216 Va. 764
CLERK
SUPREME COURT OF VIRGINIA
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SEP 9 1975
RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

Record Number 750201

GAYTON TRIANGLE LAND CO.

Appellant

v.

BOARD OF SUPERVISORS OF HENRICO COUNTY

Appellee

Joint Appendix

Leonard A. Paris
D. Wayne O'Bryan
White, Cabell, Paris & Lowenstein
523 East Main Street
Richmond, Virginia 23219

Attorneys for Appellant

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AMENDED MOTION FOR DECLARATORY JUDGMENT

Now comes plaintiff, by counsel, and states the following as its Amended Motion for Declaratory Judgment:

1. Paragraph 2 of plaintiff's Motion for Declaratory Judgment is amended as follows:

Prior to March 28, 1973, plaintiff's property was zoned B-3 as provided in the Henrico County Zoning Ordinance.

2. Paragraphs 1, 3, 4, 5, 6, 7, 8 and 9 of plaintiff's Motion for Declaratory Judgment are reaffirmed and adopted as part of this Amended Motion for Declaratory Judgment.

3. The Henrico County Comprehensive Land Use Plan required under Virginia Code §15.1-446, et. seq., purportedly adopted by the Henrico Board of Supervisors on March 19, 1958, was, in fact, never adopted and therefore never came into existence and the purported amendment to the Henrico County Comprehensive Land Use Plan of September 13, 1972, which affected plaintiff's land, was thereby void.

4. The plaintiff's property contains only 1.83 acres, but the Henrico Zoning Ordinance required a minimum parcel size of 2.0 acres, wherefore plaintiff's property has been, in effect, confiscated since plaintiff is thereby denied practical utilization of its property. Such action of defendants effects a taking of plaintiff's property without due process of law and without compensation in violation of the United States and Virginia constitutions.

WHEREFORE plaintiff prays that the Court enter a Declaratory Judgment that the action of the Board of Supervisors of Henrico County aforesaid is unconsitutional and void and that the former zoning on

plaintiff's land be restored and granting to plaintiff such other and further general relief to which it may be entitled.

GAYTON TRIANGLE LAND CO.

By _____
Its Attorney

Leonard A. Paris
D. Wayne O'Bryan
White, Cabell, Paris & Lowenstein
523 East Main Street
Richmond, Virginia

C E R T I F I C A T E

I certify that on the 29th day of April, 1974, I delivered a copy of the foregoing Amended Motion for Declaratory Judgment to William G. Broaddus, Esquire, County Attorney of Henrico, 22nd and Main Streets, Richmond, Virginia, counsel for defendants.

_____
D. Wayne O'Bryan

MOTION FOR DECLARATORY JUDGMENT

1. Plaintiff is the record owner of certain real estate near the intersection of Gayton Road and Quioccasin Road, within what is commonly referred to as the Gayton Triangle in Henrico County, Virginia, which property, comprising 1.83 acres in area, is shown on the sketch attached hereto.

3. On January 11, 1972, the Planning Commission of Henrico County, on the request of the Henrico County Board of Supervisors held an advertised public hearing to rezone from B-1 neighborhood business and B-3 general business to PMD Planned Neighborhood District Parcels 79-B1-9, 42, 43, 79-B2-6, 28 and part of Parcel 80-A2-2, containing approximately 22.68 acres and more particularly shown on a map prepared by the Planning Office of Henrico County and filed with that zoning case which is assigned the number 4-73.

4. The plaintiff's aforementioned property, containing 1.83 acres in area was included in the rezoning request hereinbefore mentioned in paragraph 3.

5. On March 28, 1973, the Board of Supervisors of Henrico County changed the zoning on the property heretofore mentioned in paragraph 3, containing 22.68 acres, from B-1 and B-3 to PMD Planned Neighborhood District, and plaintiff's property, being a part of that 22.68 acres, was thusly rezoned.

6. By reason of the foregoing action of the Board of Supervisors plaintiff's property was consolidated with and adjudged in connection with other properties involved in the rezoning case, whereas plaintiff believes his property to be singular in character and that the Board of Supervisors should have therefore considered any rezoning of his property on its own merits so that an independent judgment concerning rezoning could have been rendered.

7. By reason of the foregoing action of the Board of Supervisors, plaintiff's property has in effect, been consolidated with other properties against the wishes of the plaintiff, and plaintiff has been and will be unable to sell or use his property in any lawful manner, except in conjunction with the other properties hereinbefore mentioned, which denies plaintiff its right to the enjoyment of its property.

8. For all the reasons heretofore stated, the action of the Board of Supervisors violates rights reserved to the plaintiff by the Virginia and United States Constitutions, amounting to a confiscation of plaintiff's property and bearing no reasonable or substantial relationship to the public health, safety, morals or general welfare, thereby being unreasonable, arbitrary and capricious.

9. A matter of actual controversy exists between plaintiff and defendants.

WHEREFORE, plaintiff prays that the Court enter a declaratory judgment that the action of the Board of Supervisors of Henrico County aforesaid is unconstitutional and void and that the former zoning on plaintiff's land be restored and granting to plaintiff such other further and general relief to which it may be entitled.

FINAL ORDER

This cause, which has been regularly docketed and matured, was heard upon an Amended Motion for Declaratory Judgment, a Second Amended Answer, evidence submitted ore tenus on May 7, 1974, and briefs submitted by counsel for both parties, and

It appearing to the Court for the reasons stated in the Court's opinion of June 18, 1974, which opinion is incorporated in and made a part of this Order, that the Amended Motion for Declaratory Judgment should be denied, it is accordingly

ADJUDGED, ORDERED AND DECREED that the plaintiff's Amended Motion for Declaratory Judgment be, and it hereby is, denied and that judgment be entered in favor of the defendant Board of Supervisors of Henrico County and the members thereof, to which action of the Court the plaintiff, by counsel, objects and excepts.

Enter: 10/25/74

E. Barrett Baker
Judge

I ask for this:

William G. Broaddus
William G. Broaddus
County Attorney
Counsel for Defendants

A Copy Teste:
Margaret B. Baker, Clerk
By Ruth M. Truman
Deputy Clerk

Seen, objects and excepts:

Leonard A. Paris, Esquire
Counsel for Plaintiff

COMMONWEALTH OF VIRGINIA

EDMUND WALLER HENING, JR.
JUDGE

JOHN WINGO KNOWLES
JUDGE

E. BALLARD BAKER
JUDGE

THE CIRCUIT COURT OF
THE COUNTY OF HENRICO
P. O. BOX 27032
RICHMOND 23273

FOURTEENTH JUDICIAL CIRCUIT

June 18, 1974

Leonard A. Paris, Esquire
D. Wayne O'Bryan, Esquire
523 East Main Street
Richmond, Virginia 23219

William G. Broaddus, Esquire
County Attorney for Henrico County
P. O.Box 27032
Richmond, Virginia 23273

Re: Case M-880 - Gayton Triangle Land Co. v. Board

Gentlemen:

Gayton Triangle Land Co., by its Amended Motion for Declaratory Judgment, contends that the Board of Supervisors, in changing the zoning classification of 1.83 acres owned by it from B-3 to PMD, has acted unconstitutionally.

The rezoning of the 1.83 acres was accomplished by the Board on March 28, 1973, when it rezoned an area of some 23 acres owned by different persons from B-1 and B-3 to PMD. B-1 and B-3 classifications are for business districts. PMD is a Planned Industrial District. Gayton Triangle contends that its 1.83 acre tract is too small, as PMD requires a minimum lot of 2 acres for use purposes; that PMD requires that its land be used only in conjunction with that of other owners in the PMD district, and that the PMD zoning has denied it any reasonable and economically feasible use of the property.

At the outset the Board asserts that Gayton must seek a variance from the Board of Zoning Appeals to the 2 acre minimum lot requirement before it can ask for judicial relief. That may be so if the only complaint of Gayton was directed at the 2 acre provision. However, Gayton--as indicated--contends that the PMD zoning is unconstitutional for other reasons. Were Gayton to seek a variance from the Board of Zoning Appeals those other reasons would be left unresolved, the Board having no authority to make such determinations. 58 Am. Jur., Zoning, § 217. Furthermore, upon appeal to a request for a variance there is a question whether a court would have jurisdiction to review the ordinance. Board

v. Blue Ridge, 209 Va. 594, at 599-600. 58 Am. Jur., Zoning, § 232.

Consequently, it seems that questions raised by Gayton relative to the PMD classification should be considered.

In its Supplemental Memorandum, Gayton urges that the PMD classification is confiscatory and unconstitutional because - (1) the 2 acre minimum requirement prevents any use of its land, (2) it can use its land only in conjunction with the land of others and (3) the PMD zoning has resulted in the denial of any reasonable and econimically feasible use of the property. It is also contended that the ordinance is void for vagueness.

Considering these points in inverse order, my views are as follows:

1. On Vagueness.

Gayton argues vagueness because, "...one cannot read this ordinance and know to what uses one may use land zoned PMD because he must get approval for only a specific purpose and that is subject to the arbitrary control of the Board of Supervisors."

The PMD District, Article 13A of the County Zoning Ordinance (Plt. Ex. 1) lists a long number of permitted industrial uses. Section 13A-4.1, establishing Performance Standards, would have to be met, and a Plan of Development, required under § 13A-5, would have to be approved. Section 17A.1 sets forth a number of requirements to be met by a Plan of Development.

It is true that a proposed use in PMD must meet with County approval--pursuant to the provisions of the Ordinance. There is nothing in the Ordinance which leaves approval for a specific purpose to the "arbitrary control" of the Board of Supervisors or anyone else. (The Board's duties appear to be confined to considering amendments of the Ordinance. § 18.3)

Gayton has made no effort to receive approval for any use under PMD and points out no specific vagueness other than the above quote. Its "vagueness" argument is vague. I do not think it can prevail on this point.

2. On Denial of Reasonable and Economically Feasible Use.

Gayton argues that its 1.83 acres has relatively no value since the PMD zoning and that the public interest involved in the zoning is small. On balance, it is urged, the PMD zoning as applied to Gayton's property is unconstitutional.

The Court discusses this point without consideration of the 2 acre minimum requirement. That, obviously, raises a question as to the use of 1.83 acres. This minimum requirement is considered later.

Testimony for Gayton was that it paid $90,000 for the land in July, 1972, when the zoning was B-3, without knowledge of the proposed rezoning. An appraiser presented by Gayton put the value at $160,000 if zoning was B-3 today, and that if the 2 acre minimum requirement was not applicable the land would have a value of $40,000, under PMD. This same witness testified that B-3 was the best zoning for the Gayton property, that the location was not conducive to industrial use and that there is more demand for business use property.

Testimony for the Board was that consideration for rezoning the entire 23 acre tract to PMD began in 1971, and that a public hearing on the proposal was held in April, 1972. The Director of Planning, the Traffic Engineer and the officer charged with responsibility for traffic safety in the Henrico County Police Department testified. No useful point is gained by reciting details of their testimony, except to state that it was in support of the reasonableness of the PMD classification.

Principles applicable to judicial review of zoning ordinances are well established in Virginia. In Board of Supervisors v. Carper, 200 Va. 653, the Supreme Court made the following statement:

> "...The legislative branch of a local government in the exercise of its police power has wide discretion in the enactment and amendment of zoning ordinances. Its action is presumed to be valid so long as it is not unreasonable and arbitrary. The burden is on him who assails it to prove that it is clearly unreasonable, arbitrary or capricious and that it bears no reasonable or substantial relation to the public health, safety, morals or general welfare. The Court will not substitute its judgment for that of a legislative body, and if the reasonableness of a zoning ordinance is fairly debatable it must be sustained..." (200 Va. 660).

The same statement is repeated in Fairfax County v. Snell, 214 Va. 655, at 658; Peck v. Kennedy, 210 Va. 60, at 63, and in Southern Railway v. Richmond, 205 Va. 699, at 706.

The burden is on Gayton to prove that PMD zoning is clearly unreasonable, arbitrary and capricious. To the extent that Gayton is attacking the PMD classification applied to the 23 acres, its evidence, at best, is far short of the burden imposed on it.

There is no way, on the evidence presented, that it could be held that PMD zoning on the 23 acres is not fairly debatable.

Gayton, however, attacks the PMD zoning primarily as applied to its 1.83 acres. As applied to this parcel, the same general principles stated above have to be considered--along with evidence of the diminution in value of the parcel.

The question of the effect to be given to value has been discussed in Virginia in Boggs v. Board, 211 Va. 488, Southern Railway v. Richmond, 205 Va. 699, and Azalea Corp. v. Richmond, 201 Va. 636, among others.

Boggs held invalid a zoning of land for single family residences where the evidence, including that of the Board's witness, was that single-family use for the land was not appropriate and the zoning made the land, "...economically unfeasible for development, and...not saleable at any price." (211 Va. 491). Southern Railway upheld a residential zoning against a desire of the Railway to use the land to add additional railroad track for switching and classification of railroad cars. In Southern the Court pointed out that while the Railway had proven the land was not adaptable for single family dwellings, it was valuable for park purposes--a use permitted under the residential zoning--and thus saleable, although only the City of Richmond was a likely buyer. The Court, after quoting the rule that "zoning cannot render private property valueless" affirmed the lower court holding that the Railway had failed to show the land was not adaptable for park purposes. Azalea reversed a Board of Zoning Appeals denial of a request for a variance to permit the construction of driveways across land zoned residential, the driveways to connect a shopping center in Henrico County with a public street in Richmond. Evidence showed the value of the shopping center land was $729,000 with access to the Richmond street and $202,000 without access--and that the residential values in the area would not be affected by the driveways.

