, art. 66B, §§ 3, 21.

6. Municipal corporations ⇐601(7, 10), 625, 626

Test of invalidity of a zoning ordinance is whether it is arbitrary, unreasonable and discriminatory and has no substantial relation to public health, safety, morals or general welfare. Code 1939, art. 66B, §§ 3, 21.

7. Municipal corporations ⇐601(15)

City council has power to amend zoning ordinance whenever there has been such a change in the character and use of a use district since original enactment that public health, safety, morals, or general welfare would be promoted by change in the regulations. Code 1939, art. 66B, §§ 3, 21.

8. Municipal corporations ⇐601(17)

Whether zoning ordinance amending original zoning ordinance is a valid exercise of police power is a proper subject for judicial review. Code 1939, art. 66B, §§ 3, 21.

9. Municipal corporations ⇐601(17)

A court on review has duty to annul amendment to zoning ordinance if amendment is clearly arbitrary, unreasonable and discriminatory. Code 1939, art. 66B, §§ 3, 21.

10. Municipal corporations ⇐626

Invidious distinctions and discriminations in zoning cannot be allowed, for the very essence of zoning is territorial division according to the character of the land and the buildings, their peculiar suitability for particular uses, and uniformity of use within the use district. Code 1939, art. 66B, §§ 2, 21.

11. Municipal corporations ⇐601(9)

Spot zoning ordinance which singles out a parcel of land within limits of a use district and marks it off into a separate district for benefit of the owner, thereby permitting a use of the parcel inconsistent with the use permitted in rest of the district, is invalid if it is not in accordance with the comprehensive zoning plan and is merely for private gain. Code 1939, art. 66B, §§ 2, 21.

12. Municipal corporations ⇐601(9)

A use permitted in a small area which is not inconsistent with the use to which a larger surrounding area is restricted, although it may be different from that use, is not "spot zoning" when it does not conflict with comprehensive plan but is in harmony with an orderly growth of a new use for property in the locality. Code 1939, art. 66B, §§ 2, 21.

See Words and Phrases, Permanent Edition, for other judicial constructions and definitions of "Spot Zoning".

13. Municipal corporations ⇐601(15)

City council has power to make an exception to zoning ordinance to relieve a certain lot from a restriction applicable to the use district where exception is required either by peculiar conditions of the lot or by the public good. Code 1939, art. 66B, §§ 2, 21.

14. Municipal corporations ⇐601(15), 625, 626

Amendment to municipal zoning ordinance that creates a separate commercial district of a single lot of ground to enable an individual to obtain a permit to use his residence on lot as a funeral home is ordinarily invalid because it provides for unreasonable and discriminatory "spot zoning" beyond statutory power of city. Code 1939, art. 66B, §§ 2, 21.

15. Municipal corporations ⇐601(15)

Where city zoning ordinance prohibited use of property in residential use district for funeral home, an amendment which created separate commercial district of a single lot located in residential use district to enable operation of a funeral home thereon was invalid as "spot zoning", notwithstanding no objections were raised prior to its enactment. Code 1939, art. 66B, §§ 2, 21.

C. Arthur Eby, Baltimore, for appellants.

Hamilton O'Dunne, Asst. City Sol., Baltimore (Thomas N. Biddison, City Sol., and Edwin Harlan, Deputy City Sol., on the brief), for appellees Mayor and City Council of Baltimore and Paul A. Cohen.

W. Frank Every, Baltimore, for appellees E. Armacost and wife.

Before MARBURY, C. J., and DELAPLAINE, COLLINS, GRASON, HENDERSON and MARKELL, JJ.

DELAPLAINE, Judge.

This suit in equity was instituted by seven residents of the Howard Park section of Baltimore (1) to annul Ordinance 632, approved April 1, 1949, which amends the Baltimore City Zoning Ordinance by reclassifying the property at 5118 Gwynn Oak Avenue, owned by Ellsworth Armacost and his wife, from residential to first commercial use district for the purpose of permitting them to conduct a funeral home on the premises, (2) to direct Paul A. Cohen, Buildings Engineer, to revoke the *permit issued to them to use the* property as a funeral home, and (3) to restrain them from using the property as such.

One complainant died prior to the trial. Four withdrew from the case. The remaining two, R. Vernon Cassel and his wife, appealed here from the Court's decree dismissing the bill of complaint.

[1, 2] It is an established rule that a court of equity has the power to restrain

the enforcement of a void statute or ordinance at the suit of a person injuriously affected. Spann v. Gaither, 152 Md. 1, 136 A. 41, 50 A.L.R. 620; Jewel Tea Co. v. Town of Bel Air, 172 Md. 536, 192 A. 417; Davis v. State, 183 Md. 385, 37 A.2d 880. It is also held that a court of equity has jurisdiction to grant injunctive relief against the violation of a zoning ordinance on the complaint of an individual sustaining special damage as a result of such violation. Fitzgerald v. Merard Holding Co., 106 Conn. 475, 138 A. 483, 54 A.L.R. 361; Stokes v. Jenkins, 107 N.J.Eq. 318, 152 A. 383; Pritz v. Messer, 112 Ohio St. 628, 149 N.E. 30, Holzbauer v. Ritter, 184 Wis. 35, 198 N.W. 852.

[3] Appellants reside on Fernpark Avenue less than 100 feet from the property in dispute, which is situated on the northeast corner of Gwynn Oak Avenue and Fernpark Avenue. Though appellants cannot see the front of the funeral home, they can see the garage in the rear. As they are property owners residing within the residential use district in which the property in dispute was originally classified, they are proper parties to a suit attacking the validity of the amending ordinance and praying for an injunction against the use of the property as a funeral home.

[4, 5] Zoning is permissible only as an exercise of the police power of the State. When this power is exercised by a city, it is confined by the limitations fixed in the grant by the State and to the accomplishment of the purposes for which the State authorized the city to zone. These purposes are set forth in the State Zoning Enabling Act, which demands that zoning regulations shall be made in accordance with a comprehensive plan and designed "to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population, to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements." Laws of 1927, ch. 705, Code 1939, art. 66B, secs. 3, 21.

[6-9] The test of invalidity of a zoning ordinance is whether it is arbitrary, unreasonable and discriminatory, and has no substantial relation to the public health, safety, morals, or general welfare. Mayor and City Council of Baltimore v. Byrd, Md., 62 A.2d 588; Wilbur v. City of Newton, 302 Mass. 38, 18 N.E.2d 365; Strain v. Mims, 123 Conn. 275, 193 A. 754. It is unquestioned that the City Council has the power to amend its City Zoning Ordinance whenever there has been such a change in the character and use of a use district since the original enactment that the public health, safety, morals, or general welfare would be promoted by a change in the regulations. Whether an ordinance amending the original zoning ordinance is a valid exercise of the police power is a proper subject for judicial review. It is the duty of the Court to annul such an ordinance if it is clearly arbitrary, unreasonable and discriminatory. Simon v. Town of Needham, 311 Mass. 560, 42 N.E.2d 616, 141 A.L.R. 688; Zahn v. Board of Public Works of City of Los Angeles, 274 U.S. 325, 47 S.Ct. 594, 71 L.Ed. 1074.

[10] The State Zoning Enabling Act demands that all zoning regulations shall be uniform for each class or kind of buildings throughout each district, but the zoning regulations in one district may differ from those in other districts. Code 1939, art. 66B, secs. 2, 21. The regulations for the use of property within the various use districts are supported upon the basic theory that they apply equally and uniformly within the district affected. Invidious distinctions and discriminations in zoning cannot be allowed, for the very essence of zoning is territorial division according to the character of the land and the buildings, their peculiar suitability for particular uses, and uniformity of use within the use district. Sugar v. North Baltimore Methodist Protestant Church, 164 Md. 487, 494, 165 A. 703, Heath v. Mayor and City Council of Baltimore, 187 Md. 296, 305, 49 A.2d 799.

[11] "Spot zoning," the arbitrary and unreasonable devotion of a small area within a zoning district to a use which is

inconsistent with the use to which the rest of the district is restricted, has appeared in many cities in America as the result of pressure put upon councilmen to pass amendments to zoning ordinances solely for the benefit of private interests. While the City Council has wide discretion in enacting zoning ordinances, it has no authority to place restrictions on one person's property and by mere favor remove such restrictions from another's property, unless there is reasonable ground for the discrimination. Moreover, increase in "spot zoning" in course of time would subvert the original soundness of the comprehensive plan and tend to produce conditions almost as chaotic as existed before zoning. It is, therefore, universally held that a "spot zoning" ordinance, which singles out a parcel of land within the limits of a use district and marks it off into a separate district for the benefit of the owner, thereby permitting a use of that parcel inconsistent with the use permitted in the rest of the district, is invalid if it is not in accordance with the comprehensive zoning plan and is merely for private gain. Leahy v. Inspector of Buildings of City of New Bedford, 308 Mass. 128, 31 N.E.2d 436; Jersey Triangle Corporation v. Board of Adjustment, 127 N.J.L. 194, 21 A.2d 845; Polk v. Axton, 306 Ky. 498, 208 S.W.2d 497, Page v. City of Portland, 178 Or. 632, 165 P.2d 280.

[12] On the other hand, it has been decided that a use permitted in a small area, which is not inconsistent with the use to which the larger surrounding area is restricted, although it may be different from that use, is not "spot zoning" when it does not conflict with the comprehensive plan but is in harmony with an orderly growth of a new use for property in the locality. The courts have accordingly upheld the creation of small districts within a residential district for use of grocery stores, drug stores and barber shops, and even gasoline filling stations, for the accommodation and convenience of the residents of the residential district. Higbee v. Chicago, B. & Q. R. Co., 235 Wis. 91, 292 N.W. 320, 128 A.L.R. 734; Marshall v. Salt Lake City, 105 Utah 111, 141 P.2d 704, 149 A.L.R. 282.

[13] Somewhat similar to that rule is the rule enunciated by this Court in Ellicott v. Mayor and City Council of Baltimore, 180 Md. 176, 183, 23 A.2d 649, 652, that the City Council has the power to make an exception to the Zoning Ordinance to relieve a certain lot from a restriction applicable to the use district where the exception is required either by the peculiar conditions of the lot or by the public good. In that case the Council had reclassified a lot at the corner of Green Spring Avenue and Cold Spring Lane for the purpose of permitting a filling station on the lot, and this Court upheld the ordinance on the ground that the residential area had remained in a rural condition and the filling station was "a public need," as motor vehicular traffic had been steadily increasing, and the nearest filling stations were a half mile to the west and a mile to the east. Chief Judge Bond, speaking for the Court, stated in that case: "So long as this district continues zoned for residential purposes, it must be dealt with as a residential district, and the segregation of a lot within it for a commercial use must be dealt with as a discrimination. Not all discriminations are, however, departures from the authority of the enabling act, or unconstitutional." Compare Mayor and City Council of Baltimore v. Byrd, Md., 62 A.2d 588.

[14] We now come to the specific question whether the City Council can discriminate in favor of a mortician by permitting him to conduct a funeral home in a locality which has long been zoned as residential. The rule adopted in other States, which we follow, is that an amendment to a municipal zoning ordinance that creates a separate commercial district of a single lot of ground to enable an individual to obtain a permit to use his residence on the lot as a funeral home is ordinarily invalid because it provides for unreasonable and discriminatory "spot zoning" beyond the statutory power of the city. Smith v. Board of Appeals of Salem, 313 Mass. 622, 48 N.E.2d 620; Huebner v. Philadelphia

Savings Fund Society, 127 Pa.Super. 28, 192 A. 139; Linden Methodist Episcopal Church v. City of Linden, 113 N.J.L. 188, 173 A. 593; Snow v. Johnston, 197 Ga. 146, 28 S.E.2d 270; Mueller v. C. Hoffmeister Undertaking & Livery Co., 343 Mo. 430, 121 S.W.2d 775.

[15] We have found no facts in this record so extraordinary as to persuade us to withdraw the case from application of the accepted rule. The ordinance under review is a clear case of "spot zoning." The property in dispute is situated in an area that has been zoned as residential ever since the enactment of the City Zoning Ordinance in 1931. The amending ordinance contains a proviso that the premises shall be used only as a funeral home and that no embalming shall be done on the premises. However, Paragraph 8 of the City Zoning Ordinance explicitly provides that no land or building in a residential use district shall be used for "undertaking business or establishment or funeral home"

The amending ordinance reclassifies a single lot in a district where undertaking establishments are not permitted, thus establishing a permissive district within the restricted district. Armacost, who has been engaged in the undertaking business in Howard Park for some years, contracted to purchase the property in dispute upon the condition that if he could not secure a permit to use it as a funeral home, the contract would be rescinded. In January, 1949, after getting the approval of a number of residents of the neighborhood for the establishment of the funeral home, he had the proposed ordinance introduced in the City Council. A number of residents appeared before the Committee on Buildings and Building Regulations, and no objections were heard to the ordinance. Cassel declares that he was one of the opponents who appeared at the hearing, but that the proponents outnumbered the opponents, and he did not voice any objection because it seemed "rather futile." However that may be, the ordinance was passed by the City Council in March, and eleven days after it was approved by the Mayor, the Buildings Engineer issued the permit.

At the trial of this case Cassel asserted positively that there is no need for a funeral home at 5118 Gwynn Oak Avenue. He showed that the property in dispute is only three blocks from Woodbine Avenue, which is in a first commercial use district. Charles E. Delosier, secretary of the State Board of Funeral Directors, who was called to the stand by appellees, acknowledged that there are three other funeral homes within a radius of about ten blocks. Armacost testified that he spent a large sum of money to paint, paper and wire the house, but neither this fact nor the allegation that the funeral home will be a convenience for the tenants in nearby apartment houses is sufficient to save the ordinance. It was urged that there are about 20,000 inhabitants of the Howard Park section, but Armacost admitted that he has conducted only about two funerals a month from the funeral home since he opened it. It is impossible to avoid the conclusion that the ordinance is an arbitrary and unreasonable discrimination for the reason that it does not operate alike on all persons residing within the residential area. As we are convinced that the ordinance is beyond the statutory power of the City Council, we must declare it void. If a funeral home were permitted here, it might be an opening wedge for other enterprises in this and other residential districts of the city.

For these reasons we must reverse the decree dismissing the bill of complaint and remand the case for the passage of a decree granting the relief prayed for by appellants.

Decree reversed and case remanded, with costs.

EASTER v. MAYOR & CITY COUNCIL OF BALTIMORE et al.

No. 176.

Court of Appeals of Maryland.
May 12, 1950.

Action by Andrew J. Easter against Mayor and City Council of Baltimore and others challenging validity of city's approval of construction of addition on front of store and dwelling. The Baltimore City Court, Emory H. Niles, J., rendered judgment for defendants and plaintiff appealed. The Court of Appeals, Henderson, J., held that granting of variance of setback requirements and occupancy rule was not warranted.

Reversed.

1. Municipal corporations ⇐621.39

Board of Zoning Appeals of City of Baltimore in granting special exceptions must consider the factors set out as standard in zoning ordinance, and its action must be reasonable in light of these and all other pertinent facts

2. Municipal corporations ⇐621.39

The power of Board of Zoning Appeals of City of Baltimore under zoning ordinance to grant exceptions must be strictly construed.

3. Municipal corporations ⇐621.45

Burden of showing facts to justify an exception of variance under zoning ordinance rests upon applicants, and it must be shown that hardship affects particular premises and is not common to other property in neighborhood.

4. Municipal corporations ⇐621.21

Mere fact that variance would make property more profitable is not a sufficient ground to justify granting of variance from setback requirements of Baltimore Zoning Ordinance.

5. Municipal corporations ⇐621.25

That other buildings extended to front line of lot and lot was irregular did not authorize Board of Municipal and Zoning Appeals of City of Baltimore to grant a permit for construction of addition on front of store and dwelling in variance of setback rules and occupancy requirement on ground of hardship.

John F. Heath, Baltimore, for appellant.

Benjamin Kann and Malcolm J. Coan, Baltimore, for appellees J. P. Easter and wife.

Thomas N. Biddison, City Sol., Edwin, Harlan, Deputy City Sol., and Hamilton O'Dunne, Asst.City Sol., Baltimore, for appellee Mayor and City Council of Baltimore.

Before MARBURY, C. J., and DELAPLAINE, COLLINS, GRASON, HENDERSON and MARKELL, JJ.

HENDERSON, Judge.

This appeal is from a judgment of the Baltimore City Court affirming the action of the Board of Municipal and Zoning Appeals in granting a permit for the construction of a one-story and basement addition on the front of a store and dwelling at 6418 Belair Road, owned by John P. Easter. The only protestant, Andrew J Easter, is a brother of the permittee, residing at 6420 Belair Road, where he conducts a tavern.

As stated by the trial Court, "The property is in a First Commercial Use, C. Area District, and the permit would allow the store front to be brought out to the building line, in contravention of paragraph 24 of the Zoning Ordinance, which requires a 10-foot minimum depth of front yard in the area in question, and of the percentage of occupancy requirements under paragraph 21, bringing the percentage of occupancy to 85% as opposed to 60%, as provided in the Ordinance. The Board of Municipal and Zoning Appeals granted the permit under the provision of Paragraph 33(c) on the ground that '* * * due to its peculiar location and surroundings it is a case of practical difficulty and unnecessary hardship, since the Tavern already obstructs the view of the store where the addition is now proposed' ". The court thought there was "evidence sufficient to support the legal definition of a hardship and * * * in fact, it would be a hardship to allow one brother

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John F. Heath, Baltimore, for appellant.

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to have a tavern all the way out to the street, and to deny the other brother the *right to build his store out to the same line* as the tavern."

The Board found that the store was "on the west side of Belair Road, 105 feet south of Easter Terrace. * * * Adjacent to the premises under appeal is a building containing a tavern which is built out to the front line of the lot. To the north between Easter Avenue and Kenwood Avenue there are several buildings constructed to the front lines of the lot and the proposed addition would not affect access of light and air to any neighboring properties, nor would it even cut off the view up and down the street. The lot in question is of very shallow depth and irregular in shape * * *." The store and tavern were built as semi-detached buildings. In 1935 Andrew J. Easter obtained a permit to build a sort of covered entrance-way out to the build-line. John P. Easter did not object, and there were no protests In his present application John P Easter states that since his brother "has built out in front of us it has hid our store making it difficult to rent." There is a small triangular vacant lot to the south of 6418, and a church property adjoining to the south, across an alley laid out but apparently not opened. The church is set back the required distance. Andrew J. Easter has applied for a permit, and obtained the approval of the Board, to develop the land to the north, comprising about six acres, as a shopping center with off-street parking facilities and the required set-back If this project is carried out, he states that he proposes to remove the entrance in front of his tavern.

[1, 2] We may assume here, as we have assumed in previous cases, that the delegation to the Board of Zoning Appeals of the power to make special exceptions or variances is valid, and that the standards set up in Section 32(j) are adequate. Colati v. Jirout, 186 Md. 652, 656, 47 A.2d 613; Heath v. Mayor and City Council of Baltimore, 187 Md. 296, 49 A.2d 799, Heath v. Mayor and City Council of Baltimore, Md, 58 A. 2d 896, 898. The Board must consider the factors set out in that section and "its action must be reasonable in the light of these *and all other pertinent facts.*" *Heath v.* Mayor and City Council of Baltimore, supra, 187 Md. 305, 49 A.2d 804. The power to grant exceptions must be strictly construed. Colati v. Jirout, supra, 186 Md. page 659, 47 A.2d 613.

[3, 4] The burden of showing facts to justify an exception or variance rests upon the applicant, and it must be shown that the hardship affects the particular premises and is not common to other property in the neighborhood. Rathkopf, Zoning, 2d Ed., p 215; Levy v. Board of Standards and Appeals, 267 N.Y. 347, 196 N.E. 284. The mere fact that the variance would make the property more profitable is not a sufficient ground to justify a relaxation of setback requirements. Garden View Homes v. Board of Adjustment, 137 N.J.L. 44, 57 A 2d 677.

In the instant case there is no suggestion that the Board failed to "act as a fact-finding body" or to "give consideration to the rules, regulations, restrictions, guides and standards set forth" in the Ordinance (paragraph 33(c)). The question is whether the undisputed facts support the Board's action. The fact that the lot is irregular has no bearing on the question, nor is it material that three buildings, some distance to the north, extend to the building line. These may have been built before the passage of the Ordinance, or they may have been built under permit or without permit. As was said in Potts v. Board of Adjustment, 133 N.J.L. 230, 43 A.2d 850, 854: "Prior exceptions granted by the adjustment board are not in themselves controlling. Ill-advised or illegal variances do not furnish grounds for a repetition of the wrong. If that were not so, one variation would sustain if it did not compel others, and thus the general regulation eventually would be nullified. The annulment of zoning is a legislative function that is beyond the domain of the zoning board." See also the cases collected in a note 168 A.L.R. 13, 41-44. The same principle was announced and applied in Heath v. Mayor and City Council of Baltimore, supra, Md., 58 A.2d 896, 898, Mayor and City Council of Baltimore v. Byrd, Md., 62 A.2d 588, 591, and Cassel v. Mayor and City Council of Baltimore, Md., 73 A.2d 486.

The principal fact relied upon to justify an exception to the area and set-back rules, adopted in the general interest under the police power, is the existence of an exception on the adjoining lot. Undoubtedly this is detrimental to the applicant, although his case is somewhat weakened by his tacit acceptance of the situation over a period of years But we think the detriment to the applicant must be weighed against the benefit to the community in maintaining the general plan "It is by these gradual encroachments, individually of relative insignificance, that the integrity of the general scheme is undermined and ultimately shattered. One departure serves as justification for another * * *." Dubin v. Wich, 120 N.J.L. 469, 200 A 751, 754. In the case of non-conforming uses, the ordinance tolerates their continuance, but looks towards their ultimate elimination. Colati v. Jirout, supra. The same principle applies to special exceptions Heath v. Mayor and City Council of Baltimore, *supra, Md., 58 A.2d 896. Use variances* are doubtless more serious than dimensional changes, but that is only a matter of degree.

In People ex rel. Fordham Manor Reformed Church v. Walsh, 244 N.Y. 280, 286, 155 N E. 575, 577, it was contended that the existence of a garage immediately adjoining the proposed garage was sufficient justification for the grant of an exception on the ground of unnecessary hardship. But the Court, speaking through Chief Judge Cardozo, said: "We think the reasons assigned are insufficient to supply a basis for a departure from the map. They amount to nothing more than this, that a garage may be built because there is another one next door." See also Ventresca v. Exley, 358 Pa. 98, 56 A.2d 210, 212 No estoppel can be raised against the Board by reason of its approval of *similar* extensions in other cases. Appeal of Valicenti, 298 Pa. 276, 148 A. 308; Note 119 A.L.R. 1509, 1517.

[5] Under the circumstances we think the action of the Board cannot be sustained.

Judgment reversed, with costs.



REINDOLLAR et al v. KAISER et ux.
No. 161.

Court of Appeals of Maryland.
May 10, 1950

Robert M. Reindollar and others, as Commissioners of the State Roads Commission *of Maryland, instituted a condemnation* suit for land necessary for road purposes against Frederick A Kaiser and wife in the Circuit Court, Howard County, James Clark, J. The Roads Commission appealed from a judgment assessing damages in the amount of $12,500. The Court of Appeals, Collins, J., held that the trial judge did not err in charging the jury either by minimizing the weight of appellant's evidence or by assuming facts not in evidence.

Judgment affirmed.

1. **Eminent domain** ⇐124, 138

In condemnation proceedings, measure of loss is value of land taken at time taken; and when land is part of larger tract, diminution in value of larger tract caused by taking particular segment thereof must also be considered.

2. **Eminent domain** ⇐222(5)

In condemnation proceedings it was not error, in charging jury, for trial judge to use word "only" to show minimum appraisement when he went on to inform jury that they had exclusive prerogative and duty to determine amount of damages.

3. **Trial** ⇐185

Review of evidence by trial judge in charge to jury should be impartial.

by neglect, omission, or inability of clerk of lower court, court stenographer or appellee, appeal must be dismissed. Maryland Rules, Rule 825 d.

2. Appeal and Error ⇐624

Rules relating to time for filing record on appeal cannot be dispensed with by agreement of counsel and order of trial court. Maryland Rules, Rule 825 b, d.

3. Appeal and Error ⇐780(1), 792

For failure to comply with rules, case may be dismissed on motion or by court on its own motion

4. Appeal and Error ⇐627(2)

Where date set forth in order extending time for filing record on appeal was more than 90 days after first order for appeal was filed and there was no showing that delay was occasioned by neglect, omission or inability of clerk of lower court, court stenographer or appellee, appeal would be dismissed

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Harry S. Shapiro, Towson, for appellants.

Ronald H. Goodman, Baltimore (Friedman & Goodman, Baltimore, on the brief), for appellees.

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

PER CURIAM.

Appellants, Robert L Goldman, *et al.*, sought an injunction restraining appellees, Charles L. Tauber, *et al.*, from continuing with certain construction work on their property and improving or modifying it, contending that it was in violation of the zoning ordinance. It was their contention that there was no lawful nonconforming use for the property and, if there were a nonconforming use, that appellees proposed an unlawful extension of a nonconforming use.

The appeal from the decree of the chancellor dismissing the bill of complaint was entered on September 10, 1969. An order was obtained in the Circuit Court for Baltimore County extending the time for filing the record in this Court to December 12, 1969. The record was certified by the Clerk of the Circuit Court for Baltimore County on December 11 and filed on December 12.

Maryland Rule 825 b provides "the lower court shall not extend the time [for transmitting the record] to a day more than ninety days from the date after the first order for appeal is filed". December 12 was more than 90 days after the date the appeal was filed

[1–3] In the absence of a showing by the appellant that the delay was occasioned by "the neglect, omission or inability of the clerk of the lower court, the court stenographer or appellee" as specified in Maryland *Rule 825 d*, the appeal must be dismissed. Horseman v Furbush, 124 Md. 581, 93 A. 149 (1915). These provisions cannot be dispensed with by agreement of counsel and order of the trial court Presstman v. Fine, 162 Md. 133, 137, 159 A. 265 (1932) For failure to comply with the rules the case may be dismissed on motion or by the Court on its own motion. Butler v. Reed-Avery Co., 186 Md. 686, 690, 48 A.2d 436 (1946). *Cf.* Agnoli v. Powers, Assignees, 235 Md. 289, 201 A.2d 487 (1964).

[4] There is no showing here that the delay "was occasioned by the neglect, omission or inability of the clerk of the lower court, the court stenographer or appellee." Accordingly, the appeal must be dismissed. If, however, the case had been considered on its merits, we would have affirmed the decree of the trial court.

Appeal dismissed, appellants to pay the costs.

258 Md. 157

Robert E. DAIHL et al.

v.

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY and Herman H. Baylus.

No. 306.

Court of Appeals of Maryland.

May 11, 1970.

Proceeding to review order of county board of appeals granting petition reclassifying two parcels of land. The Circuit Court, Baltimore County, John N. Maguire, J., affirmed order of board and protestants appealed. The Court of Appeals, Finan, J., held that granting of variances from area regulations on ground that regulations caused such "difficulties" and "hardships" as to result in owners' sustaining some financial hardship in efforts to develop property and in their future use of it was arbitrary and capricious.

Affirmed in part and reversed in part.

1. Zoning ⇐358

Under ordinance providing that appeals from the zoning commissioner shall be heard by county board of appeals de novo, term "de novo" means that there shall be a de novo hearing on those issues which have been appealed and not on every matter covered in the application, and county board of appeals did not have jurisdiction to review findings on the issues from the determination of which no appeal was taken.

See publication Words and Phrases for other judicial constructions and definitions

2. Zoning ⇐167

Desirability of one street as boundary between M–L zone and residential zone does not substantiate adoption of another street as boundary as error.

3. Zoning ⇐602

Question of mistake in adoption of zoning ordinance was not "fairly debatable," and finding of county board of appeals on issue of mistake was subject to review.

4. Zoning ⇐652

Evidence was sufficient to render "fairly debatable" the question of change in the character of the neighborhood, precluding reviewing court from disturbing finding of county board of appeals.

5. Zoning ⇐503

Granting of variances from area regulations on ground that regulations caused such "difficulties" and "hardships" as to result in owners' sustaining some financial hardship in efforts to develop property and in their future use of it was arbitrary and capricious.

John W. Hessian, III, Towson, for appellants.

Frank E. Cicone, Towson (Christian M. Kahl, Towson, on the brief), for appellees.

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

FINAN, Judge.

This case is before us on appeal from an order of the Circuit Court for Baltimore County which affirmed an order of the County Board of Appeals for Baltimore County granting a petition seeking the reclassification of two parcels of land The parcels front on the north side of a paper street known as Riderwood-Lutherville Drive and are part of the Talbott Manor subdivision. The two parcels are separated by two intervening lots which are zoned residential. All of the lots in both parcels are contiguous to industrially zoned land to the north

This dispute began when Herman Baylus, appellee, petitioned for the reclassification of the two parcels from residential R–6 zoning to industrial M–L zoning. He also asked that the set-off and area restrictions, which are generally applicable to industrially zoned property which abuts on residential, be relaxed. The Deputy Zoning Commissioner[1] allowed the M–L rezoning for the easternmost parcel along with the requested variances. However, he denied the rezoning for the other parcel.

The easternmost and largest parcel consists of Lots 10 through 19 of the Talbott Manor subdivision and is also contiguous to industrially zoned property directly on the east. The smaller and westernmost parcel consisting of Lots 22, 23 and 24 of the subdivision abuts at the front and on the east and west on residential property. The protestants, appellants, live in the immediate area. John Young resides on Lot No. 26 and there is a residence constructed on Lot No. 25. Another protestant, Becky, resides approximately 350 feet from the easternmost parcel. The protestant Daihl at the time of the hearing, was in the process of constructing his home approximately 189 feet from the easternmost parcel and he valued his property at approximately $33,000. There is another residence between the Daihl home and the easternmost parcel. The variances in the Baltimore County Zoning regulations sought by the petitioner were six in number as follows:

1. Reduction of the required restrictive strip of 100 feet to 30 feet (section 255.1).
2. Reduction of the required front yard from 75 feet to 30 feet (section 243.1).
3. Reduction of the required side yard from 50 feet to 30 feet (section 243.2).
4. Reduction of the required rear yard from 50 feet to 30 feet (section 243.2).
5. Reduction of the required set back for a structure from 125 feet to 30 feet (section 243.4).
6. Reduction of the required floor area ratio from .4 to 2 (section 243.5 and section 101).

The appellants filed an appeal to the County Board of Appeals for Baltimore County. Mr. Baylus, petitioner appellee, filed no cross-appeal. At the hearing, the Board heard testimony as to the zoning of both parcels of land although the appellants contend that since no cross-appeal had been filed, the Deputy Commissioner's denial of industrial zoning for the westernmost parcel was final. The Board held that both properties should be classified industrial M–L and as to them granted the requested variances. On appeal by the appellants, the Circuit Court upheld the Board's decision

The issues raised on this appeal are:

1. Did the County Board of Appeals have jurisdiction to consider the appellee's request for a review of the Deputy Zoning Commissioner's denial of the petition for rezoning and variances for Lots Nos. 22, 23 and 24, the westernmost parcel, in view of the fact that the petitioner had taken no appeal from the Zoning Commissioner's decision.
2. Did the County Board of Appeals err in reversing the Zoning Commissioner's denial of the rezoning and variances as to Lots 22, 23 and 24, the westernmost parcel.
3. Did the County Board of Appeals err in affirming the action of the Zoning Commissioner in granting the rezoning and variances for Lots 10 through 19, the easternmost parcel.

1. Section 500.13 of Baltimore County Zoning Regulations provides that the Deputy Zoning Commissioner shall have authority to exercise the same duties as the Zoning Commissioner.

I and II

After a public hearing, the Deputy Zoning Commissioner passed an order granting the rezoning and variances sought by the petitioners for Lots 10 through 19 but denied the rezoning and variances sought for Lots Nos. 22, 23 and 24. On July 26, 1967, the protestants filed a timely appeal; however, it must be noted that the petitioners did not file any appeal. It certainly makes no sense or logic to argue that the protestants in perfecting their appeal intended to take an appeal from any action of the Deputy Commissioner other than that portion of his opinion granting the rezoning and variances to Lots 10 through 19, for the simple reason that the issues involving Lots Nos. 22, 23 and 24 were resolved in their favor The wording of the following notice of appeal filed by the protestants with the Zoning Commissioner supports this reasoning:

"Please note an *Appeal from the portions of said Order granting the requested rezoning and variances* to the Board of Appeals of Baltimore County on behalf of Earl S Jones, et al., residents and protestants." (Emphasis supplied.)

Section 500.10 of the ordinance, which is the general provision regulating appeals, provides in pertinent part:

"Any person or persons, jointly or severally or any taxpayer, or any official, office, department, board or bureau of Baltimore County, feeling aggrieved by any decision of the Zoning Commissioner shall have the right to appeal therefrom to the County Board of Appeals. * * *"

The above Section should also be considered in conjunction with Section 501.3 which provides in pertinent part:

"* * * All decisions of the County Board of Appeals shall be made after notice and opportunity for hearing *de novo upon the issues* before said Board. * * *" (Emphasis supplied.)

We think it significant to note that Section 501.3 refers to "issues" and does not use the term decision. Issue connotes a matter which lends itself to a separate finding or separate holding, that is, something which involves a separate point. Webster's New World Dictionary (College Edition) defines "issue" as: "* * * a point, matter or question to be disputed or decided * * *."

[1] We must also take into consideration the language of Section 501.6 which in referring to appeals, states:

"Appeals from the Zoning Commissioner shall be heard by the County Board of Appeals de novo. * * *"

We think that the context in which the term *de novo* is used in Section 501.6 and 501.3 (both quoted above) means that on appeal there shall be a *de novo* hearing on those issues which have been appealed and not on every matter covered in the application. In this sense *de novo* means that the Board of Appeals may hear testimony and consider additional evidence pertaining to the issue or issues presented on appeal See Vol. 2, The Law of Zoning and Planning, Rathkoff, ch. 65–30, § 7. The original nature of a *de novo* hearing with its quality of newness is in contradistinction to a review upon the record as exists where matters are heard on certiorari. 73 C.J.S. Public Administrative Bodies and Procedure § 204

Both parties to this appeal agree that there appears to be no Maryland case adjudicating the question of whether the *de novo* review power of the Board of Appeals is to be limited to those portions of the Zoning Commissioner's decision from which an appeal has been taken. However, in Deen v. Baltimore Gas & Electric Company, 240 Md 317, 214 A.2d 146 (1965), this question briefly surfaced but then disappeared. There, a utility company desired to construct a high tension transmission line over a segment of an abandoned railroad right of way 5.1 miles

in length. Three areas were involved. At the hearing the Zoning Commissioner granted the utility company's request for its intended use in the third segment, but denied its petition regarding the first and second segment. The utility company appealed to the Board from that portion of the Commissioner's order which required the underground installation of the transmission lines. The Board affirmed the Commissioner's order as to the overhead construction of lines as to the second segment, but reversed the Commissioner as to the first segment. Thereafter the utility company took an appeal to the circuit court from the denial of its request for the construction of overhead lines as to the first segment, and the property owners appealed the Board's granting of overhead construction of lines for the second segment. At the hearing in the circuit court, the utility company contended that there was no issue before the Board concerning the authorized construction of overhead facilities in the third segment because the property owners had failed to appeal from the decision. However, the circuit court was of the opinion that the matter before it dealt with the "general subject of 'overhead' vs. 'underground' transmission lines" and considered the appeal to the Board as encompassing the entire distance of the line. The specific issue as to the scope of the appeal before the Board was not raised in this Court on appeal. Although *Deen* does illustrate that appeals may logically be taken from a portion of an order of the Commissioner, it falls short of establishing any precedent as to what may be the scope of a *de novo* hearing.

In the absence of any precedent to guide us, we think the more sensible interpretation of the meaning of the scope of a *de novo* hearing as used in relation to an appeal heard by the County Board of Appeals, from a decision of the Zoning Commissioner, is that it is restricted to the specific issue or issues resolved by the Commissioner from which an appeal has been taken. By exclusion, this may not encompass all issues which may have been resolved by the Commissioner in his decision, when more than one issue is involved. We think it is consonant with the concept of appeal, that it be coextensive with those issues concerning which the moving party or parties feel aggrieved. We are also buttressed in our reasoning on this matter by the knowledge that such hearings are adversary in nature and are ofttimes complicated. Furthermore, we are of the strong belief that an orderly procedural disposition of these matters requires specificity of the adverse ruling concerning which the aggrieved party seeks review.

Accordingly, we are of the opinion that the County Board of Appeals did not have jurisdiction to review the Deputy Zoning Commissioner's denial of the petition for the reclassification in variances pertaining to Lots Nos. 22, 23 and 24, and that it was error to reverse his decision concerning this westernmost parcel.

III

The petitioners argued that the evidence presented to the Board brought the application for the rezoning classification under the "change-mistake rule." Helfrich v. Mongelli, 248 Md. 498, 237 A.2d 454 (1968), and numerous cases cited in footnote 2, page 503 of that opinion. See also Jobar Corp. v. Rodgers Forge Community Ass'n, 236 Md. 106, 202 A.2d 612 (1964).

The original zoning map covering the area in which the subject parcels are located was adopted by the County Council in November 1955. In an effort to prove a mistake in original zoning the petitioner presented testimony through expert witnesses Augustine J. Muller and Frederick P. Klaus. We think the most favorable interpretation that can be given this testimony is that, on second thought, it would appear that Riderwood-Lutherville Drive, a paper street in 1955, would have made a more logical buffer zone than the boundary adopted. At the time of the original zoning the southerly boundary of the 80 acre tract which has now been developed into an industrial park, was adopted as the boundary between the M–L and residential zones. The petitioners' witnesses also discounted the desirability of the use of the property bordering Riderwood-Lutherville Drive for residential purposes.

[2] Hindsight might dictate that Riderwood-Lutherville Drive may have been a better choice for the boundary between M–L zone and the residential zone, however, this desirability falls far short of substantiating its adoption as error. In the case Greenblatt v. Toney Schloss Properties Corporation, 235 Md. 9, 200 A.2d 70 (1964), the expert witness stated that there had been error in the 1957 comprehensive rezoning plan because the legislative body had used the boundary lines of a tract of land rather than a natural drainage course as a dividing line between an R–40 and an R–20 zone. After reaffirming the strong presumption attending original zoning and comprehensive rezoning, citing Shadynook Imp. Assn. v. Malloy, 232 Md. 265, 269, 192 A.2d 502 (1963), we stated: "* * * the use in 1957 of a property line which was then proper and appropriate * * * was not error simply because it is now revealed that subsequent events (the manner of development of contiguous lands) have made it more logical or desirable or economically profitable that the division line be a natural contour line * * *." 235 Md. at 14, 200 A.2d at 73

[3] The protestants have also testified that Riderwood-Lutherville Drive has been improved to the extent that the improved portion now extends 100 feet in front of Lots Nos. 22, 23 and 24, and that utilities are now available for residential development within several hundred feet of the subject properties. Viewing the evidence offered in totality and recognizing the strong presumption of correctness which attaches to original zoning, Shadynook Imp. Assn., *supra*, we do not think the evidence as to mistake was sufficiently strong as to render that question "fairly debatable." Dill v. Jobar Corp., 242 Md. 16, 23, 217 A.2d 564 (1966); Rohde v. County Bd. of Appeals, 234 Md. 259, 199 A.2d 216 (1964); and Overton v. Board of County Commissioners, 225 Md. 212, 219, 170 A.2d 172 (1961). See also the discussion in Mack v. Crandell, 244 Md. 193, 198, 199, 223 A.2d 248 (1966).

[4] With regard to the question of change in the character of the neighborhood, we reach a different conclusion. The original zoning map having been adopted in 1955, the evidence in the record reveals that in September of 1962, Lots Nos. 1 through 9 of the Talbott Manor, which are contiguous and immediately east of Lots Nos. 10 through 19 were rezoned from R–6 to M–L. This in effect enlarges the industrial park area. There has been considerable building in the industrial park itself and we are of the opinion that the evidence does render the question of change in the character of the neighborhood as fairly debatable and hence we must not disturb the finding of the Board on this issue. Brenbrook Constr. Co. v. Dahne, 254 Md. 443, 450, 255 A.2d 32 (1969); Hunter v. Board of County Commissioners, 252 Md. 305, 250 A.2d 81 (1969); and cases cited therein at page 309, 250 A.2d 81.

[5] However, we differ with the lower court in its affirmance of the action of the Board in granting the requested variances as to Lots Nos. 10 through 19. Section 307 of the Zoning Ordinance expressly provides that, "the Zoning Commissioners of Baltimore County and the Board of Appeals * * * shall have * * * the power to grant variances from height and area regulations, * * * only in cases where strict compliance with the Zoning Regulations in Baltimore County would result in practical difficulty or unreasonable hardships. Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area * * * regulations, and only in such

manner as to grant relief without substantial injury to public health, safety, and general welfare. * * *"

The Board predicated its granting of the variances on the basis that they were "reasonable and essential to prevent practical difficulty and hardship in developing the property." However, there is nothing in the record which would indicate the exact type of structure that the petitioners intended to construct on Lots 10 through 19, other than that it would be in keeping with the general architectural scheme prevalent in the industrial park.

We cannot overlook the fact that in the instant case there are substantial residential properties within the immediate area. The appellant Becky resides 350 feet from Lots 10 through 19. The appellant Daihl is constructing a $33,000 home, 186 feet from Lots 10 through 19. There is another residence between Daihl's home and Lots 10 through 19 Appellant Young resides on Lot No. 26. The evidence is such as would lead a reasonable man to the belief that the granting of these variances may well affect the aesthetic ambience of the residentially zoned properties which lie in the immediate area. For this reason we are of the opinion that the granting of these variances would be in disharmony with the "spirit and intent * * * of * * * the regulations * * *."

The "difficulties" and "hardships" to which the Board referred, although not spelled out, obviously were thought to be of such a nature that, if not overcome, would have resulted in the petitioners sustaining some financial hardship in their efforts to develop the property and in their future use of it. In Easter v. Mayor and City Council of Baltimore, 195 Md. 395, 400, 73 A.2d 491, 492 (1950) we said. "The mere fact that the variance would make the property more profitable is not a sufficient ground to justify a relaxation of setback requirements. Garden View Homes v. Board of Adjustment, 137 N.J.L. 44, 57 A.2d 677." In that same opinion Judge Henderson, later Chief Judge, also stated: "* * * but we think the detriment to the applicant must be weighed against the benefit to the community in maintaining the general plan." See also Burns v. Mayor and City Council of Baltimore, 251 Md. 554, 558, 248 A.2d 103 (1968), and City of Baltimore v. Polakoff, 233 Md. 1, 194 A.2d 819 (1963) As we view the law, we think the granting of the variances by the Board was arbitrary and capricious.

On the basis of what he have said in this opinion we affirm the decision of the lower court in sustaining the Board's action with regard to the rezoning of Lots 10 through 19 from R–6 to M–L (light manufacturing), and reverse the decision with respect to the court's affirming of the granting of the variances as to Lots 10 through 19 and the rezoning and variances as to Lots 22, 23 and 24

Order affirmed in part and reversed in part as set forth in this opinion, appellees to pay costs



258 Md. 168

Harry S. GALBLUM et al., t/a Montgomery Hills Associates

v.

BOARD OF APPEALS OF MONTGOMERY COUNTY.

No. 347.

Court of Appeals of Maryland.

May 11, 1970.

Proceeding on application for a variance from a county zoning ordinance. From an order of the Circuit Court, Montgomery County, Ralph G. Shure, J., upholding the finding of the board of appeals, the plaintiffs appealed. The Court of Appeals, Hammond, C. J., held, inter alia, that under county code granting exemption from special parking tax only if taxpayer should provide off-street parking facilities complying with standards set forth in another section, and standards comtemplated by such section were those to be adopted by county council, and council adopted no standards, operators of trading stamp redemption center in parking lot district, who had but 18 parking spaces whereas code required 41, were not entitled to exemption from the special parking tax.

Affirmed

1. Counties ⇐192

Under county code granting exemption from special parking tax only if taxpayer should provide off-street parking facilities complying with standards set forth in another section, and standards contemplated by such section were those to be adopted by county council, and council adopted no standards, operators of trading stamp redemption center in parking lot district, who had but 18 parking spaces whereas code required 41, were not entitled to exemption from the special parking tax.

2. Zoning ⇐236

Provision of county zoning ordinance authorizing board of appeals to reduce the number of off-street parking spaces required upon a finding that use proposed would be conducted in a building already existing and would be adequate for proposed use did not entitle operators of trading stamp redemption center in parking lot district subject to special tax to exemption under the ordinance, where operators had but 18 parking spaces whereas ordinance required 41, and ordinance specifically provided that it was not to apply to parking lot districts.

Joel Savits, Bethesda (Samuel Barker and Barker & Savits, Bethesda, on the brief) for appellants.

Stephen J Orens, Asst. County Atty (David L. Cahoon, County Atty. for Montgomery County, Alfred H. Carter, Deputy County Atty. and Stanley D. Abrams, Asst. County Atty. Rockville, on the brief) for appellee.

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

HAMMOND, Chief Judge.

Montgomery County, as part of its plan of government, utilizes four special taxing areas known as Parking Lot Districts. These districts embrace those older parts of the County which had developed commercially and industrially prior to the adoption of section 111–27 of the Zoning Regulations of Montgomery County effective in other areas of the County, which requires the furnishing of a specified number of off-street parking spaces as a prerequisite to the granting of a building or occupancy permit for a business use The districts were formed to permit the collection of extra tax revenues to be used in the district in which collected, for the acquisition and maintenance there of public parking lots and garages.

The law governing the creation and operations of these Parking Lot Districts is now codified as Ch. 44 of the Montgomery County Code 1965. Section 44–3, as amended by Ch. 4 of the 1967 Laws of Montgomery County, authorizes the levying annually of a tax of up to one dollar per hundred dollars of real and tangible personal property in each district "used in whole or in part for commercial, industrial or general business purposes." These taxes are described as "special taxes in the nature of ad valorem taxes" and are "in every respect [to] be treated the same as ordinary taxes." By section 44–4 the County Council is authorized "to adopt and amend by ordinance standards, schedules and regulations for off-street parking facilities in order to qualify land and improvements for exemption from the ad valorem tax in any parking district as

DWELLING, ALTERNATIVE SITE DESIGN — A dwelling sited on a zero lot line or zipper lot, patio house or neo-traditional dwelling as prescribed in the Comprehensive Manual of Development Policies.[11] **[Bill No. 2-1992]**

DWELLING, SINGLE-FAMILY DETACHED — A dwelling which is designed for and occupied by not more than one family and surrounded by open space or yards and not attached to any other dwelling by any means. Single-family detached dwellings to be developed as part of an alternative site design shall be considered alternative site design dwellings. **[Bill No. 2-1992]**

DWELLING, TWO-FAMILY — A two-family house containing two dwelling units each of which is totally separated from the other with an unpierced ceiling and floor extending from exterior wall to exterior wall or by an unpierced wall extending from ground to roof. **[Bill No. 2-1992]**

ELDERLY HOUSING FACILITY — The term "elderly housing facility" includes an assisted living facility, a continuing care facility and Class A or Class B housing for the elderly. **[Bill Nos. 36-1988; 188-1993]**

ENCLOSED MALL — A shopping center containing an enclosed pedestrian concourse or connecting enclosed pedestrian concourses to which at least 75% of the establishments therein front onto and have their only direct access (except as required for emergency use). **[Bill No. 29-1982]**

ENVIRONMENTAL IMPACT STATEMENT — A comprehensive study which accurately discloses the environmental consequences or enhancement of a proposed action. Such a statement must include the following:

A detailed description of the proposed action including information and technical data adequate to permit a careful assessment of environmental impact;

Discussion of the probable impact on the environment, including any impact on ecological systems and any direct or indirect consequence that may result from the action;

Any adverse environmental effects that cannot be avoided;

Alternatives to the proposed action that might avoid some or all of the adverse environmental effects, including analysis of cost and environmental impact of these alternatives;

An assessment of the cumulative, long-term effects of the proposed action including its relationship to short-term use of the environment versus the environment's long-term productivity; and

Any irreversible or irretrievable commitment of resources that might result from the action or which would curtail beneficial use of the environment. **[Bill No. 98-1975]**

EXCAVATIONS, CONTROLLED — All types of excavations other than those defined as "excavations, uncontrolled."

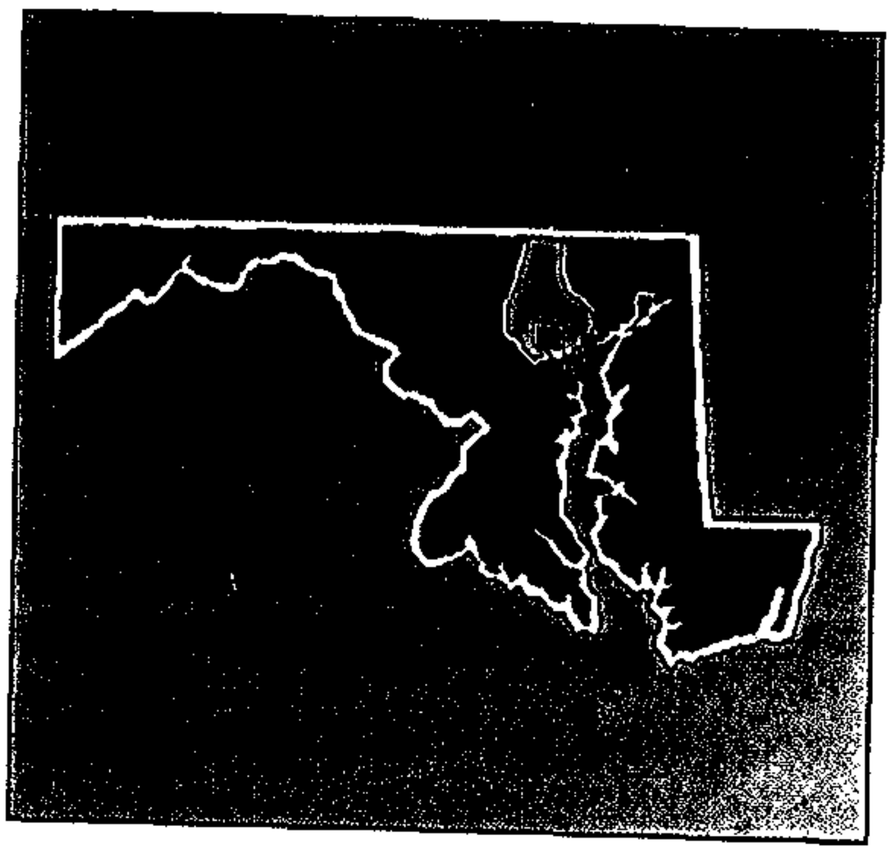
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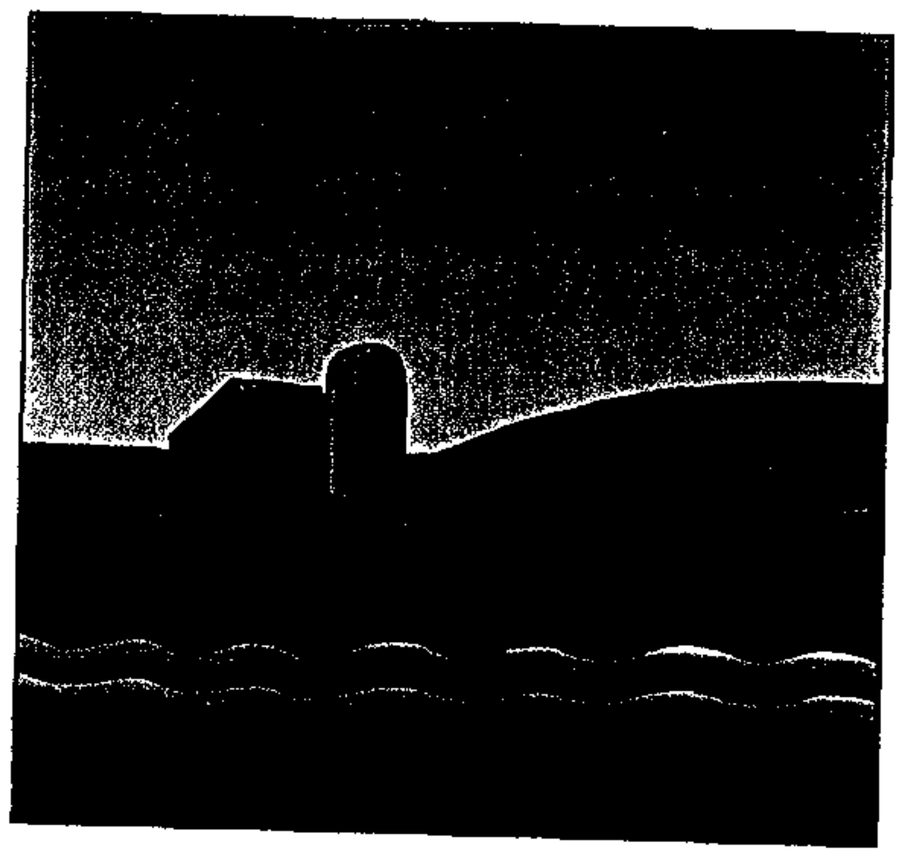
11 **Editor's Note: Information on the Manual may be obtained from the Department of Permits and Development Management.**

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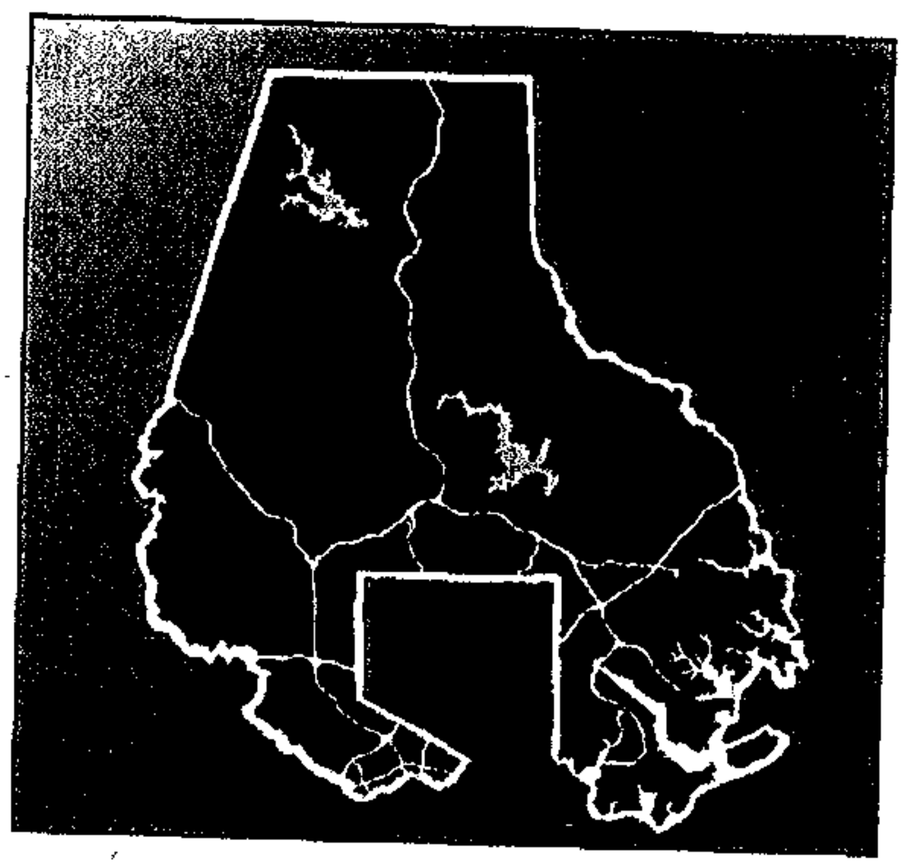
MASTER PLAN 2010

BALTIMORE COUNTY, MARYLAND









AS ADOPTED BY BALTIMORE COUNTY COUNCIL

FEBRUARY 22, 2000



HOUSING CHARACTERISTICS

TENURE STATUS

In the analysis of housing data, the most basic item is tenure — whether the unit is rented or owned by its occupants. In Baltimore County, the homeownership rate has held steady since 1970, and is higher than the national average.[5] The total number of occupied units has increased since 1970, as have the number of owner and renter occupied units (Table 12).

