BOARD OF APPEALS CASE NO. 094	*	BEFORE THE
APPLICANT: Art Builders, Inc.	*	ZONING HEARING EXAMINER
REQUEST: Rezone .784 acres from R2, Urban Residential, to RO, Residential Office; Old Emmorton Road, Point-to-Point Square, Bel Air	*	OF HARFORD COUNTY
	*	Hearing Advertised
HEARING DATE: July 20, 1998	*	Aegis: 6/3/98 & 6/10/98 Record: 6/5/98 & 6/12/98
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ZONING HEARING EXAMINER'S DECISION

The Applicant, Art Builders, Inc. Is seeking a rezoning of property owned by Joseph Strehlen, Jr., from R2 to RO.

The subject property is located at Old Emmorton Road and Point to Point Square in Bel Air, Maryland. The parcel is more particularly described on Tax Map 56, Grid 2D, Parcel 474. The parcel consists of 0.784 acres, is presently zoned R2, is within the Hunters Run subdivision and is entirely within the First Election District.

Mr. James Martin appeared and testified that he was the vice president of the Applicant, Art Builders, Inc. Mr. Martin testified that the subject parcel is adjacent to RO property which is currently improved by a commercial office building. The subject parcel was originally, prior to the 1989 comprehensive zoning review, shown as open space for the Hunters Run Subdivision. However, in 1992, the former owner of the property amended the preliminary plan for the subdivision, reconfiguring open space locations and eliminating the open space classification of this property. Mr. Martin indicated that, in his opinion, the parcel is not suitable for residential development because of its proximity to existing RO property already developed as a commercial use.

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Mr. Denis Canvan appeared and qualified as an expert in land use and planning issues. In Mr. Canavan's opinion a mistake was made in 1989 by the County Council in retaining the R2 designation for this parcel. The property was, in 1989, designated as open space in the Hunters Run Subdivision and thus, was not even considered by the Council during the 1989 comprehensive rezoning. However, in 1992, due to amendments to the Hunters Run subdivision preliminary plan, this parcel ceased to be designated as open space, The 1989 County Council could not have known in 1989 that this would occur in 1992. Mr. Canavan opined further that it would be a mistake to attempt to develop this property as a residential use because of its proximity adjacent to commercially developed RO land. The property is vacant, landlocked and only consists of 0.784 acres, too small for residential development. In his opinion the parcel is virtually undevelopable unless combined with the existing RO uses which surround the property.

Mr. Anthony McClune appeared as chief of Current Planning for the Department of Planning and Zoning. Mr. McClune indicated that the Department had evaluated this property during the most recent 1997 comprehensive zoning review and concluded that a mistake in the legal sense had occurred in 1989 when the council failed to rezone the property RO. This is because of subsequently occurring events which the council could not have taken into account in 1989. Additionally, Mr. McClune indicated that both the Department of Planning and Zoning and the Planning Advisory Board agreed tat the parcel should be rezoned RO.

Ilyse Horgan, Barbara Flanagan and Ernie Zamora appeared in opposition to the Application. In summary, each of the protestants were concerned about the actual development of the property, traffic impacts, etc. There was some discussion regarding the Planning process and the opportunity for citizen input at that time regarding actual uses.

CONCLUSION:

In Maryland, a parcel of land may not be rezoned simply because the property owner wants the property rezoned or even if the zoning authority feels the property should be rezoned. Before a property can be rezoned there must be strong evidence of mistake in the zoning classification or a change in the character of the neighborhood since the last comprehensive rezoning. These principles and their corollaries were summarized by the Maryland Court of Appeals in Boyce v. Sembly, 25 Md. 43, 344 A.2d 137 (1975). The Court set forth the change-mistake rule which may be summarized as follows:

1. The zoning classification assigned to a parcel of land is presumed to be correct.

2. A piecemeal zoning classification of a parcel of land cannot be granted unless and until the presumption of correctness is overcome.

3. The presumption of correctness can only be overcome by strong evidence that there was a mistake in the comprehensive zoning or there has been a change in the character of the neighborhood of the subject property since the last comprehensive zoning which justifies the piecemeal zoning classification.

4. Once a change in the character of the neighborhood or a mistake in the last comprehensive zoning is established, rezoning is permissible but not mandated.

5. However, once an applicant establishes the requisite change in the character of the neighborhood or a mistake in the comprehensive zoning, the denial of the requested reclassification must be sufficiently related to the public health, safety or welfare to be upheld as a valid exercise of the police power. Aspen Hill Venture v. Montgomery County Council, 265 Md. 303, 289 A.2d 303 (1972). In the case of a denial where the applicant has met his burden of establishing a change in the character of the neighborhood or a mistake in the comprehensive zoning, the zoning authority must find facts, upon the evidence, which would support a denial. Messenger v. Board of County Commissioners for Prince George's County, 259 Md. 693, 271 A.2d 166 (1970), The factual determination of the zoning authority must be supported by substantial, competent and material evidence contained in the record. Not every potential problem will serve to validate a decision to deny a requested rezoning; the problems must be real and

> immediate, not future and imaginary. Furnace Branch Land Company v. Board of County Commissioners, 232 Md. 536, 194 A.2d 640 (1963).

As stated by the Maryland Court of Special Appeals, the presumption of the validity of comprehensive rezoning,

> "...is overcome and error or mistake is established when there is probative evidence to show that the assumptions of premises relied upon by the Council at the time of comprehensive rezoning were invalid. Error can be established by showing that at the time of comprehensive rezoning 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. Error or mistake may also be established by showing that events occurring subsequent to rezoning have proven that the Council's initial premises were incorrect...It is necessary not only to show facts that exist at the time of comprehensive rezoning but also which, if any, of those facts were not actually considered by the Council...Thus, unless there is appropriate 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 rezoning is not overcome, and the question of error is not "fairly debatable". Joyce v. Smelly, supra; Rockville v. Stone, 27 Md. 655, 319 A.2d 536 (1974)

Thus, the Maryland Courts have laid out a two-pronged test. First, has a change in the character of the neighborhood or a mistake been established that would permit the rezoning of the property. Second is whether the property should be rezoned.

In 1989, the County Council believed that this parcel was to be open space as part of the Hunters Run subdivision and thus undevelopable. However, because of subsequently occurring events, the parcel ceased to be classified as open space, a crucial fact that the Council could not have been aware of in 1989. The parcel is relatively small and surrounded by RO property which has been at least partially developed as commercial office space. Based on the unrebutted expert testimony presented by the Applicant, the parcel cannot be practically developed as residential and can only be developed as commercial property in harmony with the surrounding RO properties.

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In the opinion of the Hearing Examiner, therefore, the Applicant has met its burden of proof by establishing that a legal mistake was made by the Council during the 1989 Comprehensive Zoning Review and further, that the property is appropriately zoned as RO. The Hearing Examiner recommends that the requested rezoning be approved.

Date 9/15/98

William F. Casey
Zoning Hearing Examiner