Gayton has not shown by the evidence here that the PMD zoning has precluded all practical uses of the 23 acres. Nor has it done so with respect to its 1.83 acres--putting aside for the moment the 2 acre minimum requirement. All it has shown is that land it paid $90,000 for in July, 1972, when zoned B-3 has a value of $40,000 now when zoned PMD. The evidence here is clear that the rezoning of the 23 acre tract to PMD was being considered before Gayton purchased. There is no evidence that any notice requirements were by-passed or overlooked. There is evidence of normal publicity being given to the proposal.

This Court is not aware of any vested right a landowner has in a zoning classification. Fairfax County v. Cities Service, 213 Va. 359, did uphold an owner's complaint about a zoning change, but in that case Cities Service, after issuance of a special use

permit, bought the land as zoned with the permit and substantially changed its position when it incurred considerable expense for the preparation and filing of a site plan. Subsequent zoning decreased the property value by $100,000. The Supreme Court held that the subsequent zoning could not deprive Cities Service of its right to use the property as it had planned. Fairfax County v. Medical Structures, 213 Va. 355, is similar. There is nothing like that present here.

Gayton has not borne the burden imposed upon it.

3. On Use of the Land with that Owned by Others:

Gayton argues that, under PMD, it must use its land only in conjunction with that of others and cannot use its land without being dependent on the cooperation and good will of the adjoining land owners. The Board takes the position that PMD does not require this.

The purpose of PMD is, "...to permit, in accordance with the comprehensive plan, the development of a planned industrial district (popularly known as Planned industrial park) containing not less than 20 contiguous acres... Such district, when approved shall constitute a part of the comprehensive plan for the County as a whole and the preliminary consideration of such district by the Planning Commission shall be based on recognition of this requirement." (Plt. Ex. 1, Zoning Ordinance, Article 13A-1.)

It can be argued that this general statement does preclude development of a single parcel as contended by Gayton, but the language does not necessarily require that conclusion.

Other parts of the PMD are subject to the same argument. Section 13A-3.1 relating to permitted accessory uses, Section 13A-5.1 relating to preservation of topographic features and water courses, Section 13A-7.1 relating to a landscape development plan and Section 13A-8 relating to a utilities plan, can be reasonably argued to require consideration of the entire 23 acres in dealing with a single site. However, the conclusion again is not required. Accessory uses for the entire district are only permissive--not required. Sections 13A-5.1 and 13A-7.1 refer to a "site" plan or a "specific lot," indicating that these things do not have to be considered only on a district-wide basis. The utilities plan, Section 13A-8, would likely have to have some relation to all lots in the district--or be compatible with extension to other lots--but this is scarcely a new or unconstitutional idea.

Section 13A-5.3 does require that "All site plans..." must meet requirements for a Plan of Development under Section

17A-1 of the Zoning Ordinance. This particular section is applicable to many zoning classifications other than PMD and argument can be made that some of its provisions require a lot owner to use his land in conjunction with others. A contrary argument can also be made.

Absent a showing that one or more of the provisions in the PMD is being applied by the County to require an owner to use his land unreasonably in conjunction with that of others, or absent a provision in the ordinance specifically and clearly requiring such use--which I do not find--I do not think that the zoning can be successfully attacked on this basis.

4. On the 2 Acre Minimum Lot Requirement.

As stated previously, the PMD requirement that the minimum parcel be two acres (Section 13A-9.3 of the Zoning Ordinance) raises a question as to the use of Gayton's 1.83 acres in the PMD zone. Does this requirement lead to a conclusion that PMD is unconstitutional as applied to Gayton?

Area restrictions are common in zoning ordinances. The Henrico County Zoning Ordinance has a great many applicable in zoning districts other than PMD. This Court has been unable to find any authority that a 2 acre minimum lot requirement in an industrial area is on its face unconstitutional. (The only 2 acres case in Virginia seems to be Board v. Carper, 200 Va. 653, and that involved agricultural zoning and went off on another point.) Neither my notes nor my recollection reveal any evidence that a two acre minimum is unreasonable in PMD. The argument has been, and the evidence also, that Gayton is denied use of its parcel because it is not that large.

Pursuant to the authority of Section 15.1-494 of the Code of Virginia, the Zoning Ordinance establishes a Board of Zoning Appeals. Article 19 of the Ordinance deals with the Board. Section 19.4 empowers the Board to grant variances in specific cases, and Section 19.421 mentions, "...size...of a specific piece of property..." as one element which empowers the Board to consider, in accord with other provisions, a variance.

In Board of Zoning Appeals v. Fowler, 201 Va. 942, the Supreme Court pointed out that the purpose of such boards, "...is, within the confines of the law, to vary specific terms of zoning ordinances..." (201 Va. 946). Zoning Appeal Boards may ameliorate "...the rigors of necessarily general zoning statutes by eliminating the necessity for a slavish adherence to the precise letter of the ordinance, where, in a given case, little or no good on the one side and undue hardship on the other would result from a literal enforcement." (201 Va. 946).

As stated in 58 Am. Jur., Zoning, § 196, one reason for the establishment of such boards is to protect, "...zoning regulations against attack on the ground of unreasonable interference with private rights..." Identical language is found in 21 A.M.J., Zoning, § 6.

This case has not been argued on the point of what the Board of Zoning Appeals should do if Gayton asked for a variance. That is up to the Board upon appropriate application. However, Article 19 is a part of the Zoning Ordinance, just as is Article 13A which establishes PMD, and this Court should not accept an attack on the constitutionality of Article 13A as applied to Gayton solely on the minimum area requirement until Gayton has exhausted its remedies under the Ordinance.

Earlier this Court pointed out that Gayton could attack the constitutionality of the PMD ordinance without first seeking a variance on the minimum area. This was because Gayton's contentions went beyond the minimum area provision. As those contentions have been denied the only one remaining is the minimum area. The Zoning Ordinance specifically authorizes consideration of a variance when size is involved.

This, I think is consistent with Euclid v. Ambler, 272 U. S. 365, and Dowsey v. Village, 177 N. E. 427. The general rule as to size in PMD is a minimum of two acres. There is no attack upon this as being reasonable as a general rule. The fact that strict enforcement of the rule might cause unnecessary hardship or damage to Gayton does not keep the two acre provision from being reasonable, "...provided the rule is made subject to variation in its application in case of such hardship. Then the courts will not refuse enforcement of the general rule, at least until the variance has been refused." (177 N. E. 430.)

The Amended Motion for Declaratory Judgment alleged that the County Comprehensive Land Use Plan required under Section 15.1-446 of the Virginia Code was never properly adopted and that the purported amendment affecting Gayton's land was therefore void. Gayton presented no evidence in support of that allegation at the May 7th hearing. The Stipulation signed by the parties does not provide that the statements therein are evidence, except on motion. As there was no motion with respect to the statements relating to the Land Use Plan, those statements are not before the Court. The Zoning Ordinance applicable to PMD was introduced in evidence. There being no evidence to the contrary, it cannot be held that the Ordinance was improperly adopted. Also, see Wilhelm v. Morgan, 208 Va. 398, at 404.

Consequently, the Amended Motion is denied.

Upon presentation of an appropriate sketch, it will be entered.

With best wishes,

Yours very truly,

E. Ballard Baker

E.Ballard Baker
Judge

NOTICE OF APPEAL AND ASSIGNMENT OF ERROR

Notice is hereby given that Gayton Triangle Land Co. appeals from the final judgment rendered by this Court on the 25th day of October, 1974, and announces its intention of applying for a Writ of Error to the Supreme Court of Appeals of Virginia.

ASSIGNMENTS OF ERROR

1. The Court erred in holding that plaintiff is required to seek a variance on the 2 acre minimum lot requirement of the zoning ordinance before applying to the Court for relief.

2. The Court erred in failing to hold that the zoning ordinance was unconstitutional because of vagueness.

3. The Court erred in holding that the zoning ordinance was not confiscatory and therefore unconstitutional.

4. The ruling of the Court was contrary to all the law and the evidence presented.

5. A transcript of the testimony herein has been filed with the Court and will be made a part of the record.

GAYTON TRIANGLE LAND CO.

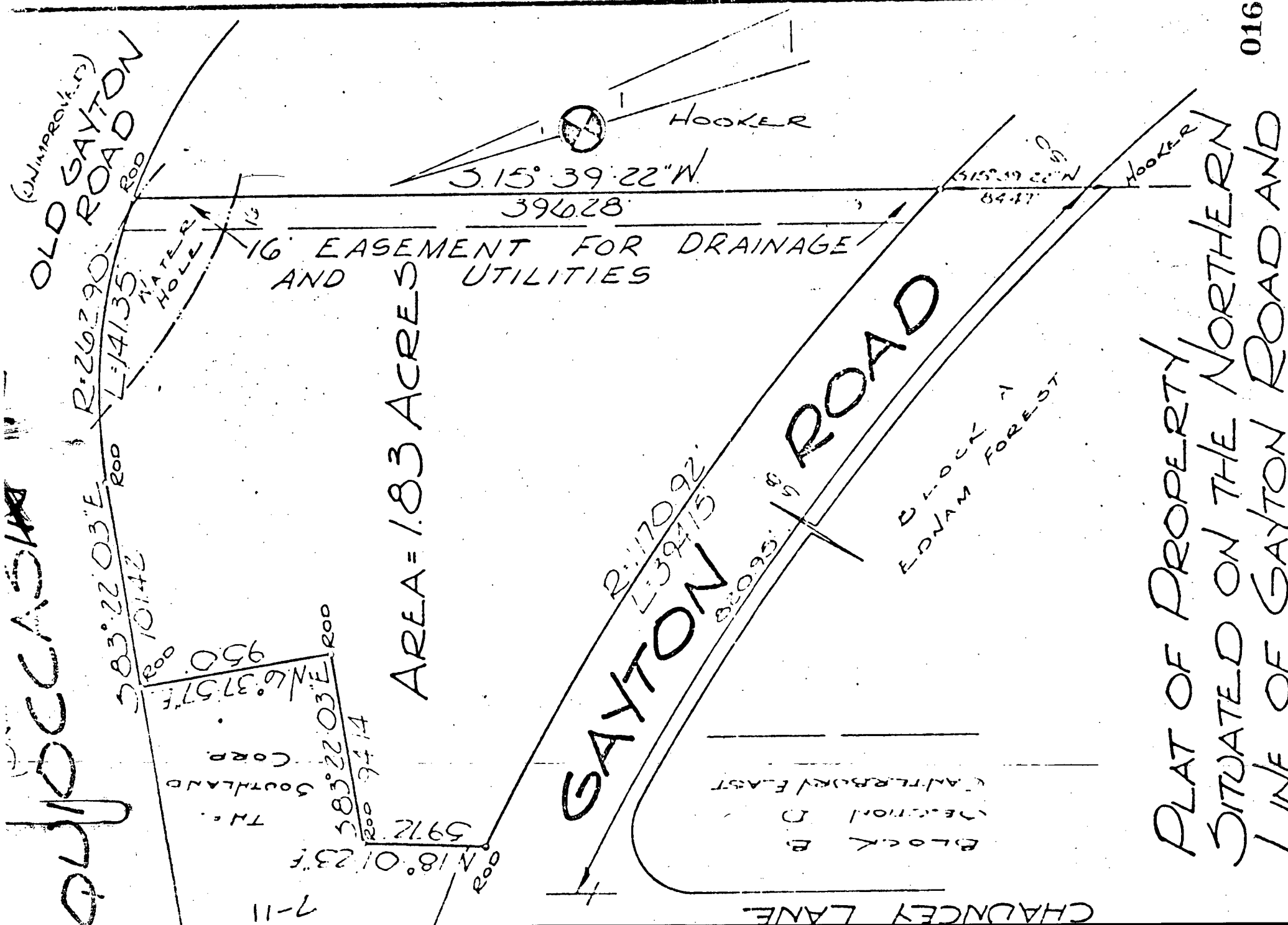
By_____
Its Attorney

Leonard A. Paris
D. Wayne O'Bryan
White, Cabell, Paris & Lowenstein
523 East Main Street
Richmond, Virginia 23219

CERTIFICATE

This is to certify that on the 11th day of November, 1974, a true copy of the foregoing Notice of Appeal and Assignment of Error was mailed to William G. Broaddus, Esquire, Henrico County Attorney, 22nd and Main Streets, Richmond, Virginia 23219, counsel for the defendants.

_____


PLAT OF PROPERTY
SITUATED ON THE NORTHERN
LINE OF GAYTON ROAD AND
GAYTON ROAD
(UNIMPROVED)
OLD GAYTON ROAD
HOOKER
S.15°39'22"W.
396.28'
16' EASEMENT FOR DRAINAGE AND UTILITIES
AREA = 1.83 ACRES
R=2662.90'
L=141.35'
NATURAL HOLE
R=1170.92'
L=394.15'
BLOCK A
EDNAM FOREST
BLOCK B
SECTION D
CAMPBELL EAST
CHANCERY LANE
S83°22'03"E
101.42'
N6°37'57"E
95.0'
S83°22'03"E
94.14'
N18°01'23"E
59.72'
THE SOUTHLAND CORP.
7-11
ROD

EAST OF CHAUNCEY LANE.
HENRICO CO., VA.
JUNE 2, 1972 SCALE 1"=60'
CHAS H FLEET & ASSOCS
CERTIFIED SURVEYORS

Map of Area Near Appellant's Property

(P#3 at Trial)

Too Large to be Conveniently Reproduced

STIPULATION

The parties agree and stipulate to the following statements for the sole purposes of avoiding the necessity of bringing certain witnesses and documents before the Court. This stipulation shall not be construed to limit or affect the right of any party to object to the introduction of any of the following statements into evidence in the trial of this case on any ground other than compliance with the "best evidence" rule. Unless otherwise specified, none of the following statements shall be received into evidence except on motion of one of the parties to which objection may be made.