From 1970 to 1990, the number of vacant units in the county increased significantly. However, the number of vacant units decreased by 2,992, or 22%, from 1990-1997. This decline may be associated with increases in the number of households and population during the same time period.

Table 12. Residency Tenure Status, 1970 - 1997
Baltimore County

	1970	1980	1990	1997
Occupied Units	184,890	237,371	268,280	299,290
Owner Occupied	129,531	152,289	177,994	205,216
Ownership Rate	*70.1%*	*64.2%*	*66.3%*	*68.6%*
Renter Occupied	55,359	85,082	90,286	94,074
Vacant Units*	5,049	5,879	13,273	10,351
Vacancy Rate	*2.66%*	*2.42%*	*4.71%*	*3.23%*
Total Units	189,939	243,250	281,553	309,641

Source: 1970 and 1980 Maryland Population and Housing Profile by Maryland Department of Planning (Maryland Office of Planning); 1990 Census of Housing; 1997 Building Permits and Population Estimates by Baltimore County Office of Planning, July 1, 1997.
*: Vacant units = Total housing units - Occupied units. It includes units for sale or rent and other vacancies.

STRUCTURE TYPE

The most basic physical description of the housing stock is structure type. This is defined in the census as the number of units in a structure. The structure type data are generally divided into four categories. The largest size structure is five or more units, and is defined as multifamily housing, distinguishing it from the smaller scale duplexes (2-unit) or fourplexes (4-unit). The one-unit category is often referred to as "single family,"[6] including both attached and detached units.



Approximately 73% of the housing units built in Baltimore County from 1991 through 1997 were single family units. This proportion is about the same as that of existing single family units in 1990. There was a slight decline in multi-unit housing units between 1991 and 1997. About 27% of the housing units built from 1991 through 1997 were multi-unit housing units. Among those, 29% were elderly housing units.

Baltimore County has been the regional leader in housing construction in the 1990s.[7] Twenty-nine percent of the region's total 78,428 housing units built since 1990 have been constructed in Baltimore County (Table 13). The county also leads in the construction of multifamily (five and more) units, with a 45.7% of the region's total 13,598 multifamily units. The county is ranked second in terms of single-unit construction, behind Anne Arundel County.

Table 13. Number of Housing Units in 1990 and New Constructions in the 1990s

All Structure Types

	Baltimore County				Baltimore Region	
	1990 Census (Existing Units)	% of Total (Existing Units)	New Units in the 1990s	% of Total (New Units)	New Units in the 1990s	% of Total (New Units)
1-Unit						
Detached	133,686	48.2%	9,206	40.4%	42,818	54.6%
Attached	68,345	24.7%	7,356	32.3%	21,978	28.0%
2-Unit	5,403	1.9%	8	*0.0%*	28	*0.0%*
3 or 4-Unit	6,957	2.5%	1	*0.0%*	6	*0.0%*
5 or more	62,688	22.6%	6,214	*27.3%*	13,598	*17.3%*
TOTAL	277,079	100.0%	22,785	100.0%	78,428	100.0%

One Unit Structure

	Baltimore County				Baltimore Region	
	1990 Census (Existing Units)	% of Total (Existing Units)	New Units in the 1990s	% of Total (New Units)	New Units in the 1990s	% of Total (New Units)
1-Unit:						
Detached	133,686	66.2%	9,206	55.6%	42,818	66.1%
Attached	68,345	33.8%	7,356	44.4%	21,978	33.9%
TOTAL	202,031	100.0%	16,562	100.0%	64,796	100.0%

Sources: U.S. Census Bureau: 1990 Census of Housing; Baltimore Metropolitan Council, Building Permits Data, 1991 - 1997.

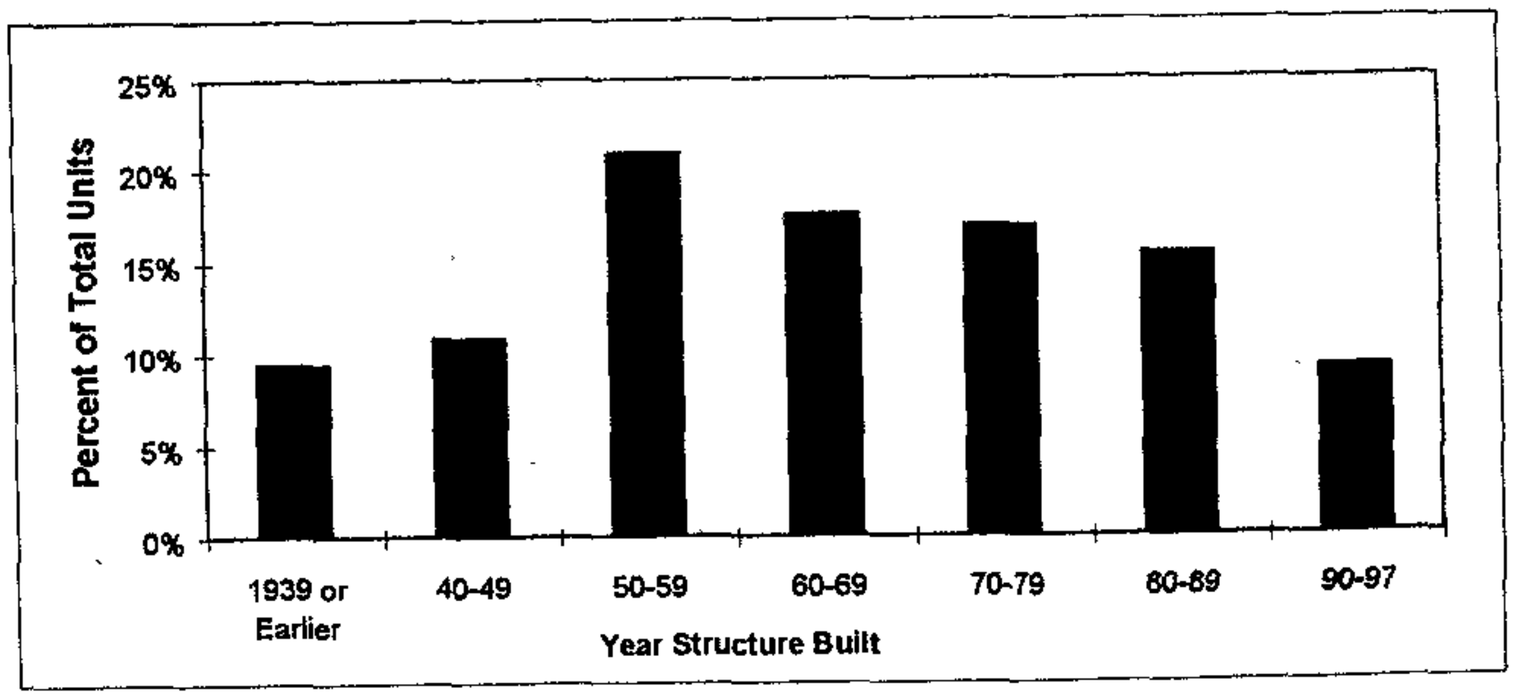


Since 1990, Baltimore County has built 16,562 of the 64,796 single family (attached and detached) houses constructed in the Baltimore region. Detached unit structures have accounted for about 40% of the county's total housing units constructed in the 1990s, while attached unit structures have accounted for about 32%.

AGE OF HOUSING

While new construction plays a part in describing the county's housing characteristics, it is also important to examine the existing housing stock, which, in Baltimore County, is aging. Figure 4 illustrates that the proportion of new units that were built between 1990 and 1997 is about 10%, while the proportion of older units built before 1950 is about 20% of the total housing stock. The period that saw the largest number of housing units built was the 1950s, coinciding with the nationwide post-World War II population and housing boom.

Figure 4. Years Structure Built, 1939 - 1997
Baltimore County



Source: 1990 Census of Population; 1997 Building Permits and Population Estimates, Baltimore County Office of Planning, July 1, 1997.



communities, making them vulnerable. The purpose of the community conservation strategy is to ensure that the older communities retain their vitality, especially by initiating prompt remedial actions in those neighborhoods that are showing signs of stress.

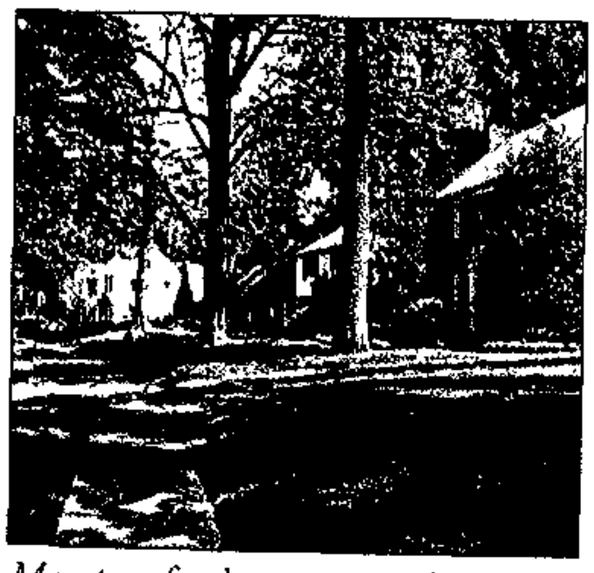
POLICIES

- Target public capital resources to community conservation areas for the maintenance and upgrading of neighborhood streets, alleys, parks, schools, and other facilities.
- Facilitate the consolidation and redevelopment of abandoned and underused properties for uses that enhance community conservation areas.

RESIDENTIAL COMMUNITY CONSERVATION AREAS

INTRODUCTION

Residential community conservation areas comprise the largest land use within the URDL. Almost 75% of Baltimore County's population lives in community conservation areas. The population growth in these areas over the past several decades produced a proliferation of housing, beginning in the 1940s around the city line and expanding outward. Many desirable neighborhoods, developed close to shopping and work, retain their appeal and value today. However, in a few places, property values have not been sustained. The county needs to continue working to understand the social forces and physical attributes that make some residential neighborhoods flourish for generation after generation, and the processes needed to reinvigorate communities that are beginning to show signs of decline.



Most of the county's older neighborhoods have retained their appeal and value.

Housing that is well-designed and well-built tends to hold its value over time, enhancing perceptions of the community. However, as housing ages, systems need to be upgraded or replaced, and the housing must be modernized to appeal to contemporary homebuyers. Resources have to be invested in old houses in order for them to compete effectively with new housing in the home buying market.



Neighborhoods will frequently undergo several cycles of reinvestment. In a healthy reinvestment cycle, housing is maintained and reused by successive generations. As a neighborhood matures, new families replace the older residents. The new residents renovate and upgrade the housing, leading to continued neighborhood stability. When housing is not maintained, an unhealthy cycle starts as families bypass older communities to look for housing in newer suburban developments and in rural areas. When this happens, subsequent reinvestment in the older communities does not occur. Over time, the rate of home ownership tends to decrease, properties continue to decline, and vacancies increase. Eventually, such communities can become areas of concentrated poverty and blight.

Several interrelated factors can influence the extent to which reinvestment is likely to occur in a community. They include the quality and age of housing construction, the changing demands of the housing market, the proximity of employment and shopping, and the condition of the public infrastructure. Social conditions, particularly the quality of the schools and the perception of public safety, are critical factors affecting the desirability of a community as a place to live. The physical form and appearance of the neighborhood, which includes the street network, the location and use of open space, and features such as alleys, sidewalks and street trees, also affects its desirability.

The county has embarked on an aggressive program to renovate, repair and improve a variety of public facilities and infrastructure systems, including schools, recreation sites, roads, streetscapes, and alleys. These improvements are important components of a comprehensive approach to reinvigorating the county's older residential neighborhoods.

The mix of housing types and how adjoining land uses are interrelated may also affect a neighborhood's sustainability. Attitudes on how to design residential areas are changing. The pervasive suburban development pattern of sprawling, low density tract housing, which has accommodated population growth all across America since the 1950s, has promoted dependence on the automobile and fostered a sense of detachment and isolation. A return to traditional residential land use patterns with smaller lot sizes, convenient public open spaces, proximity to shopping, and pedestrian accessibility, is currently thought to provide a better physical framework for promoting healthy, cohesive neighborhoods with a strong community identity.

TRADITIONAL LAND USE PATTERNS WITH GREATER EMPHASIS ON PEDESTRIAN ACCESSIBLITY AND PROXIMITY TO SHOPPING AND OPEN SPACES CAN CREATE MORE COHESIVE NEIGHBORHOODS.



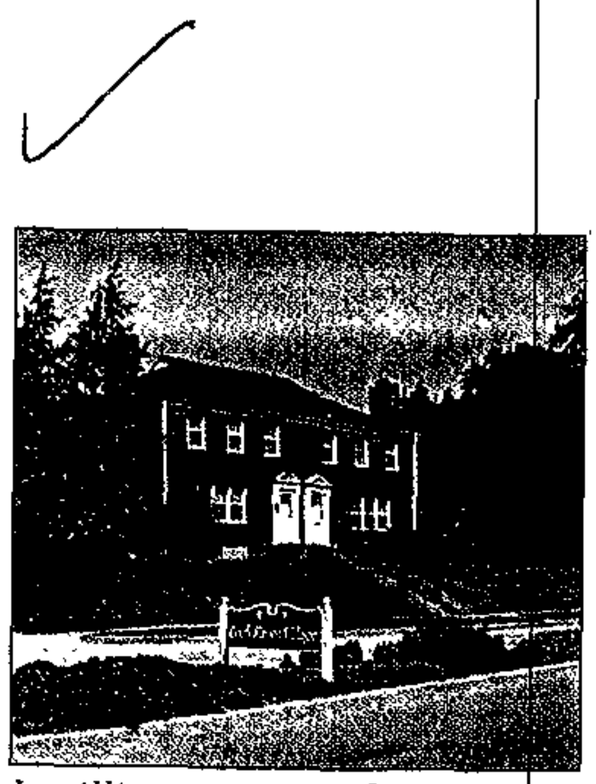
human environment are individuals' social values and behavior towards others. A decline in community involvement, concern for others in society, or civic pride can be threats to residential communities. Baltimore County is diverse and becoming more so as time goes by. Diversity includes things such as age, religion, race, and household income. Citizens should appreciate and celebrate this diversity as an asset. Measures are needed which will promote community stewardship, civic pride, and an appreciation for diversity, encouraging all members of the community to take responsibility for its future.

POLICIES

- Enhance and market the positive attributes of the older neighborhoods.
- Nurture community stability by actively promoting home ownership.
- Encourage property owners to update existing homes to increase their future marketability.
- Encourage attractive and well-maintained rental housing.
- Ensure that the permitted use and density of "infill" parcels enhances established communities.
- Preserve or create open space parcels in established communities, particularly those with higher densities.
- Ensure that community services address community needs and are accessible to residents.
- Encourage the development of housing for the elderly close to town and community centers.
- Encourage the accommodation of citizens with disabilities in new housing design.
- Foster civic pride, appreciation for diversity, and community involvement.

ISSUES AND ACTIONS

Sustaining the county's residential neighborhoods will require a comprehensive, multi-agency approach that considers all factors contributing to their stability. Key elements of neighborhood stability are well-maintained housing and attractive neighborhoods, serving the needs of the county's residents at all income levels and stages of life. Improving the appearance of residential areas will promote a sense of community ownership and pride. The county must work in partnership with local residents and community associations to create customized neighborhood conservation plans, which foster community stewardship.



Instilling a sense of community ownership and pride is a key element of neighborhood stability.



Issue: Density and Development

Basic to the development of residential neighborhoods is the concept of density. Through community planning efforts, the quality and mix of housing types should be analyzed to ensure that the housing stock, density, and the residential pattern will continue to support neighborhood viability. The presence of potential infill and redevelopment sites should be examined. In some instances, vacant parcels can provide visual open space, which is critical to the visual quality of the neighborhood and should be maintained. In other instances, infill development that is compatible with the character of the neighborhood may be appropriate. And, in still other instances, new development that will promote redevelopment or revitalization of the surrounding housing may be appropriate.

In the past, construction in established communities has not always been compatible with the existing housing. The county established its present zoning classifications in the 1950s. In many instances, the zoning designation, which was established for existing residential areas, reflects a density that is higher than the density at which these neighborhoods were originally built. When new housing is developed on vacant parcels within the neighborhood, it is usually at the higher density. Some infill developments create panhandle lots to construct additional housing within the interior of existing blocks. Besides the visual disruption of the residential pattern, the additional density can result in the overloading of the surrounding roads, on-street parking, schools, parks, and community services.

WHERE POSSIBLE, INFILL AND REDEVELOPMENT SITES SHOULD BE USED TO PROVIDE NEEDED OPEN SPACE AND RECREATION OPPORTUNITIES.

Where possible, infill and redevelopment sites should be used to provide needed open space and recreation opportunities. Redevelopment of deteriorating, higher density apartments and townhouses in older neighborhoods to create lower density single family housing will attract homebuyers, stimulating the housing market in the community. Redevelopment can also be used to create better distribution of socio-economic groups to reduce or prevent concentrations of poverty. Where a need for new residential construction is identified, it should be compatible with the existing density of the neighborhood.

Actions

1. For each community plan, evaluate the type and condition of the existing housing.
2. Perform a detailed demographic analysis including projections to determine housing needs.



3. Develop a community consensus on the density and housing mix that would be appropriate to ensure community stability.
4. Identify land parcels that will accommodate the desired housing mix, and opportunities for public spaces like playgrounds or parks. This may involve utilization of vacant parcels, or redevelopment of built parcels.
5. Determine the appropriate future land use for vacant parcels, including parcels that could become available for infill development in the future. Any infill development that creates panhandle lots should be discouraged.
6. Evaluate the development potential and density of vacant parcels zoned DR-5.5, DR-10.5, DR-16, RAE, and OT to determine appropriate land use.
7. Revise zoning as appropriate, either through the four-year Comprehensive Zoning Map Process, or through a rezoning process completed as part of a community plan. Residential zoning of land should be comparable to the existing ("built-out") density in the surrounding area or neighborhood.
8. To assist in the redevelopment of seriously deteriorated housing, consider the creation of mechanisms to acquire, consolidate and strategically redevelop parcels to promote neighborhood revitalization.
9. Create a public/private mechanism for purchasing and maintaining infill parcels as open space, where appropriate.
10. Investigate mechanisms such as overlay districts, performance standards, or lower density residential zones, which would ensure that neighborhoods remain at appropriate densities.
11. Investigate the feasibility of creating non-governmental land trusts for the acquisition and care of small parcels for the creation of open spaces.

THE COUNTY WILL EVALUATE THE DEVELOPMENT POTENTIAL AND DENSITY OF VACANT PARCELS ZONED TO DETERMINE APPROPRIATE LAND USE.

Issue: Ensuring Sustainable Neighborhoods

Addressing the quality of residential neighborhoods will necessitate examining each locality in detail as part of a community plan. Applicable principles, which can be implemented to foster community cohesion for each community, should include:

- providing attractive, well-maintained housing, streets and landscaping;
- providing public spaces including playgrounds, parks and community centers;
- providing interconnected road networks that diffuse traffic through neighborhoods, rather than concentrating it on internal collector streets, and avoiding cul-de-sacs and panhandles; and



- ensuring pedestrian accessibility within the neighborhood and to shopping, transit stops, recreation, and schools.

New development in existing neighborhoods is frequently not compatible in scale or design. Inappropriately located, dissimilar housing designs can lead to disunity in the visual fabric, and break down the cohesiveness of the community. Conversely, in a neighborhood that is experiencing a decline in the maintenance of its housing stock, appropriately located, compatible housing designs that are physically more attractive can improve the perception of the community, and provide an impetus for renovating the existing housing.

Actions

1. Ensure safe pedestrian accessibility to shopping, recreation, and schools.
2. Continue the county's program for pavement resurfacing of roads and alleys.
3. Provide adequate lighting levels for streets, parking areas, and public walkways.
4. Ensure appropriate screening and buffering for parking areas, trash areas, and other unattractive storage or service uses.
5. Encourage periodic neighborhood cleanup campaigns to remove accumulated trash and debris from public areas, and allow residents to easily dispose of unwanted personal belongings.
6. Improve the attractiveness of the community and promote community identity by providing street trees, community planting areas, and neighborhood identification signs.

THE COUNTY SHOULD FACILITATE THE PROVISION OF INDEPENDENT LIVING FOR ITS GROWING SENIOR POPULATION.

Issue: Providing Housing for the Growing Senior Population and for the Disabled

As the county's population ages, the proportion of residents who are disabled or frail will increase. Older citizens and people with disabilities need good choices with respect to where and how they live. Some people with disabilities need special services that can be provided in their own homes or in group homes called assisted living facilities.

A majority of frail seniors and people with disabilities prefer to live independently, when it is feasible. The county should consider actions that help to facilitate independent living. Home sharing is a housing option that helps connect single homeowners with compatible individuals who want to share a home and



expenses. It can provide companionship, financial support, and help with chores, making it easier for some seniors and people with disabilities to remain in their homes.

Existing homes often need modifications to provide for independent living. The extent and cost of these modifications could be reduced if new dwellings were designed with disabled people in mind. "Adaptability" refers to the condition of a dwelling that would allow it to be easily modified as a residence for a person with disabilities.

"Visitability" refers to the condition of a private dwelling which enables a disabled person to enter, move about on the first floor, and use the restroom. Private homes as well as public facilities should be easy to visit so that a person with a disability can pursue an active social and community life rather than being confined at home.

Adaptability and visitability are flexible concepts. An adaptable or visitable dwelling can include features as simple and inexpensive as lowering light switches so that someone can easily reach them from a wheelchair.

Action
Assess the needs, benefits, and costs of adaptable and visitable housing.

Issue: Promoting Home Ownership
A mix of homeowner and rental housing is desirable because it provides options for people with different resources and needs. Nevertheless, home ownership helps stabilize communities because owner-residents have a special stake in the community's future. Baltimore County is fortunate to have a home ownership rate higher than the national average, and the county is taking steps to help maintain and increase home ownership in the community conservation areas. The county has instituted two programs to provide assistance with settlement and closing costs to income-qualified first time homebuyers. This assistance is coupled with homeownership education and counseling services. The Settlement Expense Loan Program (SELP) serves homebuyers throughout the community conservation areas whose incomes are low to moderate (less than 80% of median). The Incentive Purchase Program (IPP), which received the Housing and Urban Development Best Practices award in 1998, serves middle income homebuyers (up to 110% of median) who purchase a home in one of three targeted communities. In addition, state and federal programs exist to provide



HOME OWNERSHIP HELPS STABILIZE COMMUNITIES BECAUSE OWNER-RESIDENTS HAVE A SPECIAL STAKE IN THE COMMUNITY'S FUTURE.



homebuyers with mortgage guarantees and favorable mortgage terms. These programs are largely aimed at helping first time homebuyers, those buyers who generally face the greatest barriers to homeownership. But newer housing in neighboring counties continues to attract Baltimore County's move-up middle income homebuyers. The county should determine ways to effectively promote its many attractive neighborhoods to all segments of the residential real estate market.

Actions

1. Determine whether there is an unmet need for programs like the IPP in additional communities. Consider developing new sources of settlement loan funds that are less restrictive than SELP, if needed.
2. Where appropriate, address housing and marketing strategies in community plans.
3. Work to develop a countywide, neighborhood promotion and marketing plan.
4. Continue to support and promote quality homeownership counseling and educational programs for first time homebuyers throughout the county.

Issue: Maintaining the Existing Housing Stock

The value of older housing diminishes when it is not well maintained. Moreover, poor property maintenance projects a negative community image. This image can demoralize existing residents, discourage community involvement, and dampen home sales.

POOR PROPERTY MAINTENANCE PROJECTS A NEGATIVE COMMUNITY IMAGE.

Recognizing the importance of this problem, Baltimore County has expanded and consolidated its code enforcement capabilities. Inspectors who previously enforced different property codes working out of different county agencies have been cross trained and are now located in a single agency. In addition, the county has established the Community Code Enforcement Program. Through this partnership, community associations can conduct their own exterior property inspections in cooperation with county code enforcement staff and issue notices to property owners requesting voluntary compliance. If conditions are not abated, county staff can follow up with an official inspection. Although code enforcement is handled mostly on a complaint basis, the county has conducted occasional comprehensive "sweeps" through designated areas. Sweeps can be used to target specific problems, such as junked cars, or to target areas with generally inadequate property maintenance.



Actions

1. Regularly and thoroughly enforce all property maintenance codes.
2. Encourage community associations to participate in the Community Code Enforcement Program.
3. Develop cost-effective methods for demolishing vacant buildings that are nuisances.
4. Educate property owners and renters about their responsibilities for compliance with property maintenance codes.

Issue: Updating the Existing Housing Stock

To hold its value, housing must not only be well maintained, but also periodically updated. Housing built prior to 1970 often does not contain features considered standard today such as central air conditioning, multiple baths, large closets, modern kitchens, and large specialty rooms. Approximately 60% of the county's housing stock is pre-1970 vintage. Homeowner housing that does not remain competitive may convert to rental housing or resell at lower prices, potentially inducing deterioration of the housing stock and the surrounding community. Because older housing constitutes such a large portion of the county's housing stock, creative, large-scale initiatives are needed to increase marketability and resale values.

Several programs exist to provide financing for the rehabilitation of single family homes. They include a county loan program, a more restrictive state program for the repair of emergency conditions, and a federal loan guarantee program for the rehabilitation of a home at the time of acquisition. These programs, which are administered through the Baltimore County Office of Community Conservation, serve only low to moderate-income homeowners and homebuyers. County loan rehabilitation programs received two awards from the State Department of Housing and Community Development in 1998.



Creative initiatives are needed to increase the marketability and resale values of the county's older housing.

Actions

1. Encourage the use of existing rehabilitation loan programs for homeowners in designated areas; identify gaps and facilitate the establishment of creative new renovation financing initiatives through local financial institutions.
2. Facilitate creative community-wide repair initiatives, such as volume buying for sidewalk, curb/gutter or driveway repairs, re-roofing, and large tree pruning.



3. Educate homeowners about the financial resources available for, and benefits of, quality home renovations.

Issue: Providing for Attractive and Well-Maintained Rental Housing

While homeownership helps to keep communities stable, a supply of quality rental housing throughout the county provides choices and flexibility for people in a variety of circumstances such as students and young working adults who are not ready to own a home; elderly people who are no longer able to take care of a home; families who cannot afford to own a home; or move-up buyers in transition between homes.

Rental housing comprises nearly one-third of Baltimore County's total housing stock. Over 80% of the rental units are located in the community conservation areas, and include scattered, single family houses as well as garden and mid-rise apartment buildings. The balance of the rental housing is primarily located in the growth areas and the Towson Urban Center, where the zoning allows for high-density elevator apartments.

Most of Baltimore County's rental housing is well maintained and well managed. County agencies have provided training courses for property managers on a number of topics, including livability code compliance and enforcement; Section 8 subsidy program policies, procedures, and responsibilities; tenant selection, including how to perform criminal background and credit checks; how to write and enforce leases; and lead paint testing. Nevertheless, there are a few troubled rental housing complexes that are characterized by combinations of obsolescence, physical deterioration, poor management, concentrated poverty, high rates of crime, and vacancy. The county has pursued the selective demolition of sections of troubled large-scale rental housing complexes having these characteristics in order to preserve surrounding communities, reduce density, and increase the amount of open space. The reduced density, along with targeted efforts to improve the delivery of public safety, health, social, and recreational services, is intended to make these communities more stable and livable.



A supply of quality rental housing throughout the county provides choices.

Actions

1. Continue training programs on best management practices for property managers of multi-family and scattered single family rental housing.
2. Establish a process for the registration of rental property owners to facilitate owner/management education and to enable the county to identify such owners for property code enforcement purposes.



3. Continue to reduce density in selected, troubled, large-scale rental complexes.
4. Evaluate the feasibility of setting up a revolving loan fund for cleanup and repair of substandard rental properties.
5. Identify code enforcement "problem properties" among apartment complexes and individual rental properties and concentrate resources on these properties.
6. Continue to conduct annual fire inspections in all multi-family buildings.
7. Consider establishing an annual or periodic interior and exterior code inspection in all apartment buildings.
8. Develop educational resources to inform tenants of their rights and responsibilities under the provisions of the livability code.

Issue: Reducing the Conversion of Owner-Occupied Homes to Rentals

In general, falling property values invite speculators to convert housing to rental units. Therefore, the best way to prevent large-scale rental conversion in homeowner neighborhoods is to keep the neighborhoods attractive for homeownership through a broad range of conservation efforts that help to maintain property values. Specific neighborhoods that may be at particular risk for conversion to rental status require targeted strategies to minimize rental conversions. Such neighborhoods may include those with a concentration of higher risk home mortgagees who may be more likely to default, particularly in a recessionary period, and those with a high proportion of elderly homeowners.

A house is most likely to be converted to rental status when a quick sale is desired, such as when the homeowner becomes sick or disabled and needs a different living environment; when the owner dies, to settle the estate; when a spouse dies or a couple divorces; or when the lender forecloses on the mortgage. In some of these circumstances, it is common to sell the house at auction. Ordinary homebuyers tend to avoid auctions because the process is intimidating and requires ready cash. Consequently, professional investors usually purchase houses sold at auctions. In addition, some investors seek out and approach potential sellers who may not want to list a house for sale with a real estate agent, or who may have become frustrated by a slow home sale market.

FALLING PROPERTY VALUES INVITE SPECULATORS TO CONVERT HOUSING TO RENTAL UNITS.

Strategies to address this issue include helping to prevent mortgage foreclosure; encouraging home sellers to list their houses with real estate agents rather than selling to investors; and making the choice to remain in their homes more attractive to seniors and disabled homeowners.



Actions

1. Conduct educational workshops for home sellers, particularly targeting elderly residents through senior centers; emphasize the advantages of listing a house with a real estate broker, rather than selling directly to an investor.
2. Continue to provide pre-purchase home ownership counseling to help ensure that first time home buyers are prepared to undertake the financial responsibility of owning a home.
3. Create and promote counseling and referral services to intervene and help prevent mortgage foreclosure when homeowners are in default.

Issue: Fostering Citizen Involvement and Community Stewardship

Citizen involvement is essential to avoid the loss of civic pride and sense of responsibility that can damage communities. The county must promote the stewardship of each community by its residents to strengthen and reinforce its positive social and physical aspects. Community stewardship encompasses maintaining and improving the physical resources of the neighborhood, its housing, infrastructure, open space and overall design, as well as promoting social cohesiveness and responsibility.

To be effective community "stewards," citizens need to be well informed about government services and functions, and they need a variety of community organizing and leadership skills. They also need flexibility in their work schedules to attend meetings and hearings. Civic organizations need convenient physical space for meetings and other activities, and they need money and other resources to carry out community development projects.



County-sponsored community conservation conferences serve as forums about strengthening communities.

County government has worked to address these needs. The county has co-sponsored six annual community conservation conferences with the Community Conservation Action Group (CCAG), an informal association of community associations and umbrella organizations from across the county. The conferences serve as forums for communicating technical information, supporting leadership development, and sharing ideas about strengthening communities.

Resources available for promoting community stewardship and community improvement projects are varied. The county government has established an annual competitive grant to community associations for physical improvements. The Harry and Jeannette Weinberg Foundation has provided matching funds. Some of the larger employers in the Baltimore region



have established policies that support and encourage civic involvement, such as flex time, time off, awards recognizing community achievement, and small grants for community improvement projects.

Actions

1. Promote community activities to build and strengthen relationships among neighbors, such as community picnics, market days, senior craft fairs, etc.
2. Sponsor local civic improvement activities, such as Community Conservation Grant projects, Pitch-in-for-Progress projects, Earth Day activities, stream clean-ups, community planting projects, or home improvement projects such as Christmas in April, that allow residents to participate physically in improving their communities, and building a personal stake in its future stability.
3. Encourage community associations to use their newsletters, community meetings, and other activities to promote community stewardship concepts as they pertain to strengthening their particular neighborhood.
4. Provide for flexibility in the design and use of public buildings so that every community has convenient gathering spaces that can be used for meetings, community services, and social activities.
5. Encourage employers to accommodate and support the civic activities of their employees.
6. Continue to hold the annual community conservation conference and to support the CCAG.

COMMERCIAL COMMUNITY CONSERVATION AREAS

INTRODUCTION

Baltimore County has two basic forms of commercial development throughout its community conservation areas: Commercial Revitalization Districts, which are the older traditional commercial areas, and commercial corridors, which include strip commercial development and shopping centers. Each form of commercial development presents unique challenges and opportunities.



Streetscape improvements were recently made in the Catonsville Commercial Revitalization District.

COMMERCIAL REVITALIZATION DISTRICTS

Traditional commercial areas play an important role in Baltimore County's overall vitality and prosperity. The county's twelve traditional commercial areas are located within the Urban Rural Demarcation Line (URDL).

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2000 CZMP Map Issues:
District 1

Councilmanic District
Secondary Roads
Major Roads
Map Issues

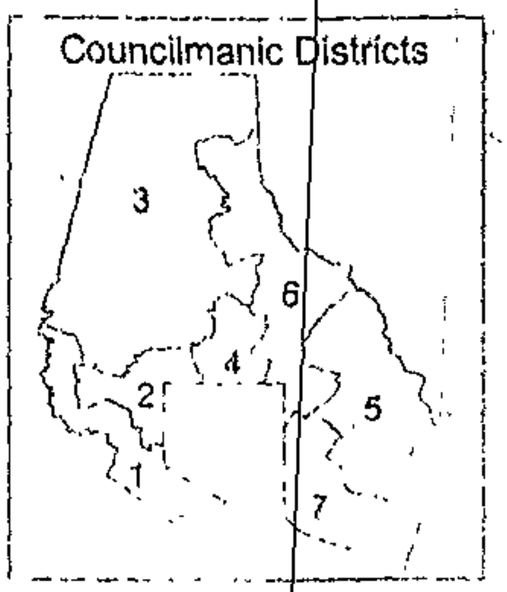
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Councilmanic Districts



Prepared by: Baltimore County Office of Planning
OIT/GIS Services Unit, January 2000

Sources: Roads and Councilmanic Districts-Baltimore Metropolitan Council 1999 1:24000
CZMP Issues-Baltimore County Office of Planning. Digitized from 1996
Tax Maps 1 7200 This map is for display purposes only Land use decisions involving zoning designations should be verified with the zoning office Issues as of January 18, 2000

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
1-001	Staff	5441 Valley Rd, south side Valley Rd, 500' east of Hilltop Rd	DR 3.5 25.5 Total 25.5	DR 1 25.5 Total 25.5	DR 3.5 25.5 Total 25.5	DR 3.5 25.5 Total 25.5	Covenant Agreement
1-002	Staff	East & west side Washington Blvd at Baltimore City line	BL AS 8.9 Total 8.9	BL 8.9 Total 8.9	BL AS 0.5 BL 8.4 Total 8.9	BL AS 0.5 BL 8.4 Total 8.9	See Issue 1-008 Overlay Adopted
1-003	Staff	East side of Rolling Rd opposite Old Frederick Rd	OR 1 2.0 Total 2.0	DR 2 2.0 Total 2.0	DR 2 2.0 Total 2.0	DR 1 2.0 Total 2.0	
1-004	Staff	5820 Edmondson Ave	DR 10.5 6.0 Total 6.0	DR 5.5 or DR 3.5 6.0 Total 6.0	DR 5.5 6.0 Total 6.0	DR 5.5 6.0 Total 6.0	
1-005	Staff	East and west sides of Edmondson Ave at Laurel Hill Ln	DR 16 6.2 Total 6.2	DR 5.5 or DR 3.5 6.2 Total 6.2	DR 16 4.0 DR 5.5 2.2 Total 6.2	DR 16 4.0 DR 3.5 2.2 Total 6.2	Overlay Adopted
1-006	George Marousis	5602 Edmondson Ave, northwest corner Edmondson Ave and Coleraine Rd	DR 5.5 0.4 Total 0.4	CB 0.4 BLR BL Total 0.4	DR 5.5 0.4 Total 0.4	DR 5.5 0.4 Total 0.4	
1-007	Staff	St Agnes Ln at Harwall Rd	DR 16 7.0 Total 7.0	DR 10.5 7.0 Total 7.0	DR 16 4.9 DR 5.5 2.1 Total 7.0	DR 16 4.9 DR 5.5 2.1 Total 7.0	Covenant Agreement 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
1-014	746 Associates LLC	14-18, 24 Melrose Ave, 423' west of Ingleside Ave	RO 0.9 Total 0.9	BL 0.9 Total 0.9	RO 0.9 Total 0.9	RO 0.9 Total 0.9	See Issues 1-012, 1-013
1-015	Staff	500' south of Baltimore National Pk, west of Nuwood Dr	ML 4.1 Total 4.1	DR 3.5 4.1 Total 4.1	DR 3.5 4.1 Total 4.1	DR 2 4.1 Total 4.1	
1-016	Herbert V. Sauter & Elinor M. Bain	2500 North Rolling Rd, southwest corner Tudsbury Rd and Rolling Rd	RO 0.5 Total 0.5	CB 0.5 Total 0.5	RO 0.5 Total 0.5	RO 0.5 Total 0.5	
1-017	Leona R. Mansfield	7115 Dogwood Rd, 2270 Rolling Run Rd, south side of Dogwood Rd west of Rolling Run Rd	DR 5.5 5.6 Total 5.6	OR 2 5.6 Total 5.6	DR 5.5 0.9 O 3 4.7 Total 5.6	O 3 5.6 Total 5.6	See Issue 1-028 Covenant Agreement
1-018	Staff	East side of Ingleside Ave south of Chrysler Place	DR 10.5 4.4 Total 4.4	DR 5.5 4.4 Total 4.4	DR 5.5 4.4 Total 4.4	DR 5.5 4.4 Total 4.4	
1-019	Thomas Booth & James Mohler	1 Delrey Ave & rear of 2 Glenwood Ave, 104' north of Frederick Rd	DR 5.5 0.3 Total 0.3	BL AS 0.3 Total 0.3	DR 5.5 0.2 BL 0.1 Total 0.3	BL 0.3 Total 0.3	*Zoning Map Correction, MC 99-1, granted 12/7/99*
1-020	Bonnie Kahler	North side of Dogwood Rd, northwest of intersection of Dogwood Rd and Riverbirch Dr	RC 2 10.6 Total 10.6	RC 3 10.6 Total 10.6	RC 3 10.6 Total 10.6	RC 6 10.6 Total 10.6	
1-021	Staff	Northeast corner of Frederick Rd at Osborne Ave	RO 0.4 Total 0.4	DR 2 0.4 Total 0.4	DR 2 0.4 Total 0.4	DR 2 0.4 Total 0.4	

Baltimore County 2000 Compre..ensive Zoning Map Issues

Issue Number	Owner, Petitioner	Location	Existing Zoning and Acres	Requested Zoning and Acres	Planning Board Recommendations	County Council Decisions	Comments
1-029	Mid-Atlantic Realty Trust	North side of Wilkens Ave, east of Maiden Choice Ln	OR 2 2.5 DR 5.5 0.4 Total 2.9	BL 2.9 Total 2.9	BL 2.9 Total 2.9	BL 2.9 Total 2.9	See Issue 1-024
1-030	Merritt Properties, LLC	3700 Commerce Dr and 3718 Washington Blvd	BR 1.1 ML IM 17.7 Total 18.8	BR IM 1.1 BM IM 17.7 Total 18.8	BL 6.0 ML 12.8 Total 18.8	BR IM 1.1 BL 17.7 Total 18 8	See Issue 1-008 Overlay Adopted
1-031	New England Motor Freight	South side of Sulphur Spring Rd, north of Joh Ave and Georgetown Rd	MLR IM 8 0 Total 8.0	ML IM 8 0 Total 8.0	ML 8.0 Total 8 0	ML 8.0 Total 8.0	See Issues 1-008, 1-030, 1-032
1-032	3600 Georgetown Corporation	3600 Georgetown Rd, southwest corner of Joh Ave and Georgetown Rd	MLR IM 6.3 Total 6.3	ML IM 6.3 Total 6.3	ML 6.3 Total 6.3	ML 6.3 Total 6.3	See Issues 1-008, 1-030, 1-031
1-033	Charles L. Wagandt	2832 Westchester Ave, 380' northeast of the intersection of Westchester Ave and Frederick Rd	DR 3.5 0.1 DR 2 0.8 Total 0.9	BL 0.9 Total 0.9	BL 0.9 Total 0 9	DR 2 0.5 BL 0.4 Total 0.9	Overlay Adopted
1-034	The Gustine Company	East side of Rolling Rd southeast of Dogwood Rd	RO 0.3 Total 0.3	BL AS 0.3 Total 0 3	RO 0.3 Total 0.3	RO 0 3 Total 0.3	See Issues 1-028, 1-035
1-035	The Gustine Company	East side of Rolling Rd and southeast corner of Dogwood Rd	RO 0.7 Total 0.7	BL AS 0 7 Total 0.7	RO 0.7 Total 0.7	RO 0.7 Total 0 7	See Issues 1-028, 1-034

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
1-044	First Apostolic Institutional Church	North side of Davis Ave. 3000' west of Wrights Mill Rd									See Issue 1-058
			RC 2	140.0	RC 5	140.0	RC 2	140 0	RC 2	140 0	
			Total	140.0	Total	140 0	Total	140.0	Total	140 0	
1-045	Norbert & Raymond Paszkiewicz	10917 Liberty Rd									Overlay Adopted
			RC 2	4.3	BM CR	1.9	RC 2	4.3	BM CR	0.5	
			Total	4.3	RC 5	2.4	Total	4 3	RC 2	3.8	
					Total	4.3			Total	4.3	
1-046	Westerlee Community Association	190' south of Cedar Circle Dr, 160' north of Powers Ln									See Issue 1-027 Covenant Agreement
			DR 16	1.4	DR 2	1.4	DR 16	1.4	DR 16	1.4	
			Total	1.4	Total	1.4	Total	1.4	Total	1.4	
1-047	D.S. Thaler & Assoc., Inc	North side of Johnnycake Rd, north of Old Stone Rd									See Issues 1-048, 1-049, 1-050, 1-051, 1-058 Overlay Adopted
			DR 5 5	4.9	OR 2	14.4	DR 3.5	5 4	DR 3 5	5.4	
			DR 16	0 4	DR 3.5	8 6	RC 3 or		RC 6	17 6	
			RC 3	17 6	Total	23 0	RC 6	17.6	Total	23 0	
			Total	23 0			Total	23 0			
1-048	D.S. Thaler & Assoc., Inc	7321 Dogwood Rd, 2100' east of Ridge Rd and Johnnycake Rd									See Issues 1-047, 1-049, 1-050, 1-051, 1-058
			RC 3	3.8	DR 3.5	3 8	RC 3 or	3 8	RC 6	3 8	
			Total	3 8	Total	3 8	RC 6		Total	3 8	
							Total	3 8			
1-049	D.S. Thaler & Assoc., Inc	North side of Johnnycake Rd, north of Gladstone Rd									See Issues 1-047, 1-048, 1-050, 1-051, 1-058 Overlay Adopted
			DR 5 5	3.2	OR 2	6 6	DR 3 5	3.2	DR 3 5	3.2	
			RC 3	9 5	DR 3 5	6.1	RC 3 or		RC 6	9 5	
			Total	12 7	Total	12.7	RC 6	9.5	Total	12.7	
							Total	12.7			

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
1-057	Staff	East and west side of Melvin Ave between Edmondson Ave and Suter Rd	DR 5.5 14.0 Total 14.0	DR 2 DR 3.5 or 14.0 Total 14.0	DR 5.5 14.0 Total 14.0	DR 2 14.0 Total 14.0	See Issue 1-065
1-058	Staff	South side of Old Court Rd, east of Ridge Rd, east of Dogwood Rd, north and south side of Davis Ave	DR 5.5 17.1 RC 2 43.0 RC 3 3,761.1 RC 5 1,381.7 Total 5,202.9	DR 5.5 17.1 RC 2 43.0 RC 3 3,761.1 RC 5 1,381.7 Total 5,202.9	DR 3.5 36.7 RC 2 43.0 RC 3 611.4 RC 5 208.6 RC 6 3,109.2 RC 7 1,194.0 Total 5,202.9	RC 6 3,864.3 DR 3.5 23.2 RC 2 1,194.0 RC 3 121.4 Total 5,202.9	Alternate Request: RC3 PG 5202.9 Total 5202.9 See Issues 1-044, 1-047, 1-048, 1-049, 1-050, 1-051 Overlay Adopted
1-059	Staff	3008 Hernwood Rd, 1050' west of Hernwood Rd	RC 3 3.5 Total 3.5	RC 2 3.5 Total 3.5	RC 2 3.5 Total 3.5	RC 2 3.5 Total 3.5	
1-060	Staff	365' east of Dogwood Rd, 1000' south of Old Court Rd	RC 5 1.5 Total 1.5	RC 2 1.5 Total 1.5	RC 2 1.5 Total 1.5	RC 2 1.5 Total 1.5	
1-061	Staff	South of I-70, north of Oella Ave	DR 5.5 4.1 DR 3.5 41.3 DR 2 605.5 Total 650.9	RC 2 650.9 Total 650.9	RC 2 or RC 7 650.9 Total 650.9	RC 2 650.9 Total 650.9	See Issues 1-015, 1-062
1-062	Staff	South of Frederick Rd, north of I-95	DR 3.5 88.6 DR 2 1,043.8 DR 1 390.3 Total 1,522.7	RC 2 1,522.7 Total 1,522.7	RC 2 or RC 7 1,522.7 Total 1,522.7	RC 2 1,522.7 Total 1,522.7	See Issue 1-061

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
1-070	County Council	Northeast corner of Frederick Rd and Oella Ave	DR 2 3.0 Total 3.0	DR 1 3.0 Total 3.0	DR 2 3.0 Total 3.0	DR 2 3.0 Total 3.0	
1-071	County Council	5413, 5415, 5417 East Dr	BL CCC 0.3 Total 0.3	BR 0.3 Total 0.3	BR 0.3 Total 0.3	BR 0.3 Total 0.3	Covenant Agreement

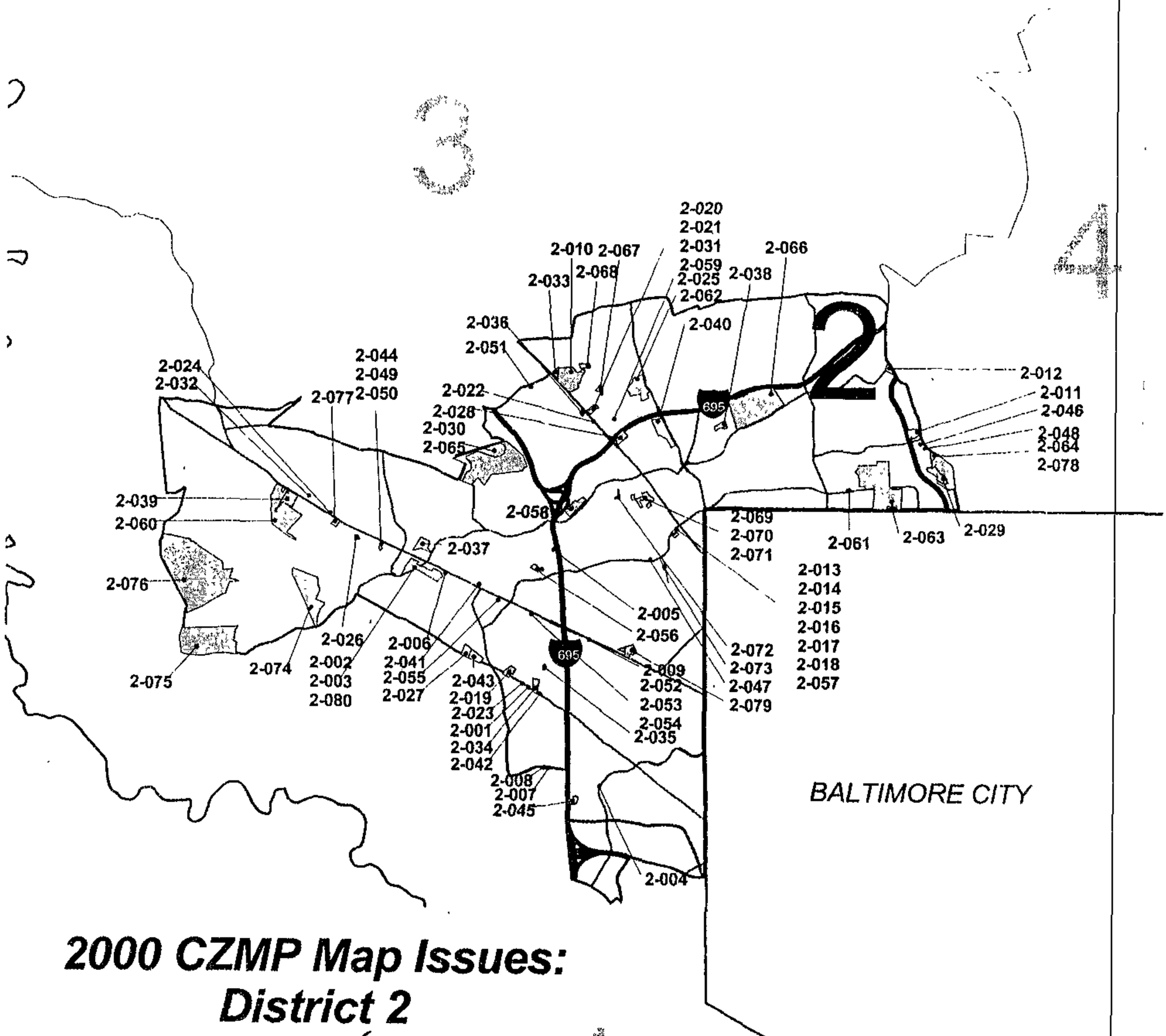
P.C. #8

BALTIMORE COUNTY
COMPREHENSIVE ZONING MAP

Final Log of Issues

Adopted October 10, 2000

2000 CZMP Map Issues:
District 2

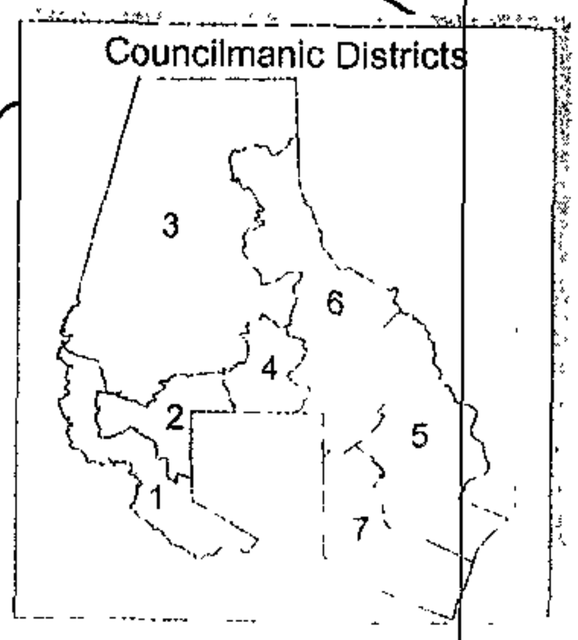


- Councilmanic Districts
- Secondary Roads
- Major Roads
- Map Issues

1 inch = 2 miles

2 0 2 4 Miles

1 : 126720



N W E S

Prepared by Baltimore County Office of Planning
OIT/GIS Services Unit, January 2000

Sources: Roads and Councilmanic Districts-Baltimore Metropolitan Council 1999 1 24000
CZMP Map Issues Baltimore County Office of Planning, Digitized from 1996 Tax Maps 1.7200
This map is for display purposes only Land use decisions involving zoning designations should be verified with the zoning office Issues as of January 18, 2000

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
2-001	Staff	7218 Windsor Mill Rd, 2800' southeast of Rolling Rd	DR 5.5 0.4 Total 0.4	BL 0.4 Total 0.4	BL 0.4 Total 0.4	BLR 0.4 Total 0.4	
2-002	Ali R. Filipour	5332 Old Court Rd	DR 16 0.3 Total 0.3	OR 2 0.3 Total 0.3	O 3 0.3 Total 0.3	O 3 0.3 Total 0.3	See Issues 2-003, 2-080
2-003	Ali R. Filipour	5330 Old Court Rd	DR 16 0.3 Total 0.3	OR 2 0.3 Total 0.3	O 3 0.3 Total 0.3	O 3 0.3 Total 0.3	See Issues 2-002, 2-080
2-004	Thel Moore. Sr.	6605 Dogwood Rd, southeast corner of Woodlawn Dr & Dogwood Rd	DR 5.5 0.3 Total 0.3	RO 0.3 Total 0.3	DR 5.5 0.3 Total 0.3	DR 5.5 0.3 Total 0.3	
2-005	Staff	Northeast side Scotts Level Rd, north of Milford Mill Rd	DR 16 1.1 Total 1.1	DR 3.5 1.1 Total 1.1	DR 3.5 1.1 Total 1.1	DR 3.5 1.1 Total 1.1	
2-006	Ronald Berger, M.D.	8501 Liberty Rd at corner of Courtleigh Dr	DR 5.5 0.3 Total 0.3	RO 0.3 BR BL Total 0.3	ROA 0.3 Total 0.3	ROA 0.3 Total 0.3	
2-007	Windsor Corporate Center 10 LLC c/o MIE	2401 Lord Baltimore Dr, northeast corner Lord Baltimore Dr and Dogwood Rd	ML IM 0.8 Total 0.8	BL IM 0.8 Total 0.8	ML IM 0.8 Total 0.8	ML IM 0.8 Total 0.8	See Issue 2-008
2-008	Windsor Corporate Center 9 LLC c/o MIE	2400 Lord Baltimore Dr, northwest corner Lord Baltimore Dr and Dogwood Rd	ML IM 1.0 Total 1.0	BL IM 1.0 Total 1.0	ML IM 1.0 Total 1.0	ML IM 1.0 Total 1.0	See Issue 2-007