14. The plaintiff is the record owner of the 1.83 acre parcel of property in question.

15. The Henrico County Building Inspector, if called and permitted to testify over defendants' objection, would state that at the present time he would not issue a building permit to plaintiff or any other person for any purpose on the 1.83 acre parcel in question so long as the parcel was to be used in isolation from all other parcels in the Gayton triangle area.

Stipulation filed, by counsel, in Henrico Circuit Court on May 7, 1974

Gaylord Road
&
Gaskins Road

17

N →

(3) 2:25P 28Sept73 D-C

(6) 11:25P 20 Oct 73 D-C

(12) 7:55A 18 Feb 74 D-C

(14) 5:45P 18 April 74 D-C

(4) 6:15P 22Sept73 D-C

(2) 9:12P 28 July 73 D-C

(9) 10:25A 29 Nov 73 D-C

330P 26 Dec 73 D-C (11)

(13) 12:35P 24 Jan 74 D-C

(17) 8:05P 2 Jan 73 D-C

020

(5) 7 OCT 73 7:32 D-C

(15) 3:10P 18 March 74 D-C

(10) 1:30P 19 Nov 73 D-C

(6) 9:10A 8 Oct 73 W-R

(1) 10:10A 2 July 73 D-C

(8) 12:40P 4 Jan 73 S-S

(7) 6:15P 19 Dec 73 D-C

Legend:

O = Injury ● = Fatal

= Vehicle

= Angle collision

Fixed object =

= Rear end

Pedestrian =

= Side swipe

LEGEND:

Time: A = AM P = PM

Weather:
C = Clear
R = Rainy
S = Snow
M = Mist
C = Cloudy

Road:
D = Dry
W = Wet
S = Snowy
I = Ice

DEFENDANT'S EXHIBIT
5

ACCIDENT DATA TALLY SHEET FOR CONTRIBUTING FACTORS INDICATED BY INVESTIGATING OFFICER

LOCATION: Gayton Rd & Gaskins Road DATE: FROM 1-1-73 TO 3-31-74

NO.	SPEED TOO FAST	FAIL TO YIELD	WRONG SIDE OF ROAD	IMPROPER PASSING	DISREGARD STOP SIGN	DISREGARD SIGNAL	FOLLOW TOO CLOSE	IMPROPER TURN	OTHER VIOLATION	DRINKING	PEDESTRIAN VIOLATION	BICYCLIST VIOLATION
		1										
2					1							
3		1										
4		1										
5					X							
6		1										
7					X					X		
8							X					
		X										
10		X										
11					X							
12		X										
		X										
14		X										
		X										
							X					
		X										
							2			6		

Q Please state your full name.

A Allen G. Witherington.

1 Q Where do you live, sir?

2 A 2761 West Brigstock Road, Midlothian,

3 Virginia.

4 Q What is your age, sir?

5 A Forty-three.

6 Q What is your occupation?

7 A Real estate broker.

8 Q How long have you been engaged in the

9 real estate business as such?

10 A Fifteen years.

11 Q How long have you been a broker?

12 A Twelve years.

13

14

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23

24

Q Are you the recorded owner of the 1.83 acres bounded by Gayton Road, Quioccasin Road, and Gaskins Road, the subject property in question here today?

A I am one of the three partners, yes.

Q When did you purchase the land?

A I don't know the exact date, but approximately 18 months ago.

Q Would that be July of 1972?

1 A Yes, that is close.

2 Q When you purchased the land, did you have

3 any knowledge of the proposed rezoning by the County to PMD?

4 A No.

5 Q What was the purchase price?

6 A $90,000.

7 Q What did you plan to do with the land

8 when you purchased it?

9 A Develop it into commercial buildings for

10 sale and also for lease.

11 Q What was the zoning at that time?

12 A B-3.

13 Q Are you familiar with B-3 zoning?

14 A Yes.

15 Q As of today, taking into consideration

16 your experience in land values, what would be the value of this

17 1.83 acres under B-3 zoning?

18 A Approximately $200,000.

19

20

21

22

23

24

Q Is this based on your knowledge of comparable land sales in the area?

A It is based on, yes, my knowledge of that area and other areas around the metropolitan area that I know what investors will or will not do. I consider myself a real estate broker as well as an appraiser of values.

Q Under the present PMD zoning, does your land have any economic or feasible use?

A No.

Q Do you think it is worth anything other

than just a minimum amount?

A Just a minimum amount is all.

Q But it has no economical feasible use?

A No.

CROSS-EXAMINATION

BY MR. BROADDUS:

Q Mr. Witherington, have you read the zoning ordiances as it relates to PMD uses?

A As I said, I only scanned that ordinance, and I left most of what you are asking me, the technical, to my attorney here.

Q If you only scanned it, how do you know whether it contains uses which might be developed profitably on your property?

1 MR. PARIS: I didn't quite follow that
2 question.
3 THE WITNESS: I don't quite follow it
4 myself.
5 MR. BROADDUS: Do you believe that you
6 have a thorough knowledge of the uses permitted in PMD parcels?
7 MR. PARIS: Judge, I think that is
8 irrelevant. This is a legal matter.
9 THE COURT: Well, he has said that the
10 property has practically no value now, and I think it is an
11 appropriate question to ask if he knows what you can do with it,
12 what uses it can be put to.
13 MR. PARIS: To the 1.83 acres? Is that
14 what he is asking?
15 THE COURT: The PMD is part of the
16 zoning ordinance, and, of course, I think the use is also a part
17 of it, and he can say if it is sold what the use could be.
18 MR. PARIS: I just think that he ought to
19 ask a fair question with regard to this property.
20 THE COURT: I think that he will have a
21 perfect chance to explain his answer.
22 THE WITNESS: Well, when he says what can
23 you use it for, I go back to the fact that it is not two acres,
24 and we can't use it at all according to the County Ordinance.

1 BY MR. BROADDUS:

2 Q That wasn't the question, Mr. Witherington.
3 The question is with regard to all of the uses to which PMD
4 property might be used.

5 A Not all of it. I said that I know some of
6 them, but as far as I am concerned, our PMD zoning is no zoning
7 because we cannot use it.

8 Q Are you basing that conclusion on the fact
9 that your particular piece of property contains 1.83 acres?

10 A That's right.

11 Q So that if you were permitted to use your
12 property -- let's assume that we take away the 2.0 acre
13 requirement. If you were permitted to use your property, would
14 there be uses to which it could be used?

15 A I would assume so, I mean, you know, if
16 you take away what you have already got, your ordinance.

17 Q By saying that the property had practically
18 no value, what do you mean by that, Mr. Witherington?

19 A It cannot be used under the present
20 circumstances.

21 Q And that is based upon the fact that it
22 contains only 1.83 acres, and not two acres?

23 A That is right.

24 Q Do you have through contract the right to

1 purchase 0.18 acres of property which is contiguous to your
2 particular parcel?
3 MR. PARIS: Judge, I object to this.
4 This is absolutely inadmissible. It has no bearing whatsoever
5 on this case.
6 MR. BROADDUS: Judge, the --
7 MR. PARIS: Well, he could have an
8 option to buy the whole tract, as far as that is concerned, but
9 it wouldn't concern this 1.83 acres.
10 MR. BROADDUS: I think that the
11 contention of the plaintiff, as we have previously submitted,
12 is not one which should be before the Court with regard to the
13 size of the property. However, if it is to be considered by
14 the Court, I think that the Court should also be advised of any
15 rights which he may have to other property which would bring
16 this particular parcel up to the 2.0 acre requirement.
17 THE COURT: I am going to let Mr.
18 Witherington answer the question over Mr. Paris' objection, and
19 put it in the record for what it is worth, if it is a
20 determinative point in the case. As far as I am concerned, I
21 will certainly say that when I make my decision.
22 THE WITNESS: Judge, there are, I think,
23 approximately 20 acres contiguous to us that is zoned PMD, and
24 if I so decided to pay the price, I could go ahead and buy all

1 20 acres and say, now I can make my 1.83 acres good, but we are
2 talking about my acreage and not the 20 acres next door.
3 MR. PARIS: Just answer the question.
4 THE WITNESS: What was the question?
5 MR. BROADDUS: I will rephrase it.
6 BY MR. BROADDUS:
7 Q Do you have a contractual right at a
8 future date to purchase 0.18 acres of property which is
9 presently owned by the 7-Eleven Store for the sum of $3,000?
10 A If sewer ever becomes available to the
11 7-Eleven.
12 Q You do have the right to purchase the
13 property?
14 A Right.
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Q For the record, sir, would you state your name, age, and address?

A Robert E. Barton. I am thirty-four years old, and I reside at 3332 Blithwood Drive in the City of Richmond.

Q What is your occupation?

1 A I am an independent real estate
2 appraiser with the firm of Watson & Barton, Incorporated.
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MR. PARIS: If Your Honor please, I would move that he be qualified as an expert real estate appraiser.

MR. BROADDUS: No objection, Your Honor.

THE COURT: All right. We will certainly accept Mr. Barton as qualified as an expert real estate appraiser in his field.

BY MR. PARIS:

Q Mr. Barton, at my request and on behalf of Mr. Witherington and Gayton Triangle Company, did you make an investigation and appraisal of the parcel 79-B1-9,

1 containing 1.83 acres bounded by Gayton Road, Quioccasin Road,
2 and Gaskins Road?
3 A Yes, sir, I did.
4 THE COURT: For the record, is that
5 Plaintiff's Exhibit No. 2 that you are talking about?
6 MR. PARIS: Yes, sir.
7 BY MR. PARIS:
8 Q What was the purpose of the appraisal?
9 A I was asked to appraise the property to
10 estimate the market value of the property under its present
11 zoning, which is PMD, and also to estimate the market value of
12 the property under an assumed zoning of B-3, which is a
13 business category, and I estimated both values.
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16 Q First of all, would you briefly describe
17 the neighborhood?
18 A Well, the property is located in
19 western Henrico County and in an area that is very rapidly
20 growing residentially. There is the Raintree Subdivision,
21 Canterbury, Kingsley, the Farmington Subdivision, and there
22 are others that I can't recall the names of now. But it is
23 heavily populated, mostly single family residential, with some
24 multifamily development already in progress, and other

1 multifamily development planned.

2 The Raintree area has some 10,000 for-

3 sale type units, which are high density type single family

4 housing.

5 The Regency Woods condominium project is

6 just getting started, and it is within, oh, I would say a half

7 a mile or a mile of this property that we are talking about.

8 Generally speaking, the property -- well,

9 the area neighborhood is residential in character, and middle to

10 upper class, I would say.

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Q Are you generally familiar with the PMD zoning ordinance?

A I think so, sir. I have read it in the ordinance, and the ordinance is very confusing to me. But I have tried to study it and acquaint myself with it. It is a new type of zoning in the County, and I have not really had a lot of experience with it. I guess nobody has. I have tried to study it and familiarize myself with it in the ordinance.

Q All right. The question is, in your opinion, looking at this piece of land, and based on your investigation of PMD zoning in Henrico County, what do you think the probability would be that this land would be, in fact, used for PMD development?

A Well, the PMD zoning is an industrial use, and generally users for industrial type development like locations where accessibility is better than this. They like some exposure generally to traffic for advertising. That is an obvious reason.

They also like expressway type roads where

1 the employees and their goods and materials could easily get
2 back and forth to their sites.
3 In my opinion, this particular location
4 is not conducive to a typical industrial use. That doesn't
5 mean to say that somebody may not use it for that, but given a
6 choice -- and there are many choices in Henrico County for
7 property available for industrial zoning and use -- I think
8 that this property would be difficult to market for industrial
9 use. In the competitive market, that is.
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Q Do you have an opinion as to the value of this land, this 1.83 acres, under B-3 zoning?

MR. BROADDUS: Judge, my only question is I would like to know what time he is talking about.

MR. PARIS: Right now.

MR. BROADDUS: I think that is irrelevant, Judge. I think that the time for valuation should be as of the time of the rezoning.

MR. PARIS: All right, sir. We will ask it this way, then.

BY MR. PARIS:

Q As of March 28, 1973, do you have an opinion as to what the value of the land would be?

A As of March 28, 1973?

Q That's right, which is just over a year ago.

A I can't answer that question. My appraisal was made as of March 28, 1974, and that was the date as of which I estimated both values.

Q Well, give us your March 28, 1974 value, then, first, and then we will go back.

THE WITNESS: Under B-3 zoning as of March 28, 1974, it is my opinion that the value of the property would have been, or was $160,000.

Q Well, does it have any economic or feasible use under the present PMD zoning?

A Under the present PMD zoning as it is now constituted, it couldn't be used.

Q Because of what?

A Because it is smaller than the minimum size that the Code states that that parcel has to be for development.

MR. PARIS: So, in your opinion, as it stands now, it does not have any economic or feasible use under the present PMD zoning?

THE WITNESS: No, it does not.

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15 CROSS-EXAMINATION
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17 BY MR. BROADDUS:
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Q Maybe I can save you some time. Assuming that the roads which we have just discussed, Richfield Parkway, Route 288, and extension of Gaskins Road northwardly to Broad Street were constructed, would this substantially improve the access to the parcel in question?

A Certainly it would improve the general access. None of these roads would improve the specific access to the property that I appraised which is located on Gayton Road, not on Richfield Road, and not on Route 288. So that would be a general accessibility that would be better, no question about that. Specifically, I don't think it would affect it a bit.

Q Now, Mr. Barton, you testified, I believe, that the property in question which you appraised had a value at the time of your appraisal of $40,000; is that correct?

A Under the present zoning, yes, sir, that is my opinion.

Q Is it also your opinion that that property if the particular owner went to the Board of Zoning Appeals and

1 sought a variance of the two-acre requirement that it could be
2 developed?
3 MR. PARIS: Objection, if Your Honor
4 please. He is asking this man to tell him or guess as to what
5 a Board of Zoning Appeals is going to do.
6 THE COURT: I don't think that is what
7 he intended the question to be, or that that is what it says,
8 even. I think that he is saying suppose that you could develop
9 it, suppose the two-acre limitation was not applicable to the
10 property, what would it be worth.
11 Is that your question, Mr. Broaddus?
12 MR. BROADDUS: No, sir. I want to know
13 whether he thinks that the Board of Zoning Appeals would grant
14 a variance. I think, Judge, that the situation is such that
15 he has given his opinion that it could not be developed. He
16 is also placing an evaluation on it of $40,000 based on that it
17 can't be developed.
18 MR. PARIS: He didn't do that.
19 THE COURT: It seems to me if he
20 answers that question whether the Board of Zoning Appeals would
21 grant a variance, he has, in effect, got to answer whether the
22 Circuit Court would uphold what the Board of Zoning Appeals
23 would do.
24 MR. BROADDUS: Judge, that is assuming

1 that the Board of Zoning Appeals would be against that. I
2 don't believe that we would --
3 THE COURT: I don't think Mr. Barton is
4 in a position to say whether or not the Board of Zoning Appeals
5 has the authority to rule. I will sustain the objection on
6 this. I think that gets somewhat into the area beyond Mr.
7 Barton's area of expertise. It is a legal question, I think,
8 of could they do it, and also would they do it. I just don't
9 like the question.
10 I don't mind your asking him what it would
11 be worth if the two-acre limitation were not there.
12 BY MR. BROADDUS:
13 Q Mr. Barton, would you recommend that a
14 variance be granted?
15 MR. PARIS: If Mr. Barton would recommend
16 it?
17 THE COURT: Yes, for whatever it is
18 worth.
19 MR. PARIS: Well, I will object to it
20 for the record, anyway.
21 THE COURT: Sure.
22 THE WITNESS: If the Board asked me
23 whether I think they should do it, what I would say? Is that
24 substantially your question?

1 MR. BROADDUS: Yes, sir.

2 THE WITNESS: Yes, I would say yes,

3 they should.

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Q Mr. Barton, what was the general area like as it existed prior to today? I am speaking of when you were first acquainted with it in 1962, the triangle and the surrounding property within approximately a mile or so?

A Well, most of that area out there 12 years ago was undeveloped, including this property.

Q Would it be correct to say that Farmington was the only subdivision in that area at that time?

A Yes, sir. Well, not the only one, but

1 the major subdivision. I am sure there were some smaller
2 subdivions, but Farmington was the biggest one that was going
3 at that time. Canterbury, Kingsley, and all of those have
4 come since then.
5 Q Would the same be true of Raintree Forest,
6 Ednam Forest, Chatham Creek Apartments, and Marble Hill
7 Apartments?
8 A Yes, sir. All of that has come within
9 the last ten years. Most of it within the last five.
10 Q Pinchbeck School?
11 A Yes.
12 Q What about Harry Byrd School? Was it
13 built since then?
14 A Yes, I believe that is right.
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1 REDIRECT EXAMINATION

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3 BY MR. PARIS:

4 Q Mr. Barton, Mr. Broaddus alluded to the
5 appraisal of $40,000 as the value of the subject property?

6 A Yes, sir.

7 Q Is that qualified?

8 A Yes, sir.

9 Q How is it qualified?

10 A Well, under the PMD zoning, as I have
11 testified, without a use permit the land cannot be developed at
12 all, and it is my opinion that a buyer in the market viewing
13 that property just as it is today, it is reasonable for the
14 buyer to think he could probably be successful in getting a
15 variance to use the property. And under that kind of a
16 position, I think the property has a value of $40,000.

17 Q On the basis that you could get a
18 variance?

19 A Yes, sir.

20 Q And that is assuming that you could get
21 a variance?

22 A Yes, sir, and I think it is reasonable
23 to think at this point of time that you could.

24

Q Is your opinion of the $40,000 valuation based on the County giving the landowner a variance?

A Yes, and I think I will go further and explain that if you couldn't get a variance, the land wouldn't be worth $40,000.

Q Would it be worth less, or much less, or --

A It would be worth less, yes, sir.

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5 RECROSS-EXAMINATION
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7 BY MR. BROADDUS:
8 Q Mr. Barton, would you define market value,
9 please?
10 A Well, market value is the highest price
11 estimated in terms of money that a buyer, a willing purchaser,
12 will pay for a property offered for sale in the open market for
13 a reasonable period of time with the buyer buying with the full
14 knowledge of the uses to which the property is adopted.
15 Q What is the fair market value of this
16 particular piece of property?
17 A As it is presently zoned?
18 Q Yes, sir.
19 A Or under the B-3?
20 Q No, sir, as it is presently zoned under
21 the terms that you just stated.
22 A In my opinion, under the PMD zoning,
23 $40,000.
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Q Mr. Barton, it looks like we are bantering the $40,000 figure around. I want you to testify perfectly clear to the Court on this. As I understand your past testimony, you said under the present zoning, as it stands now, this land has no economic or feasible use; is that correct?

A It can't be used under the present zoning. It could not be developed under the present zoning as it is now constituted.

Q And your $40,000 figure is based on the assumption that the County will grant a variance?

A Yes, sir.

Q Otherwise, your valuation would be much less?

A Yes, sir.

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22 Q Would you please state to the Court your
23 name, age, and address?
24 A J. W. Deaner, thirty-four, 2921 Wighton

1 Drive, Richmond.

2 Q What is your occupation, sir?

3 A Real estate.

4 Q Are you a broker or a real estate

5 salesman?

6 A I am a broker.

7 Q How long have you been engaged in real

8 estate sales and service in and around the Richmond area?

9 A Twelve years.

10 Q How long have you been a broker?

11 A About eight years.

12 Q In what particular area of real estate are

13 you engaged in now, if any?

14 A Commercial.

15 Q Would you tell the Court basically what

16 you do in this area of commercial real estate?

17 A Basically, I buy and sell for the clients

18 and for my own account commercial real estate.

19 Q Are you associated with any particular

20 company?

21 A General Land Company.

22 Q Are you familiar with the area around the

23 1.83 acres in question here today?

24 A Yes, I am.

Q Did you sell the land to Mr. Witherington?

A Yes, I did.

Q Or your company?

A Yes.

Q Do you recall the sales price?

A I believe it was $90,000.

Q Were you familiar with any proposed PMD zoning or anything of that nature at the time you made the sale?

A No.

Q Under the B-3, what would be your estimate of value of the 1.83 acres?

A $500 a front foot, minimum, based on what the transfers are in the immediate area.

Q What would be that total amount, approximately?

A I am not sure what the exact front footage is.

Q Well, let's say it is over 200 feet.

1 A This is developable -- I am talking about
2 the frontage on Gayton Road.
3 Q That is correct.
4 A $500 a front foot. It is close to
5 400 feet, I believe.
6 Q So that would be approximately $200,000?
7 A Right.
8 Q Are you roughly familiar with PMD zoning?
9 A Just that I have read a little bit about
10 it recently.
11 Q Do you know the limitations of acreage
12 that can be developed?
13 A I think that there is a minimum acreage,
14 the way that I read it, of two acres.
15 Q Under the present PMD zoning, then, Mr.
16 Deaner, does that land have any economically feasible use?
17 THE COURT: Now, he doesn't know much
18 about PMD, and I think that your question is coming back to the
19 same thing, your position that you can't use it because there
20 aren't two acres?
21 MR. PARIS: I will ask him this question.
22 Under the PMD zoning, as you understand
23 it, what would be your valuation of the land?
24 MR. BROADDUS: Judge, I have to object.

He says he is not familiar with it.

THE COURT: Yes.

THE WITNESS: I have read the ordinance, if that is what you are talking about.

THE COURT: Do you want him to answer that?

MR. PARIS: Sir? Do I want him to answer it?

THE COURT: Yes.

MR. PARIS: If the Court sustains the objection, I am going to vouch the record anyway, sir.

THE COURT: Well, I will let it come in. Mr. Barton has already testified. This gentleman doesn't know a whole lot about PMD. I will let him answer.

MR. PARIS: Give us your opinion of valuation of the land under PMD zoning as it presently stands.

THE WITNESS: What I understand with the PMD zoning, it is undevelopable, and if it is undevelopable, the value would be very small.

1 CROSS-EXAMINATION

2

3 BY MR. BROADDUS:

4 Q Mr. Deaner, how long have you known Mr.

5 Witherington?

6 A Probably eight or nine years.

7 Q At one time were you employed by him?

8 A Yes, sir.

9 Q How long a period of time was that?

10 A Probably six months, about eight or nine

11 years ago.

12 Q Have you had any business dealings with

13 Mr. Witherington aside from this one particular transaction

14 which we are talking about today?

15 A Yes.

16 Q How many, sir?

17 A Probably three in the nine years.

18 Q Do you regard him as a close friend?

19 A I regard him as a friend, yes.

20 Q Do you play golf with him?

21 A Occasionally.

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3 MR. PARIS: Judge, I can rest my case
4 right after this, if you would refer to page three of the
5 stipulation, article number 15.
6 I call as a witness the Henrico County
7 Building Inspector, and ask him if under the present zoning
8 would he issue a building permit to the plaintiff or any other
9 person for any purpose on the 1.83 acre parcel in question,
10 so long as the parcel was to be used in isolation to all other
11 parcels in the Gayton triangle area.
12 If Your Honor please, it is stipulated
13 that the Henrico County Building Inspector would answer no,
14 in the negative.
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WILLIAM F. LaVECCHIA, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BROADDUS:

Q Mr. LaVecchia, were you sworn earlier this morning?

A Yes, sir.

Q Would you state your name and address, please?

A William F. LaVecchia, 303 Henwick Road, Richmond, Virginia.

Q Are you employed by the County of Henrico?

A Yes, sir.

Q What is your position, and would you

please briefly describe your responsibilities?

A I am Director of Planning and an appointed member representing the administration of the County on Planning Commission. I head up the planning office which is basically responsible for the ~~offensive~~ comprehensive planning for the County, the development of the various ordinances such as zoning, subdivision, land use planning, and interpretation of these documents to the citizens and developers.

Q How long have you been employed in such a position?

A For 15 years with Henrico County.

Q What was your employment prior to that time?

A Four years as a town manager of the Town of Blacksburg, and one year as assistant city manager and city engineer for the City of Athens, Tennessee.

Q What were your responsibilities in Blacksburg as it related to planning, land use, and zoning?

A I was secretary to the county planning commission, as well as the administrative member of the planning commission appointed by town council. Again, not having a planning staff, I developed the zoning ordinance, subdivision ordinance, land use plan, and then served as the enforcement or interpretation officer.

1 Q What were your responsibilities at Athens,
2 Tennessee, with regard to planning, land use, and zoning?
3 MR. PARIS: Judge, if he is attempting
4 to qualify Mr. LaVecchia as an expert in the planning field, I
5 think that we can pretty much stipulate that without going into
6 a whole lot of details unless he wants to put it in the record.
7 THE COURT: All right. It is stipulated
8 that Mr. LaVecchia is an expert in the planning field. Is that
9 satisfactory, Mr. Broaddus? If not, you can put more on the
10 record.
11 MR. BROADDUS: Judge, we would
12 specifically like to have Mr. LaVecchia qualify as an expert
13 in planning, land use, and zoning.
14 MR. PARIS: He can't do that, Judge. I
15 wouldn't agree to that.
16 THE COURT: All right.
17 BY MR. BROADDUS:
18 Q What were your responsibilities in Athens,
19 Tennessee with regard to planning, land use, and zoning?
20 A I was responsible for developing a zoning
21 ordinance for the city, a subdivision ordinance, and a land use
22 plan. Then I administered and enforced the documents as the
23 assistant city manager.
24 Q What is your educational background, Mr.

1 LaVecchia, as it relates to the subject matter at hand?

2 A I have a bachelor of science in civil

3 engineering from VPI, or Virginia Polytechnic Institute. The

4 civil engineering field at that time was the basic local

5 government planning field because this was 20 years ago and at

6 that time there were practically no schools in the United States

7 that had the urban planning courses. You found them in your

8 civil engineering fields and in your architectural curriculums.

9 I did my master's of science in municipal

10 administration and public administration. Most of these

11 classes dealt with public administration of local governments.

12 Some were state and some were federal. There I took courses

13 dealing with the sociology of planning, city planning, land use,

14 and zoning.

15 Q Since coming with the County of Henrico,

16 have you had an opportunity to work in conjunction with the

17 General Assembly in preparation of any state statutes?

18 A During the early 1960's -- and I don't

19 remember now whether it was 1962 or 1964, it was along about

20 that time -- the state was in the process of redoing the State

21 Planning Act. Mr. Louis ~~McMillan~~ Mc Murra from the Tidewater area was

22 the chairman of the Towns and Cities and Counties Committee

23 responsible for this.