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
2-015	Village Builders 98, LLP	0 Linden Terrace, 170' southwest of Reisterstown Rd	RO 0.1 Total 0.1	BL 0.1 Total 0.1	BL 0.1 Total 0.1	RO 0.1 Total 0.1	See Issues 2-013, 2-014 2-016, 2-017 2-018, 2-057
2-016	Village Builders 98, LLP	2 Linden Terrace, 220' southwest of Reisterstown Rd	RO 0.2 Total 0.2	BL 0.2 Total 0.2	BL 0.2 Total 0.2	RO 0.2 Total 0.2	See Issues 2-013, 2-014 2-015, 2-017 2-018, 2-057
2-017	Village Builders 98, LLP	113 Slade Ave, 280' southwest of Linden Terrace and Reisterstown Rd	RO 1.4 Total 1.4	BL 1.4 Total 1.4	BL 1.4 Total 1.4	RO 1.4 Total 1.4	See Issues 2-013, 2-014 2-015, 2-016 2-018, 2-057
2-018	Village Builders 98 LLP	14 Linden Terrace, 580' southwest of Reistertown Rd	RO 0.2 Total 0.2	BL 0.2 Total 0.2	BL 0.2 Total 0.2	RO 0.2 Total 0.2	See Issues 2-013, 2-014 2-015, 2-016 2-017, 2-057
2-019	J. Homer Weidemeyer	Northside of Windsor Mill Rd, west of Richwood Ave	DR 5.5 8.1 Total 8.1	O 3 or OR 2 8.1 Total 8.1	DR 5.5 8.1 Total 8.1	DR 5.5 8.1 Total 8.1	
2-020	Greenebaum & Rose, Inc	9 Castleton Ave, northeast of Reisterstown Rd	DR 3.5 0.6 Total 0.6	OR 2 0.6 Total 0.6	O 3 0.6 Total 0.6	OR 2 0.6 Total 0.6	See Issues 2-021, 2-031, 2-059
2-021	Greenebaum & Rose, Inc	18 Castleton Ave, 430' northeast of Reisterstown Rd	DR 3.5 2.5 Total 2.5	OR 2 2.5 Total 2.5	O 3 2.5 Total 2.5	OR 2 2.5 Total 2.5	See Issues 2-020, 2-031, 2-059

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
2-030	Gwynns Falls Limited Partnership	725 Mt. Wilson Ln. north and south side of Mt. Wilson Ln west of I-795	DR 1 43.0 Total 43.0	DR 3.5 43.0 Total 43.0	DR 1 43.0 Total 43.0	DR 1 43.0 Total 43.0	See Issue 2-065
2-031	Southwood Holdings Corp	1845,1853 &8000 Reisterstown Rd at Keller Rd	BL 2.1 DR 3.5 0.5 Total 2.6	O 3 or BL 0.5 BL 2.1 Total 2.6	BL 2.1 O 3- 0.5 Total 2.6	OR 2 2.6 Total 2.6	See Issues 2-020, 2-021, 2-059 *Amended by Petitioner 4/17/00*
2-032	Sholom Y. Levin	9324 Liberty Rd	BL 0.4 Total 0.4	BR 0.4 Total 0.4	BL 0.4 Total 0.4	BL 0.4 Total 0.4	
2-033	Valley Village Associates, LLP	9183 Reisterstown Rd, southeast of Craddock Ln	OR 1 2.0 Total 2.0	BL AS 2.0 Total 2.0	OR 1 2.0 Total 2.0	O 3 2.0 Total 2.0	*See Issues 2-010, 2-068*
2-034	Timanus Lane Partnership, LLP	3100 Timanus Ln, northwest of Windsor Mill Rd	OR 1 7.3 Total 7.3	OR 2 7.3 Total 7.3	O 3 7.3 Total 7.3	O 3 7.3 Total 7.3	See Issue 2-035, 2-042
2-035	Timanus Lane Partnership, LLP	3217 Timanus Ln, 900' north of Bexhill Rd	DR 5.5 0.3 DR 16 1.3 Total 1.6	ML or 1.6 OR 2 Total 1.6	DR 5.5 1.6 Total 1.6	O 3 1.6 Total 1.6	See Issue 2-034 Covenant Agreement
2-036	*The Mount Wilson* Partnership, LLP	*1856 Reisterstown Rd, 200' southeast to Mt. Wilson Ln*	RO 3.5 Total 3.5	BLR or 3.5 BM Total 3.5	RO 3.5 Total 3.5	RO 3.5 Total 3.5	

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
2-045	A&E Partners, LP, Emmes Meadows Corp.	6601 White Stone Rd & 1724-1726 Whitehead Rd	ML IM 5.9 Total 5.9	BM 5.9 Total 5.9	ML IM 5.9 Total 5.9	ML IM 5.9 Total 5.9	
2-046	Peter Jones	6320 Falls Rd, 300' southwest of Old Pimlico Rd	ML AS 0.5 Total 0.5	BR or ML IM 0.5 Total 0.5	ML IM 0.5 Total 0.5	ML IM 0.5 Total 0.5	
2-047	Roswell Jones	Northwest corner of Milford Mill Rd & Greenwood Rd	DR 5.5 0.2 Total 0.2	DR 1 0.2 Total 0.2	DR 1 0.2 Total 0.2	DR 1 0.2 Total 0.2	
2-048	Kathryn & Nicholas Belitsos	6302 Falls Rd, at Shoemaker Rd and Falls Rd	ML 0.7 Total 0.7	BR 0.7 Total 0.7	ML 0.7 Total 0.7	MLR 0.7 Total 0.7	See Issues 2-064, 2-029, 2-078
2-049	Canam Inc	8815 Liberty Rd, 2640' east of Greens Ln	DR 3.5 0.5 Total 0.5	DR 16 0.5 Total 0.5	DR 3.5 0.5 Total 0.5	DR 3.5 0.5 Total 0.5	See Issues 2-044, 2-050
2-050	Canam Inc	8806 Stonehaven Rd, 200' south of Liberty Rd	DR 5.5 0.3 DR 3.5 1.4 Total 1.7	DR 16 1.7 Total 1.7	DR 5.5 0.3 DR 3.5 1.4 Total 1.7	DR 5.5 0.3 DR 3.5 1.4 Total 1.7	See Issues 2-044, 2-049
2-051	Dr. Adam Fidel	8023 McDonogh Rd at the corner of Pittsfield Rd	DR 1 0.8 Total 0.8	OR 2 0.8 Total 0.8	DR 1 0.8 Total 0.8	DR 1 0.8 Total 0.8	
2-052	Ralph E. & Rita M. Rhoades	7919 Liberty Rd	DR 5.5 0.3 Total 0.3	CB 0.3 Total 0.3	DR 5.5 0.3 Total 0.3	DR 5.5 0.3 Total 0.3	See Issues 2-053, 2-054

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
2-061	Staff	2330 Smith Ave, northeast corner of Old Pimlico Rd and Smith Ave	BL 1.1 Total 1.1	BLR 1.1 Total 1.1	BLR 1.1 Total 1.1	BL 1.1 Total 1.1	
2-062	Planning Board	Northwest corner of Park Heights Ave and Hooks Ln	RC 5 39.3 Total 39.3	DR 1 39.3 Total 39.3	DR 1 25.8 RC 5 13.5 Total 39.3	DR 1 25.8 RC 5 13.5 Total 39.3	Overlay Adopted
2-063	Staff	North and south side of Smith Ave, east of Pimlico Rd	DR 3.5 151.0 Total 151.0	DR 2 151.0 Total 151.0	DR 3.5 151.0 Total 151.0	DR 3.5 151.0 Total 151.0	
2-064	Staff	West side of Falls Rd, south of Clarkview Rd	DR 5.5 4.1 Total 4.1	DR 3.5 4.1 Total 4.1	DR 3.5 4.1 Total 4.1	DR 2 4.1 Total 4.1	See Issues 2-029, 2-048 2-078
2-065	Staff	North side Mt. Wilson Ln, north of Winands Rd	DR 3.5 42.7 Total 42.7	DR 1 42.7 Total 42.7	DR 3.5 42.7 Total 42.7	DR 3.5 39.9 DR 2 2.8 Total 42.7	See Issue 2-030 Overlay Adopted
2-066	Staff	North side of Old Court Rd, 1700' west of Greenspring Ave	DR 1 155.0 Total 155.0	RC 2 155.0 Total 155.0	DR 1 155.0 Total 155.0	DR 1 155.0 Total 155.0	
2-067	Staff	South side of Greentree Rd, 1200' west of Castleton Ave	BM 5.1 BR 0.9 Total 6.0	DR 3.5 5.5 BR 0.5 Total 6.0	BR 0.9 BM 5.1 Total 6.0	BR 0.9 DR 3.5 5.1 Total 6.0	Overlay Adopted
2-068	Staff	Greentree Rd, north of Stone Chapel Rd	BM 7.2 Total 7.2	DR 3.5 7.2 Total 7.2	DR 3.5 6.7 BM 0.5 Total 7.2	DR 3.5 7.2 Total 7.2	

Baltimore County 2000 Compre..ensive Zoning Map Issues

Issue Number	Owner, Petitioner	Location	Existing Zoning and Acres	Requested Zoning and Acres	Planning Board Recommendations	County Council Decisions	Comments
2-076	Staff	East side of Granite Rd, north and south side of Offutt Rd	RC 3 323.4 Total 323.4	RC 3 or RC 3 PG 323.4 Total 323.4	RC 3 155.6 RC 3 or RC 6 167 8 Total 323.4	RC 6 323.4 Total 323.4	See Issue 2-075
2-077	Staff	9101-9113 Liberty Rd & 3504-3508 Offutt Rd, southwest corner of Liberty Rd and Offutt Rd	BR 2.8 BR AS 2.7 Total 5.5	BL 5.5 Total 5.5	BM 0.3 BL 5.2 Total 5.5	BL 5.5 Total 5.5	
2-078	Staff	West side of Falls Rd, between Walnut Ave and Light Rail line	DR 3.5 49.0 Total 49.0	DR 2 49.0 Total 49.0	DR 2 40.4 DR 3.5 8.6 Total 49.0	DR 2 40.4 DR 3.5 8.6 Total 49.0	See Issues 2-029, 2-048, 2-064 Overlay Adopted
2-079	County Council	North side of Liberty Rd at Brubar Ct	DR 16 15.2 Total 15.2	DR 16 15.2 Total 15.2	DR 16 15.2 Total 15.2	DR 16 15.2 Total 15 2	
2-080	County Council	Village of Huntington, east and west side of Old Court Rd, 300' south of Liberty Rd	BL 1.1 BR 2.4 DR 16 32.5 Total 36.0	DR 16 36 0 OR 2 BLR Total 36.0	DR 16 32.5 BR 2.4 BL 1 1 Total 36.0	DR 16 32.5 BR 2.4 BL 1.1 Total 36.0	See Issues 2-002, 2-003

P.C. # 7

COMPREHENSIVE ZONING MAP PROCESS

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.

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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.

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**

EHRHARDT
84/503
3.43A.
P.46
P.317
P.392
P.323
P.48
P.47
P.49
P.50
410
414
P.51
P.52
P.315
WINDSOR
P.61
P.284
P.485
P.60
P.221
P.220
P.
555
P.565
P.267
P.472
P.526
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P.100
P.442
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MILL
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P.101
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P.104
P.103
P.102
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SALEM RD.
P.239
P.238

Real Property Information

Maryland Department of Assessments and Taxation
Real Property System

[Go Back] **BALTIMORE COUNTY** [Start Over]

DISTRICT: 02 ACCT NO: 0202850040

Owner Information

Owner Name: REHMAN MALIK ABDUL MUMTAZ ANWAR
BAIG MIRZA HUSSAIN ALI

Use: RESIDENTIAL

Mailing Address: 4219 DUSTIN RD
BURTONSVILLE MD 20866

Principal Residence: NO

Transferred

From: BURTON O J AG US E 88-89 **Date:** 06/28/1989 **Price:** $300,000

Deed Reference: 1) / 8211/ 840
2)

Special Tax Recapture:
* NONE *

Tax Exempt: NO

Location Information [View Map]

Premises Address:
ROLLING RD

Zoning:

Legal Description:
10.9 AC WS
ROLLING RD
1320 W WINDSOR MILS RD

Map	Grid	Parcel	Subdiv	Sect	Block	Lot	Group	Plat No:
87	4	267					80	Plat Ref:

Special Tax Areas

Town:
Ad Valorem:
Tax Class:

Primary Structure Data

Year Built:	Enclosed Area:	Property Land Area:	County Use:
0000		10.90 AC	04

Value Information

	Base Value	Current Value As Of 01/01/2001	Phase-In Value As Of 07/01/2002	Phase-in Assessments As Of 07/01/2001	Phase-in Assessments As Of 07/01/2002
Land:	327,900	327,900			
Impts:	0	0			
Total:	327,900	327,900	327,900	327,900	327,900
Pref Land:	0	0	0	0	0

Real Property Information

Maryland Department of Assessments and Taxation
Real Property System

[Go Back] [Start Over]

BALTIMORE COUNTY - Map 87
Page 1 of 1

Click on the Owner's Name to select:

Owner Name	Account Number	Street Location	OCC	Town	Parce
MAYFIELD W LLC	04022300009576	SIX POINT CT	N	000	6(
MAYFIELD W LLC	04022300009577	SIX POINT CT	N	000	6(
MAYFIELD W LLC	04022300009585	SIX POINT CT	N	000	6(
MAYFIELD W LLC	04022300011143	SIX POINT CT	N	000	6(
YOUNG JOHN L	04022300011126	4 SIX POINT CT	H	000	6(
MCLAUGHLIN TIMOTHY	04022300011127	6 SIX POINT CT	H	000	6(
DUKES TYRONE L	04022300011128	8 SIX POINT CT	N	000	6(
MOE MICHAEL M	04022300011129	10 SIX POINT CT	H	000	6(
DOWNING LISA M	04022300011130	12 SIX POINT CT	H	000	6(
PAYNE LEWIS M	04022300011131	14 SIX POINT CT	H	000	6(
RYLAND GROUP INC	04022300011132	16 SIX POINT CT	N	000	6(
MAYFIELD W LLC	04022300011133	18 SIX POINT CT	N	000	6(
RYLAND GROUPINC	04022300011134	20 SIX POINT CT	N	000	6(
RYLAND GROUP INC	04022300011144	22 SIX POINT CT	N	000	6(
MAYFIELD W LLC	04022300011145	24 SIX POINT CT	N	000	6(
RYLAND GROUPINC	04022300011146	26 SIX POINT CT	N	000	6(
RYLAND GROUP INC	04022300011147	28 SIX POINT CT	N	000	6(
RYLAND GROUPINC	04022300011148	30 SIX POINT CT	N	000	6(
RYLAND GROUP INC	04022300011149	32 SIX POINT CT	N	000	6(
MAYFIELD W LLC	04022300011150	34 SIX POINT CT	N	000	6(
MAYFIELD W LLC	04022300011151	36 SIX POINT CT	N	000	6(
MAYFIELD W LLC	04022300011152	38 SIX POINT CT	N	000	6(
MAYFIELD W LLC	04022300011153	40 SIX POINT CT	N	000	6(
MAYFIELD W LLC	04022300011154	42 SIX POINT CT	N	000	6(
MAYFIELD W LLC	04022300009562	44 SIX POINT CT	N	000	6(
MAYFIELD W LLC	04022300009563	46 SIX POINT CT	N	000	6(
MAYFIELD W LLC	04022300009564	48 SIX POINT CT	N	000	6(

MAYFIELD W LLC	04022300009565	50 SIX POINT CT	N	000	6(
MAYFIELD W LLC	04022300009566	52 SIX POINT CT	N	000	6(
MAYFIELD W LLC	04022300009567	54 SIX POINT CT	N	000	6(
MAYFIELD W LLC	04022300009568	56 SIX POINT CT	N	000	6(
MAYFIELD W LLC	04022300009569	58 SIX POINT CT	N	000	6(
MAYFIELD W LLC	04022300009570	60 SIX POINT CT	N	000	6(
MAYFIELD W LLC	04022300009571	35 SIX POINT CT	N	000	6(
MAYFIELD W LLC	04022300009572	33 SIX POINT CT	N	000	6(
MAYFIELD W LLC	04022300009573	31 SIX POINT CT	N	000	6(
MAYFIELD W LLC	04022300009574	29 SIX POINT CT	N	000	6(
MAYFIELD W LLC	04022300009575	27 SIX POINT CT	N	000	6(
MAYFIELD W LLC	04022300011155	25 SIX POINT CT	N	000	6(
RYLAND GROUP INC	04022300011156	23 SIX POINT CT	N	000	6(
MAYFIELD W LLC	04022300011157	21 SIX POINT CT	N	000	6(
RYLAND GROUP INC	04022300011158	19 SIX POINT CT	N	000	6(
RYLAND GROUP INC	04022300011159	17 SIX POINT CT	N	000	6(
HENSON ALFONZO D	04022300011135	15 SIX POINT CT	H	000	6(
WILLOUGHBY SEAN	04022300011136	13 SIX POINT CT	H	000	6(
MAYFIELD W LLC	04022300011137	11 SIX POINT CT	N	000	6(
MAYFIELD W LLC	04022300011138	9 SIX POINT CT	N	000	6(
RHONE INC	04022300011139	7 SIX POINT CT	N	000	6(
RHONE INC	04022300011140	5 SIX POINT CT	N	000	6(
RYLAND GROUP INC	04022300011141	3 SIX POINT CT	N	000	6(
MAYFIELD W LLC	04022300011142	1 SIX POINT CT	N	000	6(

Map 24 76°47'30" 860,000 FT P.C. #5

E F G H K A B

SEE GRID K6
1 PALMERSTON CT
2 SWANBRIDGE CT
3 SULLIVAN CT
4 BISHOP GATE CT
5 WHITE CLIFF CT
6 CATTERICK CT
7 CANBERLEY WAY

SEE GRID J9 K9
1 WHIRLWIND CT
2 SPRINGRIDGE CT
3 QUARTERWOOD CT
4 EDITH CT
5 RIDGEBURY CT
6 KING CREST CT
7 HAROLWOOD CT
8 PACTON PL
9 HADMAN CT
10 CANWICK CT
11 DAWMAN CT
12 CHADMAN CT

SEE GRID K12
1 CEDAR SPRINGS CT
2 EDGE SPRINGS CT

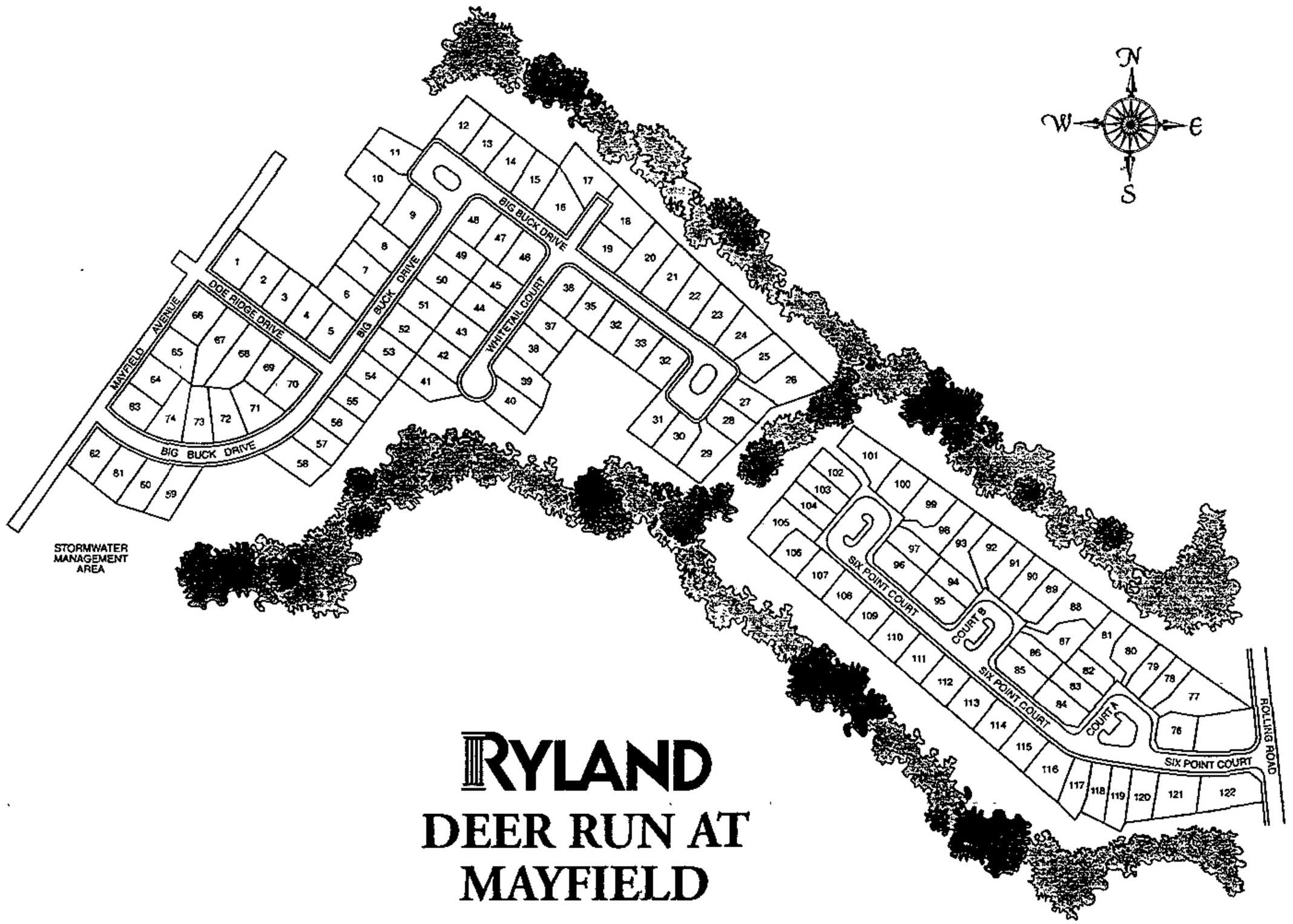
1 SPRING GATE RD
2 GAZEBO RD
3 LISADALE CIR

Baltimore Co Board of Education (Site)
Winfield ES
Greater Bethlehem Temple Apostolic
Northwest Christian Ctr
Scotts Branch ES
Rockdale Prof Ctr
Rockdale Park
Arlington Baptist
Diamond Ridge GC
Union Dam
Hollifield Area
Ball Fields
Camping
Hiking
Horseback
Picnic Area
Playground
Restrooms
Scenic Overlook
Park Headquarters
Millard Mill Elem Ctr
Millard Mill Acad HS
Millard Shop Ctr
Moses Montefiore Emanath Israel
Woodmont Hebrew Cong
Hebbville ES
Hebbville Annex
Baltimore Co Western Traffic Unit
Woodlawn Co 3 & Rescue
RUTHERFORD BUSINESS CENTER
Bihy
WINDSOR CORPORATE PARK
Temple Bapt
John Paul Reg
Dogwood Shop Ctr
Chadwick ES
Chadwick Manor Shop Ctr
Security Annex-State
Security Square Mall
Security Station Shop Ctr
Woodbridge ES
Western Hills Park
Gilson Park
Pike Park Plaza
Inwood Branch Shop Ctr
ELLICOTT MILLS
WOODBRIDGE VALLEY
FERNGLEN
WESTERLEE
CEDAR CIRCLE
GATEWAY
ROLLING ROAD
BALTIMORE NATIONAL
STATE HOWARD COUNTY PARK
PATAPSCO VALLEY
Patapsco RIVER
Cedar Run
Bens Run
Dogwood Run
Rolling Run
Pike Run

P.C.#4
id only

RYLAND

SITE PLAN



RYLAND

DEER RUN AT MAYFIELD

EQUAL HOUSING OPPORTUNITY

RYLAND TEN YEAR WARRANTY

Extra Copies -
Penwrose
R-02-120-A

Multi-Family Buildings

P. C. #13

Building height and length requirements:

Maximum building height -- 50 feet.

Maximum building height, DR 16 zone -- 60 feet.

Maximum building length -- 240 feet

On the recommendation of the Director of the Office of Planning and Zoning, the Hearing Officer may increase the building length up to 300 feet if the structure is designed in accordance with special emphasis given to the following design considerations:

1. Staggered building setbacks;

2. Varied facades and materials;

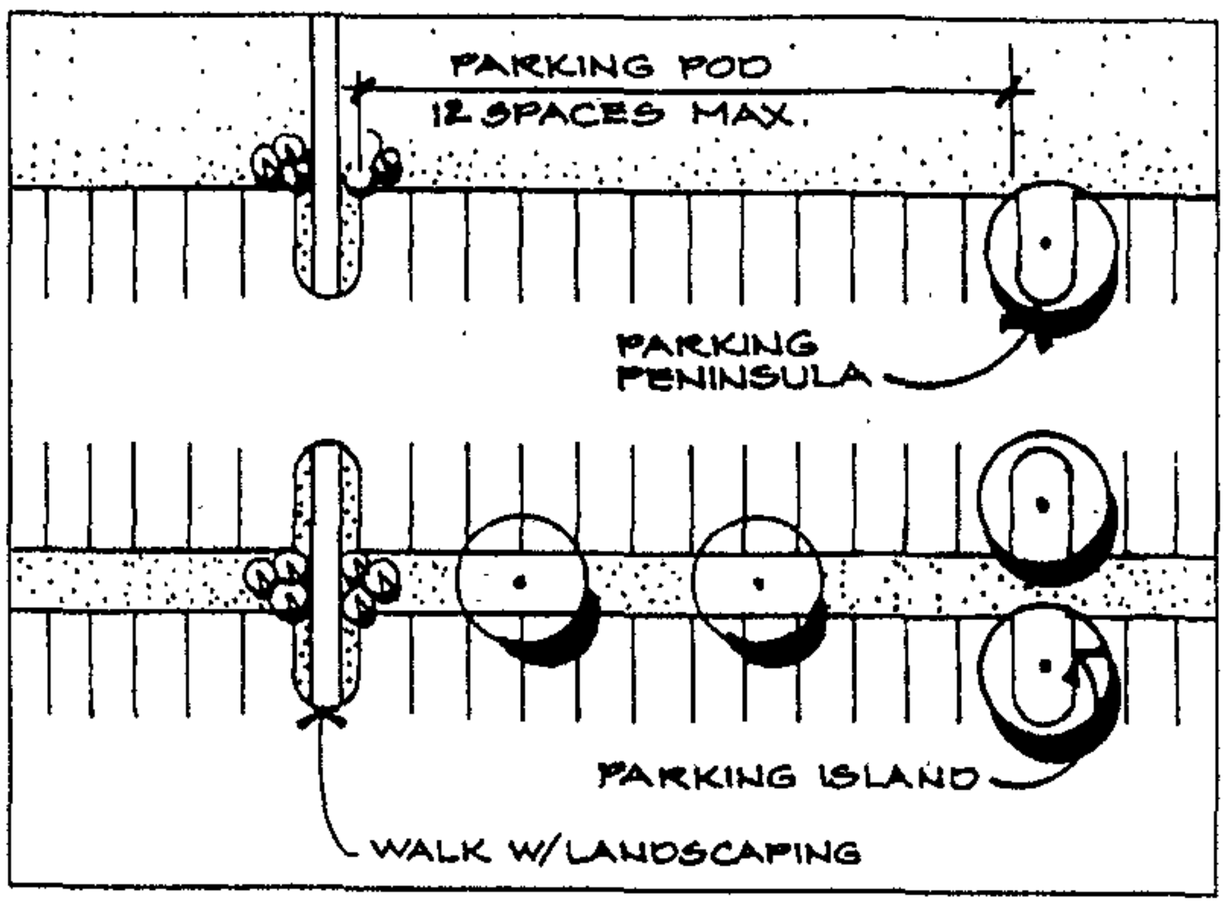
3. The inclusion of amenities such as courtyards, sitting areas, tot lots, etc. and;

4. The increased length is used to minimize topographical disturbance, addresss unusual lot configurations or provide affordable housing.

Other requirements:

Open space will be provided in accordance with the Baltimore County Local Open Space Manual.

Landscaping shall be provided in accordance with the Baltimore County Landscape Manual.



Parking requirements

Parking requirements:

These units shall cluster parking in pods. A landscaped peninsula or island shall separate any 12 parking spaces, perpendicular or angled.

In addition to the parking spaces required by Section 409, "Parking Regulations," BCZR, overflow or visitor parking shall be provided, equal to 15% of the number of spaces required. The following formula may be used to calculate the total parking requirement:

Number of Units x Parking Spaces per Unit Required by BCZR x 0.30 = Total Parking Spaces Required

Pet. #16

ATTENTION:
PAM FRENTZEL-
BEYME

Baltimore County
Department of Public Work

Office of the Director
111 W. Chesapeake Avenue
Towson, Maryland 21204
410-887-3300
Fax: 410-887-3406

October 22, 2001

Pennrose Properties, Inc.
901 Druid Park Lake Drive, Suite 100
Baltimore, Maryland 21217

Via fax: (410) 462-6299

Attn.: Pam Frentzel-Beyme

Subject: Water & Sewer Availability
3134 Rolling Road
Tax Account Number 02-02-850040
Tax Map 87, Grid 4, Parcel 267

Dear Ms. Frentzel-Beyme:

This is to advise that water service to the subject property may be taken from the existing12-inch water main located in Rolling Road. Sewer service may be taken to this property from the existing 8-inch sanitary sewer main located in Rolling Road.

The Baltimore County Metropolitan District is willing and capable of providing adequate water and sewer service to the subject property. There are no water or sewer moratoriums or restrictions currently in effect or contemplated with respect to the subject property.

If there are questions, please feel free to contact this office at (410) 887-3984.

Sincerely,

David L. Thomas

David L. Thomas, P.E.
Assistant to the Director

DLT/s

Come visit the County's Website at www.co.ba.md.us

Printed on Recycled Paper

P.C. #1

MEMORANDUM

TO: THE LIBERTY RANDALLSTOWN COALITION

FROM: PENNROSE PROPERTIES, INC. AND MARENBERG ENTERPRISES, INC

DATE: September 14, 2001

RE: 3134 ROLLING ROAD DEVELOPMENT

Pennrose Properties, Inc. and Marenberg Enterprises, Inc. ("the developer") propose to develop the above site, 3134 Rolling Road, into 119 units of senior housing. (See attached drawings) We have met with and discussed the concept of involving the Liberty Randallstown Coalition ("LRC") to be our community consultant. As such, and as is the case with all our consultants, LRC will be protected and held harmless from any and all liabilities with regard to this development

The proposed development site is located within the Community Conservation area designated in the County's Master Plan, and is also within the "Priority Funding Area" for Maryland's Smart Growth initiatives. As a result of these designations, County and State resources are targeted for investment, stabilization and revitalization in this area

Because the developer feels that it is of the utmost importance to involve and develop around the community needs and wishes, they are willing to pay LRC $50,000 for their services. This would be paid $10,000 at settlement, and $10,000/year for the next four years. The developer has outlined below how it views the involvement of the LRC, and looks forward to the chance to present, formally, our development concept as well as answer any questions you may have.

Responsibilities of the Liberty Randallstown Coalition.

1. Attend weekly project progress meetings, to the extent possible. Estimated time: 2 hours x 26 weeks plus 1 hour x 26 weeks. Total time invested: 78 hours
2. Attend design/development meetings for input to final design of the proposed building. Estimated time: 3 hours x 4 meetings. Total time invested: 12 hours
3. Attend site plan review meetings for input into planning and site related issues. Estimated time: 2 hours x 5 meetings. Total time invested: 10 hours.
4. Form inter-association group to recommend needed senior support services (i.e. transportation, education, church, synagogue, exercise etc) and develop a preliminary recommendation for such a plan. The developer will furnish an example of such a completed plan from another project. Estimated time: 3 hours x 8 meetings. Total time invested: 24 hours.
5. Meet periodically with the developer to update on various community issues, and anything pertinent to the Rolling Road Senior development. Estimated time: 1 hour x 5 meetings. Total time invested: 5 hours.
6. Post occupancy meet periodically with the developer for community updates, and to discuss any issues, such as property management, senior services or the like – with respect to this development. Estimated time: 2 hours x every 4 months. Total time invested: 6 hours.

ROLLING ROAD
SENIOR APARTMENTS
MARKET FEASIBILITY ANALYSIS

Pet. #15

Prepared For:

Catherine Caskey
Pennrose Properties, Inc.
901 Druid Park Lake Drive
Baltimore, MD 21217

Submitted by:

Lipman Frizzell & Mitchell, LLC
8815 Centre Park Drive
Suite 200
Columbia, MD 21045

October 24, 2001

Lipman Frizzell & Mitchell LLC

Lipman Frizzell & Mitchell LLC

REAL ESTATE CONSULTANTS

M. Ronald Lipman, CRE, MAI
George P. Frizzell, CRE, MAI
Ryland L. Mitchell III, CRE, MAI
David H. Brooks, CRE, MAI
James C. Feeney, MAI
Calvin V. Thomas, Jr., MAI

Sheldon A. Stern, MAI
Joseph M. Cronyn
Kelly A Hoffert
Nathan O. Brantley
F. Ford Dennis, Jr.

Kevin M. Keane
Joanne L. Andrews
Shaun J. Broome
Malcolm Sherman, CRE, *Affiliate*
Deborah M. Ryba, *Mgr.*

October 24, 2001

Ms. Catherine Caskey
Pennrose Properties, Inc.
901 Druid Park Lake Drive
Baltimore, Maryland 21217

SUBJECT: ROLLING ROAD SENIOR APARTMENTS
Market Feasibility Analysis

Dear Ms. Caskey:

Lipman Frizzell & Mitchell has conducted a market feasibility analysis for your proposed 119 unit senior tax credit apartment development along Rolling Road in Baltimore County, Maryland. The apartments are planned as new construction utilizing 9% tax credit equity.

We find that your proposed senior apartments are market-supported at rental rates affordable to senior households between 30% - 60% of the area median income, assuming a late 2003 delivery date. The enclosed report summarizes our economic, demographic and competitive property research as well as our conclusions regarding the market need for this housing.

It has been a pleasure working with you on this project. Please call us at (410) 423-2300 if you have any questions or comments.

Sincerely,
LIPMAN FRIZZELL & MITCHELL, LLC

Joseph M. Cronyn
Senior Associate

Joanne Andrews
Associate

Three Centre Park • 8815 Centre Park Drive, Suite 200 • Columbia, Maryland 21045
(410) 423-2300 Fax (410) 423-2410 • (301) 565-3380 Fax (301) 587-3033 • www.lfmvalue.com

ROLLING ROAD SENIOR APARTMENTS
MARKET FEASIBILITY ANALYSIS

I. EXECUTIVE SUMMARY

Lipman Frizzell & Mitchell, LLC (LF&M) has been engaged to analyze the market feasibility of a senior apartment building along Rolling Road in Baltimore County, Maryland. The proposed apartments will be funded in part through equity raised by the sale of 9% federal Low Income Housing Tax Credits.

Lipman Frizzell & Mitchell has found that the 119 proposed senior apartments, all of which will be restricted to senior households at or below 30% - 60% of the area median income, are market-supported within the next two years. In summary, our reasoning regarding the need for this property is as follows:

- Project Location and Design - The proposed apartments will be located along Rolling Road, between Windsor Mill Boulevard and Liberty Road, in southwestern Baltimore County near the communities of Randallstown and Woodlawn. This proposed site is located in an area which is undergoing substantial new growth, as evidenced by Ryland Home's adjacent single family subdivision with homes selling from $160,000 - $220,000. A short distance south of the subject site, numerous upscale multifamily rental communities have been constructed, with rents in the range of $1.00 and more per sq.ft. The area has become extremely attractive for new development due to its ease of access to nearby employment centers, such as the Social Security Administration and the Health Care Financing Agency, as well as major transportation routes, such as the Baltimore Beltway and I-70.

  Seniors residing in this area have a variety of resources available to them, including many churches and synagogues, abundant retail and shopping opportunities and proximity to medical services, such as those provided by the Northwest Hospital Center. All of these factors will be important in attracting seniors to this apartment community.

  The building's design, extensive common area spaces, and availability of a variety of one and two bedroom unit designs, will be especially attractive to those senior households who no longer are able to maintain the upkeep of a home.

- Community Support - The proposed apartments have been endorsed by the umbrella residential community organization, the Liberty Road Community Council. The Council will work closely with the sponsor to develop and implement a tenant services plan for the benefit of the residents. In addition, the proposed subject project has the support of the County Council which has unanimously supported the rezoning of the property to a higher density and assured the sponsors that they will be able to enter into a PILOT agreement with Baltimore County.

  The endorsement of the project by these parties will be an important factor in enhancing the project's status and credibility with seniors throughout the market area.

- Market Area Growth - LF&M has determined that the vast majority of prospects for the proposed senior independent housing will be residing in Baltimore County, specifically in the areas known as Randallstown, Lochearn, Security and Woodlawn.

The table below illustrates the population and household growth in the market area among the age 62+ cohort. As shown, there has been an increase of 1,359 persons (993 households) from 1990 - 2001, or an average annual increase of 1.2%. Growth is expected to remain steady over the next five years. This situation will result in a healthy increase in the number of senior persons and households within the market area.

Rolling Road Senior Housing - Population & Households
Age 62+ 1990 - 2006

	1990	2001	Actual Increase '90 - '01	% Increase '90 - '01	2006	Actual Increase '01 - '06	% Increase '01 - '06
Population	11,289	12,648	1,359	12.0%	13,457	809	6.4%
Households	6,811	7,804	993	14.6%	8,460	656	8.4%

Source: U.S. Census 2000 figures; 2001 estimates and projections by Claritas, Inc.

With this steady growth, there is a need for a variety of housing options for seniors now living in the PMA as well as those who will move here due to the area's community services and general appeal.

- Competition - There are currently two tax credit senior apartment communities in the market area and one which has been funded but not yet constructed. Both of the existing properties, Parkview at Randallstown and Parkview at Woodlawn, are fully occupied with waiting lists. In addition, a third tax credit senior rental community will shortly be under construction at the intersection of St. Agnes Lane and Harwall Avenue near U.S. Route 40 and the Baltimore

City/County line. As a result, we would expect that this project will be fully occupied prior to the opening of the subject project.

- Market Demand - By 2003, the estimated opening date of the subject project, LF&M has estimated that the target market will consist of 1,409 senior households. After taking into account those senior households residing in competitive rental properties, we have calculated the subject project's market penetration rate in 2003 to be 7.5%. In other words, the new units would need to lease to only one out of every 13 qualified senior households. Given the fact that a new senior community, Fairspring Senior Housing, will shortly be preleasing, LF&M has also calculated the overall market share rate. This provides an additional measure of what will be required to enable all of the existing projects as well as the new projects to reach full occupancy. The calculated percentage of 13.4% is viewed as clearly achievable. In mature markets, market share ratios as high as 20% are possible. Given an ongoing marketing effort, the subject will be able to capitalize upon its affordable pricing structure and location in a very densely populated suburb in Baltimore County.

  An effective pre-leasing program during the construction period, will assist the subject project in achieving an overall absorption pace to be 7 - 8 units per month, with a projected lease-up period of 12 - 14 months. This lease-up period is conservative, taking into account the other senior housing project planned for delivery in the market area over the next two years.

We have followed the CDA market study requirements, dated March 2001, and have organized this report in seven principal sections. Section II outlines the market analyst qualifications and relevant areas of expertise. Section III provides an overview and description of the proposed project. Section IV defines the market area for the project and site evaluation. Section V reviews the senior and multifamily housing rental supply already available in the market area and against which the subject project will compete. Section VI estimates the market demand for the senior apartments which you are proposing. Section VII analyzes the relationship between supply and demand and factors affecting the subject project's market capture ratios. Section VIII summarizes our analysis and draws conclusions regarding the market feasibility of this project.

II. MARKET ANALYST QUALIFICATIONS

Lipman Frizzell & Mitchell, LLC (LF&M) is a multi-faceted real estate consulting and appraisal firm serving the Mid-Atlantic since 1977. LF&M is the Region's largest real estate advisory firm, with 23 professionals in our Columbia, MD headquarters.

Company Overview

LF&M provides clients with objective advice and practical assistance at every stage of decision-making on the development, use or reuse of all types of real estate. Our clients include corporations, institutions, real estate owners, builders, developers, and government entities. Our professional staff has an exceptional capability to use a vast array of information and resources to assist clients in making sound, timely decisions through the real estate planning, financing and development process.

Eight senior members of the firm hold the MAI designation and other advanced degrees. Professional licenses are held by various members of the firm in Maryland, District of Columbia, Pennsylvania, Delaware and Virginia. Academic degrees and professional designations are combined with hands-on real estate investment, development and ownership expertise--offering our clients many decades of accumulated counseling and valuation experience.

Market Feasibility Consulting

LF&M senior staff has advised state and county economic development and planning agencies, state housing finance agencies, and non-profit groups regarding affordable housing and other community development issues from a variety of perspectives including the following:

- Geographic Focus - Urban, Rural, Inner Suburban Ring, Suburban

- Partnership with Other Intermediary Groups - State Housing Finance Agencies, Non-Profit Community Development Corporations, Public Housing Authorities, Entitlement/Non-Entitlement Jurisdictions, Other State/Federal Agencies

- Strategic Planning - Statewide Housing Needs Assessments; Determine Available Resources: Financial, Talent, Public/Private; Gauge Legislative/Regulatory Environment; Determine Agency Mission and Role

- Advisory Assignments - Project Feasibility, Economic and Demographic Analysis,

Program Feasibility and Review, Development Planning and Execution, Fiscal and Economic Impact Analysis, Annexation and Zoning Analysis, Policy Formulation and Implementation

Joseph M. Cronyn, Principal in Charge

The LF&M principal-in-charge of this assignment has been Joseph Cronyn, Senior Associate. He has over 27 years of real estate development, finance and consulting experience.

Most relevant to this assignment, he has successfully completed feasibility assessments for rental and homeownership opportunities throughout the mid-Atlantic in Maryland, Pennsylvania, Delaware and Virginia. To date, Mr. Cronyn has been responsible for dozens of LIHTC market studies submitted to CDA.

Joanne L. Andrews, Associate

The primary researcher on this assignment has been Joanne Andrews. She specializes in evaluating the market feasibility of senior housing developments. Ms. Andrews has been involved in real estate for over ten years and has an M.B.A. from the University of Maryland.

Both resumes are found in Appendix A at the end of this study.

III. PROJECT DESCRIPTION

A. Site Location and Description

The subject property is conveniently located at 3134 Rolling Road, just above its intersection with Windsor Mill Road between the communities of Randallstown to the north and Woodlawn to the south in western Baltimore County. The site consists of roughly 11.8 acres, with woods covering a significant portion of the site. The apartment community will consist of 55 one bedroom and 64 two bedroom apartments and will target senior households between 30% - 60% of the area median income.

The site is located in a predominantly residential neighborhood, generally with older, single family homes on the west side of Rolling Road in an area in Baltimore County which is undergoing new growth and revitalization. Immediately adjacent to the property, Ryland Homes is selling a new residential subdivision, known as Deer Run at Mayfield. This single family home community will have 122 homes, of which roughly 80 lots have already been sold. Prices in this community begin at $158,990 for the 1,456 sq.ft. Hatteras model but include three models which have a base pricing exceeding $200,000. According to the marketing representative, the more expensive homes have been the most popular with buyers. This community has been open for one year and has sold an average of 6.5 homes per month, a very healthy pace.

A short distance away, south of the subject site, numerous upscale multifamily rental communities have recently been constructed, including Windsor Commons Apartments, Rolling Wind Apartments, Granite Run Apartments, Diamond Ridge Apartments, Kingswood Common Apartments, Stratton Meadows Townhouses, Courtleigh Townhouses, Diamond Ridge Apartments, Coventry Apartments, among others. In addition, new retail and business centers have been built along Rolling Road, including Dogwood Station Shopping Center as well as the Ms. Desserts Factory Store and retail outlet. A new post office for the greater Woodlawn area has been constructed at the intersection of Windsor Boulevard and Rolling Road. These properties are adjacent to the expansive Rutherford Business Center and Windsor Corporate Park, both of which can be accessed via Rolling Road.

Several churches, including Arlington Baptist and Salem United Methodist, are within an easy walk of the subject site. Other services available in the immediate vicinity include a dry cleaners, Exxon service station, pizza shop, convenience store (7-Eleven) and liquor store.

The majority of community services for seniors, however, are located either in Randallstown along Liberty Road, one mile north of the subject site, or along Security Boulevard, roughly two miles south of the subject property. Both of these communities are well established and provide numerous opportunities for socialization, shopping, banking and other necessary daily services. Grocery stores include: Giant, Superfresh, Mars, Food Lion and Metro. Pharmacies include: CVS and Rite-Aid. Banks include: Mercantile, Bank of America and Harbor Bank. Fast food restaurants include: Pizza Hut, McDonalds, Checkers and Burger King. All of these facilities are within a short five minute drive of the subject site.

The closest senior center, Liberty Senior Center, is located on Resource Drive in Randallstown. This facility offers a daily meal, either kosher or non-kosher, card games, pool, lectures, personal enrichment classes, etc. It is open Monday through Friday as well as Monday evenings. Daily attendance at this facility averages 170 persons, most of whom provide their own transportation although the CountyRide system vans will provide scheduled transportation on an as-needed basis. The center has over 1,000 registered members and is one of the most active senior centers in the County.

The nearest hospital to the subject site is in nearby Randallstown. Northwest Hospital Center, located at 5401 Old Court Road, is approximately 2.5 miles from the subject site. This 240 bed community hospital offers a variety of services specifically for seniors, including health fairs and disease screening.

Despite the area's highly developed character, there are several parks and recreational facilities nearby, including the Woodlands Golf Course and Diamond Ridge Golf Course, both of which can be accessed from Dogwood Lane; and Rockdale Park, less than one mile from the subject site along Rolling Road. Other community facilities include the Randallstown Mini-Library at the intersection of Old Court and Liberty Roads; the post office at Windsor Boulevard and Rolling Road; Security Square Shopping Center, with Hechts, Sears, movie theatre and numerous other small in-line retailers.

The site, located in a densely populated area in Baltimore County, has public water and sewer availability and meets the Governor's requirement of being located in a Smart Growth neighborhood. The sponsor has indicated that there are no known adverse environmental conditions existing on the property.

A map of the community services is presented on the following page.

Rolling Rd Senior Apts - Services

Liberty Crossroads
(Food Lion Groceries, Coin Laundry, Harbor Bank, Fast food)

Randallstown Mini-Library

Liberty Senior Center

St. James Plaza
(Mercantile Bank, CVS Drug Store, Bank of America, Metro Groceries, McDonalds)

Northwest Hospital Center

Rockdale Park

St. James Lutheran Church

Subject Site

Salem United Methodist Church

Small retail center with pizza shop, 7-Eleven, liquor, gas station

Small retail center w/ dry cleaners

Woodlawn Post Office

Arlington Baptist Church

Dogwood Plaza
(Mars Food Shopping Store)

The Woodlands and Diamond Ridge Golf Courses

Chadwick Manor Shopping Center
(SuperFresh, Rite Aid Pharmacy)

Milford

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B. Project Overview

The project sponsor has proposed new construction of a 119 unit, moderate income senior rental apartment building. It is anticipated that there will be 57 one bedroom/one bath apartments, all of which will target senior households between 30% - 60% of the median income although a breakdown of the number of units by income targeting is not available at this time. The remaining 62 units will have two bedrooms and one bath and will also target senior households less than 60% of the area median income. A table outlining the maximum rents for each unit type is presented in the table below. The sponsor has indicated that the rental structure will be less than the allowable maximum gross rental rates.

Rolling Road Senior Apartments - Gross Allowable Rents

Unit Type	Typical Unit Size	% of Median Income	Gross Allowable Rent
1 BR/1 BA	700 sq.ft.	30%	$355
1 BR/1 BA	700 sq.ft.	40%	$474
1 BR/1 BA	700 sq.ft.	50%	$591
1 BR/1 BA	700 sq.ft.	60%	$710
2 BR/1 BA	850 sq.ft.	30%	$426
2 BR/1 BA	850 sq.ft.	40%	$568
2 BR/1 BA	850 sq.ft.	50%	$710
2 BR/1 BA	850 sq.ft.	60%	$852

Tenants will be responsible for their own personal use electricity for lighting and cooking only as central gas heat and air conditioning will be included in the rental rate. The owner will also provide and pay for water and sewer as well as trash collection. Utility allowances of $34 and $43 have been assumed by the project sponsor. LF&M judges these to be reasonable, given the fact that the sponsor will pay for the heating and air conditioning cost, and consistent with our experience evaluating similar projects in the local area.

The proposed subject project will consist of a three-story, elevator building with three residential wings, giving the building footprint an "E" shape. The building's facade will be adjacent to the Mayfield single family residential development that is currently under construction. The three projecting wings effectively break up the facade into two segments of approximately 200 ft. long with courtyards located between the building segments. The south facade is staggered to break up its length.

Construction will be wood frame with building materials and architectural elements at a residential scale with brick on the first and second floors and siding as an accent on the third floor. A pattern of single and double hung windows, reverse gables, dormers, building offsets and projecting wings provides variation and reduces the mass and scale of the building.

The building's design includes plentiful community spaces, including community room, fitness room, space for supportive services, business center and additional storage space for residents. Laundry areas will be included in centrally located places on each of the resident floors. We believe that these features will be well-received by seniors and their families.

The apartments will have a fully furnished kitchen, including dishwasher, disposal and frost-free refrigerator. The units will have central heating and air conditioning, wall-to-wall carpet and spacious floor plans.

The project sponsors have proposed a 5% vacancy rate and $4,018 per unit per year in operating expenses. This figure includes a $250 per unit per month set aside for replacement reserves. From LF&M's experience in advising on and appraising multifamily properties, we believe that these assumptions are *reasonable*, given the fact that the sponsor will be responsible for all common area as well as resident living space utility costs.

IV. MARKET AREA

A. Definition

LF&M has defined the subject property's geographic market area to be an area in Baltimore County, defined roughly by the following boundaries: the Baltimore City/County line to the east; U.S. Route 40 to the south; the Patapsco River and Brice Run stream to the west; and the railway tracks paralleling the Northwest Expressway to the north. Using the Baltimore Metropolitan Council's Regional Planning Districts (RPDs), the market area includes:

- All of Lochearn (319); and,
- All census tracts in Security (323) north of U.S. Route 40.

The census tracts which have been included in the primary market area (PMA) are listed below:

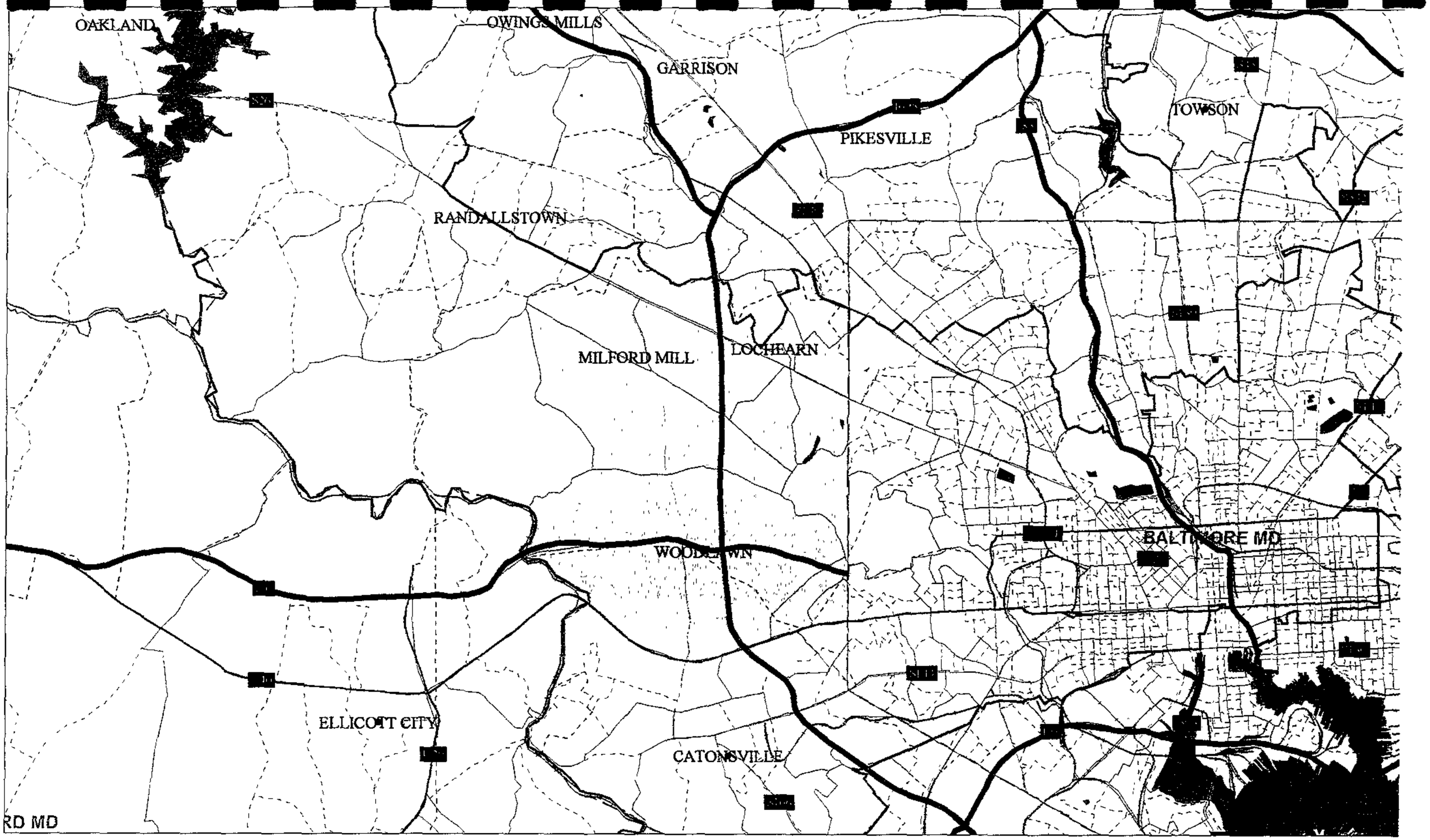
Baltimore County

RPD 319:	Census tracts 4012, 4023.01, 4023.02, 4023.03, 4023.04, 4023.05, 4024.01, 4024.04, 4024.05, 4024.03, 4031, 4032.01, 4032.02 and 4033.
RPD 323:	Census tracts 4011.01, 4011.02, 4013.01, 4013.02, 4015.01, 4015.04 and 4015.05.

We believe this market area to be reasonable because of the fact that the subject project is centrally located in the middle of this area, with convenient access north/south along Rolling Road as well as the Baltimore Beltway. East/west routes in this area include Windsor Mill Road, MD Route 26 (Liberty Road), I-70, Security Boulevard and U.S. Route 40.

This market area has one of the strongest concentrations of multifamily apartments in Baltimore County given the area's large employment centers, such as the Social Security Administration (SSA) and the Health Care Financing Agency (HCFA). As a result, we estimate, based on the experience of similar senior projects, that as many as 25% of tenants will ultimately come from outside the PMA, from areas such as Baltimore City, due to the area's overall affordability, improved safety and security as well as availability of services

A map of the PMA is included on the following page.



ROLLING ROAD SENIOR APARTMENTS
MARKET AREA

B. Market Area Evaluation

The subject property is located in Baltimore County, which is part of the Baltimore Metropolitan Region. The Metropolitan area is centered around Baltimore City and includes the City plus the five surrounding counties: Anne Arundel, Baltimore, Carroll, Harford, and Howard. Baltimore County is the northern most of the metropolitan counties, extending north from Baltimore City to the Pennsylvania/Maryland line. The County seat is Towson, which is centrally located north of Baltimore City. There are no incorporated towns within Baltimore County.