24 I met with this committee along with

1 Mr. ~~Duhurst~~ Dewhurst, the administrative assistant and county manager at
2 this time. The committee got into many difficulties with
3 everybody wanting the Act amended, but everybody wanting it
4 amended in a different fashion.
5 Mr. ~~McMillan~~ McMurran asked Mr. ~~Duhurst~~ Dewhurst and I to
6 take the Act and rewrite it, keeping in mind the questions that
7 the committee had asked, and giving us the understanding that
8 we knew what the committee wanted. With that type of
9 instruction, we did, in fact, rewrite the Planning Act of the
10 State of Virginia.
11 I did probably the bulk of the work,
12 being the planner, and Mr. Duhurst, of course, being the
13 administrator and civil engineer working with the county
14 planner. This was presented back to the committee and there
15 were no changes in the draft as prepared to the committee, and
16 it was finally adopted by the state.
17 Q Specifically, what are the functions of
18 a planning commission as we have it in Henrico with regard to
19 planning and land use and zoning?
20 A We have the basic responsibility for
21 developing a land use plan for the development of your County
22 of exactly how your land will be used and how should they be
23 used. The commission is fully charged with hearing and
24 considering and recommending to the Board of Supervisors all

1 amendments to the zoning ordinance, whether these be amendments
2 to the written text or amendments to the zoning map itself as
3 to zoning classifications.
4 We are also charged with the review of
5 plans of development which are required for shopping centers,
6 apartment projects, and any development situated on four-lane
7 highways.
8 In the land use and the zoning the
9 commission only has advisory power, in that we recommend to the
10 Board of Supervisors the plans of development. In subdivisions
11 we serve as the agent for the Board of Supervisors, and our
12 decision is final. We have additional responsibility of
13 considering any item that the Board of Supervisors may see fit
14 to refer to us for study.
15 Q Have you previously qualified as an
16 expert in any court on the subject matter of planning, land use,
17 and zoning?
18 A In a court of record in Athens, Tennessee,
19 in connection with a zoning case in the then Montgomery County
20 Circuit Court. Here in Virginia in connection with an
21 annexation case when the Town of Blacksburg was annexing land
22 from the County of Montgomery, I qualified there both as local
23 administrator and planner.
24 I have since qualified in the Circuit

1 Court of Henrico in several cases dealing with zoning and land
2 use, and in the Federal District Court.
3 Q Is that the Federal District Court for the
4 Eastern District of Virginia, the one that sits in Richmond?
5 A Yes, sir, the one that sits in Richmond.
6 MR. BROADDUS: Judge, we would submit that
7 Mr. LaVecchia is qualified as an expert in planning, land use,
8 and zoning, and request that he be permitted to testify as such.
9 THE COURT: Do you want to ask some
10 questions of his qualifications in this field, Mr. Paris?
11 MR. PARIS: Yes, sir. Judge, Mr.
12 O'Bryan is going to conduct the cross-examination of Mr.
13 LaVecchia in chief. I would ask if Mr. Broaddus would make
14 objection to me asking him these isolated questions?
15 MR. BROADDUS: No, sir.
16
17 CROSS-EXAMINATION
18
19 BY MR. PARIS:
20 Q Mr. LaVecchia, you testified that you have
21 been qualified as an expert in Athens, Tennessee; is that
22 correct?
23 A Yes.
24 Q What was the basis of the case in that

1 particular court?

2 A The case was where the city had rezoned

3 some property that was commercial back to a residential

4 classification, and as the second administrative officer and

5 the one charged with planning in the city, I testified as to

6 land use in connection with the particular case.

7 Q What did you testify to?

8 A I testified to what the land uses were,

9 what the probabilities of their developing were, what the

10 possibilities were of them being developed into other uses,

11 and then those the zoning ordinance permitted.

12 Q There the question, though, was whether

13 it was a fairly debatable issue of whether or not the zoning

14 ordinance was proper; was it not?

15 A No. I think the question was whether the

16 rezoning of the property from commercial back to residential

17 was an arbitrary act or not by the city council.

18 Q It was the same thing, though? That was

19 just a question of whether a zoning was proper or not in

20 someone's opinion?

21 A Whether the zoning was proper (nodding

22 head affirmatively).

23 Q Now, you said you qualified also as an

24 expert in Henrico County. Was that in an annexation case?

1 A That's been in the annexation case, but
2 it has also been in cases where the decisions of the Board of
3 Zoning Appeals has been appealed to the Circuit Court, and where
4 the decision of the Board of Supervisors and Planning Commission
5 have been appealed to the Circuit Court.
6 Q How would a case come up from the Planning
7 Commission to the Circuit Court?
8 A From Planning Commission cases where the
9 Planning Commission and the Board have acted on the matter.
10 Q These were cases in which the Board had
11 refused to rezone; is that correct?
12 A That is correct, sir.
13 Q And in the federal court --
14 A In the federal court it had to do with
15 the school consolidation case, where I was testifying as to
16 overall planning and land use development in the County, and
17 in connection with a use permit from the Board of Zoning Appeals
18 where we had gone against a surety to collect against a surety
19 bond that had been posted for a sand and gravel use permit.
20 Q Well, that would have no real relationship
21 to the case today, would it?
22 A Well, it goes to the extent that land use
23 planning and zoning are one and the same, whether you are
24 dealing with an isolated parcel request, or whether you are

1 dealing with overall zoning, or use permit for a sand and
2 gravel use, because land use planning is still the same.
3 Q When you sought to be qualified and say
4 that you were qualified as an expert in these jurisdictions,
5 was your expertise stipulated?
6 A No, sir. In some instances there were
7 presentations by the attorney I was working with, with
8 questions from the opposing attorney, and in one instance -- I
9 believe it was in the surety case in the district court -- the
10 court did indicate their acceptance of my qualifications after
11 questions.
12 Q And you, of course, have sort of
13 engineered the study with regard to the land use plan of the
14 area in question; is that correct?
15 A No, sir.
16 Q You had nothing to do with it?
17 A I didn't say that I had nothing to do
18 with it. I did not engineer it, Mr. Paris. The way we work
19 in the planning office, I am director of the office, and as
20 such the head, but the fact that I have the position of being
21 an appointed member of the Planning Commission and must act on
22 all recommendations that the staff make to the Planning
23 Commission, I do not interject myself into a study.
24 This study in particular was one of those

1 assigned to Michael ~~Barry~~ Berry in the office who was the principal
2 planner responsible for the study, and Ms. ~~Garrington~~ Karen Layne was the
3 project manager who was primarily responsible.
4 Q So you are saying that, as I understand
5 it, then, that your objective in this particular study was
6 rezoning? That was your objective?
7 A I think so, yes, sir.
8 Q And you did not participate in the actual
9 planning of the rezoning, then? You only submitted it to the
10 Planning Commission?
11 A I did not participate in the detailed
12 participation of the land use plan.
13 Q As I say, they did the work, and you
14 merely presented it to the Planning Commission for their
15 approval or disapproval, and then to the Board of Supervisors
16 for their approval or disapproval?
17 A This is correct, sir.
18 MR. PARIS: On that, sir, I would object
19 to testimony, and if he is going to testify with regard to this
20 case in particular, first of all, the fact of having been
21 qualified in other courts in the areas in which he testified,
22 I do not believe it would come within the purview of the
23 particular case in which we are involved because it is unique
24 in character. To my knowledge, there has been no case

1 involving this particular kind of question in Henrico Circuit
2 Court, or any circuit court in the State of Virginia.
3 Secondly, as he has stated, he is not
4 familiar with the details of this particular land use study and
5 ultimate rezoning. So I submit to the Court that he couldn't
6 testify as an expert. He can only testify as to what he knows
7 or does not know from an objective standpoint, and I would
8 object to his being qualified as an expert witness.
9 MR. BROADDUS: Judge, with regard to the
10 first basis for objection, the fact that this case or similar
11 cases have not been before the courts in other states, or that
12 this was not the type of case in which Mr. LaVecchia was
13 qualified, that certainly would have no bearing as to whether
14 he is an expert in zoning, land use, and planning.
15 With regard to the second objection, I
16 don't believe that Mr. LaVecchia said that he was not familiar
17 with the details. But in any event, as the Court is well
18 aware, an expert need not have personal knowledge of the facts,
19 although I am confident that Mr. LaVecchia's testimony will
20 reveal such knowledge. He would certainly be well qualified
21 to testify as an expert both with regard to what he first might
22 know, but what he was given and other facts.
23 THE COURT: Well, I think that I will
24 permit Mr. LaVecchia to testify on planning, land use, and

1 zoning.

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Q Mr. LaVecchia, would you describe your relationship with the Board of Zoning Appeals?

A Yes, sir. I serve as secretary and technical advisor to the Board of Zoning Appeals. All cases that are going to the Board of Zoning Appeals are made in the

1 planning office. The compilations are filed there, and the
2 preparation of the case, the advertising of the case, and the
3 preparation of the agenda to go to the Board of Zoning Appeals,
4 whether it is an appeal going to the board of whether it is a
5 special use permit, or whether it is a variance from any of the
6 requirements of the zoning ordinance.
7 Q How long have you functioned in this
8 capacity?
9 A Fifteen years.
10 Q Are you familiar with the criteria to be
11 met for the granting of a variance?
12 A Yes.
13 Q Do you have a number of occasions in which
14 individual property owners seek a variance in your office, or
15 rather file a petition in your office seeking a variance from
16 the Board of Zoning Appeals?
17 A We probably average some 15-plus cases
18 a month.
19 Q Do you have indications in which property
20 owners seek a variance claiming that their particular lot is
21 too small to meet the requirements contained in the ordinance
22 for residential construction?
23 A Yes, sir.
24 MR. PARIS: Judge, I would object to this

1 line of questioning on the basis of our previously stated
2 objections. It is absolutely irrelevant and immaterial as
3 to whether or not the plaintiff has applied for a variance.
4 Secondly, with regard to Mr. LaVecchia's
5 experience in advising the board for feasibility of variances
6 in their considered judgment, and other cases wherein variances
7 are granted or refused, this is not relevant to the issues of
8 this case.
9 THE COURT: I believe when Mr. Barton
10 was on the stand Mr. Broaddus asked Mr. Barton the same
11 question, and I sustained your objection to it, I believe, and
12 then he said he would recommend a variance to the board. Then
13 when Mr. Barton got back on he came out and said a reasonable
14 buyer would reasonably think that he could get a variance.
15 So Mr. Barton said that he could.
16 MR. PARIS: Well, the answer was
17 unresponsive, but you can't very well object to what your
18 witness is volunteering.
19 THE COURT: I will let Mr. LaVecchia
20 answer.
21 BY MR. BROADDUS:
22 Q Mr. LaVecchia, rephrasing the question,
23 are there situations in which owners of property seek a
24 variance upon the claim that their particular piece of property

is too small to meet the requirements for residential construction on that property?

A Yes, sir.

Q Would you give an example of such a situation?

A It would be an instance where a lot was smaller than the area requirements set forth in the zoning ordinance, or in some instances it is the lot width is too narrow to satisfy the ordinance requirement for the particular zoning classification that it happens to be in.

Q In a situation like that, would the owner then seek a variance before the Board of Zoning Appeals?

A Yes, sir.

Q Now, suppose the Board of Zoning Appeals did not grant a variance? Would that property in these situations be able to be used for other purposes?

MR. PARIS: Judge, that is so general and speculative, I don't see how this Court would properly accept that as any kind of probative evidence in this case. He is talking about whatever I don't know, but certainly there is no way to discern or distinguish those situations from this.

THE COURT: Well, have you asked him if the board would likely grant a variance?

MR. BROADDUS: Not yet, Judge.

THE COURT: Are you going to do that?

MR. BROADDUS: Yes, sir.

THE COURT: Why don't you ask him that? Then you won't have to ask him the other questions.

MR. BROADDUS: All right, sir.

BY MR. BROADDUS:

Q Mr. LaVecchia, assuming that the plaintiff were to seek a variance of the two-acre requirement contained in the zoning ordinance, under the facts of this case do you have an opinion as to whether the Board of Zoning Appeals would grant the variance?

MR. PARIS: Now, Judge, I am going to object to that, too, because that is speculative, and I will tell you that Mr. LaVecchia, with all of his clairvoyance, I don't think could ever tell us what the County boards are going to do one way or the other.

THE COURT: Mr. Barton told us. I am going to let Mr. LaVecchia tell us, too.

MR. PARIS: Well, I don't think that is exactly right, but anyway --

THE WITNESS: Based on 15 years of observing the Board of Zoning Appeals grant and deny variances for lot area requirements in residential classifications, it would appear reasonable and I would expect that they would grant

1 a variance in this particular case.

2 THE COURT: Now, let me ask a question

3 here. If a variance were applied for, how long would it take

4 before the Board of Zoning Appeals would reach this view?

5 THE WITNESS: It is normally about four

6 weeks. They meet once a month. If you should happen to miss

7 a filing deadline, which is four weeks prior to their hearing,

8 it could be as much as six weeks.

9 As a rule, the board always renders their

10 decision the day they hear a case. On occasion, though, they

11 do defer. They must under the ordinance act in 90 days.

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11 Q Would you go through the chronology of
12 events relating to the various petitions to rezone this property
13 and to study the particular property in question, and also the
14 entire triangle property?
15 A The Board of Supervisors directed the
16 preparation of a zoning case on this property, and in February
17 of 1971, they included the parcel bounded by Gayton, Gaskins,
18 and Quioccasin Road extended.
19 Then on March 11 of 1971, there was a
20 public hearing by the Planning Commission. They deferred their
21 action for 90 days. This was done at the request of Mr.
22 Ruffin Bailey, who was a member of the Gayton Investment
23 Corporation, and one of the owners, Mr. Eugene McCall, also
24 was representing another owner, Mr. Guy Bayliss. They also

1 had asked for the deferral.

2 It came back to the commission on June 10

3 of 1971, and this was a second hearing by the Planning

4 Commission.

5 The commission at that time moved to

6 recommend to the Board of Supervisors that the case -- and there

7 was a request that all of the property be zoned to A-1

8 agricultural district. The Planning Commission moved and

9 recommended that it be denied and send it forward to the Board

10 of Supervisors.

11 The case came to the Board of Supervisors

12 on July 14, 1971, and they deferred until October 13. At that

13 time the Board withdrew the application from further

14 consideration, and basically the case was rezoned in -- I am

15 sorry, withdrawn. In Henrico this is tantamount to a denial.

16 The Board of Supervisors at the same time

17 passed a resolution requesting the commission to conduct a

18 study of the triangle and the area around it, and forward this

19 to the Board of Supervisors.

20 The commission was directed to formulate

21 a zoning case out of the land use study that they made and to

22 make their recommendations after a public hearing to the Board

23 of Supervisors.

24 With that type of instruction, the

1 planning staff started on November 2 to initiate a land use
2 study. The staff, being more particularly the advance
3 planning section of the staff, commenced the study, the first
4 draft being prepared on December 7.
5 On February 4 of 1972, a Mr. Guy Bayliss
6 submitted some very preliminary plans to the planning office
7 with the request that he be notified of any meetings that we
8 might have on the subject.
9 On March 1, we completed a second draft
10 of this land use study, and then on March 7, 1972, the results
11 of the study as well as the date of a community meeting to be
12 held at the Pinchbeck Elementary School was announced in both
13 of the Richmond papers.
14 Copies of this land use study and the
15 announcement of the meeting were sent to all of the triangle
16 property owners, as well as to civic associations that
17 represented the landowners in the surrounding area.
18 We held what we called an informational
19 meeting at Pinchbeck Elementary, and at this time we heard
20 comments from both some of the property owners in the triangle,
21 representatives of theirs, and citizens.
22 On March 28, the land use plan was
23 revised to reflect some of the comments that were made at the
24 informational hearing. On March 30 of 1972, we sent letters

1 to the owners of the property, that is, the triangle property
2 within the study area, and about a mile radius, the owners
3 whose property was being changed from the classification or,
4 at least, suggested for change that was being made on the land
5 use plan from the existing one. Civic associations in the
6 area were also informed of a public hearing before the Planning
7 Commission on April 30.
8 This was advertised in the Richmond
9 newspaper, two advertisements. On April 13, 1972, we had a
10 public hearing by the Planning Commission, and Mr. McCall was
11 present and represented a Mr. Hooker and a Mr. Bayliss. And
12 Mr. Wilson Sheridan represented Gayton Investment Corporation.
13 There were a number of residents and civic association members
14 who responded to the proposal.
15 The Planning Commission made a motion at
16 that time to recommend approval of the land use study to the
17 Board, and this was adopted and sent forward with one member of
18 the commission voting against the motion, and one member
19 abstaining. The member abstaining was Mr. Toombs, who was
20 the Board member sitting on the commission as liaison member.
21 I was requested, or rather I requested at
22 this time, which was April 27, a legal opinion from the County
23 Attorney's office with regard to the County's ability to
24 require owners to join together to develop the land. The reply

1 to this was --

2 MR. PARIS: I object to this, Judge.

3 BY MR. BROADDUS:

4 Q Mr. LaVecchia, just go on. Don't worry

5 about what the response was. I think if you could just

6 summarize the times that it went before the Board, that is all

7 that I was just interested in to give an indication of the

8 consideration by the Board of the case. That is all.

9 A On May 10, the case came before the Board

10 of Supervisors in an advertised public hearing. They deferred

11 it. They went into the question of whether there were land use

12 classifications on the land use plan for a PMD.

13 The Planning Commission held a public

14 hearing and approved an ordinance that did attach land use

15 classifications to the legend land use, or PMD.

16 This went to the Board of Supervisors,

17 who adopted it. It was approved by the Board of Supervisors

18 on August 9.

19 After this point the Board held a hearing

20 on the PMD in September, and approved the same. The

21 supervisors then directed that a zoning case be prepared on

22 property in the triangle.

23 In January of 1973, it came before the

24 Planning Commission in a public advertised hearing. In

1 February of 1973, it came to the Board of Supervisors for a
2 public advertised hearing, and it was deferred until March 28.
3 On that date the Board of Supervisors
4 approved the rezoning of the triangle and subparcel that we are
5 discussing today, the PMD.
6 Q In terms of depth of study by you and
7 your staff of the Planning Commission and the Board of
8 Supervisors, compare the study which was given to the proposed
9 land use and rezoning of this particular property, that is,
10 including the entire triangle, with the study which is normally
11 given to rezoning cases.
12 A Zoning cases normally come from the
13 planning office, and we have four weeks from the time it starts
14 until it appears on the Planning Commission's docket. We,
15 obviously, only have about two of those weeks that we can
16 actually prepare a report to the Planning Commission, and this
17 report often goes to the Board.
18 In this particular case, we dealt off and
19 on with this property from February of 1971, until March -- or
20 rather, February of 1973, when it got to the Board of
21 Supervisors.
22 In the land use study we spent
23 approximately five months in preparing, so I would say there is
24 at least ten times as much time, I guess, at least that much

1 effort spent in the preparation of this particular case, as in
2 relation to the others that come before the supervisors.
3 MR. PARIS: Judge, I move that the
4 question and answer be stricken, again, as irrelevant. I
5 assume the question and answer are proposed to the Court for
6 the purpose of saying that they did a lot better job with this
7 than they did with something else that only took two weeks.
8 But I think that really only gets down
9 to the basic issue in the case, and I would ask that the Court
10 strike the question and answer as being irrelevant.
11 THE COURT: I am going to leave it in
12 there. I think when I really have to decide the case, I can
13 base it on what is relevant and what is irrelevant.
14 BY MR. BROADDUS:
15 Q Are you satisfied, Mr. LaVecchia, that as
16 far as you personally are concerned, that all reasonable
17 alternative uses were considered in this particular study?
18 A Yes, sir.
19 Q When was the plaintiff's property rezoned,
20 or last zoned prior to 1973?
21 A December 23 of 1959.
22 Q What was the zoning category in which it
23 was placed at that time?
24 A B-3.

1 MR. BROADDUS: Judge, could I have just a
2 moment to show something to Mr. Paris?
3 THE COURT: Sure.
4 (Discussion off the record.)
5 MR. BROADDUS: Judge, I would tender to
6 the Court Defendants' Exhibit, I believe, No. 4, which in the
7 bottom right-hand corner is marked 1960 zoning worksheets, and
8 I would ask Mr. LaVecchia to explain this exhibit to the Court
9 to what it shows.
10 Judge, I don't know whether you prefer
11 for us to put it on the blackboard? Whatever would be
12 convenient for the Court. As you can see, it is not all that
13 big.
14 THE COURT: I can see it. Does he need
15 it to testify from it?
16 MR. BROADDUS: Yes, sir, I think so.
17 THE COURT: Let him hold it and testify
18 from it.
19 BY MR. BROADDUS:
20 Q Mr. LaVecchia, would you, based on
21 Defendants' Exhibit No. 4, explain to the Court what the zoning
22 was at that time and the property surrounding the triangle?
23 First off, if you would, point out the triangle area.
24 A The triangle is the purple area.

1 Well, it is the purple area, and this portion of the road
2 (indicating). I am delineating between Gayton Road, Gaskins
3 Road, and Quioccasin Road if it was extended. It is the
4 purple and the road bounded in there.
5 Q Within those boundaries are B-3 and B-1
6 marked?
7 A Yes, sir. The B-3 is the purple, and
8 the B-1 is bright red.
9 Q How does the north arrow point on this
10 particular exhibit?
11 A The north arrow is to the straight top.
12 Q What is the zoning classification for all
13 of the property to the north of the extension of Quioccasin
14 Road?
15 A A-1 agricultural.
16 Q What is the zoning classification of the
17 property to the southwest as it is shown on here?
18 A A-1 agricultural.
19 Q And that is bounded by the green and orange
20 and brown marking?
21 A Yes, sir, and Gayton Road.
22 Q What is the classification of the
23 property immediately to the south?
24 A The portion of it bounded in brown is

1 R-2, and another corner of Gaskins and Gayton Road, being the
2 southwest corner bounded in red, is B-1, neighborhood business.
3 Q What is the classification of the property
4 to the east of the triangle tract?
5 A The portion of it lying along the east
6 boundary of Gaskins north of Gayton and just above Stoneridge
7 Road is R-3, single family, and then it is bounded in dark
8 green. And then the southeast corner of Quioccasin and
9 Gaskins bounded in red is B-1, neighborhood business.
10 MR. BROADDUS: Judge, we would offer this.
11 THE COURT: This will go in as
12 Defendants' Exhibit No. 4.
13 (Defendants' Exhibit No. 4 was received
14 and marked in evidence by the Court.)
15 MR. BROADDUS: I think that will probably
16 be all the need we will have for it, Judge.
17 THE COURT: Thank you, Mr. Broaddus.
18 BY MR. BROADDUS:
19 Q Now, are you familiar with the area as it
20 existed in 1960, Mr. LaVecchia?
21 A Yes, sir. The exhibit shows the property
22 as it existed at that time. By that I mean it shows the
23 street network where your subdivisions were at that time.
24 Q Are you also personally familiar with the

1 development of the property at that time?

2 A Yes, sir.

3 MR. BROADDUS: Defendants' Exhibit No. 2,

4 I believe, Judge, is the map on the blackboard.

5 THE COURT: Yes.

6 BY MR. BROADDUS:

7 Q Would you approach Defendants' Exhibit

8 No. 2 and point out to the Judge how the property has developed

9 between 1960 and 1973, and if you would in pointing out the

10 color boundaries, and also for the Court's convenience we have

11 marked within each particular color, a number such as 1, 2, or

12 3, which are in red and circled, which we hope will help

13 identify this after someone tries to get it out of the

14 transcript.

15 MR. PARIS: If Your Honor please, I think

16 the plaintiff is entitled to know the basis for this

17 interrogation.

18 MR. BROADDUS: Well, I will be happy to

19 say, Judge, the purpose is to show that there has been a

20 substantial -- I would say fantastic -- change in circumstances

21 since the original zoning in 1959.

22 THE COURT: Is there any issue about that?

23 MR. PARIS: I just want to hear him say

24 it, Judge. That is fine.

1 MR. BROADDUS: If the plaintiff concedes
2 that, I will be glad to.
3 MR. PARIS: That is fine.
4 THE COURT: Do you concede substantial
5 or do you concede fantastic, Mr. Paris?
6 MR. PARIS: I think that he is quoting
7 from the Boggs case, Judge, in which they said a fantastic
8 change.
9 THE COURT: You are trying to meet the
10 requirements of Snell, are you not, Mr. Broaddus?
11 MR. BROADDUS: Absolutely, Judge.
12 THE COURT: Do you concede that it meets
13 the requirements referred to in Snell?
14 MR. PARIS: Just a minute. I think,
15 certainly, if Your Honor please, there have been substantial
16 changes in the area with regard to the Snell case, if that is
17 what you are referring to.
18 THE COURT: That's right.
19 MR. PARIS: Yes, sir. I think that
20 there has been substantial changes in the area.
21 THE COURT: I could almost take
22 judicial knowledge of that fact.
23 MR. PARIS: I think that if that is the
24 basis he is proceeding under, the Snell case basis, that is all

1 right. I don't see any point in belaboring the issue, except
2 for him to just say what is there now as opposed to what was
3 there before. That is no problem.
4 THE COURT: The parties will concede
5 there has been a change in the area since 1960 to 1970, which
6 is a substantial change, and that it would meet any
7 requirements of change as the parties understand them in the
8 Snell case.
9 MR. BROADDUS: Fine, Judge. Can Mr.
10 LaVecchia just briefly point out the subdivisions which have
11 been --
12 THE COURT: All right.
13 BY MR. BROADDUS:
14 Q If you could, do that briefly and rapidly.
15 A The subdivisions, Your Honor, are Ednam
16 Forest, Canterbury Forest East is under construction, Raintree
17 is under construction, and, of course, Canterbury and Kingsley
18 west of the area.
19 There are others here that are under
20 construction in various stages of development and show on the
21 exhibit itself.
22 Q But with the exception of Farmington,
23 which is outlined in sort of a grayish brown and marked 10,
24 and then to the east of the triangle area, has all of this

1 development occurred since 1960?

2 A Yes, sir.

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21 Q Would you know whether a building permit

22 application or special use permit application or plan of

23 development or site plan or subdivision plan has ever been

24 filed on plaintiff's property?

A Yes, sir, I would know that.

Q Now, has a building use, special use application, or plan of development, site plan, or subdivision plan ever been filed on the plaintiff's property?

A No, sir.

Q Would you compare the general types? Would you compare the development under B-3 with that which you would anticipate under PMD in terms of noise generation, lighting, use and general aesthetic qualities?

A Well, basically, under the B-3 --

MR. PARIS: Judge, my objection is going to continue, but how in the world can he sit here and generalize as to if you have more lights under a shop or McDonald's, or whatever, as opposed to GE out on Laburnum? I don't see how there could possibly be any comparison in that, number one. Number two, with regard to the aesthetic values, as such, I think that is such an obvious thing that for him to testify to as an expert is just wrong.