The region had a combined total population of 2,512,431, according to the latest U.S. Census statistics. Baltimore County had the largest population base in the metropolitan area, representing nearly one-third (30%) of the total population in the Baltimore Metropolitan Area. As of April 2000, the Census Bureau estimated the County's population at 754,292, an increase of 62,158 persons or 9% since 1990. This growth rate, however, was the lowest of the metropolitan counties, primarily due to its relatively well-developed land base, especially in contrast with the outlying suburbs.

The subject's PMA, including Regional Planning Districts 319 and 323, demonstrated similar population growth trends as were evident throughout the county. In 1990, the total population in these two RPDs was 86,008, growing to 94,140 by 2000. This represented a rate of growth of 9.46%, slightly higher than the County-wide population growth rate of 8.98%.

Baltimore County is a well-planned and highly developed political subdivision with the largest tax base in the region. Consistent with its maturity, the County's tax base has grown more slowly than the area as a whole. The County's assessable tax base as of FY01 was $16,613 million, which represented a 4.36% increase from the previous year.

Overall, the housing stock of Baltimore County covers a broad spectrum, typical of most large jurisdictions, and includes single family subdivisions, garden apartments, historic properties, and modern townhouse and condominium developments. Most of the County is oriented to the middle income purchaser. Residential building permits have fluctuated over the past decade from a high of 5,158 new building permits in 1992 to 2,918 in 2000. On average, 3,525 permits were issued annually during the 1990 - 2000 period. Historically, single family home construction has accounted for 70+% of the new housing permits.

The price of housing in Baltimore County has been steadily increasing in the last five years. In 1995, the average resale price for existing homes sold in Baltimore County was $131,779. By the end of 2000, this figure had increased at an average annual rate of 3% to $151,495, according to information provided by the

Maryland Association of Realtors. The volume of homes sold has also increased. In 1995, there were 6,190 reported settlements. By 2000, this number had increased to 8,553, or a 38% increase in volume.

C. Area's Economy and Employment

Baltimore County has the largest labor force and widest range of skills and incomes in the Metropolitan area. As of July 2001, according to the Maryland Department of Labor, Licensing and Regulation, the civilian labor force for Baltimore County was 416,538, with an unemployment rate of 4.0%. The Metropolitan area's unemployment rate was 4.4% while the State rate was 3.7% during the same period.

Private sector employment has generally been strong in Baltimore County and will continue to be so over the next two decades. As shown, the major growth in private employment will be primarily in the service sector, as shown in the following table.

Baltimore County Employment by Place of Work

Sector	2000		2020	
	No. Of Jobs	Percent	No. Of Jobs	Percent
Retail & Wholesale Trade	103,100	22.9%	112,500	22.6%
Services	162,500	36.0%	200,300	40.2%
Government	57,100	12.7%	53,200	10.7%
Construction	26,600	5.9%	27,800	5.6%
Manufacturing	37,300	8.3%	33,500	6.7%
Transportation & Public Utilities	17,500	3.9%	18,700	3.8%
Farming	1,200	0.3%	1,000	0.2%
Finance, Insurance, Real Estate	40,800	9.1%	45,300	9.1%
TOTAL	450,800	100%	497,700	100%

Source: Maryland Department of Planning, September 2000

The following table lists the top ten employers in Baltimore County.

Baltimore County Employers		
Company	**Product**	**Employees**
Bethlehem Steel Corporation	Steel Mill & Ship Yard	6,180
Franklin Square Hospital	General Hospital	2,658
Greater Baltimore Medical Center	General Hospital	2,237
Baltimore Gas & Electric	Utilities	2,014
Sweetheart Cup Corporation	Paper/Plastic products	2,000
McCormick & Company	Food products	1,941
Blue Cross & Blue Shield	Healthcare	1,801
Becton Dickenson & Company	Microbiology	1,753
Bell Atlantic/Verizon	Telecommunications	1,688
AT&T	Communication Services	1,500

Source: Baltimore County Economic Development

The median household income in Baltimore County is currently estimated to be $54,466. Relative to the other suburban counties comprising the Metropolitan area, this figure is low and again reflects upon the mature status of the County as well as its population base.

D. ***Area's Commercial Revitalization***

Commercial revitalization is being implemented to update the existing, older commercial/industrial areas of the County in 12 designated districts around the Baltimore Beltway. These include Arbutus, Catonsville, Woodlawn, Liberty Road, Pikesville, Reisterstown, Towson, Joppa-Loch Raven, Parkville, Overlea, Fullerton, Dundalk and Essex. The focus in these areas is to upgrade the existing commercial districts by proactively reusing and redeveloping key sites. This policy is consistent with Baltimore County's status as a mature, urbanized jurisdiction.

Baltimore County's growth plan has directed new commercial and industrial development towards the town centers of Owings Mills to the northwest and White Marsh to the northeast as these two designated Growth Areas have the most land available to support new future development. The Owings Mills Town Center has two major projects, the Owings Mills Mall and the Corporate Center at Owings Mills. The Owings Mills Corporate Campus is situated just outside the Town Center and T. Rowe Price Associates has completed a major expansion of their space there. White Marsh currently has approximately 4,000,000 sq.ft. of office, retail and light industrial space with 1,000,000 sq.ft. to be developed over the next several years.

By the end of 2000, Baltimore County had a total of 25.7 million sq.ft. of office

space, with an average occupancy of 92% and eleven enclosed shopping malls with a total of 7.4 million sq.ft. of retail space.

Baltimore County has seventeen business and industrial parks located within its borders. Business parks make up over 2,950 acres of the County's commercially zoned land. Approximately 25% of this acreage is available for development. The five largest business parks in the County are Meadows Business Park (475 acres); Hunt Valley Business Community (435 acres); Rutherford Business Park (280 acres); Loveton Center (247 acres); and White Marsh Business Community (215 acres). In the Owings Mills Development Area, there are over 1,500 acres zoned and available for business use. Rouse's Corporate Center at Owings Mills comprises 90 acres and McDonogh School's Owings Mills Corporate Campus comprises 160 acres.

E. Area's Infrastructure Improvements

Commercial and residential activity has been evident in Rolling Road corridor for the past decade. The planner for this region has provided a list of the recent residential and commercial developments. These are shown below:

Residential

- Rolling Wind Apartments, Phases I and II, 380 units, approved 1993 and recorded 1993
- Rolling Wind Apartments and Townhomes, Phase III, 94 units, approved and recorded 1993
- Kingswood Commons, 217 multifamily apartments, approved and recorded 1982
- Windsor Commons, 232 multifamily apartments, approved 1993 and recorded 1997
- Diamond Ridge, 269 units, mixed use development, approved 1986 and recorded 1987
- Claybrooke II, 22 single family dwellings, approved 1986 and recorded 1987

Commercial

- Windsor Corporate Park, office development, approved 1989 and recorded 1991
- Dogwood Station, commercial center, approved and recorded 1989
- 2630 Rolling Road, office development, approved and recorded 1986
- RBC South, office development, approved and recorded 1987
- 3106 Timanus Lane, office development, approved 1985 and recorded 1986

In addition, more recent activity has included the ongoing renovation and expansion

of Woodlawn High School; substantial new construction in Rutherford Business Park; and, as previously mentioned, new single family residential development immediately adjacent to the site.

F. Consolidated Plan

Baltimore County's Consolidated Plan has identified the need for additional affordable housing opportunities for seniors. Baltimore County, with the largest senior population in the State of Maryland, has committed a substantial portion of its resources to assist the development of housing affordable to its senior population. To a large extent, senior housing is viewed as having a positive impact on an older community as the development is seen as evidence of the continued desirability of the neighborhood. Several exerpts from this plan are useful in articulating the County's position on elderly housing. These include:

- "The majority of these seniors live in community conservation neighborhoods, and the services of the Department of Aging...support Baltimore County senior citizens in their efforts to remain healthy, active and independent members of the community and to provide, coordinate and advocate for services" (page 48).

- "In adhering to this commitment, the Department has strived to ensure that all elderly citizens have fair and equal access to decent, safe and affordable housing in our county. The Department has worked to meet the wide array of housing needs for the elderly by supporting the development of Senior Housing" (page 49).

- "The County will continue to work with developers of affordable housing for its elderly citizens. Although the County no longer provides direct financial commitments for new development, it has continued to offer Payment in Lieu of Taxes (PILOT) arrangements as a local contribution to affordable elderly housing" (page 37).

We have been informed that the developer that the proposed project has the support of County Council for a rezoning from DR-5.5 (Density, Residential, 5.5 dwelling units per acre) to DR-16 (Density, Residential, 16 dwelling units per acre). In addition, the project sponsor is anticipating a PILOT commitment for this project. Both of these actions demonstrate the County's belief that the project meets the needs of low to moderate income seniors in this area.

G. Safety Statistics

Security issues are important to address in neighborhoods throughout Baltimore

County. In the past, the Woodlawn/Security Boulevard as well as Liberty Road corridors have experienced a crime rate in line with that of Baltimore County, with a rate of crime (5,567 crimes per 100,000 residents) exceeding the State of Maryland's rate of 5,346.

However, local law enforcement offices have made great strides in recent years in reducing the magnitude and scope of crimes in this area. As shown in the table below, Precinct 2, which includes the subject site has demonstrated improvement in all crime areas.

Baltimore County Crime Statistics, January to June - 1999 vs 2000 - Precinct 2			
Crime Category	1999	2000	% Increase/Decrease
Violent Crime	460	432	-6.1%
Property Crime	1,835	1,657	-9.7%
Total	2,295	2,089	-9.0%

Source: Baltimore County Police Department

The Baltimore County Police Department has gained a national reputation for their innovative and aggressive approach to law enforcement. They have been leaders in the area of Community Oriented Policing, working closely with county residents, businesses and other government agencies to solve problems and prevent crime. As an example, the County police established in May 1999 the Western Patrol Services Section for the Randallstown community. Police resources have been directed towards reducing the fear of crime and fostering economic stability in the Randallstown area. Similarly, a Youth Alliance and Mentorship Program has been estalbished in Woodlawn to reduce and/or prevent truancy and delinquent contacts among identified children, ages 11 to 16, through the development of a mentoring program with police officers.

H. Summary

In summary, Baltimore County is the most populous subdivision within the Baltimore Metropolitan area. Historically, its solid and diversified economic base has made this an attractive location. In more recent years, new development has been oriented to the areas designated as town centers such as Owings Mills and White Marsh while the older, more established areas have been steadily undergoing commercial redevelopment and revitalization.

In recent years, the PMA has benefited from a series of public/private partnerships. The organizations and businesses in this area have succeeded by: creating a strong working relationship with the police; upgrading landscaping and commercial

signage; developing a talented and skilled labor pool; and initiating creative and effective marketing programs. These actions have attracted new businesses to the area and increased the number of consumers for these businesses. Much of the success in this area can be attributed to the actions of the Security/Woodlawn Business Association as well as the Liberty Road Action Plan committee members.

The Liberty Road corridor has been a focus of the County's strategic planning for the past several years. During this time, over 100 representatives, including residents, institutions, businesses, have worked towards improving the quality of life in three major areas: commercial, recreational and better management and services for residents in multifamily housing. An example of the positive change which this area has experienced includes the revitalization of Liberty Crossroads Shopping Center at the intersection of Old Court and Liberty Roads. New tenants in this rejuvenated center include Food Lion, Checkers Restaurant and Harbor Bank. Other streetscape projects have been begun in order to stimulate investment in this corridor.

V. COMPETITIVE SUPPLY

In this section, LF&M reviews conditions in comparable multifamily and senior housing projects in the PMA as well as the planned senior rental housing complexes.

A. Existing Market Rate and Luxury Multifamily Rental Housing

Liberty Road Market Conditions

The market rate rental stock is primarily located on or near the Liberty Road corridor north of the subject site. Apartment complexes in this area vary from property to property although systematic efforts have been underway over the past few years to address troubled properties and to upgrade the general condition of the apartment complexes in this area. Not surprisingly, most of these properties are older, having been constructed in the 1960s and 1970s and, for the most part, can be characterized as Class B apartment complexes despite recent efforts. The one exception is the Liberty Place apartment complex. This property was purchased by Southern Management and a complete renovation has been undertaken in the past few years. This process has turned a distressed property into an asset for the Randallstown community. At the other end of the spectrum is a seriously troubled property, the Villages at Huntington. Management at this facility reports that over one-third of the apartments are not available for rent due to their uninhabitable condition.

Rents in the five surveyed multifamily apartment complexes are relatively strong given the multitude of properties in this area. Average monthly contract rents, adjusted for utilities, are currently $573 for a one bedroom apartment; $796 for a two bedroom apartment; and, $823 for a three bedroom apartment. Most properties offer some extra security measures, such as locked, glass stairwells, perimeter fencing or gated entrance. Community amenities are good, with all but one property having a community swimming pool and several offering lighted tennis courts and/or community center.

With the exception of the Villages at Huntington, all of the properties maintain good occupancy levels (94% or above) and do not offer any rental concessions.

Rolling Road Market Conditions

Several luxury multifamily apartment complexes are located along Rolling Road, south of the subject site across Windsor Mill Boulevard. While these properties are

not considered to be representative of the multifamily housing stock in this area, they do provide a perspective on the future of new housing for the Security/Woodlawn area near. All three of these complexes are owned (or are under contract) with Berkshire Realty, a public REIT, and offer modern apartments with extensive community amenities, such as Olympic-size swimming pools, clubhouses, business centers, lighted tennis courts and gated entrances. The rents at the three complexes are well above the market rental rates but despite the pricing, the average occupancy is 97.6%. It should be noted that tenants are responsible for their utility expenses in these complexes.

The table below illustrates the rental cost for both the luxury and market rate rental properties in the immediate vicinity of the subject site.

Liberty Road & Rolling Road Multifamily Apartments
Market Rental Rates

Unit Type	Liberty Road MF Apts - Average Rents	Rolling Road Luxury MF Apts - Average Rents	Liberty Road MF Apts - Cost per Sq.Ft.	Rolling Road MF Apts - Cost per Sq.Ft.
1 BR	$573	$943	$0.75	$1.19
2 BR	$796	$1,012	$0.68	$1.01

Although the subject project's rental rate structure is not known at this time, we know that the one bedroom units will not exceed $650 for a one bedroom unit (reducing the maximum allowable rent of $710 by up to $60 for all apartment utilities) and $777 for the two bedroom apartment (reducing the maximum allowable rent of $852 by up to $75 for all apartment utility costs). As a result, we judge that the pricing structure will be favorably perceived by seniors from the PMA. The Liberty Road market rate multifamily rental apartments and the Rolling Road luxury apartment complexes are further described in Tables V-1 and V-2.

Lastly, it should be noted that LF&M has not identified any multifamily apartment complexes in the PMA other than those senior projects described below which have been financed with state funds or tax exempt bonds.

B. *Existing & Pending Moderate Income (Tax Credit) Senior Rental Housing*

There are currently two moderate income (tax credit) senior rental housing properties in the PMA and one which will shortly be under construction. Units in all of these properties can be considered as directly competitive with the subject project. These projects will be described in this section and are further summarized in Table V-3.

- **Parkview at Randallstown**

This project, located roughly 2.5 miles northwest of the subject site, consists of 101 one bedroom apartments in a four story elevator-serviced building. This senior apartment community was developed and is managed by The Shelter Group. It is one of their older properties, having opened in 1995. Occupancy in this building is restricted to senior households with incomes at or below 60% of the area median income. The majority of units have 610 sq.ft. and rent for $500. Eight units are larger one bedroom apartments, with 700 sq.ft. and with a market rent of $549. Tenants are responsible for their own electric utilities. The property maintains relatively good occupancy although there is generally only a small waiting list, at this time reported to be five households. Due to the property's established reputation, referrals come primarily from word-of-mouth referrals. The vast majority of residents have resided previously in the Randallstown community. The minimum income to reside in this senior building is $14,700. At the present time, the property is 99% occupied.

- **Parkview at Woodlawn**

Parkview at Woodlawn is an affordable tax credit senior project located off Dogwood Road and Featherbed Lane, roughly 2.5 miles southeast of the subject site. This four-story, elevator-serviced apartment building consists of 101 apartments and serves senior households between 30% - 60% of the area median income. The one bedroom units are 609 sq.ft. in size and rent for $260 - $450. Six of the units have two bedrooms and are estimated to be 901 sq.ft. in size, with rents ranging from $520 - $550. The larger units target senior households at 50% - 60% of the median income.

This property, which was also developed and is managed by The Shelter Group, opened in May 1999 and was fully occupied by October 1999. The current waiting list for this property is 16 senior households.

- **Fairspring Senior Housing (funded)**

A third tax credit senior apartment complex will shortly be under construction in the PMA at the intersection of St. Agnes Lane and Harwall Avenue in the Edmonson Heights neighborhood of Catonsville. This building will also have four stories and will be serviced by elevator. Units are expected to range in size from 650 - 854 sq.ft. with rents of $280 - $510 for the one bedroom units; $600 for the one bedroom with den apartment; and, $620 for the two bedroom apartments. The majority of units, 88 out of 100, will have the one bedroom design and will be set aside for senior households with incomes between 30% - 50% of the area median

income. The larger one bedroom with den and two bedroom units will be for higher income households up to 60% of median.

This property will be developed and managed by The Waterford Group. Due to its location roughly five miles southeast of the subject site, it is considered the least directly competitive of the three senior buildings.

C. *Subsidized Senior Housing Options*

There is one apartment building in the PMA whose occupancy is restricted either to seniors age 62+ or younger persons who are handicapped or disabled. This property, Village Oaks, consists of 180 one bedroom apartments and one two bedroom unit set aside for a live-in manager. It was financed through HUD's Section 221(d)4 program in 1980 and structures rents at 30% of the tenants' adjusted gross income. A one person household must have an income less than $35,350 and $40,400 for a two person household. In addition, a small (22 slot), sliding-scale congregate care program is in place for a small number of residents. Residents receive a daily meal, light personal care and housekeeping assistance for a small additional fee through this state-sponsored program.

This property generally maintains a limited number of vacancies, ranging from 0 - 6 units. The building's location is assessed as being somewhat problematic due its almost hidden location at the end of a dead-end residential street (Winters Lane). No public mass-transit transportation is available to this property. Otherwise, the property is well-maintained although with limited amenities (no balconies, small unit sizes, no dishwashers).

Competitive property photos and locational maps are presented at the end of this section.

D. *Other Existing Senior Housing Options*

There is currently one Continuing Care Retirement Community (CCRC) for seniors in the PMA. This property, **Augsburg Lutheran Village**, targets a more affluent senior population and is mentioned for informational purposes only. It is not considered to be directly competitive with the proposed subject project. This community, located on Campfield Road near the Baltimore County/City line, has 96 independent living apartments; 38 assisted living units; and, 155 nursing care beds. Entrance fees, which are 80% refundable, range from $47,000 - $119,000. The residents' monthly fees range from $928 - $1,200 and includes meals, utilities, activities, etc. Health care is on a fee-for-service basis.

This facility is sponsored by the Lutheran Church and is reported to attract residents from the greater Baltimore Metropolitan area due to its attractive pricing structure. The majority of residents have previously been members of one of the 90 supporting Lutheran churches. Occupancy in the independent living apartments is 100% with a one year waiting list.

MF Rentals – Rolling & Liberty Rds

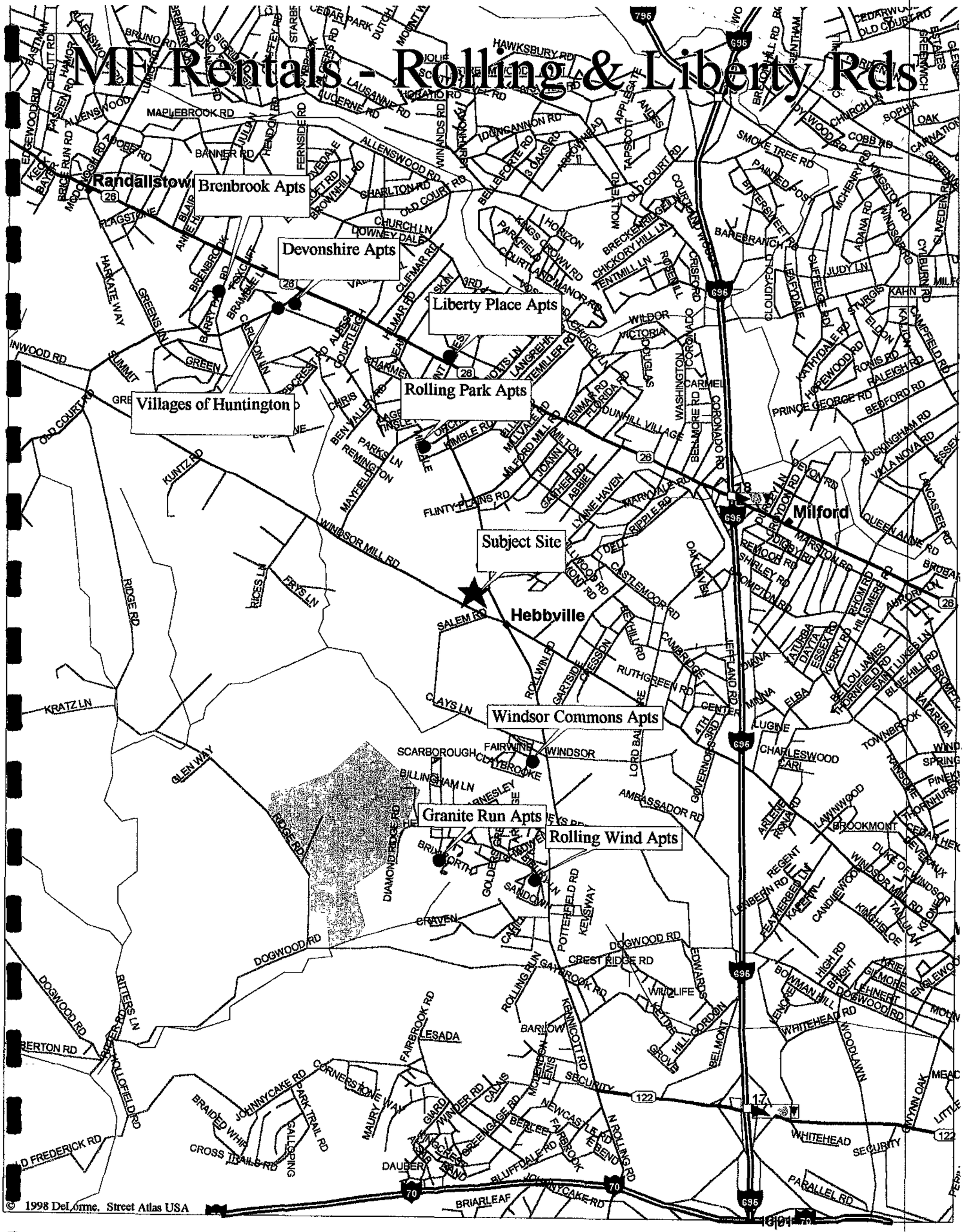


Table V-1
Multi-family Apartment Statistics - Randallstown submarket
Proposed Senior Apartments - 3134 Rolling Road, Baltimore County
October 2001

Randallstown Submarket - Multifamily Apartments:

		Units	Unit Type	Occupancy	Unadjusted for Utilities: Monthly Rent	Sq. Ft.	Rent per Sq. Ft.	Utilities: Heat Type	Tenant Pays	Adjusted Rents: Monthly Rent	Rent per Sq. Ft.	Features & Amenities
1	Devonshire Apartments 10 Spinners Court Randallstown (410) 484-4162 Martex Properties	64	1 BR 2 BR/2 BA	98.4%	$575 $625	856 1,036	$0.67 $0.60	Electric	All	$575 $625	$0.67 $0.60	3 story walk-up garden apts w/out security entrance. Units are well maintained, w/eat-in kitchen, in-unit w/d, balcony, off-street parking, Built 1970. Good curb appeal and modest rents for product. No rental concessions.
2	Brenbrook Apartments 11 Cinnamon Circle Randallstown (410) 655-0900 Equity Mgmt	225	Efficiency 1 BR 2 BR/1 BA 2 BR/1.5 BA 3 BR/1.5 BA	96.4%	$550 $605 $699 $725 $890	600 650 750 800 900	$0.92 $0.93 $0.93 $0.91 $0.99	Gas	Electric (includes cooking fuel)	$510 $555 $639 $665 $820	$0.85 $0.85 $0.85 $0.83 $0.91	2 story, brick garden-style apts w/ mansard-style roof & open entries. Units have w/w carpet, dishwasher, microwave, ceiling fan, balcony, alarm systems. Central laundry in each stairwell, swimming pool, playground & community center. No rental concessions.
3	Liberty Place 1 Liberty Place Randallstown 21244 (410) 922-8400 Southern Mgmt	294	1 BR 2 BR/1 BA 2 BR/1.5 BA 3 BR/2 BA	99.0%	$680 $765 $775 $940	774 1,080 1,080 1,260	$0.88 $0.71 $0.72 $0.75	Gas	None	$630 $705 $715 $870	$0.81 $0.65 $0.66 $0.69	2 & 3 story, brick garden-style apts w/ flat, built-up roof. Property was extensively renovated in 1999 & has excellent curb appeal. Units have hardwood floors or w/w carpet, dishwashers, new kitchens & baths. Project amenities include 24-hr staffed entrance gate, perimeter fencing, clubhouse, swimming pool, playground & lighted tennis court. Stairwells have glass enclosed entries. Each stairwell has laundry room. No rental concessions.
4	Rolling Park 8331 Mindale Circle Randallstown (410) 655-1012 HOME Properties	144	2 BR/2 BA	94.0%	$794	1,085	$0.73	Electric	All (incl. gas heated hot water)	$794	$0.73	2 story, brick garden-style apts w/ gabled roof design. Units have full size w/d, w/w carpet, balcony or patio, 2 full baths in each unit, optional security system ($10). Public amenities include swimming pool. Enclosed stairwells. Nice curb appeal w/ orientation towards interior courtyard. No rental concessions.
5	Villages of Huntington 8601 Gray Fox Road Randallstown (410) 655-3000 Art Mgmt	589	1 BR 2 BR/1 BA 2 BR/den/1 BA 3 BR/2 BA	85.7% (of the 377 rentable apts)	$530 $630 $685 $778	n.a. n.a. n.a. n.a.	n.a. n.a. n.a. n.a.	Gas	All (incl. gas heated hot water)	$530 $630 $685 $778	n.a. n.a. n.a. n.a.	2 story, brick garden-style apts w/ gabled roof. Unit amenities include w/w carpet, balcony, dishwashers. Community amenities include swimming pool & playground. Central laundry facilities. Concessions include one month free rent prorated over 12 months. Least attractive property surveyed. Manager stated that 212 apts (36%) are not available for rent due to their condition.
		1,316		93.2%								

Multifamily Market Rent Averages:

	Unadjusted for Utilities:			Adjusted Rents:	
1 BR	$598	760	$0.79	$573	$0.75
2 BR	$836	1,166	$0.72	$796	$0.68
3 BR	$869	1,080	$0.80	$823	$0.76

Table V-2
Multi-family Apartment Statistics - Woodlawn submarket
Proposed Senior Apartments - 3134 Rolling Road, Baltimore County
October 2001

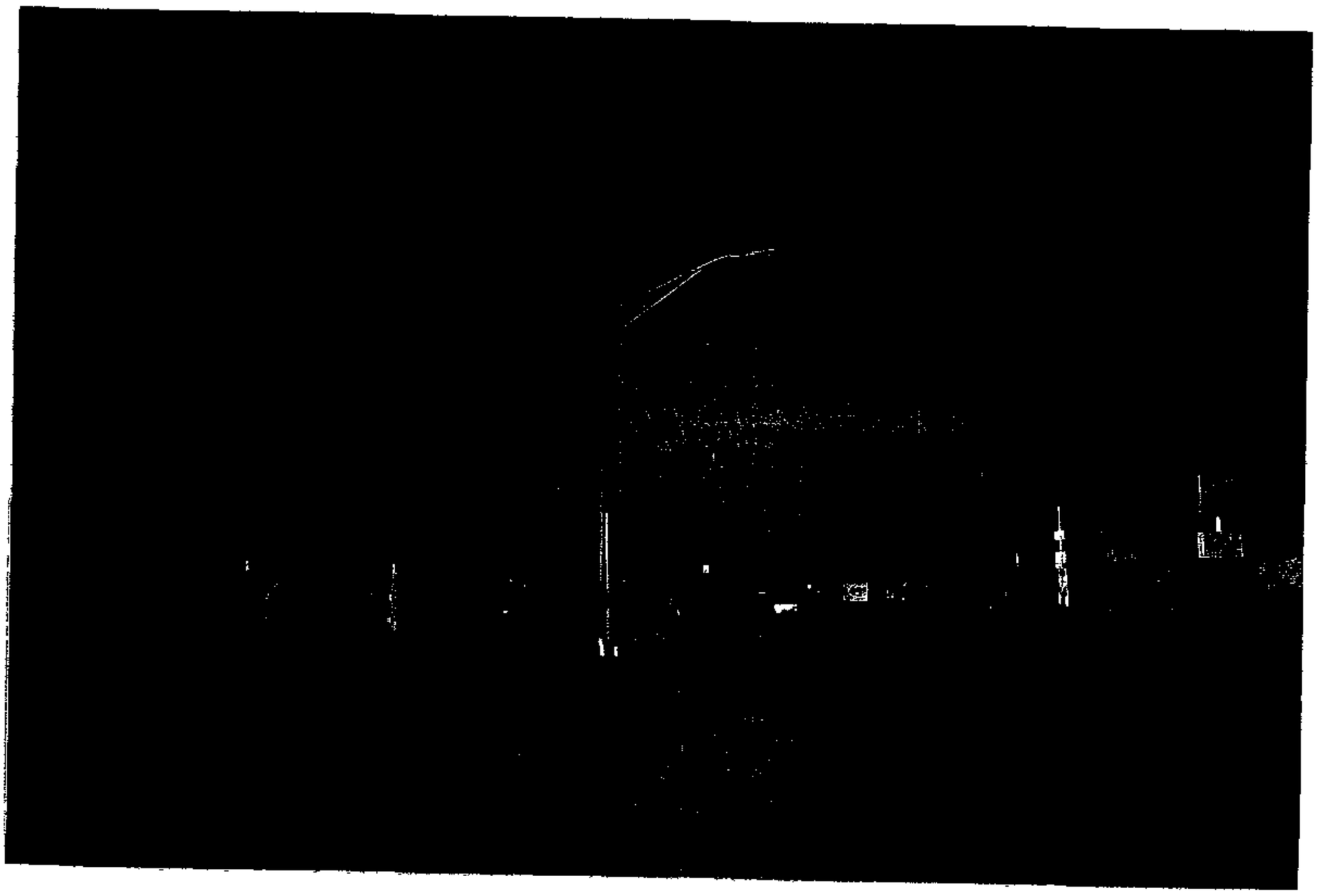
Woodlawn Luxury Submarket - Multifamily Apartments:

		Units	Unit Type	Occupancy	Monthly Rent	Sq. Ft.	Rent per Sq. Ft.	Utilities: Heat Type	Utilities: Tenant Pays	Features & Amenities
1	Windsor Commons 2800 Ashfield Drive Woodlawn (410) 298-3313 Questar Builders	286	1 BR 2 BR/1 BA 2 BR/2 BA 3 BR/2 BA	96.2%	$920 $1,005 $1,075 $1,210	751 952 1,085 1,256	$1.23 $1.06 $0.99 $0.96	Electric	All	3 story walk-up luxury apts buildings (26). Community amenities include pool, clubhouse, tennis courts, business center & library. Units amenities include full-size w/d, balcony, optional security alarm ($15), vaulted ceiling ($25), fireplace ($25), optional garages ($100 - $175). Built 2000-01.
2	Granite Run 7414 Brixworth Court Woodlawn (410) 298-4800 Berkshire Realty	264	1 BR 1 BR/Den 2 BR/2 BA 3 BR/2 BA	97.7%	$930 $1,030 $1,035 $1,150	751 906 1,060 1,200	$1.24 $1.14 $0.98 $0.96	Electric	All	3 story walk-up luxury apartments. Community amenities include olympic-size pool, lighted tennis courts, fitness center, gated entrances. Units have w/w carpet, w/d, vaulted ceilings, optional fireplaces ($50) & security alarm. Built 1998.
3	Rolling Wind 2420 Bibury Lane Woodlawn (410) 281-1221 Berkshire Realty	280	1 BR 2 BR/1 BA 2 BR/2 BA 3 BR/2 BA	98.9%	$890 $930 $1,015 $1,065	751 854 1,063 1,206	$1.19 $1.09 $0.95 $0.88	Electric	All	3 story walk-up luxury apartments. Community amenities include clubhouse w/ olympic-size pool, kiddie pool, 2 tennis courts, fitness cetner, controlled access gate. Unit amenities include w/w carpet, vaulted ceilings, w/d, security alarm, optional fireplace ($50). Built 1994.
		830		97.6%						

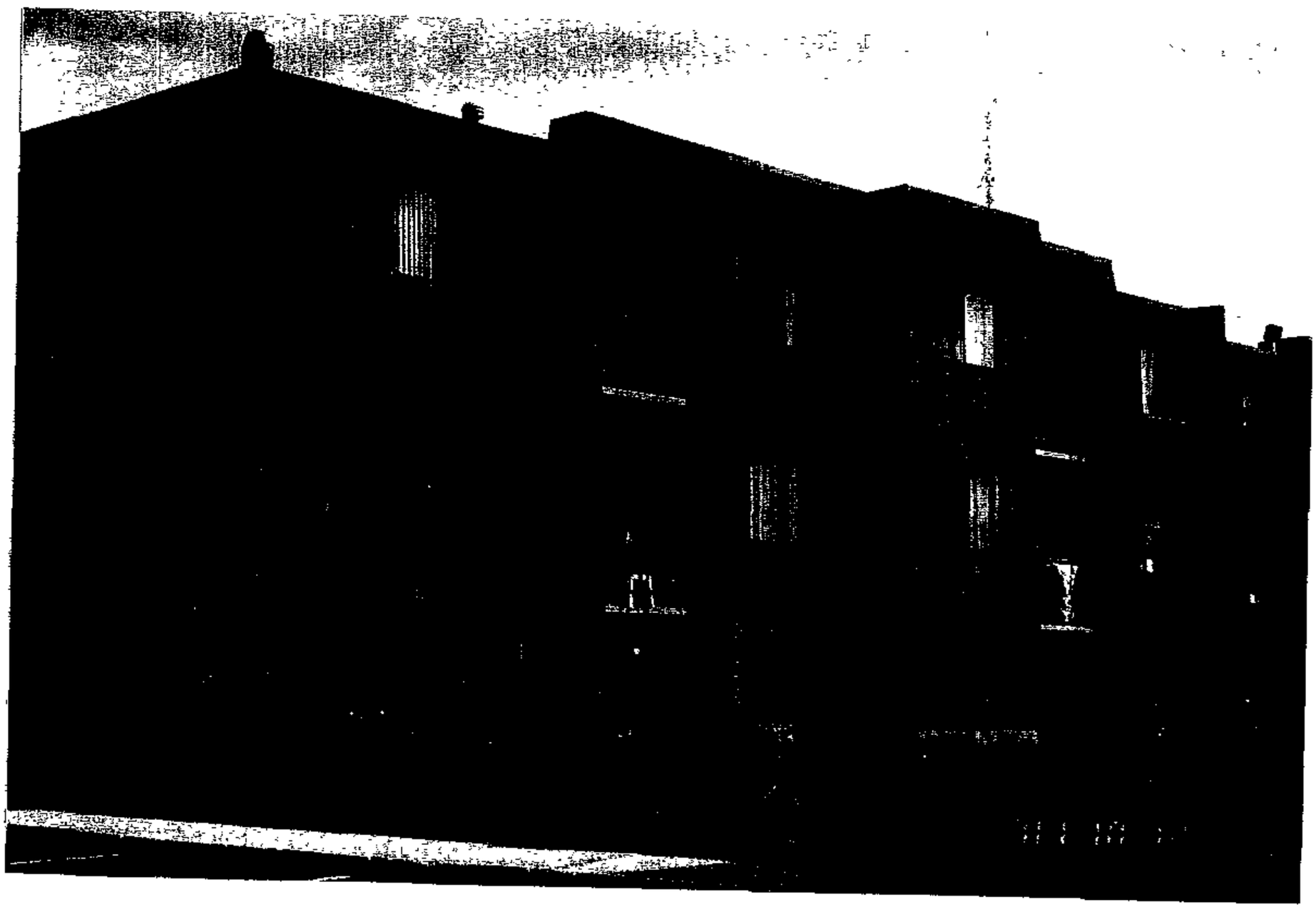
Multifamily Luxury Market Rent Averages:

1 BR	$943	790	$1.19
2 BR	$1,012	1,003	$1.01
3 BR	$1,142	1,221	$0.94

PROPOSED ROLLING ROAD SENIOR APARTMENTS
MARKET RATE MULTIFAMILY RENTAL APARTMENTS

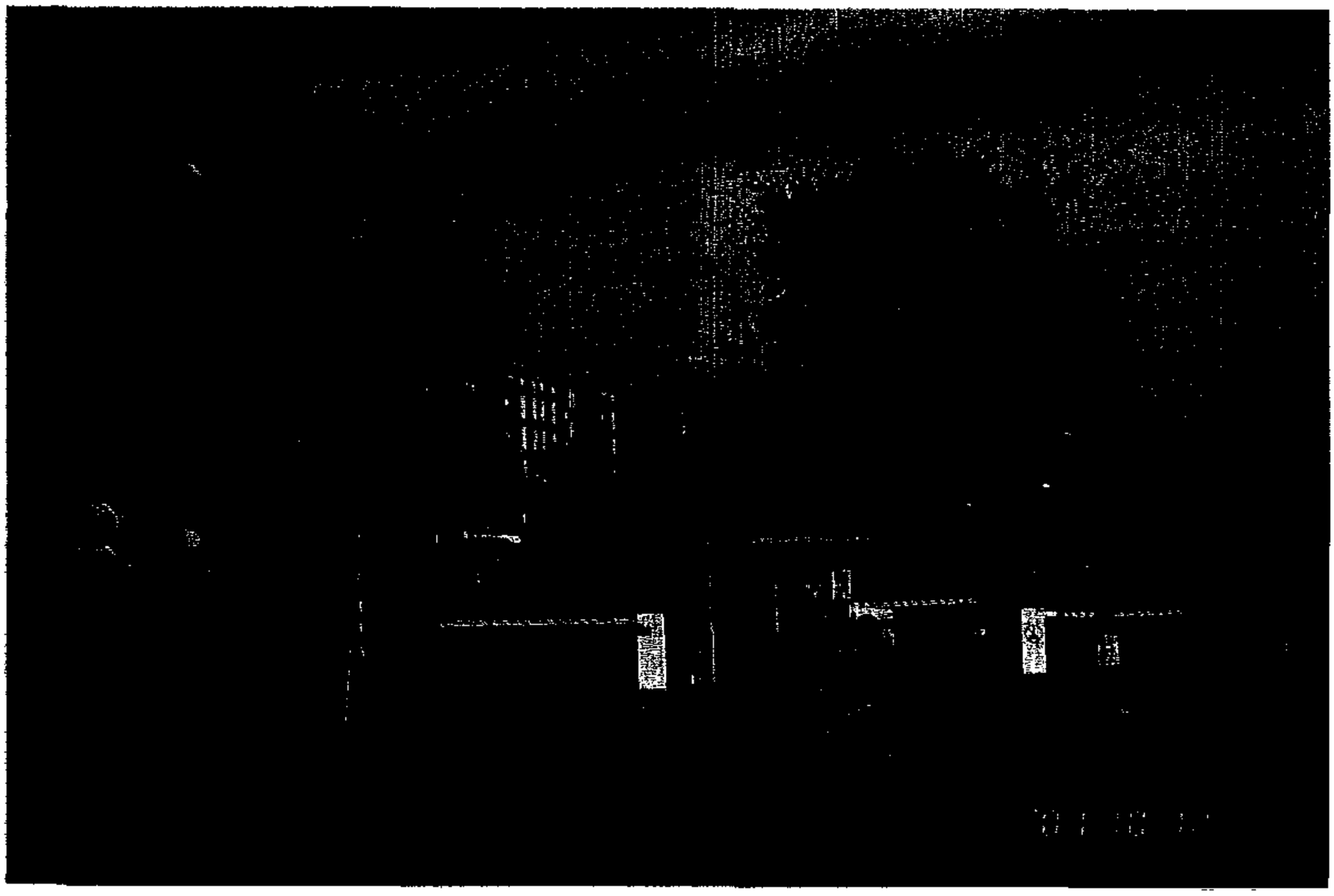


(1) DEVONSHIRE APARTMENTS



(2) BRENBROOK APARTMENTS

PROPOSED ROLLING ROAD SENIOR APARTMENTS
MARKET RATE MULTIFAMILY RENTAL APARTMENTS

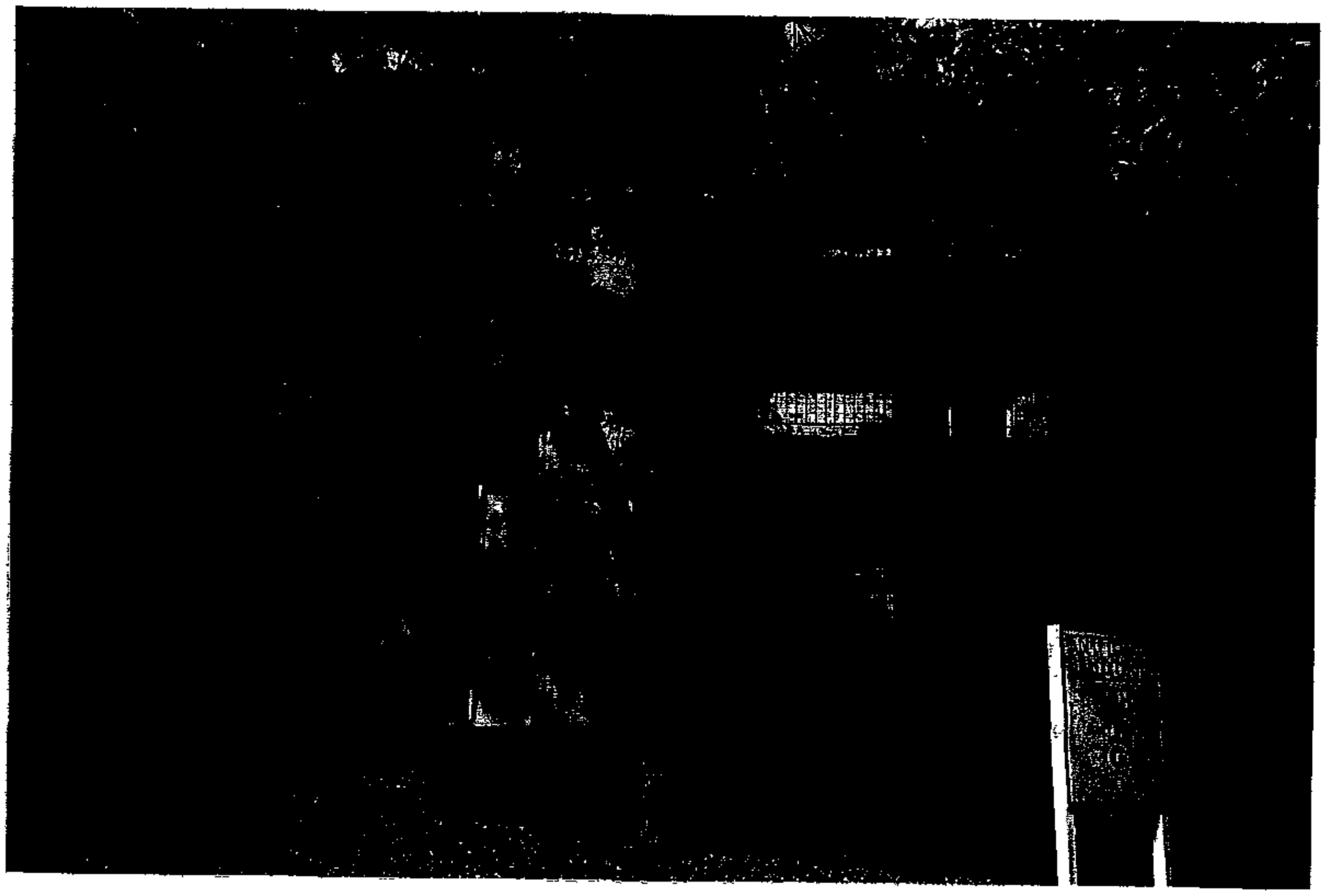


(3) LIBERTY PLACE



(4) ROLLING PARK

PROPOSED ROLLING ROAD SENIOR APARTMENTS
MARKET RATE MULTIFAMILY RENTAL APARTMENTS



(5) VILLAGES OF HUNTINGTON

PROPOSED ROLLING ROAD SENIOR APARTMENTS
LUXURY MULTIFAMILY RENTAL APARTMENTS

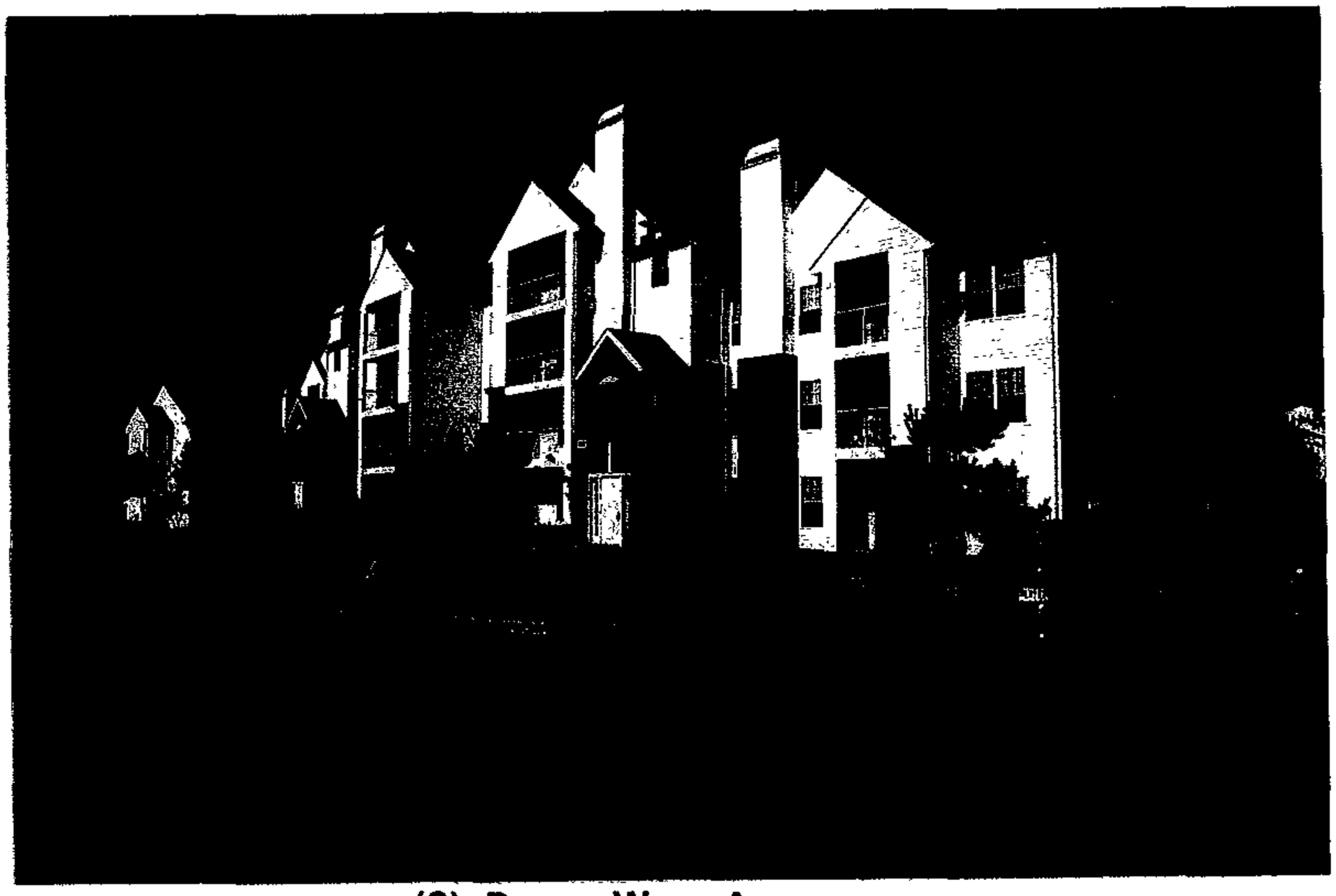


(1) WINDSOR COMMONS APARTMENTS



(2) GRANITE RUN APARTMENTS

PROPOSED ROLLING ROAD SENIOR APARTMENTS
LUXURY MULTIFAMILY RENTAL APARTMENTS



(3) ROLLING WINDS APARTMENTS

Rolling Road Sr Rental Apts

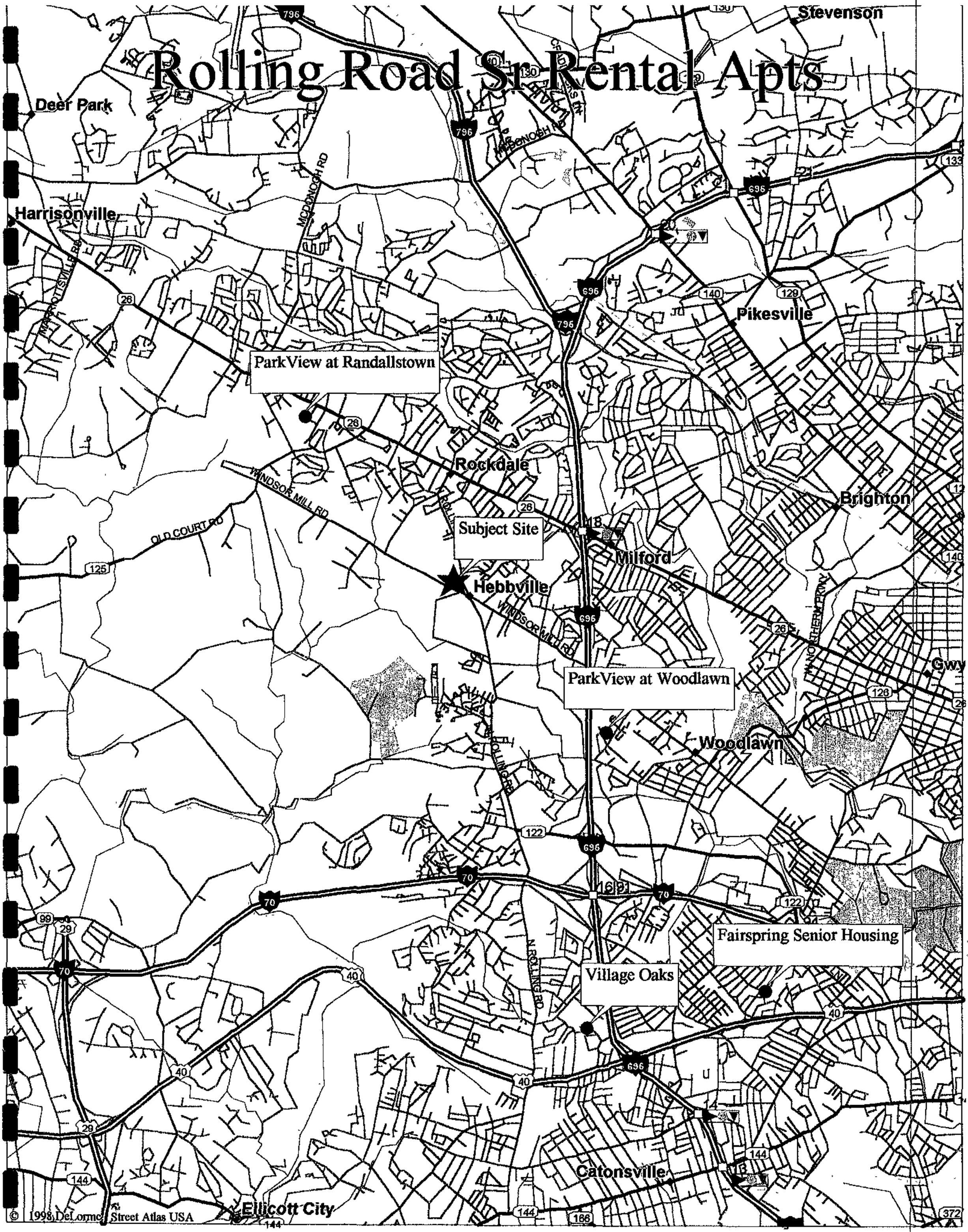


Table V-3
Moderate Income Senior Apartment Statistics
Proposed Senior Apartments - 3134 Rolling Road, Baltimore County
October 2001

Moderate Income Seniors-only Rental Apartments:

		Units	Unit Type	Occupancy Rate	Contract Rent Monthly Rent	Sq. Ft.	Per Sq. Ft.	Utilities Heat Type	Tenant Pays	Features & Amenities
1	Park View at Randallstown 3530 Resource Drive Randallstown, MD 21133 (410) 655-5673 Shelter Properties	93 8 101	1 BR-sm-60% 1 BR-lg-60%	99.0%	$500 $549	610 700	$0.82 $0.78	Electric	All	Senior tax credit apartment building which opened in 1995. Units have full kitchen, emergency pull cords in bedroom & bath, w/w carpet, individual HVAC in unit. Common laundry & community room. Minimum income= $14,700. Waiting list = 5 people.
2	Park View at Woodlawn Featherbed Lane Woodlawn, MD (410) 281-1120 Shelter Properties	1 9 10 58 17 2 2 2 101	1 BR-Homeless 1 BR-30% 1 BR-40% 1 BR-50% 1 BR-60% 2 BR/1 BA-60% 2 BR/2 BA-50% 2 BR/2 BA-60%	100.0%	$185 $260 $360 $443 $450 $540 $520 $550	609 609 609 609 609 901 901 901	$0.30 $0.43 $0.59 $0.73 $0.74 $0.60 $0.58 $0.61	Electric	All	Senior tax credit apartment building which opened in 5/99. Units have full kitchen, emergency pull cords in bedroom & bath, w/w carpet, individual HVAC in unit. Common laundry & community room. Waiting list = 16 people.
3	Fairspring Senior Housing 1121 St. Agnes Lane Woodlawn, MD 21207 Mt. Washington Mgmt	6 16 66 4 8 100	1 BR-30% 1 BR-40% 1 BR-50% 1 BR/den-60% 2 BR-60%	To be constructed	$280 $399 $510 $600 $620	650 650 650 751 854	$0.43 $0.61 $0.78 $0.80 $0.73	Electric	All	Four story senior tax credit apartment building planned for construction within the next several months. Units will have full kitchen, emergency pull cords, w/w carpet, individual HVAC. Common laundry & communit spaces. Limited (71) parking spaces.
	Total	302		99.5%						

Moderate Income Senior Apartment Rent Averages:

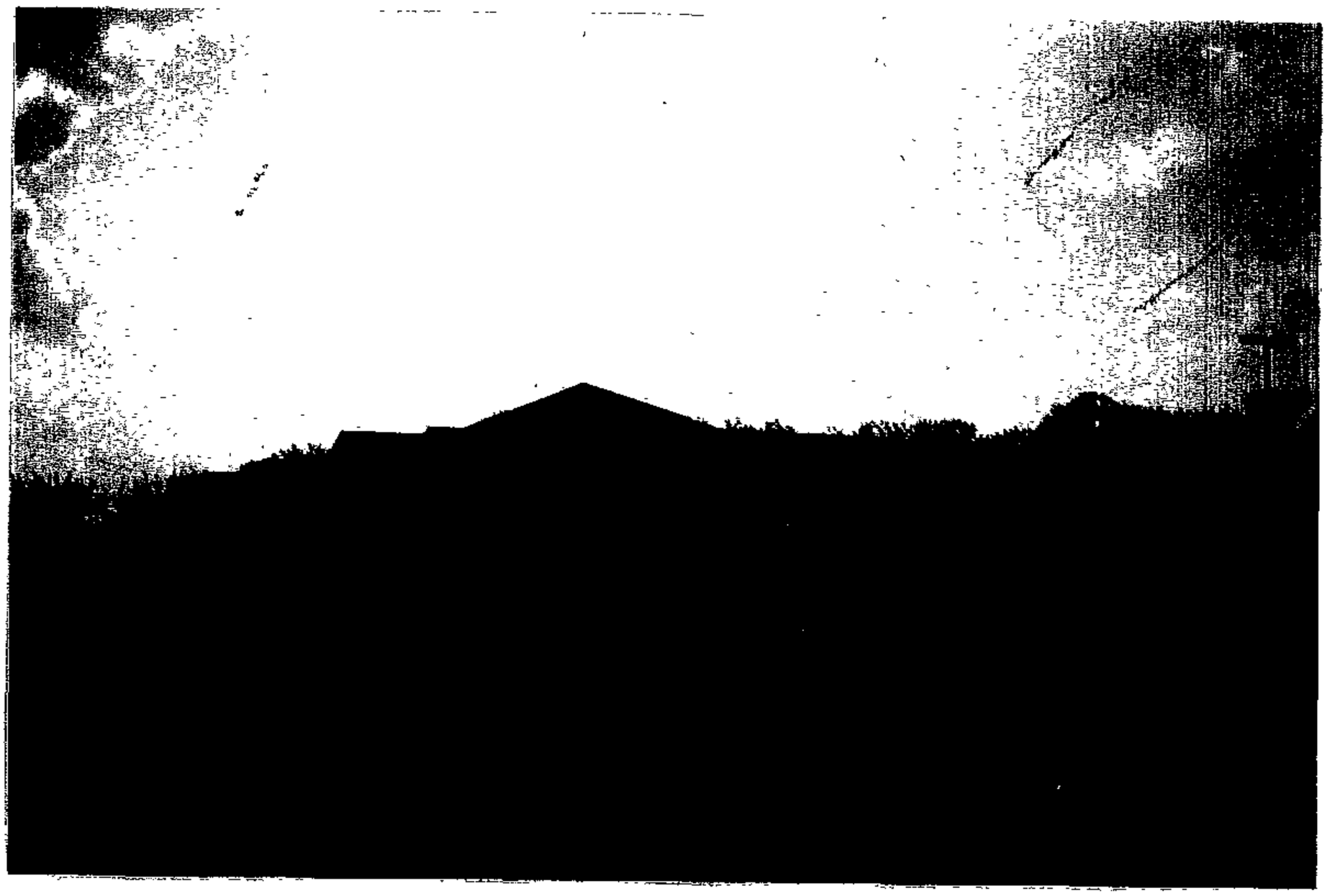
1 BR -Avg	$465	625	$0.74
2 BR - Avg	$588	845	$0.70

Table V-4
Subsidized Senior Apartment Statistics
Proposed Senior Apartments - 3134 Rolling Road, Baltimore County
October 2001

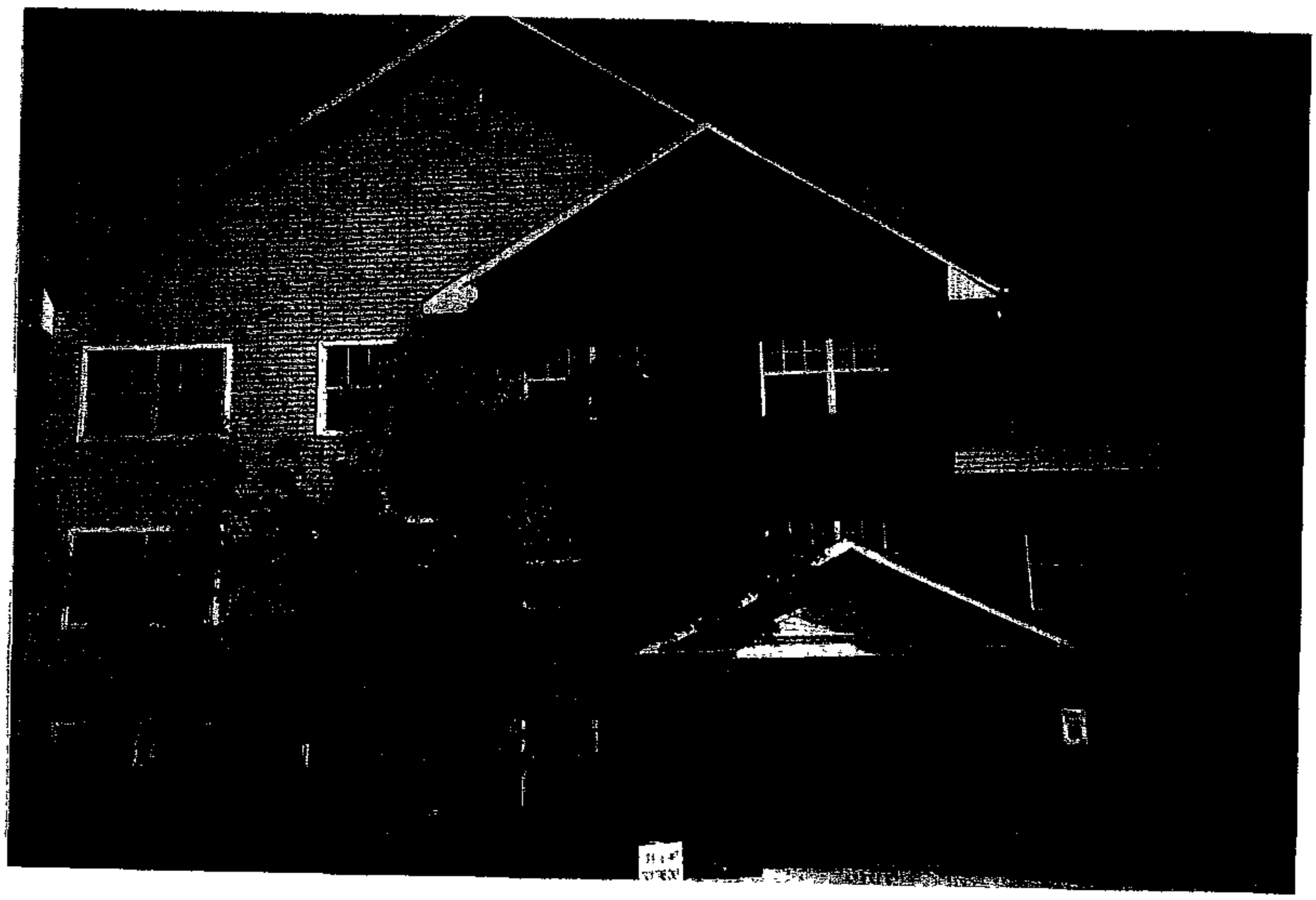
Subsidized Apartments:

Project	Total Units	Year Built	No. of Units Studio	1BR	2 BR	Type of Subsidy	Waiting List	Income Restrictions
Village Oaks 801 Winters Lane Catonsville 21228 (410) 747-1344	181	1980	0	180	1	HUD Sect 221(d)4	None	1 person <$35,350 2 persons <$40,400
Total	181		0	180	1			

PROPOSED ROLLING ROAD SENIOR APARTMENTS
COMPETITIVE SENIOR HOUSING

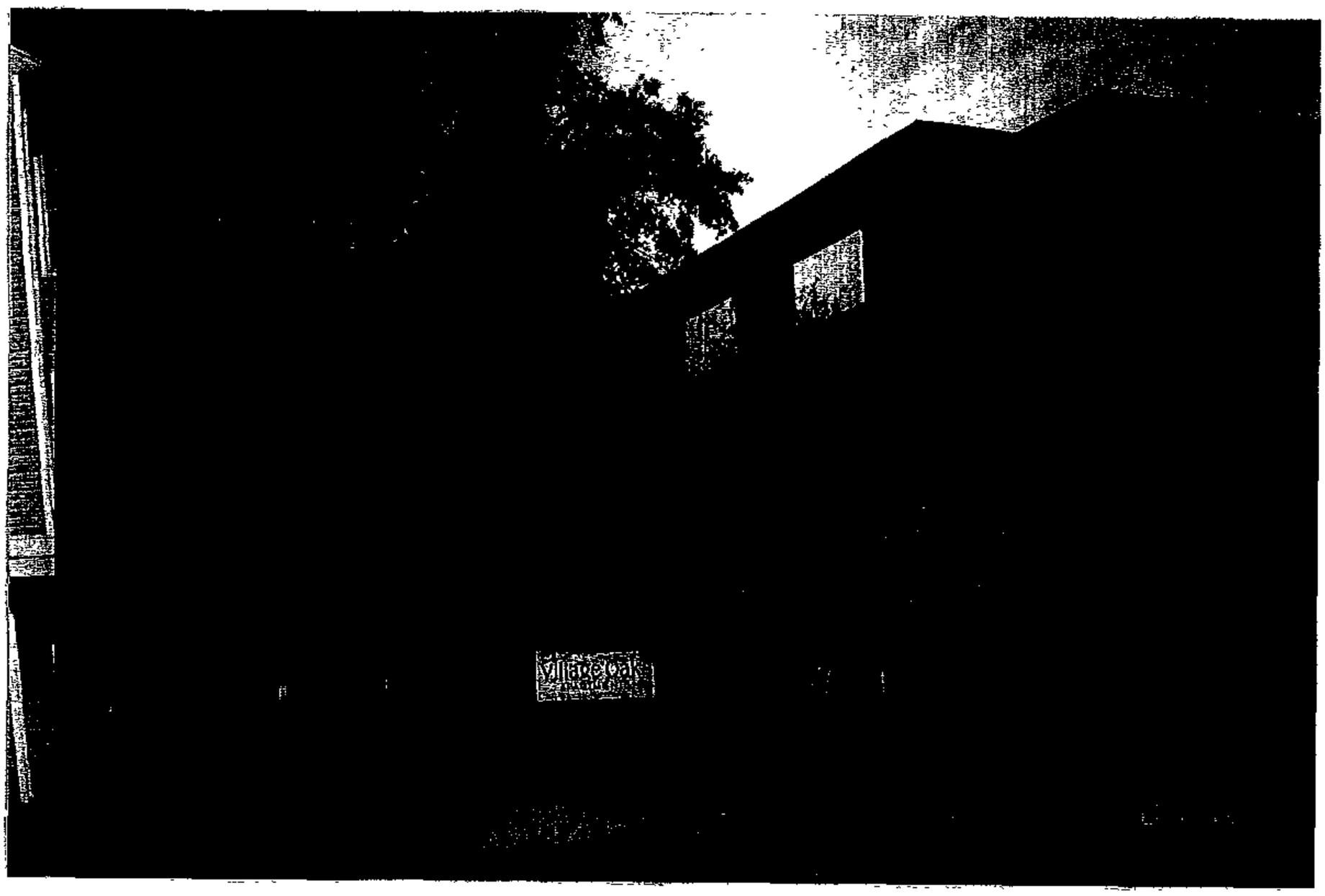


(1) PARKVIEW AT WOODLAWN



(2) PARKVIEW AT RANDALLSTOWN

PROPOSED ROLLING ROAD SENIOR APARTMENTS
COMPETITIVE SENIOR HOUSING



(3) VILLAGE OAKS

PHOTO NOT AVAILABLE AS PROPERTY IS
NOT YET UNDER CONSTRUCTION

(4) FAIRSPRING SENIOR HOUSING

VI. DEMAND ANALYSIS

LF&M's task is to estimate the number of income-qualified senior households who are likely to demand a rental apartment at the subject property.

A. Income Qualification

Senior households must be found within an income window determined by the maximum income allowable for tax credit qualification purposes and the minimum income which can reasonably support the monthly rent payment at standard apartment management ratios. Our criteria are, therefore:

- Maximum Incomes - A one person household can have a maximum income of $26,520 (60% of median). A two person household can have a maximum income of $30,300 (60% of median).

- Monthly Rents - The project sponsor has proposed contract rents less than 60% of the median income for both the one and two bedroom apartment units.

- Minimum Income Qualification - At an apartment manager's qualification ratio for contract rents of up to 40% of household income, we estimate that seniors will require a minimum income of $8,700 in order to reside in these apartments.

The senior households which we will focus our demographic analysis on are in the income range of $8,700 to $30,300. Our group will include those senior households 62 years of age and older.

B. Target Population

Using the Claritas forecasts summarized in Table VI-1, LF&M estimates the number of senior (62+) households in the PMA with incomes between $8,700 and $30,300 in 2001 to be approximately 2,511. As a result, the number of age- and income-qualified households represents roughly one out of every three (32.2%) of the estimated total number of senior households (7,804) in the PMA.

By 2006 (after adjusting for an estimated CPI growth rate of 3%), the number of age- and income-qualified households will increase to 2,932 households, or an additional 421 households. Of the total senior households (8,460), this group will represent 34.7% of all age 62+ households in the PMA.

Table VI-1
Senior Households By Income
Rolling Road Senior Apartments - Baltimore County, MD
Census tracts in RPD 319 & 323
2001-2006

2001		55-64	65-74	75+	Total
	HH Income Base	4,997	3,872	2,433	11,302
	<$10,000	197	264	439	900
	$10,000 - $14,999	143	303	289	735
	$15,000 - $24,999	407	756	382	1,545
	$25,000 - $34,999	441	528	315	1,284
	$35,000 - $49,999	801	687	281	1,769
	$50,000 - $74,999	1,473	728	396	2,597
	$75,000+	1,535	606	331	2,472
	Median Household Income	$58,647	$36,829	$28,317	

2006		55-64	65-74	75+	Total
	HH Income Base	6,113	4,042	2,584	12,739
	<$10,000	217	208	344	769
	$10,000 - $14,999	165	254	296	715
	$15,000 - $24,999	453	676	418	1,547
	$25,000 - $34,999	559	656	375	1,590
	$35,000 - $49,999	943	759	372	2,074
	$50,000 - $74,999	1,631	790	390	2,811
	$75,000+	2,145	699	389	3,233
	Median Household Income	$61,028	$39,484	$31,269	

Change		55-64	65-74	75+	Total
	HH Income Base	1,116	170	151	1,437
	<$10,000	20	(56)	(95)	(131)
	$10,000 - $14,999	22	(49)	7	(20)
	$15,000 - $24,999	46	(80)	36	2
	$25,000 - $34,999	118	128	60	306
	$35,000 - $49,999	142	72	91	305
	$50,000 - $74,999	158	62	(6)	214
	$75,000+	610	93	58	761
	Change in Median Hhld Income	$2,381	$2,655	$2,952	

Source: Claritas, Inc., compiled by Lipman Frizzell & Mitchell LLC

According to STF-4 Census statistics from 1990, the number of lower income ($25,000 and under) senior renter households in the PMA is estimated at 32.3% of all senior occupied housing units. The remainder, 67.7%, are homeowners.

The table below illustrates the target market for the subject project, which will consist of both renter and homeowner households. While all of the renter households are considered in our pool of potential prospects, only 30% of the homeowners are included. We judge this estimate to be reasonable, based upon our discussions with operators of similar properties where a significant portion of their residents have previously lived in their own home prior to tenancy.

Target Market Analysis - Rolling Road Senior Apartments				
Year	Total Age- and Income-Qualified Households	Renter Hhlds @ 32.3%	Owner Hhlds @ 30% of 67.7% (20.3%)	Total Pool of Income-Eligible Hhlds
2001	2,511	811	510	1,321
2002	2,595	838	527	1,365
2003	**2,679**	**865**	**544**	**1,409**
2004	2,764	893	561	1,454
2005	2,848	920	578	1,498
2006	2,932	947	595	1,542

The potential pool of target households which we will consider for occupancy in the proposed subject project on Rolling Road is estimated to be 1,321 age 62+ income-qualified households in 2001. This number will increase to 1,409 households by the project's planned opening in late 2003.

As a result, the project capture rate is considered to be 6.7% today, or 89 apartments to be filled from the total pool of 1,321 age- and income-qualified senior households. By 2003, the project capture rate goes down to 6.3%, with the total pool of qualified senior households increasing to 1,409.

C. Further Quantification of Demand

As an alternate perspective, we can further quantify the subject project's potential demand using alternate analyses which include:

- American Housing Survey - This data is used to estimate the proportion of senior households who are most likely to move in the course of a year from their current dwelling to rental quarters. Based on these statistics, produced by the U.S. Bureau of the Census, LF&M estimates that 4.3% of all senior households are likely to move in any year and over three-fifths (61.3%) of them move to rental housing. The table below illustrates the anticipated number of age 62+ income-qualified senior households who we would expect to be moving annually

and on a cumulative basis over the next five years.

Mover Demand Analysis Among Senior Households w/ Qualifying Incomes						
Year	2001	2002	**2003**	2004	2005	2006
Annual	66	68	**71**	73	75	77
Cumulative	66	134	**205**	278	353	430

National statistics would indicate that as many as 205 seniors will be seeking new rental quarters over the next two years. The following section, Supply and Demand Analysis, will address the implications of this calculation.

- Waiting Lists - We know that the existing moderate income senior properties have consistently operated at full occupancy over the past several years. In addition, according to historical Baltimore County Housing Office statistics, the largest number of active rent subsidy voucher holders have been in the second Councilmanic District. Of the estimated 1,133 voucher holders, roughly 25% (or 292 households) are elderly. An additional 636 households are waiting for a rental subsidy voucher. Of these, 159 are estimated to be age 62 or older.

- Senior Households from Outside the Market Area - There are an estimated 5,415 households with the head of household between the ages of 45 - 54 in the PMA. This group is the "sandwich generation", taking care of their own children as well as having some responsibilities towards their own aging parents. While no generally accepted statistics are available to estimate how many of these individuals have parents who are in need of affordable housing, it is reasonable to assume that at least a portion of the planned apartments will be filled by seniors from outside the market area who are referred by adult children.

  For this purpose, we have estimated that as many as 25% of the subject's units (30 units) will be rented by age-and income-qualified households who reside outside of the PMA but who will move to this area, primarily from Baltimore City where there are greater concerns regarding safety and security.

A discussion of market penetration and project feasibility is presented in the following section.

VII. SUPPLY AND DEMAND ANALYSIS

LF&M has estimated the subject project's potential penetration rate, building upon the assumptions presented in the previous section. In the initial analysis, we will calculate the ratio of available new units in the market area in relation to the pool of households who are age- and income-qualified for residency but who are not already residing in competitive rental housing situations.

The initial step involves calculating the number of age- and income-eligible renter households from the market area now residing in competitive rental projects. LF&M estimates that there are currently 179 senior households in our target group residing in these competitive properties. This number will grow to 217 by project opening. This analysis is presented below:

Summary of Target Senior Households Residing in Competitive Properties

Type of Housing	Total No. Of Units	Estimated Proportion Filled by Target Hhlds		
		Percent	Total	Adjusted Total @ 75% from MA
Tax Credit				
- Existing	202	100%	202	152
- Future	100	50%	50	38
Subsidized	181	20%	36	27
TOTAL - 2001	383		238	179
TOTAL - 2003	483		288	217

Of the total 383 units of competitive rental housing in the PMA today (202 tax credit and 181 subsidized), we have estimated that 47% of these units are already filled by senior households from our target group. However, by 2003, this total inventory will increase to 483, of which 45% will be filled by households who are potential candidates for housing at the subject project.

As a result, the adjusted pool of eligible senior households is estimated to consist in 2001 of 510 homeowners and 632 renter households not residing in competitive housing situations (the total renter pool of 811 households minus the adjusted total of 179 renter households already in other competitive rental housing situations). By 2003, the target market will increase to 544 homeowners and 648 renter households (the total renter pool of 865 households minus the adjusted total of 217 renter households in competitive properties). The subject project's penetration rates are derived and presented in the table which follows.

Project Market Penetration Rates - Rolling Road Senior Apartments				
No. Of Units @ 75% from MA	Eligible Target Hhlds - 2001	Penetration Rate 2001	Eligible Target Hhlds - 2003	Penetration Rate 2003
89	1,142	7.8%	1,192	7.5%

As shown, the subject project's market penetration rates are well within an acceptable range and are improving over time due to the growth in the senior cohorts in the PMA.

Given the fact that the subject project will come on line shortly after the lease up of Fairspring Senior Housing, it is desirable to determine the overall market penetration for all senior housing projects in the PMA. This analysis involves calculating the annual turnover in the existing competitive facilities as well as including all of the new projects which are likely to come on line between now and the subject project's proposed opening date in 2003.

The first step includes calculating an annual turnover rate for the existing senior properties. Given the fact that seniors generally do not voluntarily leave an independent living setting, we have estimated that annual turnover in these properties is quite low, roughly 10%. As a result, over a two year period (fall 2001 - fall 2003), we would expect that, on average, 20 tax credit units will become available for re-lease each year. Of these, 75%, or 15 units, are filled from within the market area. Of the subsidized properties, the annual turnover is 18 units, but only three of these units are filled from the target market, after adjusting for 20% which are income-eligible and the 75% market area draw. As a result, the anticipated turnover in existing senior properties is 33 units.

The second step involves calculating the number of new units which will be available during this same period. We have assumed that this total will consist of 38 units at Fairspring Senior Housing and the subject's own 89 units. These numbers have been adjusted to reflect the fact that only 75% of the units will be filled from within the market area. Together, including turnover at the existing facilities, the total number of senior apartments to be filled from our adjusted target market is estimated to be 160 (33 units through turnover in the existing properties and 127 new units coming on line).

The next calculation is useful in that it enables us to place the project's penetration rate, i.e. what is required to fill the subject's own units, within the context of the overall competitive market environment. This analysis, known as a market share calculation, is especially helpful in situations where several projects are coming on line in a relatively short period of time. LF&M has estimated that the market share calculation is 13.4%, or 160 units needing to be leased by the adjusted target market of 1,192 age- and income-eligible households not currently residing in competitive rental housing situations. We feel that the lease up of all of the

competitive units as well as the subject project's units should be achievable in this market.

Additional data confirms that the market will support new senior apartments in the PMA. LF&M has estimated the number of income-qualified households (both renter and homeowner) who are likely to be seeking new housing situations each year in the subject project's market area.

- Pent up Demand - By project opening, we would expect that approximately 205 income-eligible senior households, including both renter and homeowners, will need to relocate to a rental housing situation within the PMA. After reducing this number by 71, adjusting for turnover in the existing properties (33 units) and Fairspring Senior Housing (38 units), we would expect that the remaining 134 households would find the subject project's apartments to be an attractive alternative.

- Senior Households Currently on Waiting Lists - There are currently waiting lists for all of the existing tax credit senior housing facilities throughout the PMA. We would expect that a portion of these households will be interested in the proposed project, especially those who are currently residing near Rolling Road.

- Senior Households from Outside the PMA - Because of the dynamic influx of households into this area, we would expect that as many as 25% of the apartments (the equivalent of 30 units) would not have resided in this area previously but will move from other areas, particularly Baltimore City, in order to take advantage of the multitude of community services, the area's superior safety and security and the general affordability of the subject property.

As stated above, the project's penetration rate as well as overall market share rate are both achievable, given the building's affordability, convenient location, attractive design, amenities and effective management. It is also important to reiterate that the target population is increasing over the next several years, reducing market risk while the senior population is more likely to become knowledgeable regarding senior independent living housing options, with the opening of the new tax credit apartments on St. Agnes Lane.

Lastly, senior households with lower incomes are also likely to expand the potential market. Many seniors rely upon adult children for financial assistance or will agree to spend a greater proportion of their income for suitable housing than the assumed 40%.

In summary, from a market perspective, LF&M estimates that the project will be able to lease at an average pace of 7 - 8 units per month. A large number of units will be leased upon opening, with the pace declining to 3 - 4 units after the initial

three months. Given an adequate marketing campaign, we would expect that the subject property will be fully leased within 12 - 14 months of opening. After initial lease-up, we believe that the project will be able to sustain a stabilized occupancy rate of at least 95% due to the property's location, amenities and the value which it offers seniors in the PMA, assuming an effective marketing effort.

A *marketing campaign should include: solicitations mailed into existing family rental* communities in Randallstown and Woodlawn as well as nearby Baltimore City; outreach and personal contact with churches and senior groups; effective on-site signage and publicity; and pre-leasing during the construction period.

VIII. SUMMARY & CONCLUSION

Lipman Frizzell & Mitchell finds, therefore, that the 119 proposed senior apartments, all of which will be restricted to senior households at or below 30% - 60% of the area median income, are market-supported within the next two years. In summary, our reasoning regarding the need for this property is as follows:

- Project Location and Design - The proposed apartments will be located along Rolling Road, between Windsor Mill Boulevard and Liberty Road, in southwestern Baltimore County near the communities of Randallstown and Woodlawn. This proposed site is located in an area which is undergoing substantial new growth, as evidenced by Ryland Home's adjacent single family subdivision with homes selling from $160,000 - $220,000. A short distance south of the subject site, numerous upscale multifamily rental communities have been constructed, with rents in the range of $1.00 and more per sq.ft. The area has become extremely attractive for new development due to its ease of access to nearby employment centers, such as the Social Security Administration and the Health Care Financing Agency, as well as major transportation routes, such as the Baltimore Beltway and I-70.

  Seniors residing in this area have a variety of resources available to them, including many churches and synagogues, abundant retail and shopping opportunities and proximity to medical services, such as those provided by the Northwest Hospital Center. All of these factors will be important in attracting seniors to this apartment community.

  The building's design, extensive common area spaces, and availability of a variety of one and two bedroom unit designs, will be especially attractive to those senior households who no longer are able to maintain the upkeep of a home.

- Community Support - The proposed apartments have been endorsed by the umbrella residential community organization, the Liberty Road Community Council. The Council will work closely with the sponsor to develop and implement a tenant services plan for the benefit of the residents. In addition, the proposed subject project has the support of the County Council which has unanimously supported the rezoning of the property to a higher density and assured the sponsors that they will be able to enter into a PILOT agreement with Baltimore County.

  The endorsement of the project by these parties will be an important factor in

enhancing the project's status and credibility with seniors throughout the market area.

- Market Area Growth - LF&M has determined that the vast majority of prospects for the proposed senior independent housing will be residing in Baltimore County, specifically in the areas known as Randallstown, Lochearn, Security and Woodlawn.

  The table below illustrates the population and household growth in the market area among the age 62+ cohort. As shown, there has been an increase of 1,359 persons (993 households) from 1990 - 2001, or an average annual increase of 1.2%. Growth is expected to remain steady over the next five years. This situation will result in a healthy increase in the number of senior persons and households within the market area.

Rolling Road Senior Housing - Population & Households
Age 62+ 1990 - 2006

	1990	2001	Actual Increase '90 - '01	% Increase '90 - '01	2006	Actual Increase '01 - '06	% Increase '01 - '06
Population	11,289	12,648	1,359	12.0%	13,457	809	6.4%
Households	6,811	7,804	993	14.6%	8,460	656	8.4%

Source: U.S. Census 2000 figures; 2001 estimates and projections by Claritas, Inc.

With this steady growth, there is a need for a variety of housing options for seniors now living in the PMA as well as those who will move here due to the area's community services and general appeal.

- Competition - There are currently two tax credit senior apartment communities in the market area and one which has been funded but not yet constructed. Both of the existing properties, Parkview at Randallstown and Parkview at Woodlawn, are fully occupied with waiting lists. In addition, a third tax credit senior rental community will shortly be under construction at the intersection of St. Agnes Lane and Harwall Avenue near U.S. Route 40 and the Baltimore City/County line. As a result, we would expect that this project will be fully occupied prior to the opening of the subject project.

- Market Demand - By 2003, the estimated opening date of the subject project, LF&M has estimated that the target market will consist of 1,409 senior households. After taking into account those senior households residing in competitive rental properties, we have calculated the subject project's market penetration rate in 2003 to be 7.5%. In other words, the new units would need to lease to only one out of every 13 qualified senior households. Given the fact that a new senior community, Fairspring Senior Housing, will shortly be

preleasing, LF&M has also calculated the overall market share rate. This provides an additional measure of what will be required to enable all of the existing projects as well as the new projects to reach full occupancy. The calculated percentage of 13.4% is viewed as clearly achievable. In mature markets, market share ratios as high as 20% are possible. Given an ongoing marketing effort, the subject will be able to capitalize upon its affordable pricing structure and location in a very densely populated suburb in Baltimore County.

An effective pre-leasing program during the construction period, will assist the subject project in achieving an overall absorption pace to be 7 - 8 units per month, with a projected lease-up period of 12 - 14 months. This lease-up period is conservative, taking into account the other senior housing project planned for delivery in the market area over the next two years.

APPENDIX A

JOSEPH M. CRONYN
Resume

Joseph Cronyn has a broad professional background in real estate research, sales and marketing, development, financing and appraisal. His experience includes market and financial feasibility analyses of major real estate projects; land acquisition and marketing for residential development; tax-motivated and conventional financing for single family and multi-family residential projects; and advising public, non-profit and private clients concerning real estate decision-making.

PROFESSIONAL EXPERIENCE

Lipman Frizzell & Mitchell, LLC, Baltimore, MD (1997 - present)
Senior Associate

Conducts market feasibility analyses for commercial and residential real estate projects throughout the Mid-Atlantic area. Analyzes commercial real estate markets and specializes in determining the economic and fiscal outcomes of real estate decision-making. Building on strong skills in economic and demographic research, also advises clients on economic development, public sector housing policy, historic preservation and fiscal impact issues. Recent assignments include:

- HOPE VI Public Housing Redevelopment, Baltimore City and Philadelphia
- Convention Center Hotel Feasibility, Baltimore City
- Owings Mills Metro Station Master Redevelopment Plan, Baltimore County
- National Business Park Feasibility, Anne Arundel County
- Springfield State Hospital Redevelopment, Carroll County
- State Housing Needs Assessment: Delaware, Maryland and Louisiana
- Class B Office Conversion to Apartments Feasibility, Baltimore City
- For-Sale Residential Feasibility in Bolton Hill, Baltimore City

Legg Mason Realty Group, Inc., Baltimore, MD (1989 - 1997)
Vice President

Built a professional practice within the real estate advisory subsidiary of a major regional securities firm. Served private, public and non-profit clients throughout the Mid-Atlantic states in dealing with their real estate-related issues: residential and commercial development, market and financial feasibility, fiscal and economic impacts.

Financial Associates of Maryland, Baltimore, MD (1987 - 1989)
Vice President

Responsible for land acquisition and marketing for firm specializing in real estate development and venture capital investment. Analyzed financial and sales feasibility for residential lot development and home construction projects.

Baltimore Federal Financial, F.S.A., Baltimore, MD (1982 - 1987)
Director of Sales & Marketing. Senior Vice President

Responsible for all marketing and public relations for one of the largest thrift organizations in Maryland. Directed all retail sales efforts and administration of statewide branch banking network, stock brokerage, insurance agency and business development functions.

Neighborhood Reinvestment Corporation, Washington, DC (1978 - 1982)
Assistant Director

Discovered and developed innovative urban revitalization projects throughout the United States for prominent national non-profit corporation. Supervised allocation of grant budget and researched impact of programs. Trained staff and local non-profits in real estate practices and housing finance.

Baltimore Federal Savings & Loan, Baltimore, MD (1976 - 1978)
Mortgage Underwriter and Urban Lending Coordinator

Evaluated residential purchase and rehabilitation mortgage loans for investment. Assisted in the development of urban lending techniques in cooperation with public, non-profit and private sector partners.

St. Ambrose Housing Aid Center, Baltimore, MD (1973-1976)
Principal and Housing Counselor

Counselor and non-profit real estate agent. Sold over 200 homes to low- and moderate-income families throughout the Baltimore Metropolitan Area. Researched local housing issues.

EDUCATION

Master of Business Administration
Loyola College, Executive Program, 1986

B.A. in English & Philosophy
Boston College, 1969

AFFILIATIONS

Neighborhood Housing Services of Baltimore, Board of Directors
Neighborhood Housing Services of Greater Hillendale, Advisory Board
Baltimore County Multifamily Housing Advisory Group, Member
Citizens Planning and Housing Association
Downtown Partnership of Baltimore, Class B Commercial Re-Use Task Force
Maryland Industrial Development Association (MIDAS)
Regional Development Advisory Committee, Baltimore Metropolitan Council

PROFESSIONAL LICENSES

State of Maryland Real Estate Agent's License

JOANNE L. ANDREWS
Resume

Ms. Andrews has extensive experience providing consulting services in the area of retirement housing, including market and financial feasibility studies and operational analyses. In addition, she is actively involved in the development of senior and multifamily rental housing.

PROFESSIONAL EXPERIENCE

Lipman Frizzell & Mitchell, LLC, Columbia, MD (February 2000 - present)
Associate

Conducts market feasibility analyses for residential real estate with a specialty in senior housing. Additional expertise in evaluating congregate and assisted living market feasibility projects.

JLA Consulting, LLC, Columbia, MD (1997 - present)
Principal

Owner of a Minority Business Enterprise which specializes in the development of senior and multifamily housing projects.

Howell Associates, Inc., Washington, D.C. (1994 - 1997)
Senior Associate

Directed market research and financial feasibility studies in the fields of retirement and affordable housing.

Ericsson Radio Systems, Stockholm, Sweden (1991 - 1994)
Project Analyst

Conducted financial planning and reporting activities for a large, multi-national corporation.

Humphrey Associates, Inc. Silver Spring, MD (1987 - 1990)
Project Developer

Coordinated development of affordable & market-rate multi-family housing.

The Rouse Company, Columbia, MD (1985 - 1987)
Leasing Associate

Represented national developer in office space negotiations.

EDUCATION

Master of Business Administration (MBA), University of Maryland, College Park, Maryland (1987)

Master of Social Work (MSW), University of Pittsburgh, Pittsburgh, Pennsylvania (1979)

Pet. #12

County Council of Baltimore County

Court House, Towson, Maryland 21204
410-887-3196
Fax 410-887-5791

S. G Samuel Moxley
FIRST DISTRICT

Kevin Kamenetz
SECOND DISTRICT

T Bryan McIntire
THIRD DISTRICT

Wayne M. Skinner
FOURTH DISTRICT

Vincent J. Gardina
FIFTH DISTRICT

Joseph Bartenfelder
SIXTH DISTRICT

John Olszewski, Sr.
SEVENTH DISTRICT

Thomas J. Peddicord, Jr.
LEGISLATIVE COUNSEL
SECRETARY

September 6, 2001

Lawrence S. Wescott, Chairman
Baltimore County Board of Appeals
Court House
Towson, Maryland 21204

Dear Mr. Wescott:

Attached please find a copy of Resolution 106-01 approving the Planning Board's certification that the zoning reclassification petition filed by Penrose Properties, Inc., for the property located at 3134 Rolling Road and situated in the Second Councilmanic District, should be exempted from the regular cyclical procedure of Section 2-356(c) through (h), inclusive, of the Baltimore County Code, 1988, as amended.

This Resolution was unanimously approved by the County Council at its September 4, 2001 meeting and is being forwarded to you for appropriate action.

Sincerely,

Thomas J. Peddicord, Jr.

Thomas J. Peddicord, Jr.
Legislative Counsel/Secretary

TJP:dp
Enclosure

r10601.wpd

01 SEP -6 AM 10:36

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 2001, Legislative Day No. 16

Resolution No. 106-01

Mr. Kevin Kamenetz, Councilman

By the County Council, September 4, 2001

A RESOLUTION of the Baltimore County Council to approve the Planning Board's certification that the zoning reclassification petition filed by Pennrose Properties, Inc. for the property located at 3134 Rolling Road and situated in the Second Councilmanic District, should be exempted from the regular cyclical procedure of Section 2-356(c) through (h), inclusive, of the Baltimore County Code, 1988, as amended.

WHEREAS, the Planning Board, by Resolution dated August 16, 2001, has certified that early action on the Petition for Zoning Reclassification filed by Pennrose Properties, Inc., requesting a reclassification of the above described property is manifestly required in the public interest; and

WHEREAS, the County Council of Baltimore County, in accordance with the provisions of Section 2-356(i), may approve said certification and exempt the Petition for Zoning Reclassification from the regular procedures of Section 2-356.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, that the certification by the Planning Board that early action on the zoning reclassification petition filed by Pennrose Properties, Inc. , with the documented site plan filed with the request for exemption from the regular cyclical procedure, be

and the same is hereby approved; and

BE IT FURTHER RESOLVED, that the County Council's approval herein does not constitute an opinion on the merits of the petition; and

BE IT FURTHER RESOLVED, that the Board of Appeals shall schedule a public hearing on said petition in accordance with Section 2-356(i) of the Baltimore County Code.

READ AND PASSED this 4th day of September, 2001.

BY ORDER

Thomas J. Peddicord, Jr.
Secretary

ITEM: Resolution 106-01

Baltimore County
Planning Board

401 Bosley Avenue - Ste 406
Towson, Maryland 21204
410-887-3495
Fax: 410-887-5862
E-mail: planning@co.ba.md.us

August 17, 2001

The Hon. S. G. Samuel Moxley
Chairman, Baltimore County Council
County Courthouse
Towson, MD 21204

Re: Certification on Reclassification Petition -
Pennrose Properties, Inc.

Dear Councilman Moxley:

At a special meeting on August 16, 2001, the Baltimore County Planning Board voted, in accordance with Section 2-356(i) of the County Code, to certify to the County Council that early action upon the petition by the Pennrose Properties, Inc., for zoning reclassification of the property at 3134 Rolling Road is manifestly required in the public interest.

Enclosed is the report on this matter by the Office of Planning, as accepted by the Planning Board. The Planning staff will be pleased to assist the Council in the consideration of this matter.

Sincerely,

Arnold F. 'Pat' Keller, III
Secretary

AFK:TD:rlh

Enclosure

c: Members, Baltimore County Council
Thomas J. Peddicord, Jr., Legislative Counsel/Secretary
Brian J. Rowe, County Auditor
John M. Wasilisin, Administrative Officer
Edward J. Gilliss, County Attorney
Lawrence S. Wescott, Chairman, Board of Appeals
Peter M. Zimmerman, People's Counsel
Arnold Jablon, Director, Permits & Development Management
G. Scott Barhight, Petitioner's Representative

Printed with Soybean Ink on Recycled Paper

Come visit the County's Website at www.co.ba.md.us

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

Date: August 3, 2001

To: Baltimore County Planning Board

From: Arnold F. 'Pat' Keller, III

Re: Pennrose Properties, Inc. (3134 Rolling Road)

The attached letter requests certification by the Planning Board for out-of-cycle action on a zoning petition for reclassification of the subject property.

Section 2-356(i) of the Baltimore County Code authorizes the Planning Board to certify to the County Council that expedited scheduling of a reclassification hearing by the Board of Appeals "is manifestly required in the public interest or because of an emergency." Neither the certification by the Planning Board nor a concurrence by the County Council would constitute an opinion on the merits of the petition; the effect is simply to take the petition out of the normal cycle zoning schedule for an earlier hearing.

The subject request for certification has been reviewed by planning staff and without taking a position on the merits of the case, the Office of Planning recommends to the Planning Board that certification for early action upon this zoning reclassification petition is required.

Sincerely,

Pat Keller

Arnold F. 'Pat' Keller, III
Director

AFK:GK:lsn
Attachment

S:\COMPLAN\GARY\PENNROSE PROPERTIES, INC..doc

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on Recycled Paper

SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202-1626
TELEPHONE 410 347-8700
FAX 410 752-7092

30 COLUMBIA CORPORATE CENTER
10440 LITTLE PATUXENT PARKWAY
COLUMBIA, MARYLAND 21044
TELEPHONE 410 884-0700
FAX 410 884-0719

JULIE A. DIGRIGOLI
DIRECT NUMBER
410 832-2084
gbarbight@wtplaw.com

WHITEFORD, TAYLOR & PRESTON
L.L.P.

210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4515
410 832-2000
FAX 410 832-2015
www.wtplaw.com

1025 CONNECTICUT AVENUE, NW
WASHINGTON, D.C. 20036-5405
TELEPHONE 202 659-6800
FAX 202 331-0573

1317 KING STREET
ALEXANDRIA, VIRGINIA 22314-2928
TELEPHONE 703 836-5742
FAX 703 836-0265

July 30, 2001

Via Hand Delivery
Mr. Arnold F. "Pat" Keller
Director
Baltimore County Office of Planning
4th Floor, County Office Building
401 Bosley Avenue
Towson, MD 21204

Re: Pennrose Properties, Inc.
3134 Rolling Road
Petition for Reclassification

Dear Mr. Keller,

This Office represents Pennrose Properties, Inc.'s ("Pennrose") with respect to the above-referenced matter. Pennrose is a Philadelphia, Pennsylvania based developer who has gained an excellent reputation for developing and managing high quality, affordable housing projects in Maryland, Washington D.C., Pennsylvania, New Jersey, and Delaware. With this letter, Pennrose respectfully requests that its Petition for Reclassification on the above property be considered out-of-cycle by the Baltimore County Planning Board. As explained herein, early action upon Pennrose's Petition for Reclassification is manifestly required in the public interest.

By way of background, Pennrose is the contract purchaser and developer of certain property located at 3134 Rolling Road in the Second (2nd) Councilmanic District ("Subject Property"). The Subject Property currently contains 11.8 acres ± of D.R. 5.5 zoned property. I have enclosed a vicinity map and zoning map to assist you in locating the property.

With this Petition for Reclassification, Pennrose seeks to reclassify the Subject Property from a D.R. 5.5 to a D.R.16 zoning classification. If Pennrose's Petition for

Reclassification is granted, it will develop a 119 unit senior independent living rental housing building on the property. The project will include 57 one-bedroom units and 62 two-bedroom units. Please be advised that the project will not contain a nursing, assisted living or medical component. Pennrose's senior rental housing building will provide an affordable housing option to seniors 62 years and older. I have enclosed elevations of the proposed project for your review.

It is manifestly in the public interest to certify that early action should be taken on Pennrose's Petition for Reclassification. In addition to such justifications as Pennrose may present at the hearing in this matter, Pennrose offers the following in support of its Petition: First, there is unquestionably an immediate need for Senior Independent Living Facilities, like the one proposed by Pennrose, in Baltimore County. According to the Maryland Department of Aging, Baltimore County currently has the largest population of residents aged 60 years and older than any other County in Maryland. The State's census data indicates that there are 139,116 residents over the age of 60 currently living in Baltimore County. The census projects that this number will grow to 161, 232 residents in 2010 and 205,204 residents in 2020. This represents a 47.5% increase in the Baltimore County's senior population between the years 2000 and 2020.

Additionally, the Baltimore County 2010 Master Plan recognizes that Baltimore County has experienced an increase in the number of persons over the age of 65. The Master Plan states that "[t]he percentage of senior population in Baltimore County is increasing at such a rate that by 2010, 15.6% of the County's population will be senior citizens". (*See* 2010 Master Plan, p.10). Despite these astounding statistics, Baltimore County has very little senior rental apartment buildings currently available. According to the Baltimore County Department of Aging, there are only 30 senior rental buildings available to serve 139,116 senior residents.

Secondly, certifying Pennrose's Petition for early action is imperative in that it allows Pennrose to seek the necessary State funding for the project. In order to offer the proposed housing at an affordable price to seniors, Pennrose must obtain financial assistance from the Maryland Department of Housing and Community Development ("DHCD"). To qualify for such assistance, Pennrose must submit a comprehensive application package to DHCD by September 21, 2001.

Based on the foregoing, Pennrose asserts it is manifestly in the public interest to certify that early action should be taken on its Petition for Reclassification. Please do not hesitate to contact me if you have any questions regarding this matter. Additionally, please contact me if you need any additional information in order to

evaluate Pennrose's request. Thank you in advance for consideration of this request.

Sincerely,

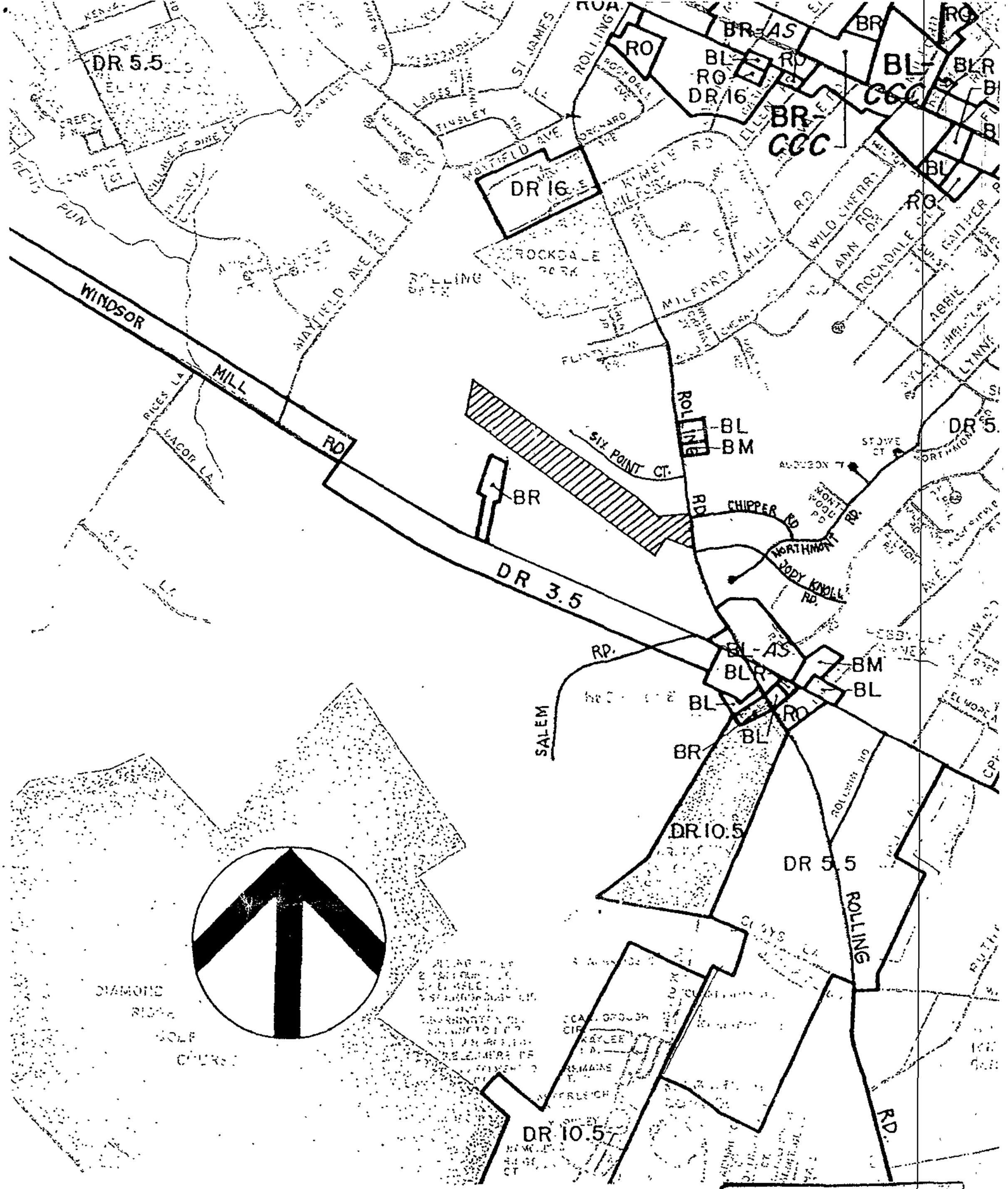
Julie A. DiGrigoli

Enclosures:

1000 Scale Zoning Map
Elevations (3)

ccs: The Honorable Kevin Kamenetz (w/enclosures)
Mr. Jeffrey Long, Office of Planning (w/ enclosures)
Mr. Timothy K. Dugan, Office of Planning (w/enclosures)
Ms. Laurie Hay, Second District Planner, Office of Planning (w/ enclosures)
Ms. Catherine Caskey, Pennrose Properties, Inc.
Mr. Sandy J. Marenberg, Marenberg Enterprise Inc.
G. Scott Barhight, Esquire

231042



ROLLING ROAD SENIOR COMMUNITY

ZONING MAP SCALE: 1" = 1,000'

BALTIMORE COUNTY ZONING WESTERN AREA, MAP 2-B

RECEIVED
JUL 30 2001
OFFICE OF PLANNING

Pet. # 13

C.A. Dutch Ruppersberger
Baltimore County Executive

Executive Office
400 Washington Avenue
Towson, Maryland 21204
410-887-2450
Fax: 410-887-4049

September 27, 2001

Ms. Catherine Caskey
Penrose Properties, Inc.
901 Druid Park Lake Drive, Suite 100
Baltimore, Maryland 21217

Dear Ms. Caskey;

Thank you for providing information about your proposed 119-unit affordable elderly housing development known as Rolling Road Senior Apartments, to be located on Rolling Road in Baltimore County. We are aware you have worked with Councilman Kamenetz' office and the local community to gain support for the project.

The proposed development site is located within the Community Conservation area designated in the County's Master Plan, and is also within the "Priority Funding Area" for Maryland's Smart Growth initiatives. As a result of these designations, County and State resources are targeted for investment, stabilization, and revitalization in this area.

I understand you have requested a Payment in Lieu of Taxes (PILOT) agreement on similar terms as those provided for other affordable elderly communities that have been developed in the County. Typically, PILOT Agreements require a minimum tax payment of between $100 and $250 per unit per year out of operating income, with a second payment to the County to the extent there is cash flow after payment of debt service on the project.

The County is willing to offer such property tax relief as our contribution to the project. However, final terms and conditions of an agreement will be subject to review and underwriting by the Office of Community Conservation, and final approval by the Baltimore County Council. Please submit development and operating projections to the Office of Community Conservation at the appropriate time.

Best wishes for a favorable review by the Maryland Department of Housing and Community Development in the next round of competition for low income housing tax credits. We look forward to working with you to meet the growing needs of the elderly in Baltimore County.

Sincerely,

C.A. Dutch Ruppersberger

C.A. Dutch Ruppersberger
County Executive

CADR:esg
cc: Councilman Kevin Kamenetz
John M. Wasilisin, Administrative Officer
Robert J. Barrett, Special Assistant to the County Executive
Mary L. Harvey, Director, Office of Community Conservation
Stephanie S. Ruskin, Grants Administration

Pet. # 14

COUNTY COUNCIL OF BALTIMORE COUNTY
COURT HOUSE, TOWSON, MARYLAND 21204

KEVIN KAMENETZ
COUNCILMAN, SECOND DISTRICT

COUNCIL OFFICE: 410-887-3196
FACSIMILE: 410-887-5791

October 25, 2001

Ms. Catherine Caskey
Penrose Properties, Inc.
901 Druid Park Lake Drive, Suite 100
Baltimore, Maryland 21217

Dear Ms. Caskey:

This letter is written to confirm that this office supports the proposed affordable, senior housing development to be located at 3134 Rolling Road. Your team has done an excellent job in responding to the needs and demands of the community.

I understand that the project is contingent upon an award of housing tax credits from the State of Maryland and I encourage you to include this letter in your submission to the Maryland Department of Housing and Community Development.

There is an immediate need for this type of housing in that area and I look forward to continuing to work with your team and the community to meet the growing needs of the elderly in Baltimore County.

Very truly yours,

Kevin Kamenetz

Kevin Kamenetz
Councilman, Second District

KK:pln
caskey.ltr.wpd

Pet. # 3



SKETCH

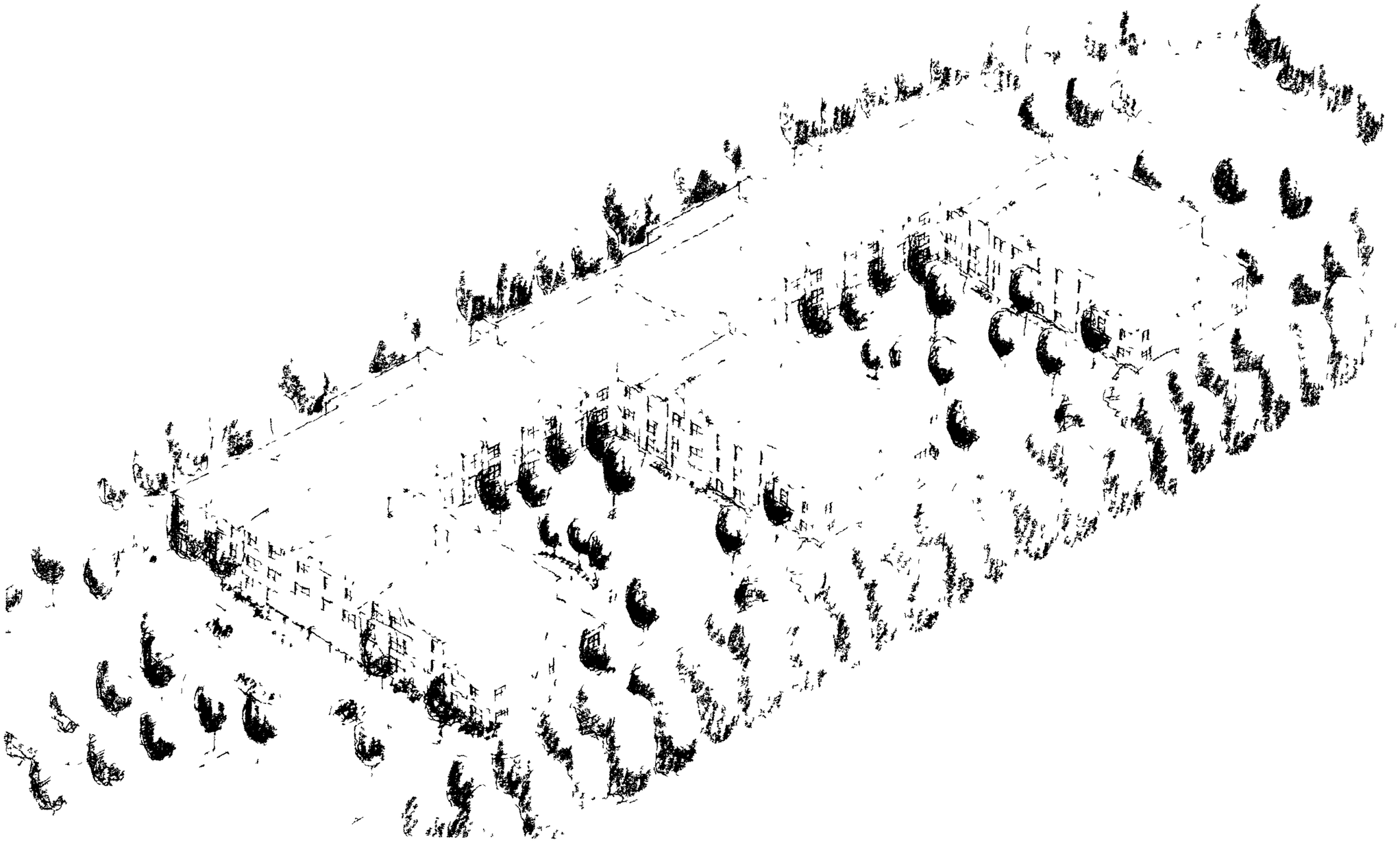
ROLLING ROAD SENIOR APARTMENTS

PENNROSE PROPERTIES INC.