1 THE COURT: Well, I think that he can
2 tell us what you usually find in B-3 and what he would expect
3 to find in PMD, for whatever it might be worth to us.
4 THE WITNESS: In your B-3 ordinance you
5 are permitted 24-hour operation. Your lighting does not have
6 to be controlled in the freestanding B-3 classification that
7 you have in a PMD. You can actually regulate the type of
8 lighting and how it will be located to be sure that the lighting
9 does not have a detrimental effect on your surrounding
10 properties, whether those properties be residential or some
11 other commercial or industrial. You don't have the regulations
12 in freestanding B-3 that you do in a PMD for lighting, noise,
13 or odors.
14 The basic test of the ordinance says that
15 in PMD you don't see it, smell it, or hear it outside the
16 property lines. That is not true in the B-3.
17 BY MR. BROADDUS:
18 Q What about signs, Mr. LaVecchia?
19 A In B-3 you are permitted a certain square
20 footage based on your front property line. In PMD your signs
21 must be harmonious and designed in keeping with the overall
22 development of the property.
23 Q Would it be possible to develop the entire
24 triangle bounded by Gayton, Gaskins, and Quioccasin extended

1 which is zoned PMD as a shopping center if it were zoned as
2 B-3?
3 A Yes, sir.
4 Q Do you know the size of the tract of land
5 which is now zoned PMD?
6 A Approximately 23 acres.
7 Q Are there shopping centers of comparable
8 size in the County?
9 A Yes, sir. We have got them on both
10 sides of that particular size.
11 Q For the purposes of comparison, what are
12 some of the sizes of shopping centers around that size?
13 A Parham Plaza that is located on Parham
14 Road and north of Quioccasin Road, east of this property is
15 approximately 11 acres. Ridge is across the street from
16 Parham Plaza and is 7. Willow Lawn shopping center is
17 approximately 29, and Azalea Mall is approximately 31.
18 Q Now, in your opinion, is the triangle
19 area in here -- I am referring to the property within
20 approximately a one-mile radius of this particular triangle
21 itself -- adequately served by commercial businesses?
22 MR. PARIS: I object to that, Judge, a
23 continuing objection to that.
24 THE COURT: All right. I will let him

1 answer the question over your continuing objection.

2 THE WITNESS: Yes, sir, our land use

3 study of this area that we made specifically within a one-mile

4 radius of this property would indicate it. Then the overall

5 study that we have made more recently for the County indicates

6 it.

7 BY MR. BROADDUS:

8 Q Does the County have land in the western

9 portion of the County south of Broad Street in the PMD category?

10 THE COURT: What do you mean? Does the

11 County have land?

12 MR. BROADDUS: No, sir. I beg your

13 pardon.

14 BY MR. BROADDUS:

15 Q Is there any property located south of

16 Broad Street in Henrico County which is zoned PMD?

17 A No, sir.

18 Q Do you anticipate a need for property

19 zoned in such a category in that portion of the County?

20 A Yes, sir.

21 Q Do you anticipate that there are practical

22 uses for which the plaintiff's property may not be put?

23 A If the requests that we get from persons

24 coming to our office looking for industrial property are any

1 indication, yes, sir, there would be a need for it.

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7 RECROSS-EXAMINATION
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9 BY MR. O'BRYAN:
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2 Q If you wanted to put up a sign, you
3 couldn't put up just any sign that you wanted to, you would have
4 to make sure it was in harmony with the remainder of the 20-acre
5 tract?
6 A No, sir. It has to be in harmony with
7 your tract.
8 Q You are talking about the 20 acres?
9 A No, sir, your 1.83.
10 Q Without any regard to the remainder of the
11 20-acre site?
12 A That's right. It is related primarily
13 to being coordinated with your particular building or buildings.
14 Q How about entrances into the street?
15 Would they have to be coordinated?
16 A We would take a look at the entrances on
17 the street in the same fashion as when we look at a subdivision.
18 We take a look at that subdivision to see how it might tie in
19 to adjacent properties. We would study your entrances in the
20 same fashion concerning traffic and street patterns in the area.
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21 Q My question is, can it be used for any
22 purpose as the tract sits right now with a two-acre minimum
23 requirement and a 1.83-acre parcel?
24 MR. BROADDUS: A continuing objection,

1 Judge, as we have stated earlier.

2 THE COURT: The objection has been

3 overruled, so you can answer the question.

4 THE WITNESS: I am really trying to

5 figure out, Your Honor, what his question is because in one

6 sense it seems to me I am being asked that you can't use it

7 because it is 1.83 acres, and I sense that I am being asked --

8 and maybe I misunderstood the question -- what use can you put

9 it to, and I think that it can be put to many uses, but not

10 until the 1.83 question is overcome.

11 THE COURT: I think that has been pretty

12 well established.

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13 Q You mentioned about getting a variance and
14 what you thought about the possibility of getting a variance.
15 Isn't it a fact, Mr. LaVecchia, that many variances are turned
16 down? Variances are turned down from time to time?
17 A Not many variances, Mr. O'Bryan, but
18 variances are turned down from time to time, yes, sir.
19 Q Could you guarantee anybody that they
20 would get a variance on any particular piece?
21 A No, sir, I could never guarantee anyone
22 that.
23 Q Under the PMD zoning, Mr. LaVecchia, you,
24 being the chief planner for Henrico County, there are many uses

1 that are permitted under the zoning ordinance under the PMD
2 section of our zoning ordinance which you, as a planner, would
3 not recommend; isn't that correct?
4 A This is true in most all classifications.
5 Q Isn't it true that it would be the
6 majority of uses under the PMD classification that you would
7 not recommend for this parcel?
8 A Well, I don't have a capacity where I
9 would recommend whether a particular use under the PMD would be
10 permitted or not. As a commission member, I would have to
11 test whether that particular use could meet the criteria of the
12 ordinance. It it could, then, of course, they could go there.
13 Q Well, could you do that for us? Could
14 you go through that and tell us whether or not you would
15 recommend the majority of uses in the ordinance are permitted?
16 A Well, Mr. O'Bryan, that is dependent upon
17 the individual coming in and saying that I want to make such and
18 such a use of the property, and then through his planning and
19 his presentation he has to show that that use would be
20 harmonious in that particular area, that it wouldn't be
21 objectionable as far as noise, odors, lights, and this type of
22 thing, and only if that point is satisfied would I be able to
23 say whether I would recommend an approval or not.
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1 REDIRECT EXAMINATION

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3 BY MR. BROADDUS:

4 Q How does the County characterize

5 Patterson Avenue, Mr. LaVecchia?

6 THE COURT: I thought that he said that,

7 didn't he?

8 THE WITNESS: It is a major arterial.

9 MR. BROADDUS: I asked Mr. Barton if he

10 was aware of that, Judge.

11 THE COURT: All right. Maybe that is

12 where I got that from.

13 BY MR. BROADDUS:

14 Q What was your answer, Mr. LaVecchia?

15 A A major arterial.

16 Q Are there plans to extend Gaskins Road

17 north to Broad Street?

18 A Plans to extend it to the interchange

19 with Interstate 64, and then ultimately to intersect with

20 Broad Street.

21 Q Are there plans to construct a

22 circumferential highway, I believe, presently designated as

23 Route 288 and 295, which will be located several miles to the

24 west of this particular property?

A Yes, sir.

1 VIRGIL R. HAZELETT, being duly sworn,
2 testified as follows:
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4 DIRECT EXAMINATION
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6 BY MR. BROADDUS:
7 Q Mr. Hazelett, would you please state your
8 name and address, please, sir?
9 A Virgil R. Hazelett, 44 Skipwith Green
10 Circle, Henrico County.
11 Q What is your present occupation?
12 A Traffic engineer, Henrico County.
13 Q Would you briefly describe your
14 responsibilities as such?
15 A The traffic engineer with the Henrico
16 County is responsible for actually three-fold operations with
17 the County, the first being traffic operations, which is the
18 day-to-day maintenance of traffic signs and signals and markings
19 throughout approximately 800 miles of roadway within 280 square
20 miles of area.
21 In addition to this, I am responsible for
22 actual ongoing traffic engineering studies which are done to
23 eliminate congestion points, congested roadways, the development
24 and redesign of traffic based upon capital problems or volume

1 restrictions, and also the design of signalized intersections
2 throughout the County.
3 In addition, we review the so-called
4 warrants for installations of traffic signals, and also the
5 installation of various other traffic control devices.
6 We investigate, of course, highway
7 locations and overcapacity roadways to determine the need to
8 improve those various conditions, or the possible methods of
9 improvement for them.
10 In addition to that second phase, I am,
11 of course, responsible for traffic planning and analysis, which
12 is the actual review of existing traffic volumes, the projection
13 of traffic volumes on the various roadways of the County in
14 order to determine the effect of these volumes in reference to
15 actual cross sections of roadways, or the availability of
16 existing roadways to carry such traffic capacity.
17 In addition, we review the actual
18 development as it occurs in the County, both in the plans of
19 development and also the existing development to determine what
20 problems the development may have on the actual existing road
21 system, or the future road system. We are also required to
22 review zoning cases for this particular item also.
23 Q How long have you held this position with
24 these responsibilities, Mr. Hazelett?

1 A It has been approximately 18 months to
2 date.
3 Q Would you briefly describe your
4 educational background and your work experience which qualifies
5 you for your position?
6 A I received a bachelor of science degree
7 from West Virginia Institute of Technology in the field of
8 civil engineering. I have worked as both a co-op student and
9 actual project engineer for the West Virginia Department of
10 Highways in the field of interstate construction.
11 After receiving the bachelor's degree, I
12 was requested to attend graduate school, and accepted this
13 position under a Eno Traffic Foundation fellowship in graduate
14 school at the West Virginia University, and received a master's
15 degree in the field of traffic engineering and transportation
16 planning.
17 After receiving that degree I worked with
18 the --
19 Q Excuse me, Mr. Hazelett. For the benefit
20 of the Court, those that might not know, would you briefly
21 describe what an Eno Fellowship is?
22 A This is a fellowship given by the Eno
23 Foundation which is named for a William Eno. This is a
24 nonprofit foundation, of course, for the advancement of research

1 and planning in the field of traffic engineering and
2 transportation planning. These are given to approximately
3 two students per year.
4 Q If you will, go into your other
5 experiences, Mr. Hazelett.
6 A After receiving the master's degree, I
7 worked with the West Virginia Department of Highways and the
8 advance planning section in the area of long range planning,
9 traffic analysis in route, and project planning. In this area
10 we reviewed existing roads and against the proposed roadway
11 facilities to determine where these roads should go, their
12 actual capacity, both present and future capacity, and the
13 actual determination including the public hearings as to whether
14 this road should be built or not.
15 In addition, we would review the existing
16 traffic. We projected the traffic on each of the facilities to
17 determine the adequacy again of these roadways and the projection
18 of cross sections for such. We, of course, went into the
19 economics of the interstate projects, and also various other
20 secondary road projects, including bridge locations.
21 After working with the West Virginia
22 Department of Highways, I obtained employment with the City of
23 High Point, North Carolina, as an urban and transportation
24 planning engineer, and within four months assumed the duties

1 and accepted the position of assistant traffic engineer.

2 As assistant traffic engineer with High

3 Point, North Carolina, I was involved, number one, with the

4 actual transportation planning process to review and update the

5 actual transportation plans for the City of High Point, which

6 included, once again, the development and research of traffic

7 volumes in various traffic zones and generations of figures

8 throughout the city to determine the adequacy of existing roads,

9 proposed routes, and projected future routes based upon the

10 transportation plans.

11 In addition, as assistant traffic

12 engineer, I was, of course, in charge of existing day-to-day

13 operations, signal rephasing, and signal design, as previously

14 mentioned with the current job. And we also initiated during

15 that time a topic program, which is a traffic operations program

16 to increase capacity and safety. This is a program funded by

17 the federal and state funds in an effort to improve existing

18 bottleneck conditions in various neighborhoods, and also small

19 roadways within the city.

20 After being in this position for

21 approximately three and a half years, I accepted employment

22 with Henrico County.

23 Q When the opportunity presents itself, do

24 you attend seminars to remain current in your field?

1 A I have, yes, sir, obtained education as
2 far as seminars in the field of highway safety and capacity
3 design. In addition, of course, there are traffic signal
4 planning and also the actual working of the traffic signals as
5 far as various items are concerned. In addition, there have
6 been several public speaking seminars which I have also attended.
7 Q Would you list the professional
8 organizations to which you belong?
9 A I belong, of course, to the International
10 Institute of Traffic Engineers, the Southern Section of the
11 Institute of Traffic Engineers, which is a division of that,
12 also the Virginia Association of Traffic Engineers; I am a
13 member of the Society of Professional Engineers; I am a
14 registered professional engineer in the State of Virginia and
15 North Carolina, and have pending application with the Virginia
16 Chapter of the American Society of Civil Engineers.
17 MR. BROADDUS: Judge, I would submit that
18 Mr. Hazelett is an expert in road planning, road use, traffic
19 engineering, and traffic analysis.
20 THE COURT: Are there any questions that
21 you want to put to him on the point? Are there any objections
22 to his qualifications as an expert in this field?
23 MR. PARIS: I don't know what he was
24 qualifying him for, Judge.

THE COURT: I think that I will accept him as qualified to testify in the area in which Mr. Broaddus made reference.

Q Are you familiar with the uses generally permitted in B-3 zoning?

1 A Yes, sir.

2 Q Are there nationally recognized methods of

3 calculating the quantity of traffic to be generated by such

4 uses?