HORD COPLAN MACHT

NO SCALE 06.25.2001

Per #4



ROLLING ROAD SENIOR APARTMENTS

PENNROSE PROPERTIES INC

HORD COPLAN MACHT

NO SCALE 06.2.2011

Pet #5

Baltimore County
Office of Community Conservation

Investment Building, Suite 800
One Investment Place
Towson, Maryland 21204
410-887-3317
Fax 410-887-5696
TTY 410-887-2799

August 13, 2001

Ms Catherine C Caskey
Pennrose Properties, Inc
901 Druid Park Lake Drive, Suite 100
Baltimore, MD 21217

Dear Ms Caskey

Thank you for taking the time to meet with us to discuss Pennrose Properties' proposed affordable, senior housing development to be located at 3134 Rolling Road We are aware you have worked with Councilman Kamenetz' office and the local community to gain support for the project

The proposed development site is located within the Community Conservation area designated in the County's Master Plan, and is also within the "Priority Funding Area" for Maryland's Smart Growth initiatives As a result of these designations, County and State resources are targeted for investment, stabilization and revitalization in this area

I understand the project is contingent upon an award of low income housing tax credits from the State of Maryland In our communities, we see a growing population of elderly residents on fixed incomes who are experiencing difficulty maintaining their current living arrangements A successful application will enable you to provide elderly households in Baltimore County with another option of affordable housing

The Office of Community Conservation supports the proposed development of Rolling Road Senior Apartments and wishes you a favorable review by the Maryland Department of Housing and Community Development in the next round of competition We look forward to working with you to meet the growing needs of the elderly in Baltimore County

Sincerely,

Mary L Harvey

Mary L Harvey,
Director

MLH ssr

cc Councilman Kevin Kamenetz, Second District
John M Wasilisin, Administrative Officer
Stephanie S Ruskin, Office of Community Conservation

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on Recycled Paper

BALTIMORE COUNTY, MARYLAND
Office of Community Conservation

Inter-Office Correspondence

Date October 11, 2001

To Department of Permits and Development Management
Attn George Zahner
M S 1105

From Mary L Harvey,
Director

Re **Case No CR-02-120**
Item No 120
Penrose Properties, Inc
w/s of Rolling Road between Chipper Road and Jody Knoll Road

The need for affordable, elderly housing in Baltimore County is well documented In our communities, we see a growing population of elderly residents on fixed incomes who are experiencing difficulty maintaining their current living arrangements This Project will provide elderly households in Baltimore County with another option of affordable housing

The Office of Community Conservation supports the proposed development of Rolling Road Senior Apartments, has endorsed their application for financing through the Maryland State Department of Housing and Community Development and therefore supports the Petition for Reclassification and the request for a variance pending before you

OFFICE OF COMMUNITY CONSERVATION

By Mary L. Harvey
Mary L Harvey, Director

Pet #6

Pc6 #7

Laurie Penrose

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO Mr Lawrence S Wescott, Chairman
Baltimore County Board of Appeals

DATE October 4, 2001

FROM Arnold F 'Pat' Keller, III, Director
Baltimore County Office of Planning

SUBJECT. Case # CR-02-120-A
Dr Mirza Hussain Ali Baig, Legal Owner
Pennrose Properties, Inc , Contract Purchaser
West side of Rolling Road between Chipper Road and Jody Knoll Road

At its meeting on August 16, 2001, the Baltimore County Planning Board voted in accordance with Section 2-356(1) of the County Code, to certify to the County Council that early action upon the Petition for Zoning Reclassification of the subject property was manifestly required

The County Council unanimously approved a Resolution approving the Planning Board's certification on September 4, 2001

Enclosed herewith is a copy of the report of the Office of Planning

Pat Keller

Arnold F 'Pat' Keller, III

AFK JWL kma

W \DEVREV\cr-02-120-A-letter doc

Pet #8

Liberty Road Community Council, Inc.

P.O. Box 31617
Baltimore, MD 21207

RR - Community

RECEIVED
MAR 9 2001
STAVROU

March 6, 2001

Mr. Sandy J. Marenberg, Project Developer
Stavrou Senior Communities, L.L.C.
5100 Forbes Blvd, Suite 101
Lanham, Md. 20706

Dear Mr. Marenberg,

The Liberty Road Community Council supports your proposed Rolling Road Senior Community for 150 units at 3134 Rolling Road. Our recommendation is based on your experience in developing similar communities and your committment to our community.

These committments include meeting with the neighborhood residents every 6 months if the community sees the need and working to improve the community through support of local school needs and similar enhancements to the quality of life in our community.

Sincerely,

William Obriecht

William Obriecht, President

Pet. #4

Liberty Road Community Council
2137 Gwynn Oak Ave.
Baltimore, Md. 21207

October 25, 2001

Board of Appeals
400 Washington Ave. Room 49
Towson, Md 21204

Re. CR-02-120-A

The Liberty Road Community Council has supported the Housing for the Elderly at 3134 Rolling Road. Since that time questions have been raised about whether multifamily units for residents of any age could be operated at that address at some future date In addition concerns have been expressed about the size of the buffer between the building and the adjacent DR 5 5 properties.

Consequently I have requested that several provisions be part of the proposal in order to protect the neighbors These are included in the attached document

Baltimore County has had a number of meetings with the developer about this project and I am sure the county has a strong interest in protecting the community residents. Therefore I am asking you to assist me in insuring that Baltimore County includes these safegaurds for our community.

Sincerely,

William Ooriecht, President.

Pet # 4

Comments on the Proposed Rolling Road Senior Community @ 3134 Rolling Road

The purpose of Zoning is to protect the quality of life of the residents while meeting the needs for the various uses needed for a society This proposal meets a need for senior housing but does impact the surrounding area which is DR 5 5 with some BR to the south

The following should be part of the proposal in order to protect the neighbors

1 Both the developer and Baltimore County should provide a concrete statement that the property can be used only for the stated purpose of senior housing and that the property will revert to DR 5 5 if senior housing does not succeed

2 There should be no exceptions to the regular protections such as buffer zones and landscaping The project should include 50 foot landscaped buffers on the north and south sides of the building

3 The number of residents for the development has been reduced to 119 Since DR 10 5 would allow 118 residents the added protection for the neighbors of reclassifying the property to DR 10 5 should be accomplished as soon as possible

4 There should be a commitment by Baltimore County that the Liberty Road community will receive no more than 25% more residential units for seniors than one would expect based on the population of the Liberty Road community compared to the population of Baltimore County If Liberty road has 10% of the population no more than 12 5% of the residential units in Baltimore County will be approved for the Liberty Road community

William Obrecht

William Obrecht, President LRCC

Pg # 10

Liberty Randallstown Coalition, Inc.

"United for the Future"

October 25, 2001

ELLA W CAMPBELL
President

CHERYL PASTEUR
First Vice President

KENNETH N OLIVER
Second Vice President

BILL OBRIECHT
Third Vice President

ROBERT W FISCHER
Treasurer

MIKE CHAPMAN
Recording Secretary

CHRISTINE CYPRESS
Financial Secretary

BARRY L SCHLEIFER
Executive Director

Ms. Catherine Caskey
Pennrose Properties, Inc.
901 Druid Park Lake Drive
Suite 100
Baltimore, Maryland 21217

Re: 3134 Rolling Road

Dear Ms. Caskey:

Please accept this letter from Liberty Randallstown Coalition to be your partner in the redevelopment of 3134 Rolling Road, and to be the coordinator of the tenant services that will provided at the finished development. We look forward to building on the success of recent developments in the area, and, further, to help with adding much needed senior housing. We have sent you a detailed tenant service package, which include all our services to be provided at the new development. We understand that we will receive $50,000 (over a 5 year period) for this work

The community believes that this project will provide quality housing conducive to the revitalization of the neighborhood. Therefore, the Liberty Randallstown Coalition is in support of the development teams' plan to newly construct 119 units of new, affordable, senior housing at the subject site

Sincerely,

Barry L. Schleifer
Executive Director

Pet. # 11

Baltimore County
Planning Board

401 Bosley Avenue - Ste 406
Towson Maryland 21204
410-887-3495
Fax 410-887-5862
E-mail planning@co ba md us

August 17, 2001

The Hon S G Samuel Moxley
Chairman, Baltimore County Council
County Courthouse
Towson, MD 21204

Re Certification on Reclassification Petition -
Pennrose Properties, Inc

Dear Councilman Moxley

At a special meeting on August 16, 2001, the Baltimore County Planning Board voted, in accordance with Section 2-356(1) of the County Code, to certify to the County Council that early action upon the petition by the Pennrose Properties, Inc , for zoning reclassification of the property at 3134 Rolling Road is manifestly required in the public interest

Enclosed is the report on this matter by the Office of Planning, as accepted by the Planning Board The Planning staff will be pleased to assist the Council in the consideration of this matter

Sincerely,

Arnold F 'Pat' Keller, III
Secretary

AFK TD rlh

Enclosure

c Members, Baltimore County Council
Thomas J Peddicord, Jr , Legislative Counsel/Secretary
Brian J Rowe, County Auditor
John M Wasilisin, Administrative Officer
Edward J Gilliss, County Attorney
Lawrence S Wescott, Chairman, Board of Appeals
Peter M Zimmerman, People's Counsel
Arnold Jablon, Director, Permits & Development Management
G Scott Barhight, Petitioner's Representative

(SHEET NW-6-G)

N 20,000

W 42,000

W 40,500

W 39,000

W 37,500

E 672,000

N 553,000

N 19,000

N 18,000

N 17,000

N 16,000

N 15,000

N 14,000

N 13,000

N 12,000

N 11,000

N 10,000

W 36,000

W 34,500

W 33,000

W 31,500

W 30,000

W 28,500

W 27,000

W 25,500

W 24,000

W 22,500

W 21,000

W 19,500

W 18,000

W 16,500

W 15,000

W 13,500

W 12,000

W 10,500

W 9,000

W 7,500

W 6,000

W 4,500

W 3,000

W 1,500

E 672,000

N 553,000

N 20,000

(SHEET NW-5-F)

(SHEET NW-4-G)

(SHEET NW-5-H)

L-NE

BL-CCC

BL

RO

ROCKDALE

BL-AS

BL

RO

D.R. 16

D.R. 5.5

RO

RO

MILFORD

BELTWAY

D.R. 5.5

D.R. 5.5

PLEASANT HEIGHTS

D.R. 5.5

D.R. 3.5

D.R. 5.5

D.R. 5.5

T R E E S

D.R. 16

D.R. 5.5

D.R. 5.5

HEBBVILLE ELEM. SCHOOL

AREA UNDER CONSTRUCTION

D.R. 5.5

OR-2

OR-2

O-3

D.R. 16

D.R. 5.5

D.R. 3.5

BL-AS

HEBBVILLE

BM

BM

MILLVALE RD.

SUBET ROAD

MILFORD GARDEN RD.

MILL WILD

MONTWOOD RD.

POOL

ROCKDALE

GATHER ROAD

ABBIE ROAD

MILTON AVE.

ANN COURT

SUNSET LA.

SHADY LANE

SHELLEY DR.

PLACE

LIBERTY

JO ARVEN DR.

BROOKHAVEN RD.

LYNN HAVEN DR.

MARYVALE ROAD

MT. BURN ROAD

MERLE RD.

WASHINGTON ROAD

SUBET ROAD

RIPPLE ROAD

LYNN ROAD

NORTHMONT RD.

STOWE RD.

DELL CT.

AUDOBON COURT

NORTHMONT COURT

MONWOOD ROAD

RIPPLE CT.

MILLWOOD ROAD

ALLMONT ROAD

CHIPPER RD.

KNOLL RD.

JODY

NORTHMONT

PRIVATE RD.

POOL

AVE.

CASTLEMOOR

PRIVATE ROAD

DOOMAN AVE.

GARSIDE AVE.

CRESSON AVE.

RICHWOOD ROAD

GREENFIELD ROAD

PINE

POOL

POOL

LIBERTY ROAD

BELLMORE RD.

CORONADO ROAD

WASHINGTON AVE.

LIBERTY

TIMANUS LANE

ROAD

OAK HAVEN CIR.

DEXHILL

VARGIS

GARDENS

MARSTON RD.

DIGBY RD.

REMOOR RD.

SHIRLEY RD.

ROAD

BROMPTON RD.

CROYDON CT.

BALTIMORE

CROYDON

ROAD

2000 COMPREHENSIVE ZONING
ADOPTED by
THE BALTIMORE 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'±	HEBBVILLE ROCKDALE WOODMOOR	N.W. 5-G
DATE OF PHOTOGRAPHY JANUARY 1986		

PC 113

NW 5G

(SHEET N.W.-6-H)

D.R. 5.5 | D.R. 16 | D.R. 5.5

R.C. 5 | R.C. 6 | D.R. 5.5 | D.R. 5.5 | D.R. 5.5

R.C. 6 | R.C. 5 | D.R. 5.5 | D.R. 5.5

R.C. 6 | R.C. 5 | R.C. 6 | D.R. 5.5

R.C. 6 | R.C. 6 | D.R. 3.5 | D.R. 5.5

R.C. 6 | R.C. 6 | D.R. 3.5 | R.C. 6

(SHEET N.W.-4-H)

(SHEET N.W.-5-G)

L-NW L-NE

2000 COMPREHENSIVE ZONING MAP
ADOPTED BY
THE BALTIMORE COUNTY COUNCIL
OCTOBER 10, 2000
Bill Nos. S[illegible]-00, SE-00, 91-00, 92-00, 93-00

[signature]
Chairman, County Council

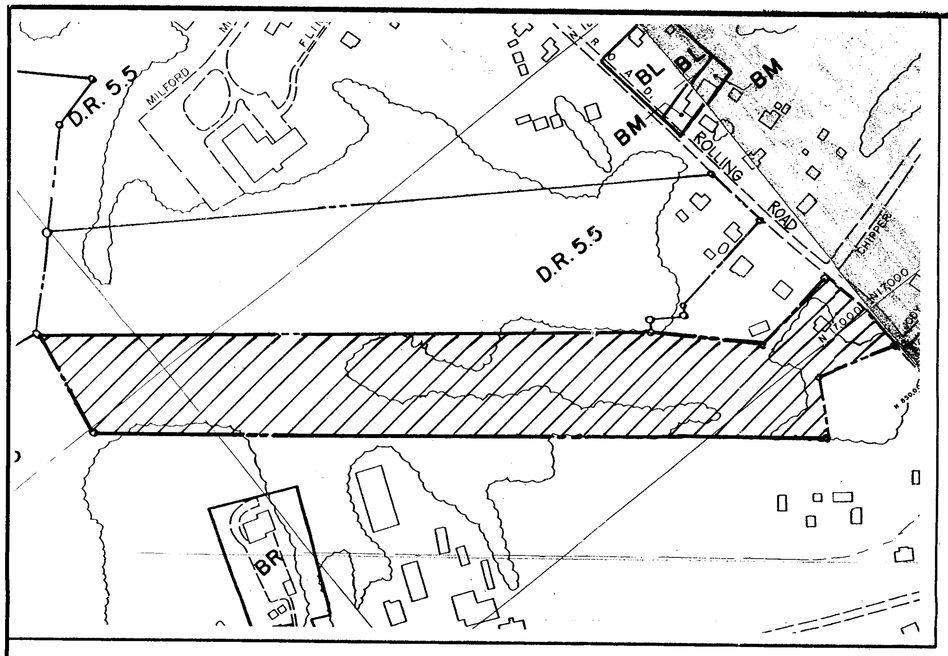
THIS MAP HAS BEEN REVISED IN SELECTED AREAS.
TOPOGRAPHY COMPILED BY PHOTOGRAMMETRIC METHODS
BY BUCHART-HORN, INC. BALTIMORE, MD. 21210

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
OFFICIAL ZONING MAP

SCALE	LOCATION	SHEET
1" = 200'±	HEBBVILLE	N.W. 5-H
DATE OF PHOTOGRAPHY JANUARY 1986		

PC Exh 11A

NW 5H



ZONING MAP N.W. 5-H, 5-G

SCALE: 1"-200'

GENERAL NOTES:

1. CONTRACT PURCHASER: PENNROSE PROPERTIES, INC.
   c/o MERENBERG ENTERPRISES, INC.
   11 CHASEMOUNT COURT
   BALTIMORE, MARYLAND 21209

   APPLICANT: SAME

2. PREPARED BY: STV INCORPORATED
   21 GOVERNOR'S COURT
   BALTIMORE, MARYLAND 21244
   PHONE: 410-944-9112
   CONTACT: DEBRA K. WITTLE, RLA

3. PREMISES ADDRESS: 3134 ROLLING ROAD
   BALTIMORE, MARYLAND 21244

4. TAX ASSESSMENT NUMBERS: TAX MAP 87, GRID 4
   PARCEL 267
   TAX ACCOUNT NO. 0202850040

5. DISTRICT NUMBERS: ELECTION DISTRICT 2
   COUNCILMANIC DISTRICT 2
   CENSUS TRACT 4036.02
   REGIONAL PLANNING DISTRICT 313C

6. WATERSHED: EASTERN THIRD ZONE
   SUBWATERSHED: 53C

7. ZONING DATA

   A. EXISTING USE: VACANT; NO BUILDINGS LOCATED ON-SITE
      PROPOSED USE: CLASS A HOUSING FOR THE ELDERLY, SENIOR INDEPENDENT LIVING ONLY.

   B. CURRENT ZONING AND ACREAGE: D.R.-5.5 11.28AC.

      PROPOSED ZONING: D.R. 16 11.28AC.: 119 DWELLING UNITS
      57 1-BR, 62 2-BR

   C. SETBACK REQUIREMENTS:
      FRONT - 40 FT. FROM FRONT PROPERTY LINE
      SIDE - 30 FT. FOR ONE SIDE YARD,
      REAR - 40 FT. FROM REAR PROPERTY LINE

   D. PARKING REQUIREMENTS: 79 SPACES (1 SPACE PER 1½ UNITS):
      119 UNITS/1.5= 79 SPACES REQUIRED

      PARKING PROVIDED:

	1BR	2BR	
FLOOR 1 :	16	23	
FLOOR 2 :	22	22	
FLOOR 3 :	20	18	
TOTAL =	58 +	63	= 121 SPACES

      121 SPACES (INCLUDES 6 HANDICAP ACCESSIBLE SPACES)

      ALL SPACES WILL BE A MINIMUM OF 8.5 FT. X 18 FT. ALL PARKING AREAS ARE TO BE PAVED WITH A DURABLE AND DUSTLESS SURFACE OF BITUMINOUS CONCRETE AND PERMANENTLY STRIPED.

   E. BUILDING HEIGHT: MAXIMUM ALLOWED - 60 FT.;
      PROPOSED - 46 FT. (IN RTA-35')

   F. AMENITY OPEN SPACE - NOT REQUIRED

   G. ZONING MAP NUMBER - N.W. 5-H, 5-G

8. ZONING RELIEF REQUESTED:
   A. PURSUANT TO BCZR SECTION 1B01.2.B.2, BCZR 504.2 AND CMDP RESIDENTIAL STANDARDS FOR MULTI-FAMILY BUILDINGS, PENNROSE SEEKS A MODIFICATION OF STANDARDS AND A VARIANCE TO PERMIT A BUILDING LENGTH OF 428' IN LIEU OF THE PERMITTED 240'.

9. BUILDING WILL COMPLY WITH ALL APPLICABLE BUILDING CODE AND FIRE CODE PROVISIONS.

10. SCREENING AND LANDSCAPING SHALL BE PROVIDED IN COMPLIANCE WITH THE BALTIMORE COUNTY LANDSCAPE MANUAL AND BCZR.

11. OPEN SPACE WILL BE PROVIDED IN ACCORDANCE WITH THE BALTIMORE COUNTY LOCAL OPEN SPACE MANUAL.

12. HOURS OF OPERATION: 24 HRS. NUMBER OF EMPLOYEES: 5.

13. THE SITE DOES NOT LIE WITHIN THE CHESAPEAKE BAY CRITICAL AREA.

14. THIS SITE DOES NOT INCLUDE NOR IS CONTIGUOUS TO ANY BUILDINGS, PROPERTY OR SITES REGISTERED ON THE HISTORICAL INVENTORY LIST.

15. THERE IS NO KNOWN ARCHAEOLOGICAL SITE ON THIS PROPERTY.

16. THIS SITE WILL BE REQUIRED TO MEET FOREST CONSERVATION REQUIREMENTS.

17. STORMWATER MANAGEMENT WILL BE REQUIRED FOR THIS SITE.

18. TRASH WILL BE COLLECTED PRIVATELY.

19. PREVIOUS COMMERCIAL PERMIT(S): N/A

20. ZONING HISTORY: N/A

21. ANY DISTURBANCE IN THE SLOPE EASEMENT WILL REQUIRE APPROVAL FROM MARYLAND STATE HIGHWAY ADMINISTRATION.

22. ALL LIGHTING FIXTURES TO ILLUMINATE THE PROPERTY SHALL BE ARRANGED TO REFLECT AWAY FROM PUBLIC STREETS AND ADJACENT PROPERTIES. MAX. LIGHTING HEIGHT IN RTA IS 16'.

23. NO OUTSIDE STORAGE OR DISPLAY SHALL BE PERMITTED.

24. ALL PROPOSED SIGNAGE SHALL BE IN COMPLIANCE WITH SECTION 450 OF THE BALTIMORE COUNTY ZONING REGULATIONS MANUAL.

25. THIS SITE IS CURRENTLY DENSELY VEGETATED.

26. THERE ARE NO KNOWN WELLS, UNDERGROUND STORAGE TANKS OR HAZARDOUS MATERIALS ON THE SITE.

27. THIS SITE IS NOT LOCATED WITHIN A MORATORIUM AREA.

28. ROLLING ROAD IS CLASSIFIED AS A PRINCIPAL ARTERIAL PER THE FEDERAL CLASSIFICATION MAP.

29. THERE ARE NO KNOWN EXISTING PONDS, STREAMS, BODIES OF WATER, WATER COURSES, 100 YR FLOODPLAINS, OR UNUSUAL NATURAL FORMATION ON THIS SITE.

30. SUBJECT PROPERTY WILL BE DEVELOPED IN SUBSTANTIAL CONFORMANCE WITH DOCUMENTED PLAN TO ACCOMPANY RECLASSIFICATION PETITION AND VARIANCE PETITION, HOWEVER, THE DEVELOPER MAY MAKE REFINEMENTS TO THE PLAN ADMINISTRATIVELY AS LONG AS SUCH CHANGES DO NOT REQUIRE A VARIANCE AND ARE WITHIN THE SPIRIT AND INTENT OF THE APPROVED DOCUMENTED PLAN TO ACCOMPANY RECLASSIFICATION PETITION AND VARIANCE PETITION

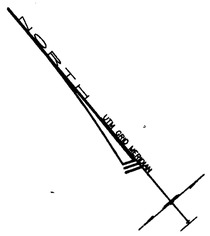
31. THIS SENIOR INDEPENDENT HOUSING COMMUNITY WILL HAVE EMANATIONS ORDINARILY ASSOCIATED WITH SUCH USE.

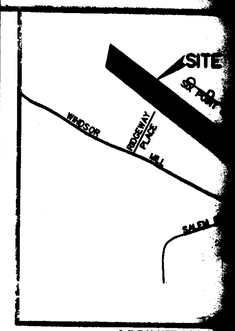
32. LOCAL OPEN SPACE REQUIREMENT:

    ACTIVE LOS 119 UNITS x 650 SF./UNIT = 77,350 SF. (1.78 AC.)
    PASSIVE LOS 119 UNITS x 350 SF./UNIT = 41,650 SF. (0.95 AC.)

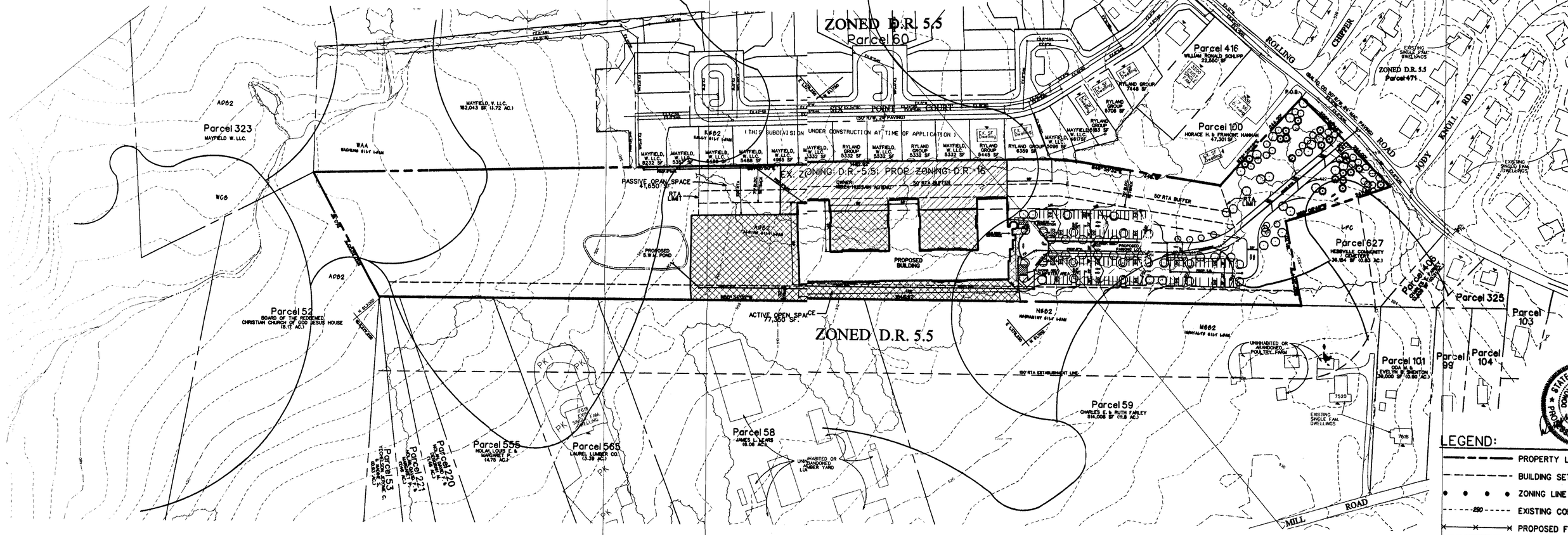
    LOCAL OPEN SPACE PROVIDED:

    ACTIVE = 77,350 SF.
    PASSIVE = 41,650 SF.





VICINITY MAP
SCALE: 1" = 2,000'



LEGEND:

- PROPERTY LINE
- BUILDING SETBACK
- ZONING LINE
- 250 EXISTING CONTOUR
- PROPOSED FENCE
- PROPOSED CONC
- 100' R.T.A.
- INDICATES BLDG.

STV Incorporated

engineers / architects / planners / scientists / construction managers

21 Governor's Court Baltimore, MD 21244-2722 (410) 944-9112

REVISIONS		
NO.	DATE	DESCRIPTION

GRAPHIC SCALE

300 200 100 0 100 300
250 150 50 200

PLAN PREPARATION			
DRAWN BY:	M. BLOW	DATE:	JULY, 2001
DESIGNED BY:	K. HOLLAND	SCALE:	1" = 100'
CHECKED BY:	D. OLSEN	JOB NO.:	61-03-10707

DOCUMENTED PLAN TO ACCOMPANY RECLASSIFICATION PETITION AND VARIANCE PETITION

ROLLING ROAD SENIOR COMMUNITY

ROLLING ROAD
BALTIMORE COUNTY, MARYLAND

DRA

SH
1

FILE: R:\PROJECTS\10707\Z001roll.dgn
DATE: 29-Aug-01 09:13

ADJOINING PROPERTY
OWNER ADDRESSES

RYLAND GROUP
SUITE 520
7250 PARKWAY DRIVE
HANOVER, MD 21076-1343

MAYFIELD W LLC
SUITE 302
1301 YORK ROAD
LUTHERVILLE TIMONIUM, MD 21093-6006

ZONED D.R. 5.5
Parcel 60

SIX POINT COURT
(50' R/W, 29' PAVING)

EX. ZONING: D.R.-5.5; PROP. ZONING: D.R.-16

OWNER
MIRZA HUSSAIN ALTBAIG

PROPOSED BUILDING

PROPOSED PARKING LOT

PASSIVE OPEN SPACE
41,650 SF.

ACTIVE OPEN SPACE
77,350 SF.

RTA LIMIT

50' RTA BUFFER

75' BLDG SETBACK

100' RTA

30' SETBACK

APPROX 700' TO PROP. LINE

APPROX 900' TO PROP. LINE

BUILDING ENTRANCE

SIAMESE 'Y' CONNECTION

LOADING AREA
DUMPSTER AREA

PROPOSED S W M POND

150' RTA ESTABLISHMENT LINE

ZONED D.R. 5.5

KE02
KELLY SILT LOAM

AP02
ALDINO SILT LOAM

NE02
NESHAMINY SILT LOAM

MS02
MONTALTO SILT LOAM

MAYFIELD, W. LLC. 8232 SF
MAYFIELD, W. LLC. 5357 SF
MAYFIELD, W. LLC. 5488 SF
MAYFIELD, W. LLC. 5488 SF
MAYFIELD, W. LLC. 4965 SF
MAYFIELD, W. LLC. 5332 SF
RYLAND GROUP 5332 SF
MAYFIELD, W. LLC. 5332 SF
RYLAND GROUP 5332 SF
MAYFIELD, W. LLC. 5332 SF
RYLAND GROUP 5445 SF
RYLAND GROUP 6359 SF
MAYFIELD, W. LLC. 5096 SF
MAYFIELD, W. LLC. 4617SF
RYLAND GROUP 5183 SF
RYLAND GROUP 5706 SF
RYLAND GROUP 7448 SF

Parcel 416
WILLIAM RONALD SCHLIPP
22,550 SF

Parcel 100
HORACE H & FRANCINE HANNAH
47,301 SF

Parcel 627
HEBBVILLE COMMUNITY CEMETERY
36,154 SF (0.83 AC.)

EXISTING SINGLE FAM DWELLINGS

UNINHABITED OR ABANDONED POULTRY FARM

ROLLING ROAD

CHIPPER

P.O.B.

N 61,1250
E 1,378,250

N 61,1750
E 1,378,250

E 1,378,250
N 61,1100

S51°45'50"E 1482.92'

S45°34'32"E 346.19'

N50°34'05"W 1848.97'

S78°25'28"E 244.20'

N68°08'46"W 247.90'

S60°51'14"W 161.70'

VICINITY MAP
SCALE: 1" = 2,000'

LEGEND:
PROPERTY L
BUILDING SE
ZONING LIN
EXISTING C
PROPOSED
PROPOSED
100' R.T.A.

STV Incorporated

REVISIONS

NO	DATE	DESCRIPTION

GRAPHIC SCALE
150 100 50 0 100

PLAN PREPARATION

DRAWN BY:	M BLOW	DATE:	JULY, 2001

DOCUMENTED PLAN TO ACCOMPANY
RECLASSIFICATION PETITION AND VARIANCE PETITION

ROLLING ROAD SENIOR COMMUNITY
ROLLING ROAD
BALTIMORE COUNTY, MARYLAND

ADJOINING PROPERTY OWNER ADDRESSES

RYLAND GROUP
SUITE 520
7250 PARKWAY DRIVE
HANOVER, MD 21076-1343

MAYFIELD W. LLC
SUITE 302
1301 YORK ROAD
LUTHERVILLE TIMONIUM, MD. 21093-6006

ZONED D.R. 5.5
Parcel 60

SIX POINT COURT
(50' R/W, 29' PAVING)

EX. ZONING: D.R. 5.5; PROP. ZONING: D.R. 16

OWNER:
MIRZA HUSSAIN ALI BAIG

PROPOSED BUILDING

PASSIVE OPEN SPACE
41,650 SF.

ACTIVE OPEN SPACE
77,350 SF.

ZONED D.R. 5.5

Parcel 416
WILLIAM RONALD SCHLIPP
22,550 SF

Parcel 100
HORACE H. & FRANCINE HANNAH
47,301 SF

Parcel 471
ZONED D.R. 5.5

Parcel 627
HEBBVILLE COMMUNITY CEMETERY
36,154 SF (0.83 AC.)

RYLAND GROUP 7448 SF
RYLAND GROUP 5706 SF
RYLAND GROUP 6359 SF
RYLAND GROUP 5445 SF
RYLAND GROUP 5332 SF
MAYFIELD, W. LLC. 4617SF
MAYFIELD, W. LLC. 5096 SF
MAYFIELD, W. LLC. 5183 SF
MAYFIELD, W. LLC. 5332 SF
MAYFIELD, W. LLC. 4965 SF
MAYFIELD, W. LLC. 5488 SF
MAYFIELD, W. LLC. 5357 SF
MAYFIELD, W. LLC. 8232 SF

EXISTING SINGLE FAM DWELLINGS

EX SF Dwelling

3200 SQ FT EXIST SINGLE FAM DWELLING

3336 SQ FT EX SFD

KE02 KELLY SILT LOAM

AD02 ALDINO SILT LOAM

NE02 NESHAMINY SILT LOAM

MS02 MONTALTO SILT LOAM

UNINHABITED OR ABANDONED POULTRY FARM

PROPOSED S.W.M. POND

PROPOSED PARKING LOT

LOADING AREA DUMPSTER AREA

BUILDING ENTRANCE

SIAMESE "Y" CONNECTION

APPROX. LOCATION ENTRANCE SIGN (ONE SIGN ONLY)

PROPOSED CURB AND GUTTER TIE-INS

ROLLING

CHIPPER

ROAD

JODY

50' RTA BUFFER

150' RTA ESTABLISHMENT LINE

RTA LIMIT

75' BLDG SETBACK

30' SETBACK

N 61.1750

E 1,378.250

N 61.1250

E 1,378.250

N 61.1100

E 1,378.250

S45° 34'32"E 346.19'

S51° 15'50"E 1482.92'

N50° 34'05"W 1848.97'

S09° 00'46"W 264.00'

N78° 25'28"E 244.20'

N68° 08'46"W 247.90'

S30° 51'14"W 436.00'

VICINITY MAP
SCALE: 1" = 2,000'

SITE
SIX POINT CT.
ROLLING
CHIPPER RD.
WINDSOR
PECKMAN PLACE
JODY HALL RD.
ROAD
SALEM RD.

LEGEND:
- PROPERTY LINE / R/W LINE
- BUILDING SETBACK LINE
- ZONING LINE
- 250 EXISTING CONTOUR
- PROPOSED FENCE
- PROPOSED CONCRETE SIDEWALK
- 100' R.T.A.

STATE OF MARYLAND
DONOVAN LOOMIS
14880
PROFESSIONAL ENGINEER

STV Incorporated
engineers / architects / planners / scientists / construction managers
21 Governor's Court Baltimore, MD 21244-2722 (410) 944-9112

REVISIONS		
NO	DATE	DESCRIPTION

GRAPHIC SCALE
150 100 50 0 100
125 75 25 50 150

PLAN PREPARATION			
DRAWN BY:	M BLOW	DATE:	JULY, 2001
DESIGNED BY:	K HOLLAND	SCALE:	1" = 50'
CHECKED BY:	D OLSEN	JOB NO	61-03-10707

DOCUMENTED PLAN TO ACCOMPANY RECLASSIFICATION PETITION AND VARIANCE PETITION

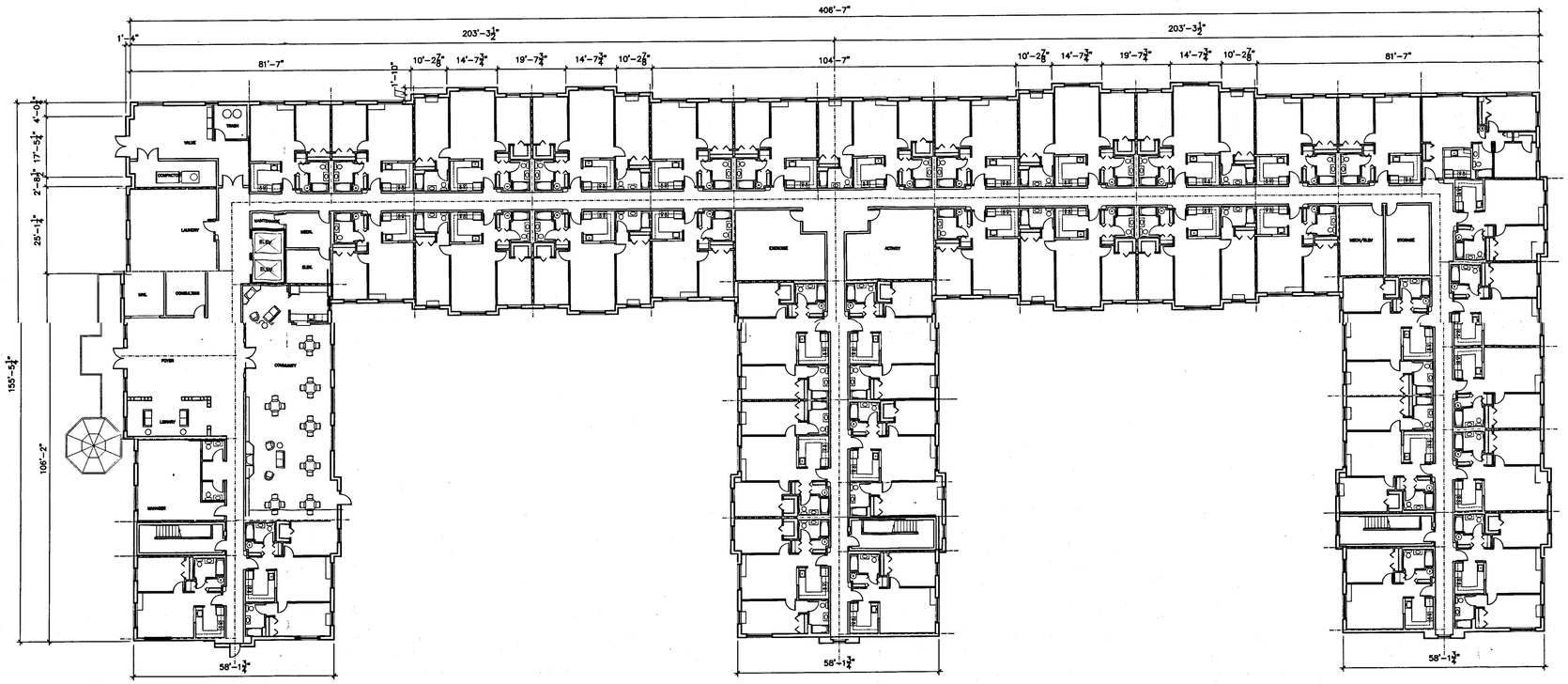
ROLLING ROAD SENIOR COMMUNITY
ROLLING ROAD
BALTIMORE COUNTY, MARYLAND

DRAWING NO. C-2

SHEET NO. 2 of 5

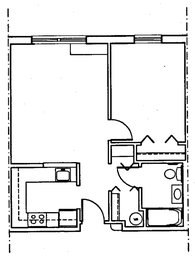
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THIS DRAWING OF THE PROPOSED ROLLING ROAD SENIOR COMMUNITY WAS PREPARED BY HORD COPLAN MACHT, LLC AS THE DESIGNER AND IS SIGNED AND SEALED BY A REGISTERED ARCHITECT IN THE STATE OF MARYLAND. THE SEAL AND SIGNATURE OF THE ENGINEER INDICATES **ONLY** THAT THIS DRAWING IS A COMPONENT OF THE REZONING CLASSIFICATION PETITION SUBMISSION.

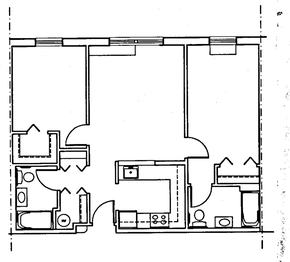


7B A2.1 **FIRST FLOOR PLAN**
SCALE: 1/16" =1'-0"

TRUE NORTH
PROJECT NORTH



7D A2.1 **TYPICAL ONE BEDROOM**
SCALE: 1/8" =1'-0"



7K A2.1 **TYPICAL TWO BEDROOM**
SCALE: 1/8" =1'-0"

DOCUMENTED PLAN TO ACCOMPANY
RECLASSIFICATION PETITION AND VARIANCE PETITION

ROLLING ROAD SENIOR COMMUNITY

ROLLING ROAD BALTIMORE COUNTY, MARYLAND

Hord Coplan Macht

ARCHITECTURE
LANDSCAPE ARCHITECTURE
PLANNING
INTERIOR DESIGN

111 MARKET PLACE SUITE 710
BALTIMORE MARYLAND 21202
410 837 7311 FAX 410 837 6530

NOT FOR CONSTRUCTION

ARCHITECTURAL REGISTRATION BOARD 3528-R

SEAL

DRAWN BY: CHECKED:

NO. DESCRIPTION DATE

REVISIONS

SHEET TITLE

FIRST FLOOR PLAN

SCALE	DATE	PROJ.#
AS NOTED	08/29/01	21048.00

PROJECT PHASE

SD
NOT FOR CONSTRUCTION

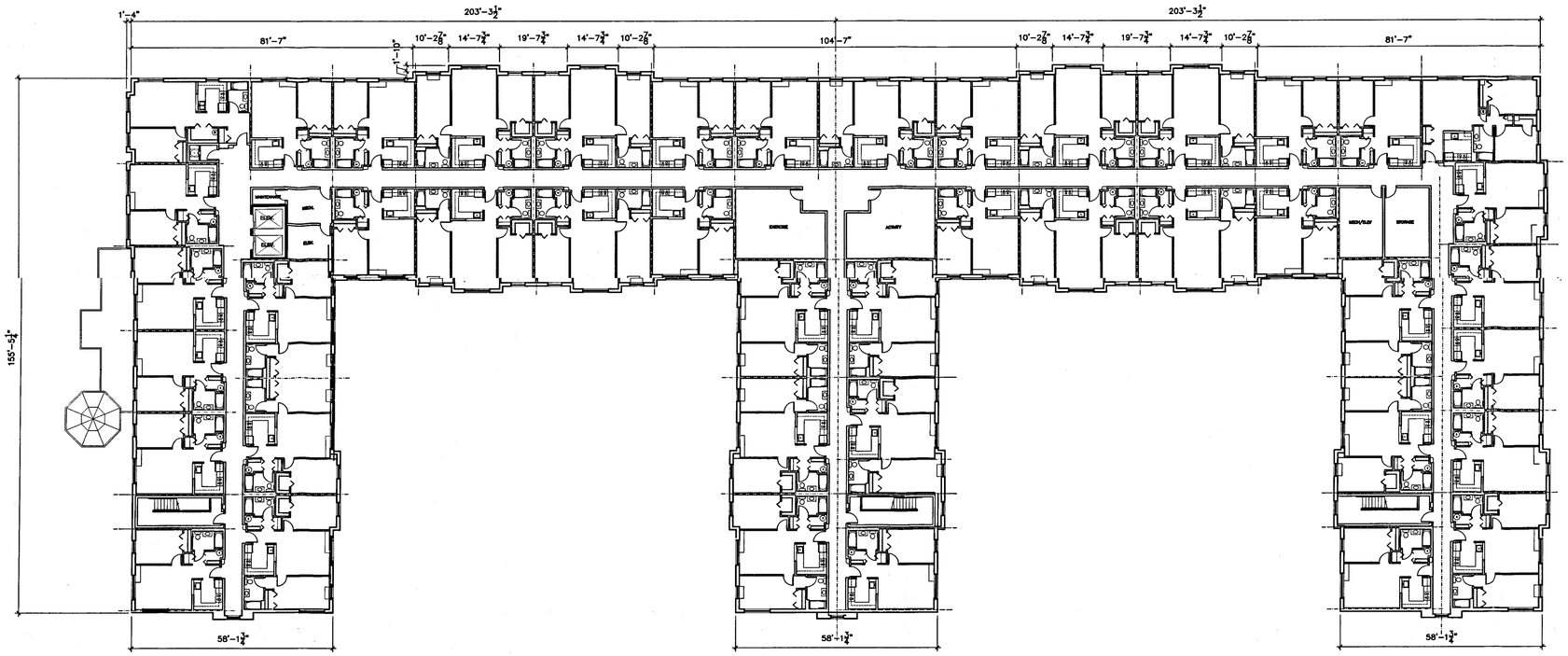
DRAWING #

3 of 5

If this drawing is not 36" x 48" it is a reduced print.

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7B / A2.2 SECOND FLOOR PLAN

SCALE: 1/16" =1'-0"

TRUE NORTH

PROJECT NORTH

DOCUMENTED PLAN TO ACCOMPANY
RECLASSIFICATION PETITION AND VARIANCE PETITION

ROLLING ROAD SENIOR COMMUNITY

ROLLING ROAD BALTIMORE COUNTY, MARYLAND

Hord Coplan Macht

ARCHITECTURE
LANDSCAPE ARCHITECTURE
PLANNING
INTERIOR DESIGN

111 MARKET PLACE SUITE 710
BALTIMORE MARYLAND 21202
410 837 7311 FAX 410 837 6530

NOT FOR CONSTRUCTION

ARCHITECTURAL REGISTRATION BOARD 8528-R STATE OF MARYLAND

SEAL

DRAWN BY: CHECKED:

NO. DESCRIPTION DATE

REVISIONS

SHEET TITLE

FLOOR PLAN

SCALE	DATE	PROJ.#
AS NOTED	08/29/01	21048.00

PROJECT PHASE

SD
NOT FOR CONSTRUCTION
DRAWING #

4 of 5

If this drawing is not 30" x 42" it is a reduced print.

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3B A4.1 **NORTH ELEVATION**
SCALE: 1/16" =1'-0"



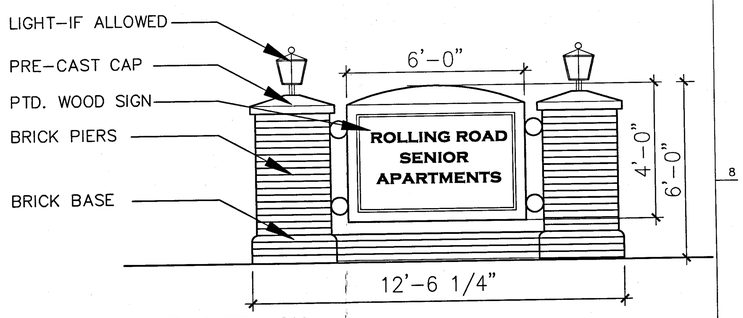
5B A4.1 **SOUTH ELEVATION**
SCALE: 1/16" =1'-0"



8B A4.1 **EAST ENTRY ELEVATION**
SCALE: 1/16" =1'-0"



8H A4.1 **WEST ELEVATION**
SCALE: 1/16" =1'-0"



8H A4.1 **SITE SIGN**
SCALE: 1/2" =1'-0"

THIS DRAWING OF THE PROPOSED ROLLING ROAD SENIOR COMMUNITY WAS PREPARED BY HORD COPLAN MACHT, LLC AS THE DESIGNER AND IS SIGNED AND SEALED BY A REGISTERED ARCHITECT IN THE STATE OF MARYLAND. THE SEAL AND SIGNATURE OF THE ENGINEER INDICATES ONLY THAT THIS DRAWING IS A COMPONENT OF THE REZONING CLASSIFICATION PETITION SUBMISSION.

ARCHITECTURAL REGISTRATION BOARD 4680 PROFESSIONAL ENGINEER

DOCUMENTED PLAN TO ACCOMPANY
RECLASSIFICATION PETITION AND VARIANCE PETITION

ROLLING ROAD SENIOR COMMUNITY

ROLLING ROAD BALTIMORE COUNTY, MARYLAND

Hord Coplan Macht
ARCHITECTURE
LANDSCAPE ARCHITECTURE
PLANNING
INTERIOR DESIGN

111 MARKET PLACE SUITE 710
BALTIMORE MARYLAND 21202
410 837 7311 FAX 410 837 6530

ARCHITECTURAL REGISTRATION BOARD 3528-R

SEAL

DRAWN BY: CHECKED:

NO.	DESCRIPTION	DATE

REVISIONS

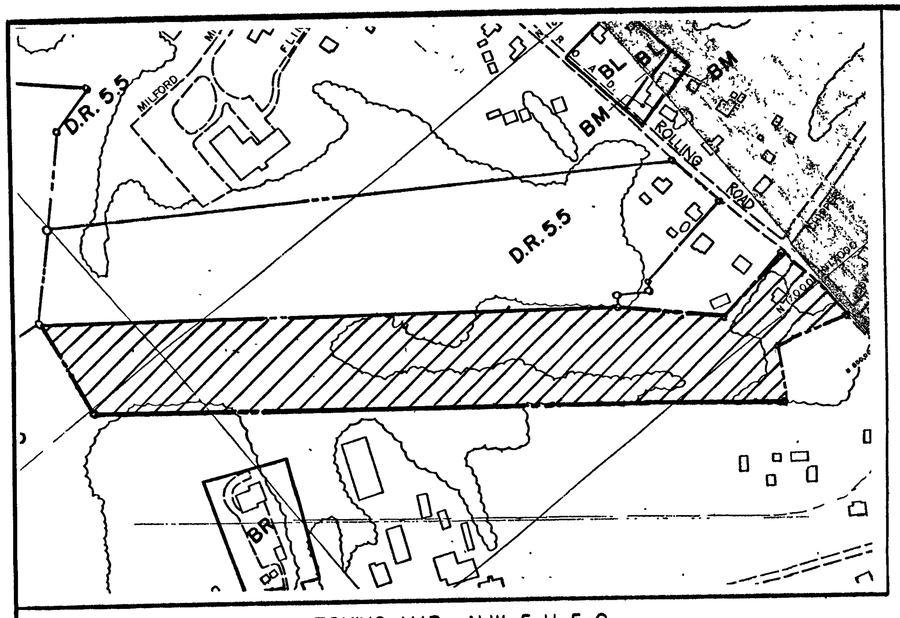
SHEET TITLE
ELEVATIONS

SCALE	DATE	PROJ.#
AS NOTED	08/29/01	21048.00

PROJECT PHASE
SD
NOT FOR CONSTRUCTION
DRAWING #
5 of 5

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If this drawing is not 36" x 48" it is a reduced print.



ZONING MAP N.W. 5-H, 5-G

SCALE: 1"=200'

GENERAL NOTES:

1. CONTRACT PURCHASER: PENNROSE PROPERTIES, INC.
   c/o MERENBERG ENTERPRISES, INC.
   11 CHASEMOUNT COURT
   BALTIMORE, MARYLAND 21209

   APPLICANT: SAME

2. PREPARED BY: STV INCORPORATED
   21 GOVERNOR'S COURT
   BALTIMORE, MARYLAND 21244
   PHONE: 410-944-9112
   CONTACT: DEBRA K. WITTLE, RLA

3. PREMISES ADDRESS: 3134 ROLLING ROAD
   BALTIMORE, MARYLAND 21244

4. TAX ASSESSMENT NUMBERS: TAX MAP 87, GRID 4
   PARCEL 267
   TAX ACCOUNT NO. 0202850040

5. DISTRICT NUMBERS: ELECTION DISTRICT 2
   COUNCILMANIC DISTRICT 2
   CENSUS TRACT 4036.02
   REGIONAL PLANNING DISTRICT 313C

6. WATERSHED: EASTERN THIRD ZONE
   SUBWATERSHED: 53C

7. ZONING DATA

   A. EXISTING USE: VACANT, NO BUILDINGS LOCATED ON-SITE
      PROPOSED USE: CLASS A HOUSING FOR THE ELDERLY, SENIOR INDEPENDENT LIVING ONLY.

   B. CURRENT ZONING AND ACREAGE: D.R.-5.5 11.28AC.
      PROPOSED ZONING: D.R. 16 11.28AC.± 119 DWELLING UNITS
      57 1-BR, 62 2-BR

   C. SETBACK REQUIREMENTS:
      FRONT = 40 FT. FROM FRONT PROPERTY LINE
      SIDE = 30 FT. FOR ONE SIDE YARD.
      REAR = 40 FT. FROM REAR PROPERTY LINE

   D. PARKING REQUIREMENTS: 79 SPACES (1 SPACE PER 1½ UNITS):
      119 UNITS/1.5= 79 SPACES REQUIRED

      PARKING PROVIDED:

	1BR	2BR	
FLOOR 1 :	16	23	
FLOOR 2 :	22	22	
FLOOR 3 :	20	18	
TOTAL =	58	+ 63	= 121 SPACES

      121 SPACES (INCLUDES 6 HANDICAP ACCESSIBLE SPACES)

      ALL SPACES WILL BE A MINIMUM OF 8.5 FT. X 18 FT. ALL AND PARKING AREAS ARE TO BE PAVED WITH A DURABLE DUSTLESS SURFACE OF BITUMINOUS CONCRETE AND PERMANENTLY STRIPED.

   E. BUILDING HEIGHT: MAXIMUM ALLOWED = 60 FT.
      PROPOSED = 46 FT. (IN RTA-35')

   F. AMENITY OPEN SPACE = NOT REQUIRED

   G. ZONING MAP NUMBER = N.W. 5-H, 5-G

8. ZONING RELIEF REQUESTED:
   A. PURSUANT TO BCZR SECTION 1B01.2.B.2. BCZR 504.2 AND CMDP RESIDENTIAL STANDARDS FOR MULTI-FAMILY BUILDINGS, PENNROSE SEEKS A MODIFICATION OF STANDARDS AND A VARIANCE TO PERMIT A BUILDING LENGTH OF 420' IN LIEU OF THE PERMITTED 240'.

9. BUILDING WILL COMPLY WITH ALL APPLICABLE BUILDING CODE AND FIRE CODE PROVISIONS.

10. SCREENING AND LANDSCAPING SHALL BE PROVIDED IN COMPLIANCE WITH THE BALTIMORE COUNTY LANDSCAPE MANUAL AND BCZR.

11. OPEN SPACE WILL BE PROVIDED IN ACCORDANCE WITH THE BALTIMORE COUNTY LOCAL OPEN SPACE MANUAL.

12. HOURS OF OPERATION: 24 HRS. NUMBER OF EMPLOYEES 5.

13. THE SITE DOES NOT LIE WITHIN THE CHESAPEAKE BAY CRITICAL AREA.

14. THIS SITE DOES NOT INCLUDE NOR IS CONTIGUOUS TO ANY BUILDINGS, PROPERTY OR SITES REGISTERED ON THE HISTORICAL INVENTORY LIST.

15. THERE IS NO KNOWN ARCHAEOLOGICAL SITE ON THIS PROPERTY.

16. THIS SITE WILL BE REQUIRED TO MEET FOREST CONSERVATION REQUIREMENTS.

17. STORMWATER MANAGEMENT WILL BE REQUIRED FOR THIS SITE.

18. TRASH WILL BE COLLECTED PRIVATELY.

19. PREVIOUS COMMERCIAL PERMIT(S): N/A

20. ZONING HISTORY: N/A

21. ANY DISTURBANCE IN THE SLOPE EASEMENT WILL REQUIRE APPROVAL FROM MARYLAND STATE HIGHWAY ADMINISTRATION.

22. ALL LIGHTING FIXTURES TO ILLUMINATE THE PROPERTY SHALL BE ARRANGED TO REFLECT AWAY FROM PUBLIC STREETS AND ADJACENT PROPERTIES. MAX. LIGHTING HEIGHT IN RTA IS 16'.

23. NO OUTSIDE STORAGE OR DISPLAY SHALL BE PERMITTED.

24. ALL PROPOSED SIGNAGE SHALL BE IN COMPLIANCE WITH SECTION 450 OF THE BALTIMORE COUNTY ZONING REGULATIONS MANUAL.

25. THIS SITE IS CURRENTLY DENSELY VEGETATED.

26. THERE ARE NO KNOWN WELLS, UNDERGROUND STORAGE TANKS OR HAZARDOUS MATERIALS ON THE SITE.

27. THIS SITE IS NOT LOCATED WITHIN A MORATORIUM AREA.

28. ROLLING ROAD IS CLASSIFIED AS A PRINCIPAL ARTERIAL PER THE FEDERAL CLASSIFICATION MAP.

29. THERE ARE NO KNOWN EXISTING PONDS, STREAMS, BODIES OF WATER, WATER COURSES, 100 YR FLOODPLAINS, OR UNUSUAL NATURAL FORMATION ON THIS SITE.

30. SUBJECT PROPERTY WILL BE DEVELOPED IN SUBSTANTIAL CONFORMANCE WITH DOCUMENTED PLAN TO ACCOMPANY RECLASSIFICATION PETITION AND VARIANCE PETITION. HOWEVER, THE DEVELOPER MAY MAKE REFINEMENTS TO THE PLAN ADMINISTRATIVELY AS LONG AS SUCH CHANGES DO NOT REQUIRE A VARIANCE AND ARE WITHIN THE SPIRIT AND INTENT OF THE APPROVED DOCUMENTENTED PLAN TO ACCOMPANY RECLASSIFICATION PETITION AND VARIANCE PETITION

31. THIS SENIOR INDEPENDENT HOUSING COMMUNITY WILL HAVE EMANATIONS ORDINARILY ASSOCIATED WITH SUCH USE.

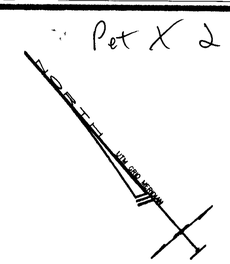
32. LOCAL OPEN SPACE REQUIREMENT:

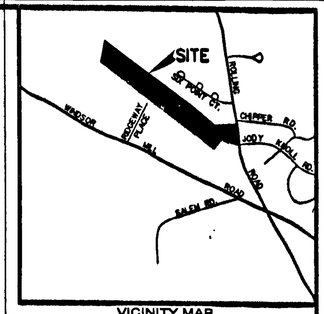
    ACTIVE LOS 119 UNITS x 650 SF./UNIT = 77,350 SF. (1.78 AC.)
    PASSIVE LOS 119 UNITS x 350 SF./UNIT = 41,650 SF. (0.96 AC.)

    LOCAL OPEN SPACE PROVIDED:

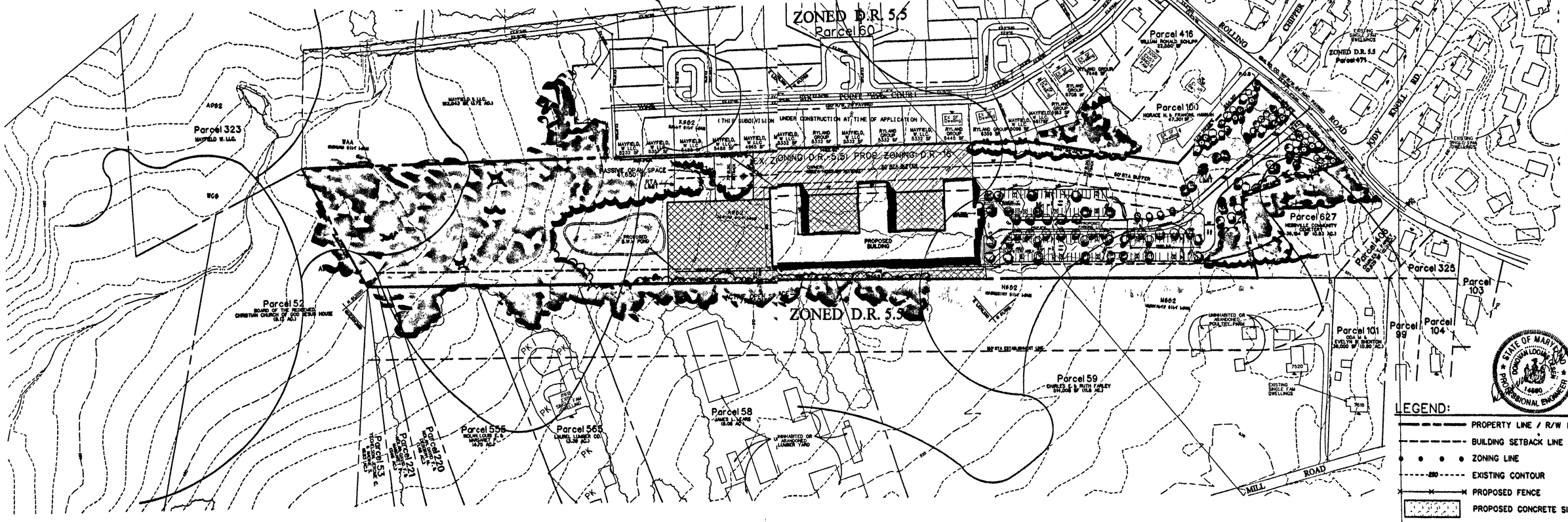
    ACTIVE = 77,350 SF.
    PASSIVE = 41,650 SF.

Pet X 2





VICINITY MAP
SCALE: 1" = 2,000'



LEGEND:

- PROPERTY LINE / R/W LINE
- BUILDING SETBACK LINE
- ZONING LINE
- 250 EXISTING CONTOUR
- PROPOSED FENCE
- PROPOSED CONCRETE SIDEWALK
- 100' R.T.A.
- INDICATES BLDG. FRONT

STATE OF MARYLAND — DONOVAN LOOMIS LUCAS — 14690 — PROFESSIONAL ENGINEER

Rev. 2

STV Incorporated

engineers / architects / planners / scientists / construction managers

21 Governor's Court Baltimore, MD 21244-2722 (410) 944-9112

REVISIONS		
NO	DATE	DESCRIPTION

GRAPHIC SCALE

300 200 100 0 100 300
250 150 50 200

PLAN PREPARATION			
DRAWN BY:	M BLOW	DATE:	JULY, 2001
DESIGNED BY:	K HOLLAND	SCALE:	1" = 100'
CHECKED BY:	D OLSEN	JOB NO	61-03-10707

DOCUMENTED PLAN TO ACCOMPANY RECLASSIFICATION PETITION AND VARIANCE PETITION

ROLLING ROAD SENIOR COMMUNITY

ROLLING ROAD
BALTIMORE COUNTY, MARYLAND

DRAWING NO. C-1

SHEET NO. 1 of 5

RECORD COPY AS SUBMITTED FOR PETITION 9/01

PC Exh 2A



Baltimore County GIS Services Unit Date of Photography: March 1995 Scale: 1 inch = 200 feet

Baltimore County Tile: 087b1

PC Exh 2A

PC 2B



Baltimore County GIS Services Unit Date of Photography: March 1995 Scale: 1 inch = 200 feet

Baltimore County Tile: 087c1

PC Exh 2B

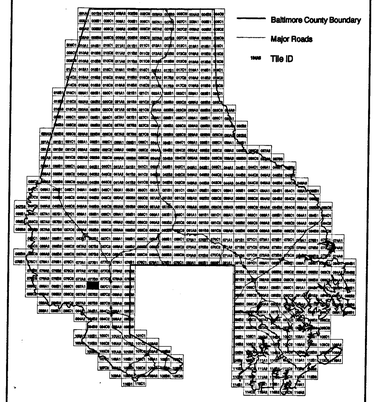
PC Exh 3A

PLANIMETRICS PLOT



Legend

- Mapsheet Index
- Residential Buildings
- Commercial Buildings
- Institutional Buildings
- Garages and Other Structures
- Buildings Under Construction
- Toll Booths and Rail Stations
- Water Towers and Storage Tanks
- Curbs
- Paved Roads
- Unpaved Roads
- Paved Alleys
- Unnamed Roads
- Hidden Roads, Roads Under Construction
- Road Intersections
- Paved Parking Lots, Driveways, Runways, Taxiways
- Bridges and Overpasses
- Tunnel Portal
- Rail Line
- Hidden Rail Line
- Abandoned Rail
- Metro Rail
- Light Rail
- Transmission Line
- Pipeline
- Junkyards, Landfills, Quarries, Gravel and Sand Pits
- Areas Under Construction, Power Stations
- Race Tracks, Cemeteries
- Wooded Areas, Orchards/Nurseries
- Tree Rows
- Wetlands/Swamps
- State Plane Grid Lines
- Street Centerlines
- Alley Centerlines
- Ramp Centerlines
- Recreational Areas, Golf Courses
- Commercial Pools
- Bike/Hike Areas
- Athletic Fields, Tennis Courts, Playgrounds
- Natural Hydrography
  Reservoirs
  SW Retention Ponds
- Bay Area
- Boat Ramps, Piers, Dams, and Bulkheads
- Drainage Connector
- Culverts
- Headwall/Floodwall
- Hidden Hydrography
- Index Contour
- Intermediate Contour
- Index Depression Contour
- Intermediate Depression Contour
- Obscured Index Contour
- Obscured Intermediate Contour
- Obscured Index Depression Contour
- Obscured Intermediate Depression Contour
- Hidden Contour
- Neatline
- Radio Towers
- Transmission Towers
- Microwave Transmitters
- Spot Elevations
- Water Elevations
- Bridge Elevations
- Rooftop Elevations



1:2400

0ft 1000ft

0m 100m 200m 300m

N

Baltimore County - OIT GIS Services Unit

Layers:
INDEX, BLDG, ROADS, CLINE, TRANS
CULT, VEG, REC, HYDROL, HYDROP
COMM, SPOT, TOPO

Coordinate System:
Maryland State Plane: NAD83/91 Horiz. Datum
Elevations in Feet: NAVD88 Vertical Datum

Date of Data Capture: March 1995

Tile ID: 087b1

PC Exh 3A

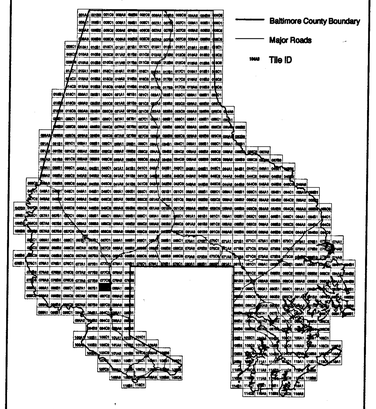
PC Exh 3B

PLANIMETRICS PLOT



Legend

- Mapsheet Index
- Residential Buildings
- Commercial Buildings
- Institutional Buildings
- Garages and Other Structures
- Buildings Under Construction
- Toll Booths and Rail Stations
- Water Towers and Storage Tanks
- Curbs
- Paved Roads
- Unpaved Roads
- Paved Alleys
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- Hidden Roads, Roads Under Construction
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- Paved Parking Lots, Driveways, Runways, Taxiways
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- Natural Hydrography
  Reservoirs
  SW Retention Ponds
- Bay Area
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- Drainage Connector
- Culverts
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- Obscured Index Contour
- Obscured Intermediate Contour
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- Obscured Intermediate Depression Contour
- Hidden Contour
- Neatline
- Radio Towers
- Transmission Towers
- Microwave Transmitters
- Spot Elevations
- Water Elevations
- Bridge Elevations
- Rooftop Elevations



1:2400

0ft 1000ft

0m 100m 200m 300m

N

BALTIMORE COUNTY MARYLAND

Baltimore County - OIT GIS Services Unit

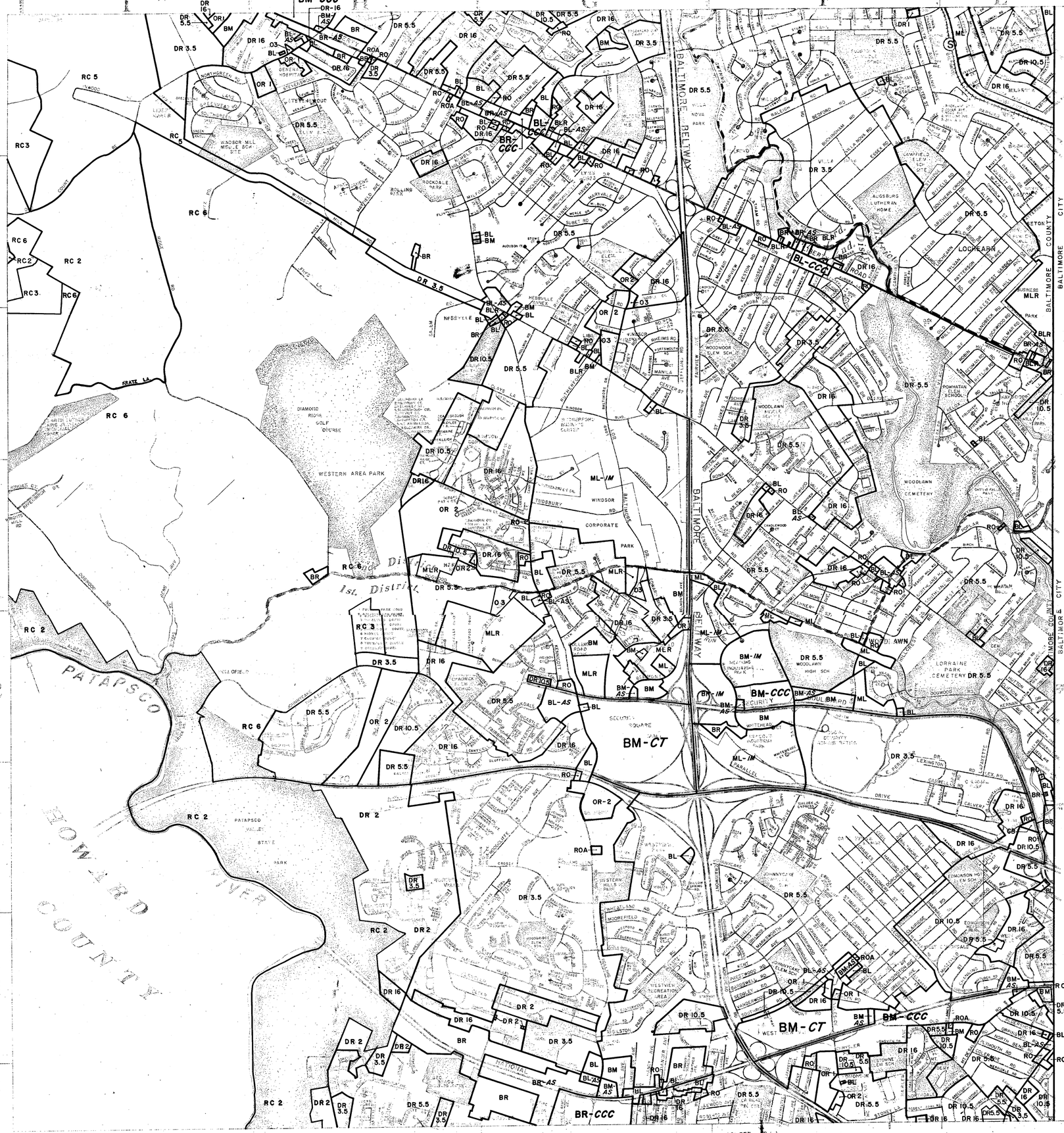
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INDEX, BLDG, ROADS, CLINE, TRANS
CULT, VEG, REC, HYDROL, HYDROP
COMM, SPOT, TOPO

Coordinate System:
Maryland State Plane: NAD83/91 Horiz. Datum
Elevations in Feet: NAVD88 Vertical Datum

Date of Data Capture: March 1995

Tile ID: 087c1

PC Exh 3B



BALTIMORE COUNTY OFFICE OF PLANNING

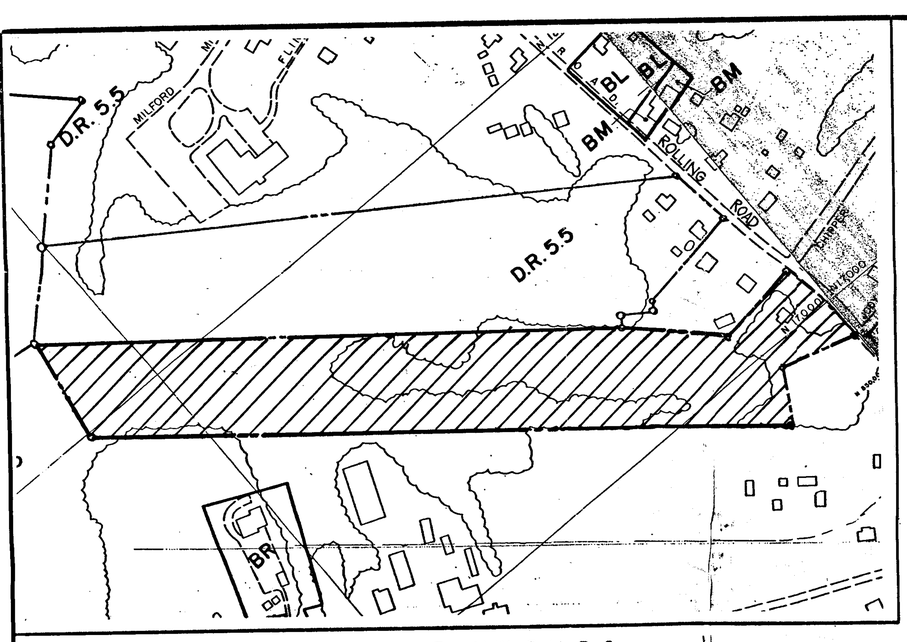
WESTERN AREA

BALTIMORE COUNTY BASE MAP SERIES

REVISED DATE FEB. 95

2B

PC Ch. 12



ZONING MAP N.W. 5-H, 5-G

SCALE: 1"=200'

GENERAL NOTES:

1. CONTRACT PURCHASER: PENNROSE PROPERTIES, INC.
   c/o MERENBERG ENTERPRISES, INC.
   11 CHASEMOUNT COURT
   BALTIMORE, MARYLAND 21209

   APPLICANT: SAME

2. PREPARED BY: STV INCORPORATED
   21 GOVERNOR'S COURT
   BALTIMORE, MARYLAND 21244
   PHONE: 410-944-9112
   CONTACT: DEBRA K. WITTLE, RLA

3. PREMISES ADDRESS: 3134 ROLLING ROAD
   BALTIMORE, MARYLAND 21244

4. TAX ASSESSMENT NUMBERS: TAX MAP 87, GRID 4
   PARCEL 267
   TAX ACCOUNT NO. 0202850040

5. DISTRICT NUMBERS: ELECTION DISTRICT 2
   COUNCILMANIC DISTRICT 2
   CENSUS TRACT 4036.02 TRICT 313C
   REGIONAL PLANNING DIST

6. WATERSHED: EASTERN THIRD ZONE
   SUBWATERSHED: 53C

7. ZONING DATA

   A. EXISTING USE: VACANT; NO BUILDINGS LOCATED ON-SITE
      PROPOSED USE: CLASS A HOUSING FOR THE ELDERLY, SENIOR INDEPENDENT LIVING ONLY.

   B. CURRENT ZONING AND ACREAGE: D.R.-5.5 11.28AC.
      PROPOSED ZONING: D.R. 16 11.28AC.: 118 DWELLING UNITS
      57 1-BR, 62 2-BR

   C. SETBACK REQUIREMENTS:
      FRONT - 40 FT. FROM FRONT PROPERTY LINE
      SIDE - 30 FT. FOR ONE SIDE YARD,
      REAR - 40 FT. FROM REAR PROPERTY LINE

   D. PARKING REQUIREMENTS: 79 SPACES (1 SPACE PER 1½ UNITS):
      119 UNITS/1.5= 79 SPACES REQUIRED

      PARKING PROVIDED:

	1BR		2BR	
FLOOR 1 :	16		23	
FLOOR 2 :	22		22	
FLOOR 3 :	20		18	
TOTAL =	58	+	63	= 121 SPACES

      121 SPACES (INCLUDES 6 HANDICAP ACCESSIBLE SPACES)

      ALL SPACES WILL BE A MINIMUM OF 8.5 FT. x 18 FT. ALL PARKING AREAS ARE TO BE PAVED WITH A DURABLE AND DUSTLESS SURFACE OF BITUMINOUS CONCRETE AND PERMANENTLY STRIPED.

   E. BUILDING HEIGHT: MAXIMUM ALLOWED - 60 FT.
      PROPOSED - 46 FT. (IN RTA-35')

   F. AMENITY OPEN SPACE - NOT REQUIRED

   G. ZONING MAP NUMBER - N.W. 5-H, 5-G

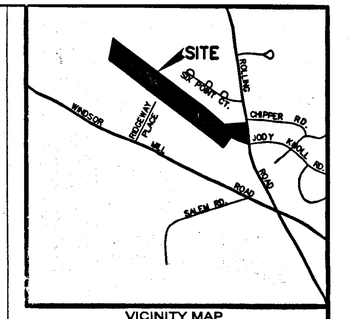
8. ZONING RELIEF REQUESTED:
   A. PURSUANT TO BCZR SECTION 1B01.2.B.2. BCZR 504.2 AND CMDP RESIDENTIAL STANDARDS FOR MULTI-FAMILY BUILDINGS, PENNROSE SEEKS A MODIFICATION OF STANDARDS AND A VARIANCE TO PERMIT A BUILDING LENGTH OF 428' IN LIEU OF THE PERMITTED 240'.

9. BUILDING WILL COMPLY WITH ALL APPLICABLE BUILDING CODE AND FIRE CODE PROVISIONS.
10. SCREENING AND LANDSCAPING SHALL BE PROVIDED IN COMPLIANCE WITH THE BALTIMORE COUNTY LANDSCAPE MANUAL AND BCZR.
11. OPEN SPACE WILL BE PROVIDED IN ACCORDANCE WITH THE BALTIMORE COUNTY LOCAL OPEN SPACE MANUAL.
12. HOURS OF OPERATION: 24 HRS. NUMBER OF EMPLOYEES: 5.
13. THE SITE DOES NOT LIE WITHIN THE CHESAPEAKE BAY CRITICAL AREA.
14. THIS SITE DOES NOT INCLUDE NOR IS CONTIGUOUS TO ANY BUILDINGS, PROPERTY OR SITES REGISTERED ON THE HISTORICAL INVENTORY LIST.
15. THERE IS NO KNOWN ARCHAEOLOGICAL SITE ON THIS PROPERTY.
16. THIS SITE WILL BE REQUIRED TO MEET FOREST CONSERVATION REQUIREMENTS.
17. STORMWATER MANAGEMENT WILL BE REQUIRED FOR THIS SITE.
18. TRASH WILL BE COLLECTED PRIVATELY.
19. PREVIOUS COMMERCIAL PERMIT(S): N/A
20. ZONING HISTORY: N/A
21. ANY DISTURBANCE IN THE SLOPE EASEMENT WILL REQUIRE APPROVAL FROM MARYLAND STATE HIGHWAY ADMINISTRATION.
22. ALL LIGHTING FIXTURES TO ILLUMINATE THE PROPERTY SHALL BE ARRANGED TO REFLECT AWAY FROM PUBLIC STREETS AND ADJACENT PROPERTIES. MAX. LIGHTING HEIGHT IN RTA IS 16'.
23. NO OUTSIDE STORAGE OR DISPLAY SHALL BE PERMITTED.
24. ALL PROPOSED SIGNAGE SHALL BE IN COMPLIANCE WITH SECTION 450 OF THE BALTIMORE COUNTY ZONING REGULATIONS MANUAL.
25. THIS SITE IS CURRENTLY DENSELY VEGETATED.
26. THERE ARE NO KNOWN WELLS, UNDERGROUND STORAGE TANKS OR HAZARDOUS MATERIALS ON THE SITE.
27. THIS SITE IS NOT LOCATED WITHIN A MORATORIUM AREA.
28. ROLLING ROAD IS CLASSIFIED AS A PRINCIPAL ARTERIAL PER THE FEDERAL CLASSIFICATION MAP.
29. THERE ARE NO KNOWN EXISTING PONDS, STREAMS, BODIES OF WATER, WATER COURSES, 100 YR FLOODPLAINS, OR UNUSUAL NATURAL FORMATION ON THIS SITE.
30. SUBJECT PROPERTY WILL BE DEVELOPED IN SUBSTANTIAL CONFORMANCE WITH DOCUMENTED PLAN TO ACCOMPANY RECLASSIFICATION PETITION AND VARIANCE PETITION. HOWEVER, THE DEVELOPER MAY MAKE REFINEMENTS TO THE PLAN ADMINISTRATIVELY AS LONG AS SUCH CHANGES DO NOT REQUIRE A VARIANCE AND ARE WITHIN THE SPIRIT AND INTENT OF THE APPROVED DOCUMENTED PLAN TO ACCOMPANY RECLASSIFICATION PETITION AND VARIANCE PETITION
31. THIS SENIOR INDEPENDENT HOUSING COMMUNITY WILL HAVE EMANATIONS ORDINARILY ASSOCIATED WITH SUCH USE.
32. LOCAL OPEN SPACE REQUIREMENT:

    ACTIVE LOS 119 UNITS x 650 SF./UNIT = 77,350 SF. (1.78 AC.)
    PASSIVE LOS 119 UNITS x 350 SF./UNIT = 41,650 SF. (0.95 AC.)

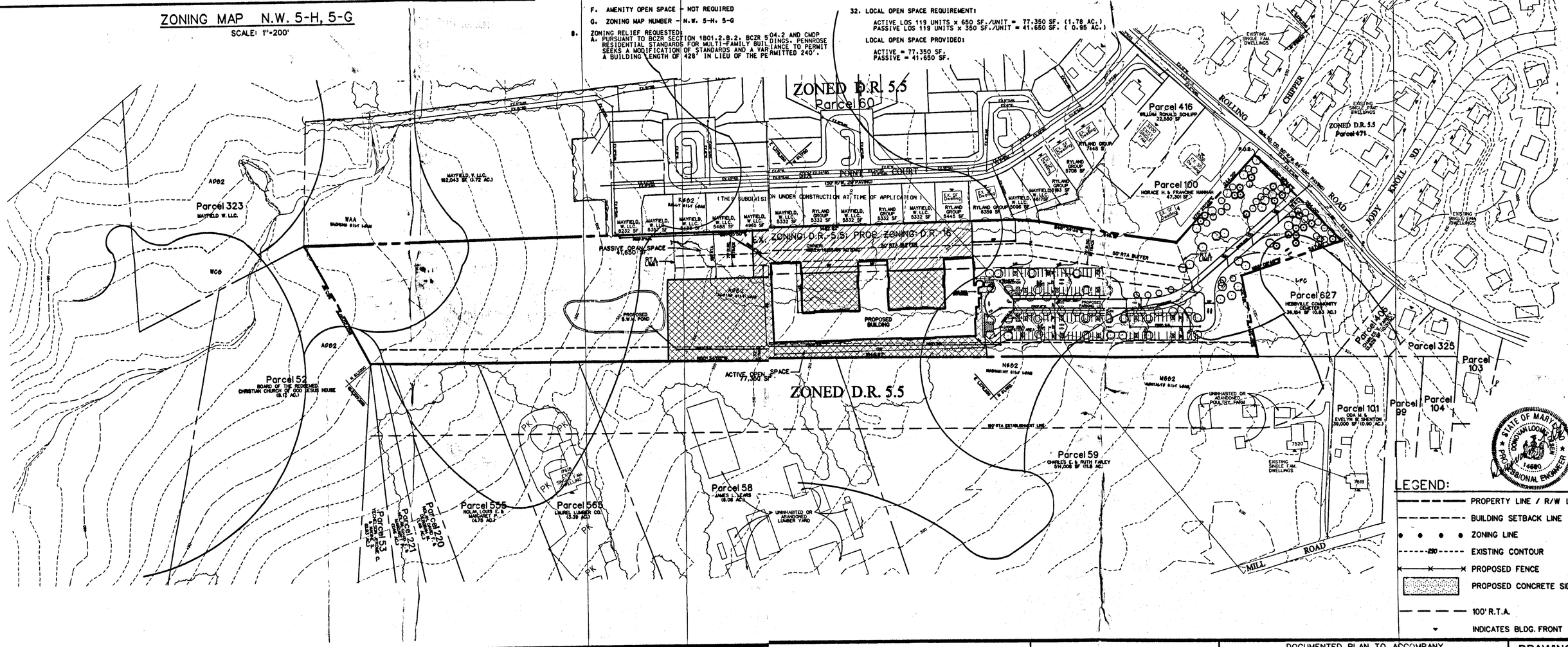
    LOCAL OPEN SPACE PROVIDED:

    ACTIVE = 77,350 SF.
    PASSIVE = 41,650 SF.



VICINITY MAP

SCALE: 1" = 2,000'



LEGEND:

- PROPERTY LINE / R/W LINE
- BUILDING SETBACK LINE
- ZONING LINE
- 250 EXISTING CONTOUR
- PROPOSED FENCE
- PROPOSED CONCRETE SIDEWALK
- 100' R.T.A.
- INDICATES BLDG. FRONT

STATE OF MARYLAND — DONOVAN LOOMIS OLSEN — 14580 — PROFESSIONAL ENGINEER

STV Incorporated

engineers / architects / planners / scientists / construction managers

21 Governor's Court Baltimore, MD 21244-2722 (410) 944-9112

REVISIONS		
NO.	DATE	DESCRIPTION

GRAPHIC SCALE

300 200 100 0 100 300

250 150 50 200

PLAN PREPARATION			
DRAWN BY:	M. BLOW	DATE:	JULY, 2001
DESIGNED BY:	K. HOLLAND	SCALE:	1" = 100'
CHECKED BY:	D. OLSEN	JOB NO.:	61-03-10707

DOCUMENTED PLAN TO ACCOMPANY RECLASSIFICATION PETITION AND VARIANCE PETITION

ROLLING ROAD SENIOR COMMUNITY

ROLLING ROAD

BALTIMORE COUNTY, MARYLAND

DRAWING NO. C-1

SHEET NO. 1 of 5

F:\...\PROJECTS\10707\ZOOIroll.dgn

ADJOINING PROPERTY
OWNER ADDRESSES

RYLAND GROUP
SUITE 520
7250 PARKWAY DRIVE
HANOVER, MD. 21076-1343

MAYFIELD W. LLC
SUITE 302
1301 YORK ROAD
LUTHERVILLE TIMONIUM, MD. 21093-6006

ZONED D.R. 5.5
Parcel 60

SIX POINT COURT
(50' R/W, 29' PAVING)

KE02
KELLY SILT LOAM

ADB2
ALDINO SILT LOAM

NEB2
NESHAMINY SILT LOAM

MSB2
MONTALTO SILT LOAM

MAYFIELD, W. LLC. 8232 SF
MAYFIELD, W. LLC. 5357 SF
MAYFIELD, W. LLC. 5488 SF
MAYFIELD, W. LLC. 5488 SF
MAYFIELD, W. LLC. 4965 SF
MAYFIELD, W. LLC. 5332 SF
RYLAND GROUP 5332 SF
MAYFIELD, W. LLC. 5332 SF
RYLAND GROUP 5332 SF
MAYFIELD, W. LLC. 5332 SF
RYLAND GROUP 5445 SF
RYLAND GROUP 6359 SF
MAYFIELD, W. LLC. 5096 SF
MAYFIELD, W. LLC. 4617SF
RYLAND GROUP 5183 SF
RYLAND GROUP 5706 SF
RYLAND GROUP 7448 SF

EX. ZONING: D.R.-5.5; PROP. ZONING: D.R.-16

OWNER: MIRZA HUSSAIN ALI BAIG

PASSIVE OPEN SPACE 41,650 SF.
ACTIVE OPEN SPACE 77,350 SF.
RTA LIMIT
100' RTA
75' BLDG. SETBACK
50' RTA BUFFER
150' RTA ESTABLISHMENT LINE
PROPOSED BUILDING
PROPOSED PARKING LOT
LOADING AREA DUMPSTER AREA
BUILDING ENTRANCE
SIAMESE "Y" CONNECTION
FIRE LANE
PROP. S.D.
PROP. 8"W.
PROP. 8"SAN.
50' PROPOSED S.W.M. POND
APPROX. 900' TO PROP. LINE
APPROX 700' TO PROP. LINE

S51°15'50"E 1482.92'
N50° 34'05"W 1848.97'
S45° 34'32"E 346.19'
N78° 25'28"E 244.20'
S89° 08'46"E 247.50'
N68° 08'46"W 196.70'
S50° 51'14"W

E 1,378,250 N 61,750
E 1,378,250 N 61,000
E 1,378,250 N 61,250

Parcel 416
WILLIAM RONALD SCHLIPP
22,550 SF

Parcel 100
HORACE H. & FRANCINE HANNAH
47,301 SF

Parcel 627
HEBBVILLE COMMUNITY CEMETERY
36,154 SF (0.83 AC.)

EXISTING SINGLE FAM DWELLINGS
STF. & 2 CAR GAR.
3 STY. BRICK
EX. SF Dwelling

ROLLING ROAD
CHIPPER ROAD
JODY ROAD
3' (BAL) TO CO. 50' R/W, 24' MACADAM PAVING
APPROX. LOCATION ENTRANCE SIGN (ONE SIGN ONLY)
PROPOSED CURB AND GUTTER TIE-INS
P.O.B.

ZONED D.R. 5.5
Parcel 471

UNINHABITED OR ABANDONED POULTRY FARM

VICINITY MAP
SCALE: 1" = 2,000
SITE
SIX POINT CT.
ROLLING
WINDSOR
PICKERAL PLACE
CHIPPER RD.
JODY
ROAD
SALEM RD.

LEGEND:
- PROPERTY LINE / R/W LINE
- BUILDING SETBACK LINE
- ZONING LINE
- 250 EXISTING CONTOUR
- PROPOSED FENCE
- PROPOSED CONCRETE SIDEWAL
- 100' R.T.A.

STATE OF MARYLAND
DONNIVAN LOOMIS HOLLAND
No. 14890
REGISTERED PROFESSIONAL ENGINEER

STV Incorporated
engineers / architects / planners / scientists / construction managers
21 Governor's Court Baltimore, MD 21244-2722 (410) 944-9112

REVISIONS

NO	DATE	DESCRIPTION

GRAPHIC SCALE
150 100 50 0 100
125 75 25 50 150

PLAN PREPARATION

DRAWN BY:	M BLOW	DATE:	JULY, 2001
DESIGNED BY:	K HOLLAND	SCALE:	1" = 50'
CHECKED BY	D OLSEN	JOB NO	61-03-10707

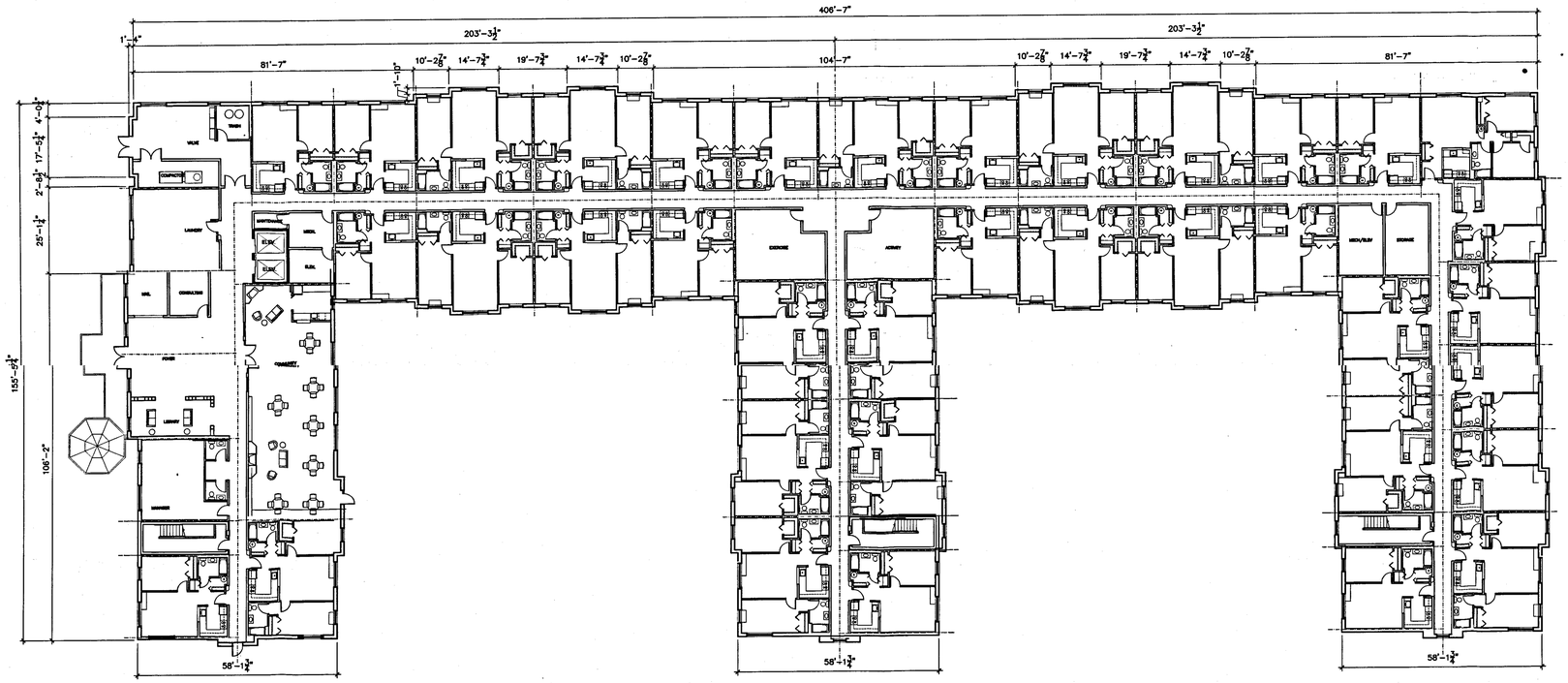
DOCUMENTED PLAN TO ACCOMPANY RECLASSIFICATION PETITION AND VARIANCE PETITION

ROLLING ROAD SENIOR COMMUNITY
ROLLING ROAD
BALTIMORE COUNTY, MARYLAND

DRAWING NO C-2

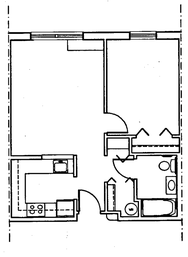
SHEET NO. 2 of 5

THIS DRAWING OF THE PROPOSED ROLLING ROAD SENIOR COMMUNITY WAS PREPARED BY HORD COPLAN MACHT, LLC AS THE DESIGNER, AND IS SIGNED AND SEALED BY A REGISTERED ARCHITECT IN THE STATE OF MARYLAND. THE SEAL AND SIGNATURE OF THE ENGINEER INDICATES ONLY THAT THIS DRAWING IS A COMPONENT OF THE REZONING CLASSIFICATION PETITION SUBMISSION.

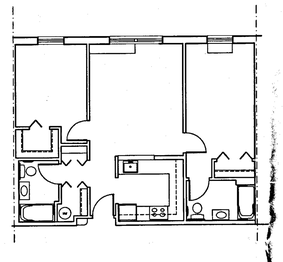


7B A2.1 FIRST FLOOR PLAN
SCALE: 1/16" =1'-0"

TRUE NORTH
PROJECT NORTH



7D A2.1 TYPICAL ONE BEDROOM
SCALE: 1/8" =1'-0"



7K A2.1 TYPICAL TWO BEDROOM
SCALE: 1/8" =1'-0"

If this drawing is not 36" x 48" it is a reduced print.

DOCUMENTED PLAN TO ACCOMPANY
RECLASSIFICATION PETITION AND VARIANCE PETITION

ROLLING ROAD SENIOR COMMUNITY

ROLLING ROAD BALTIMORE COUNTY, MARYLAND

Hord Coplan Macht

ARCHITECTURE
LANDSCAPE ARCHITECTURE
PLANNING
INTERIOR DESIGN

111 MARKET PLACE SUITE 710
BALTIMORE MARYLAND 21202
410 837 7311 FAX 410 837 6530

NOT FOR CONSTRUCTION

ARCHITECTURAL REGISTRATION BOARD 3528-R STATE OF MARYLAND
SEAL

DRAWN BY: CHECKED:

NO.	DESCRIPTION	DATE

REVISIONS

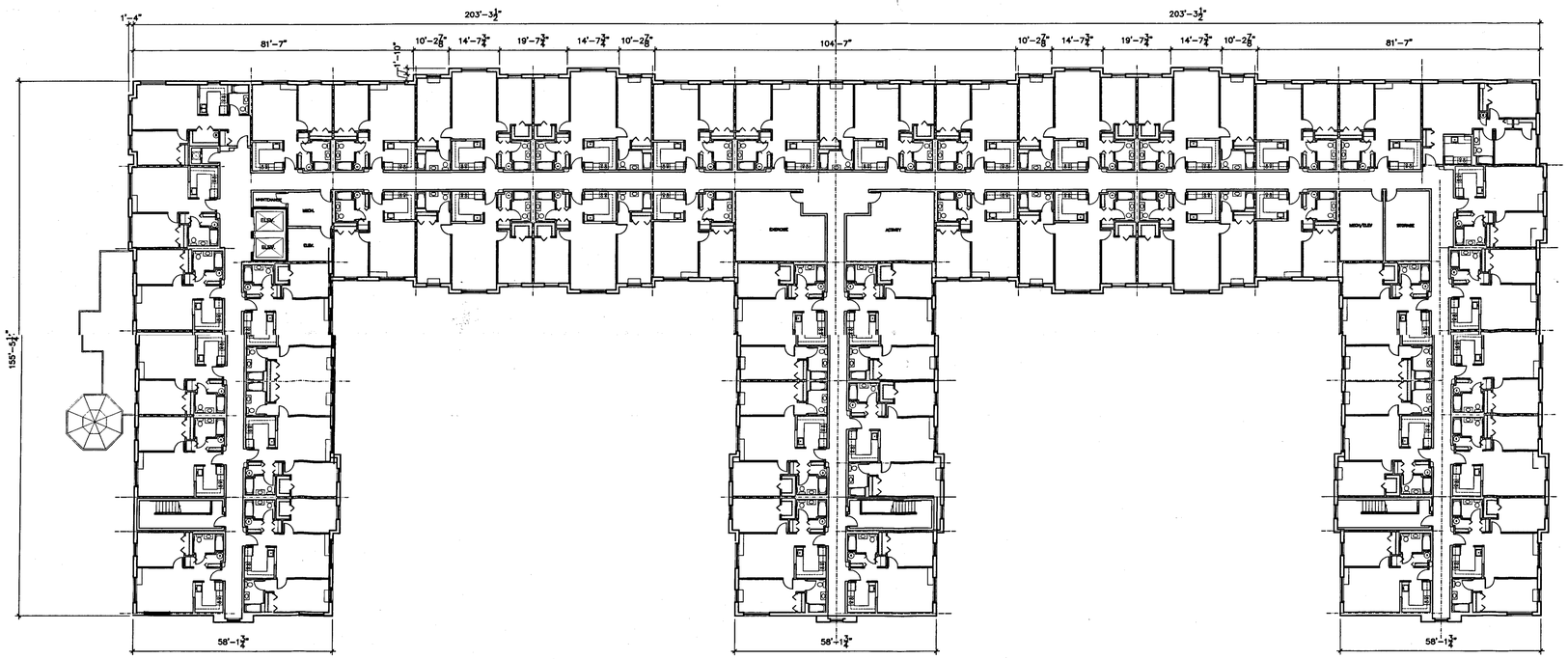
SHEET TITLE
FIRST FLOOR PLAN

SCALE	DATE	PROJ.#
AS NOTED	08/29/01	21048.00

PROJECT PHASE
SD
NOT FOR CONSTRUCTION
DRAWING #
3 of 5

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THIS DRAWING OF THE PROPOSED ROLLING ROAD SENIOR COMMUNITY WAS PREPARED BY HORD COPLAN MACHT, LLC AS THE DESIGNER AND IS SIGNED AND SEALED BY A REGISTERED ARCHITECT IN THE STATE OF MARYLAND. THE SEAL AND SIGNATURE OF THE ENGINEER INDICATES ONLY THAT THIS DRAWING IS A COMPONENT OF THE REZONING CLASSIFICATION PETITION SUBMISSION.



7B A2.2 SECOND FLOOR PLAN

SCALE: 1/16" =1'-0"

TRUE NORTH

PROJECT NORTH

DOCUMENTED PLAN TO ACCOMPANY
RECLASSIFICATION PETITION AND VARIANCE PETITION

ROLLING ROAD SENIOR COMMUNITY

ROLLING ROAD BALTIMORE COUNTY, MARYLAND

Hord Coplan Macht

ARCHITECTURE
LANDSCAPE ARCHITECTURE
PLANNING
INTERIOR DESIGN

111 MARKET PLACE SUITE 710
BALTIMORE MARYLAND 21202
410 837 7311 FAX 410 837 6530

NOT FOR CONSTRUCTION

ARCHITECTURAL REGISTRATION BOARD 3528-R STATE OF MARYLAND

SEAL

DRAWN BY: CHECKED:

NO.	DESCRIPTION	DATE

REVISIONS

SHEET TITLE

FLOOR PLAN

SCALE	DATE	PROJ.#
AS NOTED	08/29/01	21048.00

PROJECT PHASE

SD
NOT FOR CONSTRUCTION
DRAWING #

4 of 5

If this drawing is not 30" x 42" it is a reduced print.

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3B A4.1 NORTH ELEVATION
SCALE: 1/16" =1'-0"



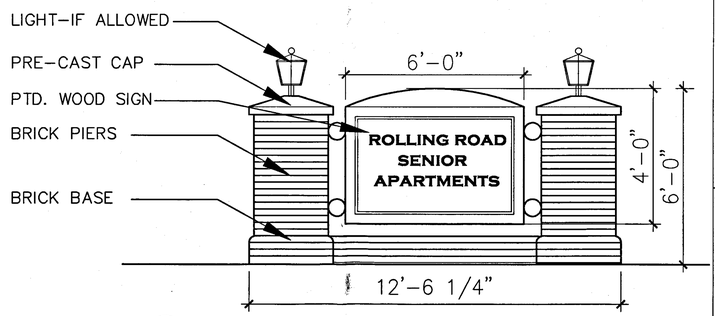
5B A4.1 SOUTH ELEVATION
SCALE: 1/16" =1'-0"



8B A4.1 EAST ENTRY ELEVATION
SCALE: 1/16" =1'-0"



8H A4.1 WEST ELEVATION
SCALE: 1/16" =1'-0"



8H A4.1 SITE SIGN
SCALE: 1/2" =1'-0"

If this drawing is not 30" x 42" it is a reduced print.

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DOCUMENTED PLAN TO ACCOMPANY
RECLASSIFICATION PETITION AND VARIANCE PETITION

ROLLING ROAD SENIOR COMMUNITY

ROLLING ROAD BALTIMORE COUNTY, MARYLAND

Hord Coplan Macht

ARCHITECTURE
LANDSCAPE ARCHITECTURE
PLANNING
INTERIOR DESIGN

111 MARKET PLACE SUITE 710
BALTIMORE MARYLAND 21202
410 837 7311 FAX 410 837 6530

ARCHITECTURAL REGISTRATION $528-R STATE OF MARYLAND

SEAL

DRAWN BY: CHECKED:

NO.	DESCRIPTION	DATE

REVISIONS

SHEET TITLE

ELEVATIONS

SCALE	DATE	PROJ.#
AS NOTED	08/29/01	21048.00

PROJECT PHASE

SD
NOT FOR CONSTRUCTION
DRAWING #

5 of 5

GENERAL NOTES:

1. CONTRACT PURCHASER: PENNROSE PROPERTIES, INC.
   c/o MERENBERG ENTERPRISES, INC.
   11 CHASEMOUNT COURT
   BALTIMORE, MARYLAND 21209

   APPLICANT: SAME

2. PREPARED BY: STV INCORPORATED
   21 GOVERNOR'S COURT
   BALTIMORE, MARYLAND 21244
   PHONE: 410-944-9112
   CONTACT: DEBRA K. WITTLE, RLA

3. PREMISES ADDRESS: 3134 ROLLING ROAD
   BALTIMORE, MARYLAND 21244

4. TAX ASSESSMENT NUMBERS: TAX MAP 87, GRID 4
   PARCEL 267
   TAX ACCOUNT NO. 0202085004Q

5. DISTRICT NUMBERS: ELECTION DISTRICT 2
   COUNCILMANIC DISTRICT 2
   CENSUS TRACT 4036.02
   REGIONAL PLANNING DISTRICT 313C

6. WATERSHED: EASTERN THIRD ZONE
   SUBWATERSHED: 53C

7. ZONING DATA

   A. EXISTING USE: VACANT, NO BUILDINGS LOCATED ON-SITE
      PROPOSED USE: CLASS A HOUSING FOR THE ELDERLY, SENIOR INDEPENDENT LIVING ONLY.

   B. CURRENT ZONING AND ACREAGE: D.R.-5.5 11.28AC.
      PROPOSED ZONING: D.R. 16 11.28AC.: 119 DWELLING UNITS
      57 1-BR. 62 2-BR

   C. SETBACK REQUIREMENTS:
      FRONT - 40 FT. FROM FRONT PROPERTY LINE
      SIDE - 30 FT. FOR ONE SIDE YARD.
      REAR - 40 FT. FROM REAR PROPERTY LINE

   D. PARKING REQUIREMENTS: 79 SPACES (1 SPACE PER 1½ UNITS):
      119 UNITS/1.5= 79 SPACES REQUIRED

      PARKING PROVIDED:

	1BR		2BR	
FLOOR 1 :	16		23	
FLOOR 2 :	22		22	
FLOOR 3 :	20		18	
TOTAL =	58	+	63	= 121 SPACES

      121 SPACES (INCLUDES 6 HANDICAP ACCESSIBLE SPACES)

      ALL SPACES WILL BE A MINIMUM OF 8.5 FT. X 18 FT. ALL PARKING AREAS ARE TO BE PAVED WITH A DURABLE AND DUSTLESS SURFACE OF BITUMINOUS CONCRETE AND PERMANENTLY STRIPED.

   E. BUILDING HEIGHT: MAXIMUM ALLOWED - 60 FT.
      PROPOSED - 46 FT. (IN RTA-35')

   F. AMENITY OPEN SPACE - NOT REQUIRED

   G. ZONING MAP NUMBER - N.W. 5-H, 5-G

8. ZONING RELIEF REQUESTED:
   A. PURSUANT TO BCZR SECTION 1B01.2.B.2, BCZR 504.2 AND CMDP REGULATIONS FOR MULTI-FAMILY BUILDINGS, PENNROSE RESIDENTIAL STANDARDS FOR MULTI-FAMILY BUILDINGS, PENNROSE SEEKS A MODIFICATION OF STANDARDS AND A VARIANCE TO PERMIT A BUILDING LENGTH OF 428' IN LIEU OF THE PERMITTED 240'.

9. BUILDING WILL COMPLY WITH ALL APPLICABLE BUILDING CODE AND FIRE CODE PROVISIONS.

10. SCREENING AND LANDSCAPING SHALL BE PROVIDED IN COMPLIANCE WITH THE BALTIMORE COUNTY LANDSCAPE MANUAL AND BCZR.

11. OPEN SPACE WILL BE PROVIDED IN ACCORDANCE WITH THE BALTIMORE COUNTY LOCAL OPEN SPACE MANUAL.

12. HOURS OF OPERATION: 24 HRS. NUMBER OF EMPLOYEES: 5.

13. THE SITE DOES NOT LIE WITHIN THE CHESAPEAKE BAY CRITICAL AREA.

14. THIS SITE DOES NOT INCLUDE NOR IS CONTIGUOUS TO ANY BUILDINGS, PROPERTY OR SITES REGISTERED ON THE HISTORICAL INVENTORY LIST.

15. THERE IS NO KNOWN ARCHAEOLOGICAL SITE ON THIS PROPERTY.

16. THIS SITE WILL BE REQUIRED TO MEET FOREST CONSERVATION REQUIREMENTS.

17. STORMWATER MANAGEMENT WILL BE REQUIRED FOR THIS SITE.

18. TRASH WILL BE COLLECTED PRIVATELY.

19. PREVIOUS COMMERCIAL PERMIT(S): N/A

20. ZONING HISTORY: N/A

21. ANY DISTURBANCE IN THE SLOPE EASEMENT WILL REQUIRE APPROVAL FROM MARYLAND STATE HIGHWAY ADMINISTRATION.

22. ALL LIGHTING FIXTURES TO ILLUMINATE THE PROPERTY SHALL BE ARRANGED TO REFLECT AWAY FROM PUBLIC STREETS AND ADJACENT PROPERTIES. MAX. LIGHTING HEIGHT IN RTA IS 16'.

23. NO OUTSIDE STORAGE OR DISPLAY SHALL BE PERMITTED.

24. ALL PROPOSED SIGNAGE SHALL BE IN COMPLIANCE WITH SECTION 450 OF THE BALTIMORE COUNTY ZONING REGULATIONS MANUAL.

25. THIS SITE IS CURRENTLY DENSELY VEGETATED.

26. THERE ARE NO KNOWN WELLS, UNDERGROUND STORAGE TANKS OR HAZARDOUS MATERIALS ON THE SITE.

27. THIS SITE IS NOT LOCATED WITHIN A MORATORIUM AREA.

28. ROLLING ROAD IS CLASSIFIED AS A PRINCIPAL ARTERIAL PER THE FEDERAL CLASSIFICATION MAP.

29. THERE ARE NO KNOWN EXISTING PONDS, STREAMS, BODIES OF WATER, WATER COURSES, 100 YR FLOODPLAINS, OR UNUSUAL NATURAL FORMATION ON THIS SITE.

30. SUBJECT PROPERTY WILL BE DEVELOPED IN SUBSTANTIAL CONFORMANCE WITH DOCUMENTED PLAN TO ACCOMPANY RECLASSIFICATION PETITION AND VARIANCE PETITION. HOWEVER, THE DEVELOPER MAY MAKE REFINEMENTS TO THE PLAN ADMINISTRATIVELY AS LONG AS SUCH CHANGES DO NOT REQUIRE A VARIANCE AND ARE WITHIN THE SPIRIT AND INTENT OF THE APPROVED DOCUMENTENTED PLAN TO ACCOMPANY RECLASSIFICATION PETITION AND VARIANCE PETITION

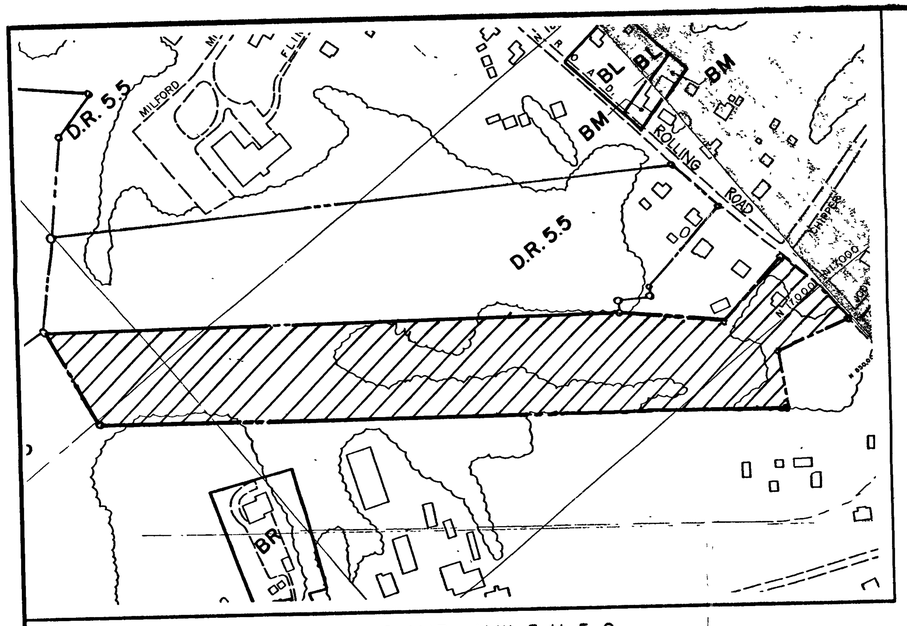
31. THIS SENIOR INDEPENDENT HOUSING COMMUNITY WILL HAVE EMANATIONS ORDINARILY ASSOCIATED WITH SUCH USE.

32. LOCAL OPEN SPACE REQUIREMENT:

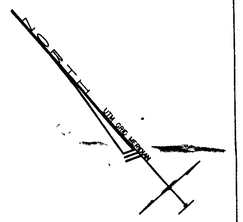
    ACTIVE LOS 119 UNITS x 650 SF./UNIT = 77,350 SF. (1.78 AC.)
    PASSIVE LOS 119 UNITS x 350 SF./UNIT = 41,650 SF. (0.95 AC.)

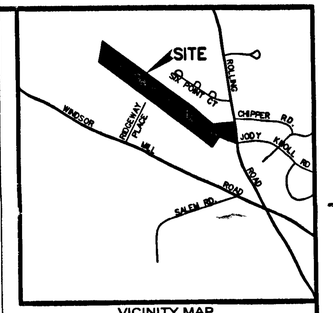
    LOCAL OPEN SPACE PROVIDED:

    ACTIVE = 77,350 SF.
    PASSIVE = 41,650 SF.

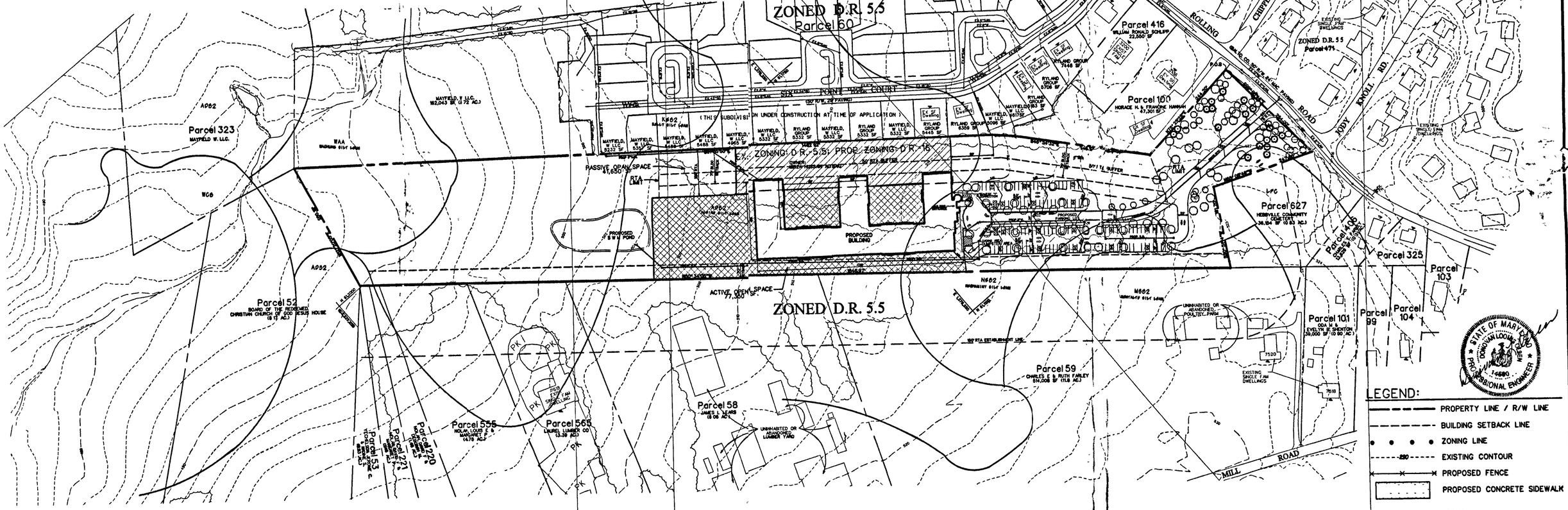


ZONING MAP N.W. 5-H, 5-G
SCALE: 1"=200'





VICINITY MAP
SCALE: 1" = 2,000'



LEGEND:

- PROPERTY LINE / R/W LINE
- BUILDING SETBACK LINE
- ZONING LINE
- 250 EXISTING CONTOUR
- PROPOSED FENCE
- PROPOSED CONCRETE SIDEWALK
- 100' R.T.A.
- INDICATES BLDG. FRONT

STATE OF MARYLAND
DONOVAN LOUIS SCHLEP
No. 14580
PROFESSIONAL ENGINEER

STV Incorporated
engineers / architects / planners / scientists / construction managers
21 Governor's Court Baltimore, MD 21244-2722 (410) 944-9112

REVISIONS		
NO	DATE	DESCRIPTION

GRAPHIC SCALE
300 200 100 0 100 300
250 150 50 200

PLAN PREPARATION			
DRAWN BY:	M BLOW	DATE:	JULY, 2001
DESIGNED BY:	K HOLLAND	SCALE:	1" = 100'
CHECKED BY	D OLSEN	JOB NO	61-03-10707

DOCUMENTED PLAN TO ACCOMPANY RECLASSIFICATION PETITION AND VARIANCE PETITION

ROLLING ROAD SENIOR COMMUNITY
ROLLING ROAD
BALTIMORE COUNTY, MARYLAND

DRAWING NO. C-1

SHEET NO. 1 of 5

ADJOINING PROPERTY OWNER ADDRESSES

RYLAND GROUP
SUITE 520
7250 PARKWAY DRIVE
HANOVER, MD 21076-1343

MAYFIELD W. LLC
SUITE 302
1301 YORK ROAD
LUTHERVILLE TIMONIUM, MD. 21093-6006

ZONED D.R. 5.5
Parcel 60

SIX POINT COURT
(50' R/W, 29' PAVING)

EX. ZONING: D.R. 5.5; PROP. ZONING: D.R. 16

OWNER:
MIRZA HUSSAIN ALI BAIG

PASSIVE OPEN SPACE
41,650 SF.

ACTIVE OPEN SPACE
77,350 SF.

PROPOSED BUILDING

PROPOSED PARKING LOT

PROPOSED S.W.M. POND

LOADING AREA/ DUMPSTER AREA

50' RTA BUFFER

150' RTA ESTABLISHMENT LINE

RTA LIMIT

75' BLDG. SETBACK

50' SETBACK

APPROX 700' TO PROP. LINE

APPROX. 600' TO PROP. LINE

KE02 KELLY SILT LOAM

ADD2 ALDINO SILT LOAM

NE02 NESHAMINY SILT LOAM

MS02 MONTALTO SILT LOAM

MAYFIELD, W. LLC. 8232 SF

MAYFIELD, W. LLC. 5357 SF

MAYFIELD, W. LLC. 5488 SF

MAYFIELD, W. LLC. 5488 SF

MAYFIELD, W. LLC. 4965 SF

MAYFIELD, W. LLC. 5332 SF

RYLAND GROUP 5332 SF

MAYFIELD, W. LLC. 5332 SF

RYLAND GROUP 5332 SF

MAYFIELD, W. LLC. 5332 SF

RYLAND GROUP 5445 SF

RYLAND GROUP 6359 SF

MAYFIELD, W. LLC. 5096 SF

MAYFIELD, W. LLC. 4617SF

RYLAND GROUP 5183 SF

RYLAND GROUP 5706 SF

RYLAND GROUP 7448 SF

EX SF Dwelling

Parcel 416
WILLIAM RONALD SCHLIPP
22,550 SF

Parcel 100
HORACE H. & FRANCINE HANNAH
47,301 SF

Parcel 627
HEBBVILLE COMMUNITY CEMETERY
36,154 SF (0.83 AC.)

EXISTING SINGLE FAM DWELLINGS

ZONED D.R. 5.5
Parcel 471

UNINHABITED OR ABANDONED POULTRY FARM

P.O.B.

APPROX. LOCATION ENTRANCE SIGN (ONE SIGN ONLY)

PROPOSED CURB AND GUTTER TIE-INS

ROLLING ROAD

CHIPPER ROAD

JODY ROAD

3' (BALTO. CO. 50' R/W, 24' MACADAM PAVING)

1482.92'
S54°15'50"E

1848.97'
N50°34'05"W

348.19'
S45°34'32"E

247.90'
S88°51'05"W

264.00'
N78°25'28"E

244.20'
S09°08'32"W

N68°08'46"W

N 61,750
E 1,378,250

N 61,100
E 1,378,250

N 61,125
E 1,378,250

VICINITY MAP
SCALE: 1" = 2,000'

SITE
SIX POINT CT.
ROLLING
CHIPPER RD
WINDSOR
CHESHAM PLACE
MILL
JODY
MILL RD
ROAD
SALEM RD.

STATE OF MARYLAND
DONOVAN LOOMIS BARNES
No. 14680
PROFESSIONAL ENGINEER

LEGEND:

- PROPERTY LINE / R/W LINE
- BUILDING SETBACK LINE
- ZONING LINE
- 250 EXISTING CONTOUR
- PROPOSED FENCE
- PROPOSED CONCRETE SIDEWALK
- 100' R.T.A.

GRAPHIC SCALE
150 100 50 0 100
125 75 25 50 150

STV Incorporated
engineers / architects / planners / scientists / construction managers
21 Governor's Court Baltimore, MD 21244-2722 (410) 944-9112

REVISIONS		
NO	DATE	DESCRIPTION

PLAN PREPARATION			
DRAWN BY:	M BLOW	DATE:	JULY, 2001
DESIGNED BY:	K HOLLAND	SCALE:	1" = 50'
CHECKED BY	D OLSEN	JOB NO	61-03-10707

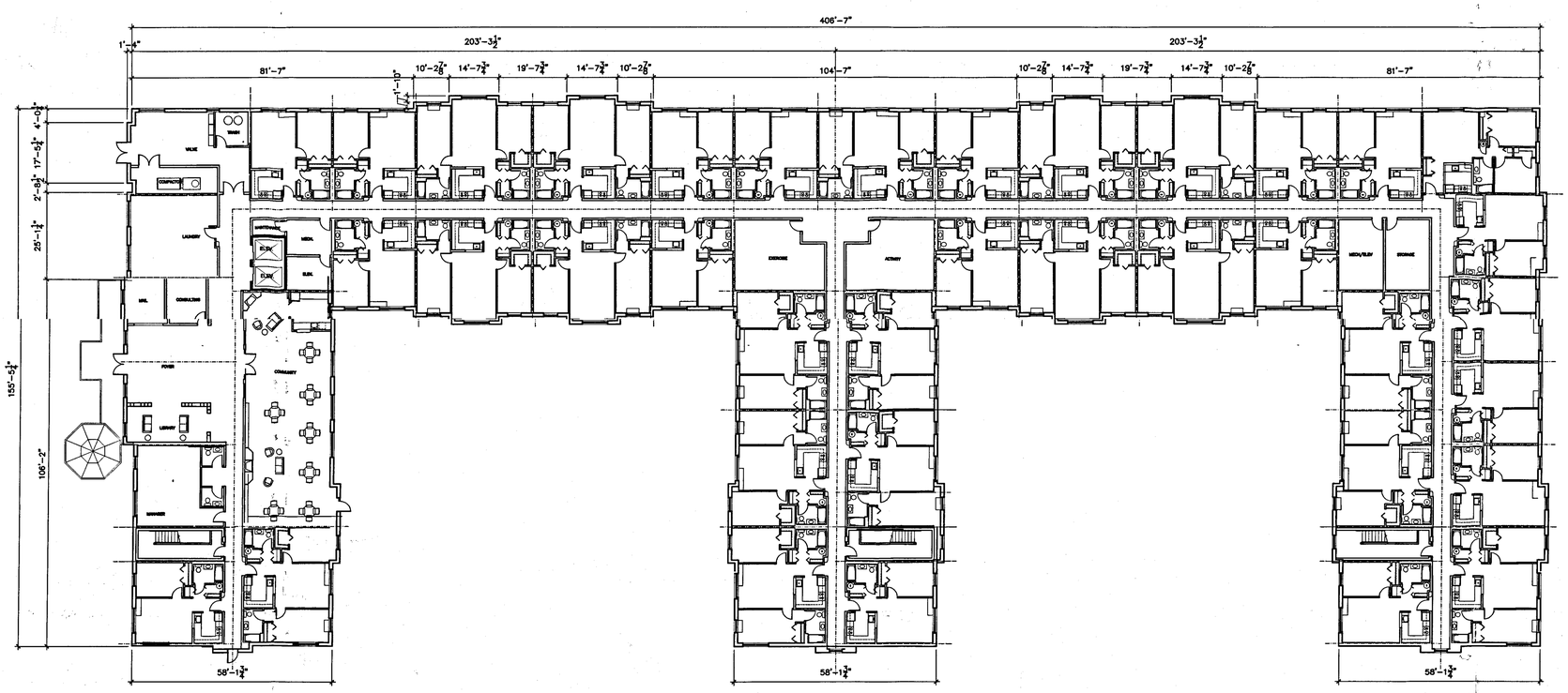
DOCUMENTED PLAN TO ACCOMPANY RECLASSIFICATION PETITION AND VARIANCE PETITION

ROLLING ROAD SENIOR COMMUNITY
ROLLING ROAD
BALTIMORE COUNTY, MARYLAND

DRAWING NO. C-2

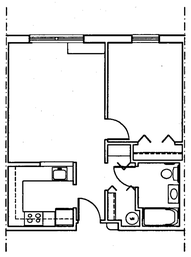
SHEET NO. 2 of 5

THIS DRAWING OF THE PROPOSED ROLLING ROAD SENIOR COMMUNITY WAS PREPARED BY HORD COPLAN MACHT, LLC AS THE DESIGNER AND IS SIGNED AND SEALED BY A REGISTERED ARCHITECT IN THE STATE OF MARYLAND. THE SEAL AND SIGNATURE OF THE ENGINEER INDICATES **ONLY** THAT THIS DRAWING IS A COMPONENT OF THE REZONING CLASSIFICATION PETITION SUBMISSION.

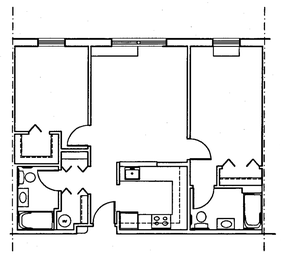


7B A2.1 FIRST FLOOR PLAN
SCALE: 1/16" =1'-0"

TRUE NORTH
PROJECT NORTH



7D A2.1 TYPICAL ONE BEDROOM
SCALE: 1/8" =1'-0"



7K A2.1 TYPICAL TWO BEDROOM
SCALE: 1/8" =1'-0"

DOCUMENTED PLAN TO ACCOMPANY
RECLASSIFICATION PETITION AND VARIANCE PETITION

ROLLING ROAD SENIOR COMMUNITY

ROLLING ROAD BALTIMORE COUNTY, MARYLAND

hcm
Hord Coplan Macht
ARCHITECTURE
LANDSCAPE ARCHITECTURE
PLANNING
INTERIOR DESIGN

111 MARKET PLACE SUITE 710
BALTIMORE MARYLAND 21202
410 837 7311 FAX 410 837 6530

NOT FOR CONSTRUCTION

SEAL

DRAWN BY: CHECKED:

NO. DESCRIPTION DATE
REVISIONS

SHEET TITLE
FIRST FLOOR PLAN

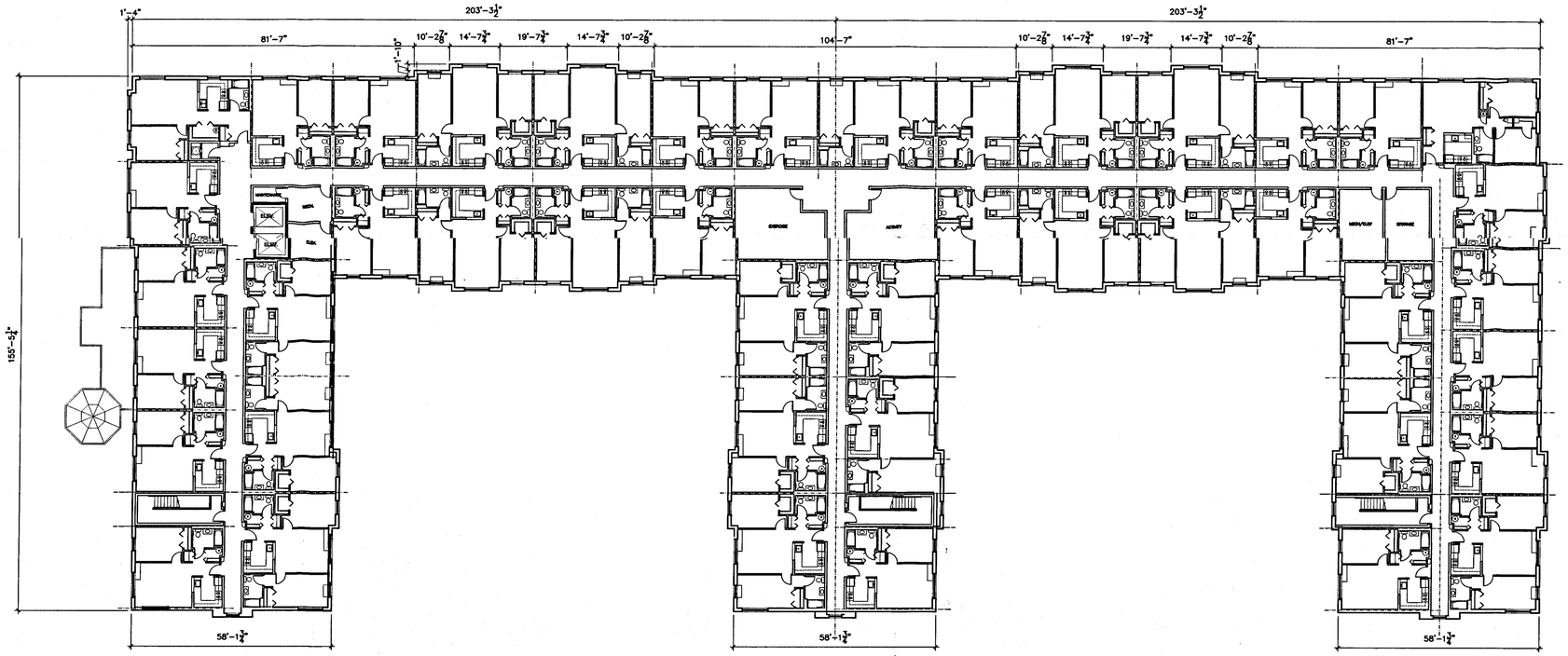
SCALE	DATE	PROJ.#
AS NOTED	08/29/01	21048.00

PROJECT PHASE
SD
NOT FOR CONSTRUCTION
DRAWING #
3 of 5

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THIS DRAWING OF THE PROPOSED ROLLING ROAD SENIOR COMMUNITY WAS PREPARED BY HORD COPLAN MACHT, LLC AS THE DESIGNER AND IS SIGNED AND SEALED BY A REGISTERED ARCHITECT IN THE STATE OF MARYLAND. THE SEAL AND SIGNATURE OF THE ENGINEER INDICATES ONLY THAT THIS DRAWING IS A COMPONENT OF THE REZONING CLASSIFICATION PETITION SUBMISSION.



7B / A2.2 SECOND FLOOR PLAN

SCALE: 1/16" =1'-0"

TRUE NORTH

PROJECT NORTH

DOCUMENTED PLAN TO ACCOMPANY
RECLASSIFICATION PETITION AND VARIANCE PETITION

ROLLING ROAD SENIOR COMMUNITY

ROLLING ROAD BALTIMORE COUNTY, MARYLAND

Hord Coplan Macht

ARCHITECTURE
LANDSCAPE ARCHITECTURE
PLANNING
INTERIOR DESIGN

111 MARKET PLACE SUITE 710
BALTIMORE MARYLAND 21202
410 837 7311 FAX 410 837 6530

NOT FOR CONSTRUCTION

ARCHITECTURAL REGISTRATION BOARD 3528-R STATE OF MARYLAND

SEAL

DRAWN BY:	CHECKED:

NO.	DESCRIPTION	DATE
REVISIONS		

SHEET TITLE

FLOOR PLAN

SCALE	DATE	PROJ.#
AS NOTED	08/29/01	21048.00

PROJECT PHASE

SD
NOT FOR CONSTRUCTION

DRAWING #

4 of 5

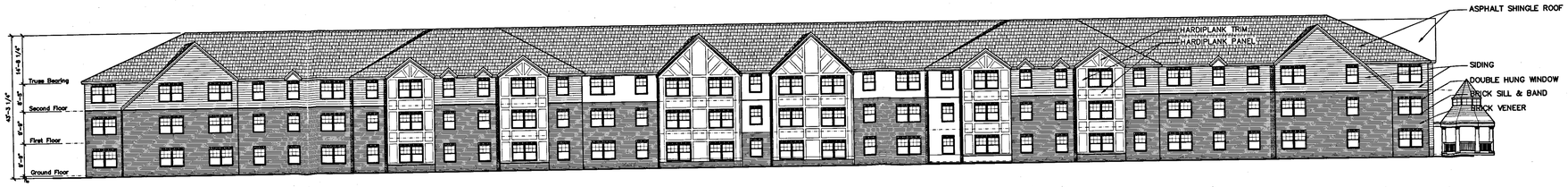
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3B A4.1 NORTH ELEVATION
SCALE: 1/16" =1'-0"



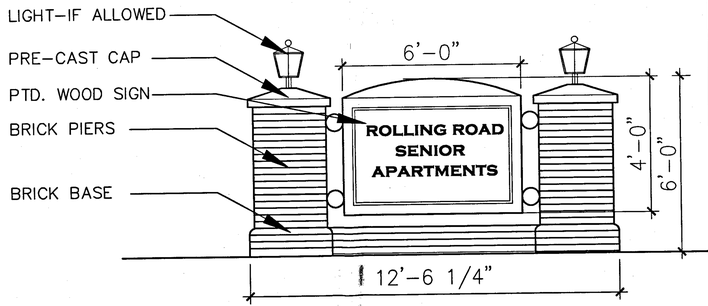
5B A4.1 SOUTH ELEVATION
SCALE: 1/16" =1'-0"



8B A4.1 EAST ENTRY ELEVATION
SCALE: 1/16" =1'-0"



8H A4.1 WEST ELEVATION
SCALE: 1/16" =1'-0"



8H A4.1 SITE SIGN
SCALE: 1/2" =1'-0"

DOCUMENTED PLAN TO ACCOMPANY
RECLASSIFICATION PETITION AND VARIANCE PETITION

ROLLING ROAD SENIOR COMMUNITY

ROLLING ROAD BALTIMORE COUNTY, MARYLAND

Hord Coplan Macht

ARCHITECTURE
LANDSCAPE ARCHITECTURE
PLANNING
INTERIOR DESIGN

111 MARKET PLACE SUITE 710
BALTIMORE MARYLAND 21202
410 837 7311 FAX 410 837 6530

ARCHITECTURAL REGISTRATION BOARD 3528-R

SEAL

DRAWN BY: CHECKED:

NO. DESCRIPTION DATE

REVISIONS

SHEET TITLE

ELEVATIONS

SCALE	DATE	PROJ.#
AS NOTED	08/29/01	21048.00

PROJECT PHASE

SD
NOT FOR CONSTRUCTION
DRAWING #

5 of 5

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COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 2001, Legislative Day No. 16

Resolution No. 106-01

Mr. Kevin Kamenetz, Councilman

By the County Council, September 4, 2001

A RESOLUTION of the Baltimore County Council to approve the Planning Board's certification that the zoning reclassification petition filed by Pennrose Properties, Inc. for the property located at 3134 Rolling Road and situated in the Second Councilmanic District, should be exempted from the regular cyclical procedure of Section 2-356(c) through (h), inclusive, of the Baltimore County Code, 1988, as amended.

WHEREAS, the Planning Board, by Resolution dated August 16, 2001, has certified that early action on the Petition for Zoning Reclassification filed by Pennrose Properties, Inc., requesting a reclassification of the above described property is manifestly required in the public interest; and

WHEREAS, the County Council of Baltimore County, in accordance with the provisions of Section 2-356(i), may approve said certification and exempt the Petition for Zoning Reclassification from the regular procedures of Section 2-356.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, that the certification by the Planning Board that early action on the zoning reclassification petition filed by Pennrose Properties, Inc. , with the documented site plan filed with the request for exemption from the regular cyclical procedure, be

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
1-008	Staff	West side Washington Blvd, east of I-95	MLR IM 173.0 Total 173.0	MLR IM 173.0 or ML IM Total 173.0	ML 173.0 Total 173.0	ML 124.0 BM IM 49.0 Total 173.0	See Issues 1-002, 1-031, 1-032 Overlay Adopted
1-009	Staff	South side Dogwood Rd west of Belmont Ave	DR 5.5 10.5 DR 10.5 4.2 DR 3.5 30.2 Total 44.9	O 3 44.9 MLR DR 3.5 DR 16 Total 44.9	DR3.5 22.0 DR 5.5 10.5 DR 16 2.4 O 3 5.4 MLR 4.6 Total 44.9	DR 3.5 20.0 DR 5.5 10.9 DR 16 2.4 O 3 5.0 MLR 4.2 BM 2.4 Total 44.9	See Issue 1-039 Overlay Adopted
1-010	Staff	200' South of Edmondson Ave, 150' west of N. Prospect Ave	DR 5.5 7.2 Total 7.2	DR 3.5 7.2 Total 7.2	DR 3.5 7.2 Total 7.2	DR 3.5 7.2 Total 7.2	
1-011	Halethorpe Improvement Association Inc	1320 Elm Rd, north side of Elm Rd, 145' west of Carville Ave	DR 16 0.2 Total 0.2	DR 5.5 0.2 Total 0.2	DR 16 0.2 Total 0.2	DR 5.5 0.2 Total 0.2	
1-012	Elmer Morsberger	28, 32 Melrose Ave, east of Egges 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 1-013, 1-014
1-013	Elmer, Bernice, Louis and Jolene Morsberger	17 Fusting Ave, 300' west of Ingleside Ave	DR 5.5 1.5 Total 1.5	RO 1.5 Total 1.5	DR 5.5 1.5 Total 1.5	DR 5.5 1.5 Total 1.5	See Issues 1-012, 1-014

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
1-022	Paradise Assisted Living Inc	6348 Frederick Rd, east of Briarwood Rd	DR 5.5 0.6 Total 0.6	DR 10.5 0.6 Total 0.6	DR 10.5 0.6 Total 0.6	DR 5.5 0.6 Total 0.6	
1-023	Mr. & Mrs. Edward Wood Sr.	1201 Maiden Choice Ln, 400' east of Westland Blvd	DR 5.5 0.7 Total 0.7	ROA RO or 0.7 Total 0.7	DR 5.5 0.7 Total 0.7	DR 5.5 0.7 Total 0.7	See Issue 1-069
1-024	Kensington Associates	Northeast corner of Wilkens Ave and Maiden Choice Ln	DR 5.5 0.1 OR 2 10.8 Total 10.9	BL 10.9 Total 10.9	BL 10.9 Total 10.9	BL 10.9 Total 10.9	See Issue 1-029
1-025	Rolling Road Plaza	Northwest corner of Rolling Rd and Powers Ln	DR 3.5 0.8 BL 5.9 Total 6.7	BM 6.7 Total 6.7	DR 3.5 0.8 BL 5.9 Total 6.7	DR 3.5 0.8 BL 5.9 Total 6.7	See Issue 1-064
1-026	Jim Koons Limited Partnership II	2003 Rolling Rd, 1300' north of Security Blvd	DR 5.5 1.0 Total 1.0	BM 1.0 Total 1.0	DR 5.5 1.0 Total 1.0	DR 5.5 1.0 Total 1.0	
1-027	Merry Hill, LLC	Powers Ln, southwest of Nuwood Dr and Nuwood Circle	DR 2 4.8 Total 4.8	DR 16 4.8 Total 4.8	DR 2 4.8 Total 4.8	DR 16 4.8 Total 4.8	See Issue 1-046 Covenant Agreement
1-028	Rolling Heights Lot A LP	2285 Rolling Run Dr, southeast of intersection of Rolling Run Dr and Dogwood Rd	MLR 6.3 Total 6.3	BL AS 6.3 Total 6.3	MLR 6.3 Total 6.3	BL AS 1.6 BL 4.7 Total 6.3	See Issues 1-017, 1-034, 1-035 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
1-036	Tuck Capital Investment, Inc	5153 Baltimore National Pk, southeast corner of Baltimore National Pk and Charing Cross Rd	RO 1.2 DR 5.5 0.6 Total 1.8	BL AS 1.8 Total 1.8	RO 1.2 DR 5.5 0.6 Total 1.8	BM 1.8 Total 1.8	Covenant Agreement
1-037	Philip Valenzia	2912 Hammonds Ferry Rd, 150' south of Hammonds Ferry Rd and Fifth St	DR 5.5 0.4 Total 0.4	RO 0.4 Total 0.4	RO 0.4 Total 0.4	RO 0.4 Total 0.4	See Issue 1-052
1-038	Gary Dixon	5538 Baltimore National Pk	BM CCC 0.4 Total 0.4	BR 0.4 Total 0.4	BR 0.4 Total 0.4	BM CCC 0.4 Total 0.4	
1-039	Dennis Sardona Mendoza	1700 Hill Dr, 220' northwest from Grove Ave	MLR 0.8 Total 0.8	BM 0.8 Total 0.8	BM 0.8 Total 0.8	BM 0.8 Total 0.8	See Issue 1-009
1-040	William W. & Barbara P. Birago	3500 Granite Rd, south of Marriotsville Rd	RC 2 36.1 Total 36.1	RC 3 36.1 Total 36.1	RC 2 36.1 Total 36.1	RC 2 36.1 Total 36.1	
1-041	Braveheart, LLC	408 Commonwealth Ave at Route 40 West	DR 16 0.5 Total 0.5	BL 0.5 Total 0.5	DR 16 0.5 Total 0.5	DR 16 0.5 Total 0.5	
1-042	Relay Improvement Association	West side of Viaduct Ave opposite Woodland Dr	DR 3.5 13.5 Total 13.5	DR 1 13.5 Total 13.5	DR 3.5 13.5 Total 13.5	DR 1 13.5 Total 13.5	
1-043	Relay Improvement Association	1846 Sutton Ave, 250' southeast of South St	RO 2.5 Total 2.5	DR 5.5 2.5 Total 2.5	ROA 1.3 DR 5.5 1.2 Total 2.5	RO 1.3 DR 5.5 1.2 Total 2.5	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
1-050	D.S. Thaler & Assoc., Inc	7818 Johnnycake Rd, north of Cross Trails Rd	RC 3 16.0 Total 16.0	DR 3.5 16.0 Total 16.0	RC 3 or RC 6 16.0 Total 16.0	RC 6 16.0 Total 16.0	See Issues 1-047, 1-048, 1-049, 1-051, 1-058
1-051	D.S. Thaler & Assoc., Inc	7726 Johnnycake Rd, 400' north of Park Trail Rd and Johnnycake Rd	RC 3 50.0 Total 50.0	DR 3.5 50.0 Total 50.0	RC 3 or RC 6 50.0 Total 50.0	RC 6 50.0 Total 50.0	See Issues 1-047, 1-048, 1-049, 1-050, 1-058
1-052	Margaret Lynn Vonderhorst	2900 Hammonds Ferry Rd	DR 5.5 1.0 ML IM 0.8 Total 1.8	BR 1.8 Total 1.8	DR 5.5 1.0 ML IM 0.8 Total 1.8	RO 1.0 ML IM 0.8 Total 1.8	See Issue 1-037 Overlay Adopted
1-053	Stacy & Nicholas J., Jr Angelozzi, Trustees	7312 Dogwood Rd, 2600' east of Ridge Rd	DR 10.5 0.1 DR 5.5 12.5 Total 12.6	ML MLR or 12.6 Total 12.6	DR 5.5 12.5 DR 10.5 0.1 Total 12.6	MLR 12.6 Total 12.6	
1-054	Henry J. McCarthy	2 Liberty Ridge Ct, corner of Liberty Ridge Ct and Liberty Rd	RC 4 6.0 Total 6.0	RC 5 6.0 Total 6.0	RC 4 6.0 Total 6.0	RC 4 6.0 Total 6.0	
1-055	Stephen W. Whalen, Jr	314-320 W. Kenwood Ave, north of Wilkens Ave	DR 3.5 1.9 Total 1.9	OR 2 1.9 Total 1.9	DR 3.5 1.9 Total 1.9	OR 2 1.9 Total 1.9	
1-056	Emmanuel Jackson	3038 Rolling Rd, south of Windsor Mill Rd	RO 0.3 Total 0.3	BR 0.3 Total 0.3	BR 0.3 Total 0.3	BR 0.3 Total 0.3	See Issue 1-066 Covenant Agreement

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
1-063	Staff	South side of I-95 to I-695	DR 5.5 2.1 DR 1 200.3 DR 16 0.7 MLR 13.5 MH 150.2 ML 18.1 Total 389.9	MLR ML MH RC 2 389.9 Total 389.9	DR 16 0.7 MLR 18.5 RC 2 or RC 7 370.7 Total 389.9	DR 16 0.7 RC 2 389.2 Total 389.9	See Issues 1-061, 1-062 Overlay Adopted
1-064	Staff	East side of Rolling Rd, 140' south of Gilston Park Rd	DR 5.5 10.2 Total 10.2	DR 3.5 10.2 Total 10.2	DR 5.5 10.2 Total 10.2	DR 5.5 10.2 Total 10.2	See Issue 1-025
1-065	Staff	North side of Edmondson Ave, 180' east of Rosewood Ave to Glenmore Ave	DR 3.5 9.5 Total 9.5	DR 2 9.5 Total 9.5	DR 3.5 9.5 Total 9.5	DR 2 9.5 Total 9.5	See Issue 1-057
1-066	County Council	3036 N. Rolling Rd, 450' south of Windsor Mill Rd	RO 0.3 Total 0.3	ML or 0.3 BR Total 0.3	BR 0.3 Total 0.3	BR 0.3 Total 0.3	See Issue 1-056 Covenant Agreement
1-067	County Council	North & south side of Frederick Rd from N. Prospect Ave to 100' west of Briarwood Ct and from Maple Dr to Paradise Ave	BL AS 5.6 Total 5.6	BL 5.6 Total 5.6	BL 5.6 Total 5.6	BL AS 1.5 BL 4.1 Total 5.6	Overlay Adopted
1-068	County Council	1813 Main St opposite East St	DR 16 0.7 Total 0.7	DR 5.5 0.7 Total 0.7	DR 5.5 0.7 Total 0.7	DR 5.5 0.7 Total 0.7	
1-069	County Council	Southwest corner of Maiden Choice Ln and Shelbourne Rd	RO 1.5 Total 1.5	BL CCC 1.5 Total 1.5	BL CCC 1.5 Total 1.5	RO 1.5 Total 1.5	See Issue 1-023

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
2-009	John N Carr	7306 Liberty Rd, 160' east of Buckingham Rd	DR 3.5 0.3 Total 0.3	CB 0.3 Total 0.3	DR 3.5 0.3 Total 0.3	DR 3.5 0.3 Total 0.3	
2-010	Avalon Associates LLC	Avalon Way and east side Greentree Rd	OR 2 1.7 DR 3.5 4.2 DR 10.5 7.0 DR 5.5 3.7 Total 16.6	OR 2 2.1 RAE 1 10.8 DR 16 3.7 Total 16.6	OR 2 4.2 DR 3.5 1.0 DR 16 11.4 Total 16.6	OR 2 3.4 DR 3.5 4.7 DR 5.5 3.1 DR 10.5 5.4 Total 16.6	Alternate Request: DR 16 14.5 OR 2 2.1 Total 16.6 See Issues 2-033, 2-068 Overlay Adopted
2-011	Sigfried Gerstung	1400 Coppermine Terrace, between Falls Rd and Jones Falls Expressway	MLR 11.8 Total 11.8	ML 11.8 Total 11.8	ML 11.8 Total 11.8	ML 11.8 Total 11.8	Covenant Agreement
2-012	Rockland Mill Associates	2201 Old Court Rd	DR 1 0.5 Total 0.5	RO 0.5 Total 0.5	DR 1 0.5 Total 0.5	DR 1 0.5 Total 0.5	
2-013	Village Builders 98, LP	Reisterstown Rd, southwest corner of Milford Mill/Slade Ave and Reisterstown Rd	RO 0.1 Total 0.1	BL 0.1 Total 0.1	BL 0.1 Total 0.1	RO 0.1 Total 0.1	See Issues 2-014, 2-015 2-016, 2-017 2-018, 2-057
2-014	Village Builders 98, LLP	520 Reisterstown Rd, southwest corner of Reisterstown Rd and Linden Terrace	RO 0.1 Total 0.1	BL 0.1 Total 0.1	BL 0.1 Total 0.1	RO 0.1 Total 0.1	See Issues 2-013, 2-015 2-016, 2-017 2-018, 2-057

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
2-022	Reisterstown Road LLC	1830 Reisterstown Rd, 1000' east of Mt Wilson 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	
2-023	Eric Tallman	7230 Windsor Mill Rd	BL 0.2 Total 0.2	BR 0.2 Total 0.2	BL 0.2 Total 0.2	BL 0.2 Total 0.2	
2-024	Orlando Fernandez	9134 Liberty 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
2-025	Richard Hoffman	27 Hooks Ln, 1000' east of Reisterstown 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	
2-026	Marcella Woods, LLC	9001-9005 Marcella Ave, southwest corner of Marcella Ave and Greens Ln	DR 3.5 2.5 Total 2.5	DR 10.5 2.0 OR 2 0.5 Total 2.5	DR 3.5 2.5 Total 2.5	DR 3.5 2.5 Total 2.5	
2-027	J. Homer Weidemyer	7600 Windsor Mill Rd, 1600' northwest of Rolling Rd	BR 0.1 DR 5.5 9.4 Total 9.5	O 3 or 9.5 OR 2 Total 9.5	DR 5.5 9.5 Total 9.5	DR 5.5 9.5 Total 9.5	See Issue 2-043
2-028	Pikesville Motel Corporation	1737 Reisterstown Rd, southeast corner of Reisterstown Rd and I-695	DR 16 6.2 BL 3.6 Total 9.8	BM 9.8 Total 9.8	BL 9.8 Total 9.8	BL 9.8 Total 9.8	Covenant Agreement
2-029	Continental Realty Corp	West side of Falls Rd 600' south of Hollins Ln	DR 3.5 12.8 MLR 8.3 Total 21.1	MLR 3.7 ML 17.4 Total 21.1	ML 12.0 DR 2 3.1 MLR 6.0 Total 21.1	MLR 21.1 Total 21.1	See Issues 2-048, 2-064, 2-078 Covenant Agreement

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
2-037	Staff	8615 & 8619 Church Ln, west side of Old Court Rd 700' west of Liberty Rd	OR 2 15.0 Total 15.0	O 3 15.0 Total 15.0	OR 2 15.0 Total 15.0	OR 2 15.0 Total 15.0	
2-038	Beth Tfilch Congregation of Baltimore City	North side of Old Court Rd northeast of Stevenson Rd	DR 2 7.4 Total 7.4	DR 16 7.4 Total 7.4	DR 2 7.4 Total 7.4	DR 16 7.4 Total 7.4	Covenant Agreement
2-039	Company Motors Corp	Southwest side of Liberty Rd, west of Pikeswood Dr	DR 16 21.7 Total 21.7	DR 16 21.7 Total 21.7	O 3 21.7 Total 21.7	OR 2 21.7 Total 21.7	See Issue 2-060
2-040	Stewart Enterprises, Inc	7900 Park Heights Ave, northeast side of Park Heights Ave at Old Court Rd	DR 2 36.0 Total 36.0	DR 16 24.3 RAE 2 11.7 Total 36.0	DR 2 36.0 Total 36.0	DR 2 36.0 Total 36.0	
2-041	Stanley Rider, Jr	8308 Liberty Rd, northeast side of Liberty Rd north west of Rolling Rd	DR 16 0.2 RO 0.3 Total 0.5	BL AS 0.5 Total 0.5	RO 0.3 BL 0.2 Total 0.5	RO 0.5 Total 0.5	Covenant Agreement
2-042	Spellman, Larson & Associates	Northeast corner of Timanus Ln and Windsor Mill Rd	DR 5.5 0.9 Total 0.9	OR 2 0.9 Total 0.9	DR 5.5 0.9 Total 0.9	DR 5.5 0.9 Total 0.9	See Issue 2-034
2-043	Charles E. Farley	7520 Windsor Mill Rd, 800' to Rolling Rd	DR 5.5 11.8 Total 11.8	O 3 or 11.8 OR 2 Total 11.8	DR 5.5 11.8 Total 11.8	DR 5.5 11.8 Total 11.8	See Issue 2-027
2-044	Canam Inc	8819 Liberty Rd, 2640' east of Greens Ln	DR 3.5 0.6 Total 0.6	DR 16 0.6 Total 0.6	DR 3.5 0.6 Total 0.6	DR 3.5 0.6 Total 0.6	See Issues 2-049, 2-050

Baltimore County 2000 Comprehensive Zoning Map Issues

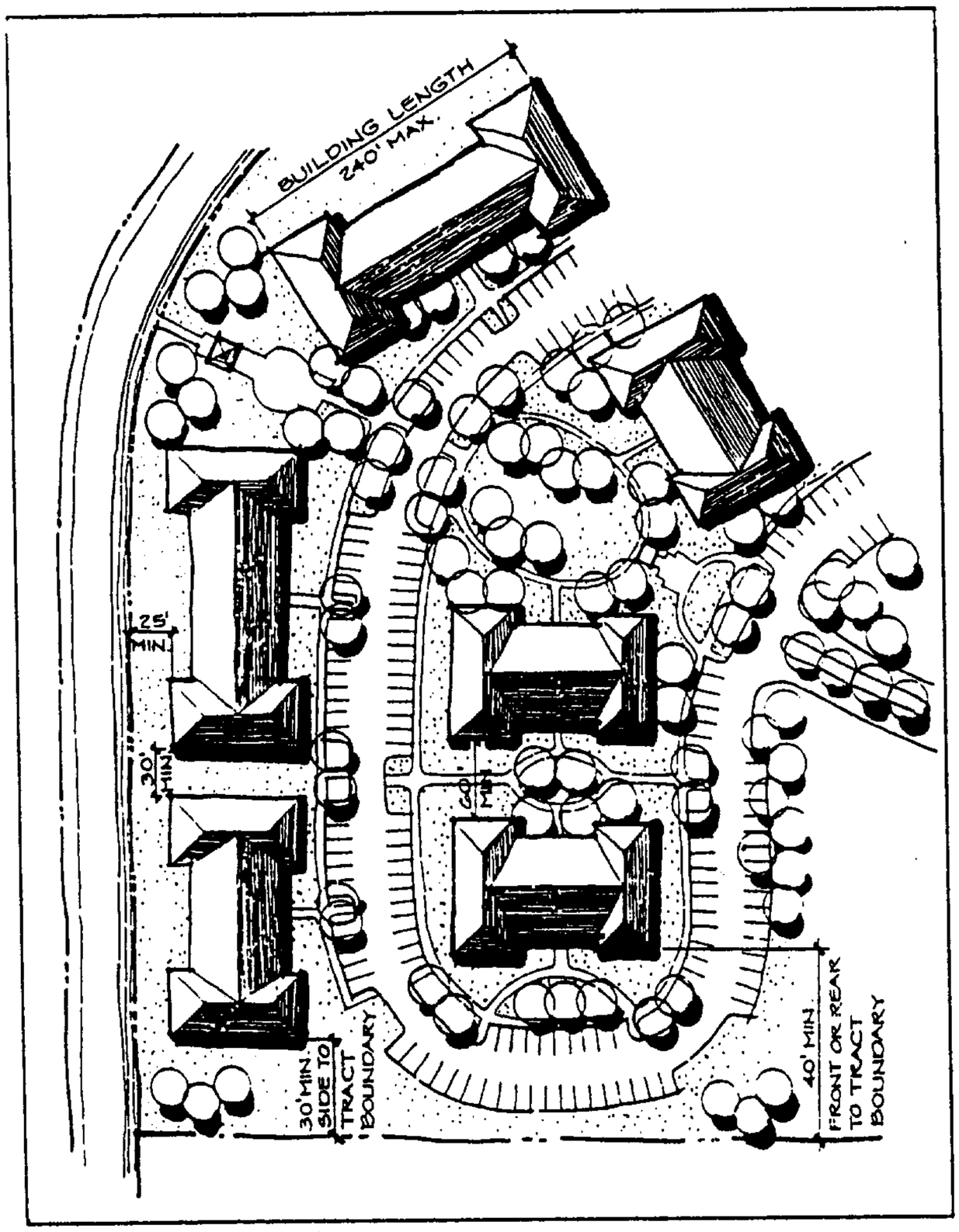
Issue Number	Owner, Petitioner	Location	Existing Zoning and Acres	Requested Zoning and Acres	Planning Board Recommendations	County Council Decisions	Comments
2-053	Emmanuel Cbu	7925 Liberty Rd	DR 5.5 0.2 Total 0.2	CB 0.2 Total 0.2	DR 5.5 0.2 Total 0.2	DR 5.5 0.2 Total 0.2	See Issues 2-052, 2-054
2-054	Jonathan David Hart	7923 Liberty Rd	DR 5.5 0.3 Total 0.3	BL BLR CB or 0.3 Total 0.3	DR 5.5 0.3 Total 0.3	DR 5.5 0.3 Total 0.3	See Issues 2-052, 2-053
2-055	Planning Board	3518 Ellen Rd, west side of Ellen Rd 200' south of Liberty Rd	BR AS 0.2 Total 0.2	O 3 0.2 Total 0.2	RO 0.2 Total 0.2	RO 0.2 Total 0.2	
2-056	Staff	3900 Milford Mill Rd, north side of Milford Mill Rd at Washington Ave	BM 5.2 Total 5.2	DR 5.5 5.2 Total 5.2	BM 5.2 Total 5.2	BM 5.2 Total 5.2	
2-057	Staff	504 Reisterstown Rd, 1,3,7,11,15 Linden Terrace	DR 5.5 2.8 Total 2.8	RO 2.8 Total 2.8	RO 2.8 Total 2.8	DR 5.5 2.8 Total 2.8	See Issues 2-013, 2-014, 2-015, 2-016, 2-017, 2-018
2-058	Staff	Old Court Metro to southeast corner of Greenwood Rd	OR 2 16.8 DR 16 4.6 Total 21.4	DR 5.5 21.4 Total 21.4	O 3 21.4 Total 21.4	OR 2 3.5 DR 5.5 17.9 Total 21.4	Overlay Adopted
2-059	Staff	5,9,11,15 Keller Rd, 180' northeast of Reisterstown Rd	DR 3.5 1.6 Total 1.6	O 3 RO or 1.6 Total 1.6	DR 3.5 1.6 Total 1.6	OR 2 1.6 Total 1.6	See Issues 2-020, 2-021, 2-031
2-060	Staff	South side of Liberty Rd, opposite Schnaper Dr	DR 16 16.6 DR 3.5 31.7 Total 48.3	DR 3.5 or 48.3 O 3 Total 48.3	DR 3.5 48.3 Total 48.3	DR 3.5 48.3 Total 48.3	See Issue 2-039

Baltimore County 2000 Comprehensive Zoning Map Issues

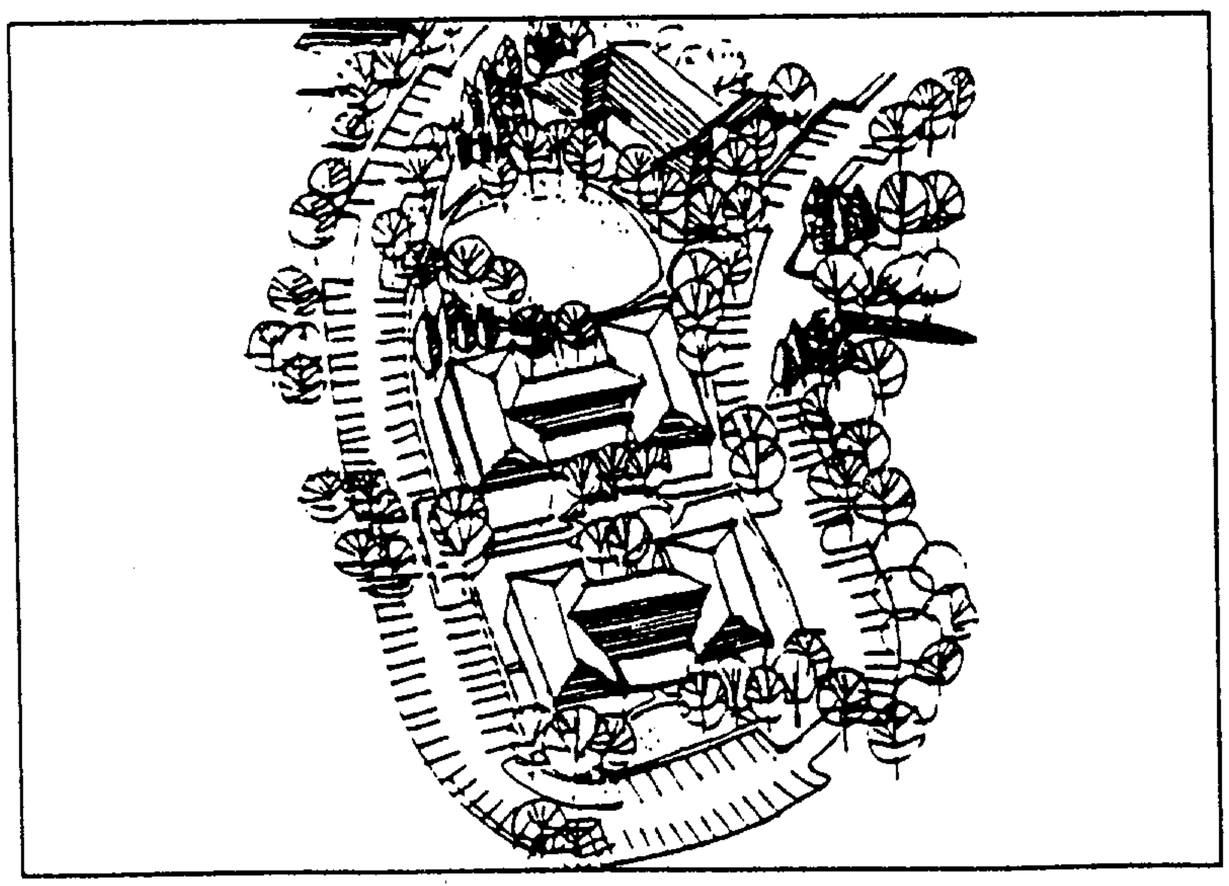
Issue Number	Owner, Petitioner	Location	Existing Zoning and Acres	Requested Zoning and Acres	Planning Board Recommendations	County Council Decisions	Comments
2-069	Staff	North and south side of Church Ln and Sudbrook Ln	BM CT 0.2 DR 16 0.7 BL CT 1.0 RO 1.0 BL 6.3 Total 9.2	BL 9.2 DR 3.5 BLR ROA RO Total 9.2	RO 8.6 BL 0.6 Total 9.2	BL 0.6 OR 2 0.7 RO 7.9 Total 9.2	See Issues 2-070, 2-071, 2-072 Overlay Adopted
2-070	Staff	North and south side of Church Ln at Glenbeck Rd	DR 5.5 8.0 Total 8.0	DR 3.5 8.0 Total 8.0	DR 3.5 8.0 Total 8.0	DR 5.5 1.5 DR 3.5 6.5 Total 8.0	See Issues 2-069, 2-071, 2-072 Overlay Adopted
2-071	Staff	101 Church Ln, at Bedford Ave	RAE 1 0.7 Total 0.7	DR 5.5 0.7 Total 0.7	RAE 1 0.7 Total 0.7	RAE 1 0.7 Total 0.7	See Issues 2-069, 2-070, 2-072
2-072	Staff	South side of McHenry Ave, 180' east of Albans Rd	DR 5.5 3.0 Total 3.0	DR 3.5 3.0 Total 3.0	DR 5.5 3.0 Total 3.0	DR 5.5 3.0 Total 3.0	See Issues 2-069, 2-070, 2-071
2-073	Staff	South side of Milford Mill Rd, 600' east of Greenwood Rd	ML 9.0 Total 9.0	DR 5.5 9.0 Total 9.0	ML 9.0 Total 9.0	DR 5.5 9.0 Total 9.0	
2-074	Staff	North side of Old Court Rd, 3600' southwest of Ridge Rd	RC 3 100.0 Total 100.0	RC 3 or RC 3 PG 100.0 Total 100.0	RC 3 or 100.0 RC 6 Total 100.0	RC 3 100.0 Total 100.0	
2-075	Staff	North side of Old Court Rd, east of Granite Rd	RC 3 172.9 Total 172.9	RC 3 or RC 3 PG 172.9 Total 172.9	RC 3 143.3 RC 3 or RC 6 29.6 Total 172.9	RC 3 172.9 Total 172.9	See Issue 2-076

P.C.#13 CMDP

Multi-Family Buildings



Minimum setbacks for apartment buildings



Perspective view, apartment units

Building Type: Multi-Family Buildings (owned or rented apartments or condominiums)

Location: All DR 5.5, 10.5, 16 Zones and PUDs

Minimum setback requirements:

- From a building face to a public street right-of-way -- 25 feet

- Between front or rear building faces -- 60 feet

- Between side building faces -- one foot of setback is required for every one foot of building elevation height measured to the soffit line (where soffit plane meets building face) of the tallest structure. In no instance shall the distance be less than 30 feet. Variances may be required to meet this setback.

- From a building face to tract boundary -- 40 feet for front or rear faces and 30 feet for side building faces.

- Building face to edge of paving of a private street -- 35 feet.

- Setbacks for buildings located adjacent to arterial roadways shall be increased by 20 feet.