5 A There are procedures to calculate such

6 traffic based upon the requirements and also the expected size

7 of developments, yes, sir.

8 Q Would you briefly describe those methods?

9 A These methods are based upon actual field

10 experience which take into account various developments of

11 various sizes in a particular area. I think probably the best

12 way to explain it would be to take an example. Let's say we

13 are looking at a shopping center near that size at all times in

14 different areas. We then coordinate by actually counting the

15 actual number of trips in and out of the particular development,

16 and then take various factors of development such as square

17 footage of area, acreage, number of employees, number of

18 parking stalls, and so forth, and try to correlate one of these

19 particular variables with the amount of traffic which comes out.

20 These are done by equations and so forth.

21 When a particular variable is found, or

22 a particular characteristic of the development is found that

23 can be used as a factor, then this is correlated with the

24 volumes to determine if they are actually correct.

1 For instance, with shopping centers we
2 usually can develop a generation factor for a certain number of
3 trips per through square foot of area, and this is found to be
4 true when you actually do it in the field. So this is the way
5 in which we develop the actual factor for any development for
6 its use to determine what the future traffic will be for any
7 development.
8 Q Assuming that triangle, which includes
9 approximately 23 acres, were developed to its maximum possible
10 density under B-3, and let's assume that that development were
11 a shopping center --
12 MR. PARIS: Judge --
13 MR. BROADDUS: Can you calculate --
14 MR. PARIS: Just a minute, please.
15 I object to that. There is nothing
16 whatever in the record upon which to base such a hypothetical
17 question, and I object to the question. It is so highly
18 speculative it has no value. And besides, we are only talking
19 about 1.83 acres, not 23 acres.
20 THE COURT: What do you want to say
21 about it, Mr. Broaddus?
22 MR. BROADDUS: Mr. LaVecchia has
23 testified that it would be possible under the B-3 zoning to
24 develop the triangle as a shopping center, and I think that --

1 THE COURT: That we don't really have
2 any evidence of anybody wanting to do that, do we?
3 MR. BROADDUS: No, sir, but I think that
4 when we consider the appropriate zoning on a piece of property
5 that we must of necessity consider all of the uses which are
6 permitted, rather than a particular individual's that he will
7 place on that property when he seeks rezoning.
8 I think the experience has certainly
9 demonstrated on a number of occasions that people come in and
10 say that they wish to use a particular piece of property for a
11 particular use, only to have it rezoned and then subsequently
12 for various reasons he might not be able to develop it. Then
13 it is later developed for another use which was not anticipated.
14 Experience has taught us that we must look
15 at all of the uses which are permitted rather than only those
16 particular uses which an individual says he must put the
17 property to.
18 THE COURT: Can you put a shopping
19 center on 1.83 acres?
20 MR. BROADDUS: No, sir. Well, you
21 could put general commercial use on it. Whether you would
22 characterize that as a shopping center, I don't know. It
23 would be possible, as I say, as Mr. LaVecchia testified to put
24 a shopping center in the triangle area.

1 THE COURT: I don't think there is any
2 question about that. We all pretty much know if you put a
3 shopping center out there, you have got a lot of traffic, and
4 I expect that is what Mr. Hazelett would tell us.
5 I guess the only issue is how relevant is
6 that to your particular inquiry. Well, I am going to let Mr.
7 Hazelett tell us what his projection would be, but I have got
8 some question in my mind as to how material it is in the overall
9 picture of the case. He can certainly answer the question.
10 MR. BROADDUS: All right, Judge.
11 BY MR. BROADDUS:
12 Q Mr. Hazelett, assuming that the triangle,
13 which includes approximately 23 acres, were developed to the
14 maximum possible density under B-3 use, and that that use were
15 as a shopping center. Are you able to calculate the number of
16 trips which that would generate on a daily basis?
17 MR. PARIS: From where? Judge, I think
18 the --
19 THE COURT: Well, he is talking about the
20 roadway from Gayton and Gaskins.
21 MR. BROADDUS: Are you able to calculate
22 that, Mr. Hazelett?
23 THE WITNESS: I am able to calculate
24 the attracted or generated trips to the anticipated development

1 of a shopping center surface. The actual route or the
2 dispersing of those trips I am not able to do under this type
3 of study. It would take a market survey, and so forth, to
4 determine the area in which they would come from.
5 As far as the maximum number of trips, we
6 would expect if the entire tract were developed --
7 BY MR. BROADDUS:
8 Q Excuse me. Before you get to that, Mr.
9 Hazelett, what do you mean by a trip?
10 A A trip is either in this particular case
11 a movement of a vehicle into the tract or out of the tract.
12 In other words, this would be upon the roadway.
13 Q Go ahead, sir.
14 A It would be approximately from these
15 calculations, using the factors developed for shopping centers
16 and the zoning requirements, which would limit the development
17 of the shopping center to a certain size, it would be
18 approximately 11,000 vehicles a day which would enter into that
19 type of facility -- excuse me, enter and exit that type of
20 facility.
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Q Assuming that a shopping center were placed in the area, what would be the effect upon the road system from the standpoint of road safety of an increased burden of traffic?

A Well, with the --

MR. PARIS: Judge, again, that is very speculative, and I object to it.

THE COURT: Go ahead. You can answer.

THE WITNESS: With the increase of traffic, and also the increase in traffic volumes on the roadway at the present time of approximately 19 percent a year, it would have a detrimental effect on the carrying capacity of that roadway. Due to the traffic flow which is existing in the area, any additional volume of this magnitude would simply create enormous traffic congestion and even more traffic congestion at any entrance point, and also in any intersection itself.

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7 Q You have testified that you are generally
8 familiar with the uses permitted in the PMD general category,
9 Mr. Hazelett?
10 A The uses indicated in the PMD are those
11 uses probably known as stated in the zoning ordinance, which is
12 an industrial park. These uses could be any type of
13 manufacturing or fabrication of goods to include textiles,
14 food services, canneries of any type, any type of industrial
15 development which would actually develop material or develop
16 products.
17 Q Are there traffic generation studies which
18 are based upon similar uses, and if so, would you state
19 specifically what those uses were?
20 A The generation figures, of course, can be
21 developed on any particular type of development. Based upon
22 the PMD zoning we could use the generation factors which are
23 used for an industrial park, and those factors are indicated
24 to be anywhere from 113 to 130 trips per net area -- excuse me,

per net acre of area. So that would be looking at approximately 1,200 to 1,300 trips per day from an industrial park situated on this tract.

Q From a safety standpoint, would you compare the effect of PMD development with B-3 development at the triangle area, that is, from a traffic safety standpoint?

A From your traffic safety standpoint, just a mere decrease in volume of traffic provides maneuvering ability to the motorist that lessens the number of left turn movements which would be made, the number of right turn movements which would be made, and it just simply lessens the amount of congestion in the area.

It is anticipated that most of the trips along that area would be home-to-work trips, and, of course, this type of trip is a through trip, whereas, the B-3 zoning would create a short trip, which is a very dangerous type of trip in reference to traffic safety, dependent upon the traffic controls within the area.

Q We have previously discussed the possibility of developing the entire tract to the maximum density possible under B-3, such as a shopping center. How would that type of use compare in terms of traffic safety with the development of the Gayton and Gaskins Road frontage as a strip of commercial development?

1 A Of course, strip commercial development is
2 a very difficult problem due to the type of development which
3 would occur. In other words, you would have various
4 commercial projects, commercial developments along the entire
5 strip of roadway which would be generating their own particular
6 type of traffic. This could be very short term type, and due
7 to the various numbers of commercial development you could have
8 trips from one development to the other.
9 This, along with, of course, the left
10 turn and right turn movements into these particular facilities
11 could add to the hazardous conditions which would exist along
12 the roadway with the increased volume and traffic, whereas,
13 under a POD we would be looking at possibly one or two uses,
14 or one or two access points to handle that particular type of
15 traffic.
16 Of course, adequate storage could be
17 provided, whereas, under a strip development it would be very
18 difficult to provide adequate storage in each and every
19 particular development and in addition to providing driveways
20 for those developments.
21 Q You referred to a POD. What is that,
22 sir?
23 A POD is a plan of development, which is
24 required by the County for those people proposing to develop

tracts of land in various ways.

Q Is a shopping center a type of use which requires a POD?

A Yes, it is.

CROSS-EXAMINATION

BY MR. PARIS:

BY MR. PARIS:

Q Did you make any projections if you developed this 1.83 acres only for a neighborhood business?

A For a neighborhood business?

Q Yes, sir.

A No, sir, but using the generation factor, I could probably do that right quickly. But, no, I have not done that.

Q Why don't you do that?

A (Witness complied.) Based upon the size of the tract in question and the zoning ordinance, we have referred to a maximum coverage of 25 percent. Assuming again some type of shopping center, and using the factor for a --

Q Some kind of shopping center, sir? I didn't ask you about a shopping center.

THE COURT: You asked him about a neighborhood business. Are you talking about a store, or are you talking about a lawyer's office, or what are you talking about?

1 MR. PARIS: Judge, that is precisely my
2 point.
3 THE COURT: Well, ask him.
4 MR. PARIS: That is precisely my point.
5 He talks about a shopping center without any explanation of the
6 shopping center. I am talking about the neighborhood business
7 to see if he has got some kind of magic formula.
8 THE WITNESS: Based upon the maximum
9 development of density which could occur on a B-3 zoning, that
10 is the true figure.
11 BY MR. PARIS:
12 Q What?
13 A 1,170 trips.
14 Q 1,170 trips on 1.83 acres only?
15 A Based upon the maximum possible
16 development.
17 Q Of what?
18 A Of this particular parcel, in reference
19 to B-3 zoning.
20 Q What particular parcel?
21 A 1.83 acres.
22 Q It would generate that much traffic, you
23 think?
24 A Based upon the max.

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10 REDIRECT EXAMINATION
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12 BY MR. BROADDUS:
13 Q Mr. Hazelett, you testified that under
14 your generation studies that you would anticipate, assuming the
15 maximum development on a 1.83-acre parcel, a traffic generation
16 under shopping center conditions of 1,170 trips; is that
17 correct?
18 A Yes, sir.
19 Q Let's assume that you put an A & P
20 grocery store on that particular piece of property. Would you
21 have more trips or less trips than what you calculated?
22 MR. PARIS: Judge, I don't think that
23 you have to use any kind of a mathematical formula to derive --
24 THE COURT: We can put all kinds of things

1 on there, a grocery store, a dental office, I guess, or it is
2 going to vary.
3 MR. BROADDUS: That is correct, Judge,
4 but I think the point which would be perhaps interesting to
5 the Court, Mr. Paris has tried to suggest that the average
6 statistics are not applicable because you don't know what is
7 going to be on that tract. And I think that it would be
8 interesting to know whether, in fact, there are certain
9 permissible uses which would generate more traffic than the
10 average which Mr. Hazelett has given.
11 THE COURT: Well, I assume some would
12 generate more and some less.
13 MR. BROADDUS: Certainly. No doubt
14 about that.
15 THE COURT: And we have no idea about
16 what it would be if there were something else, do we?
17 MR. BROADDUS: That is correct, Judge.
18 THE COURT: Do we need any more evidence
19 to establish that point that we all seem to agree on?
20 MR. BROADDUS: Well, if Mr. Paris agrees
21 that the average use would generate 1,170 trips, that is fine,
22 Judge.
23 THE COURT: Well, he has already
24 testified to that.

1 MR. PARIS: That is the max, Judge.
2 That is not the average.
3 THE WITNESS: It is the max.
4 THE COURT: Based on shopping centers.
5 If you had an A & P, you would use more. If you had a lawyer's
6 office you might not have any all day long. I think that we
7 understand the point. Now, whether it is clear from the
8 record or not, I don't know.
9 MR. BROADDUS: Well, that is the very
10 point, Judge, that the maximum under a shopping center might be
11 lower than a maximum for an A & P grocery store or some other
12 particular use, and that is the only point that I think ought
13 to be fully resolved in the record.
14 THE COURT: Well, is there any quarrel
15 with that statement?
16 MR. PARIS: No, sir.
17 THE COURT: I will accept that as a
18 statement of fact, and I think that is understandable.
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JAMES ROBERT LINDSEY, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BROADDUS:

THE COURT: He is certainly qualified as a traffic safety expert. He has been traffic engineer for 15 years, too, and if you wanted to, I guess you could qualify

him like that. Okay.

Q Captain, are there sidewalks on the Gayton and Gaskins Roads near this intersection?

A The only section of public sidewalk currently existing is only a very small section of Gayton Road near the rear entrance, or the back entrance to the Pinchbeck Elementary School.

Q Captain, I tender you a copy of a sketch, and ask if you have prepared that at my request?

A Yes, sir, we did.

MR. BROADDUS: Judge, we would submit

1 this for identification as Defendants' Exhibit No. --

2 THE COURT: Five, I believe, we are on

3 now.

4 MR. BROADDUS: All right, sir.

5 BY MR. BROADDUS:

6 Q Captain, what does this sketch show?

7 A This is what we call a collision diagram.

8 It covers a period from January 1, 1973, through March 31, 1974.

9 These symbols indicate the type, the date of the various types

10 of accidents reported to us, and investigated by our personnel

11 at this location.

12 The various symbols, the legend in the

13 lower left-hand corner, will indicate the type, the time, the

14 date, the weather and road conditions. They are all part of

15 the collision diagram in each instance.

16 This indicates in the time period covered

17 here that there were 17 reported collisions in or adjacent to

18 this intersection.

19 MR. BROADDUS: Judge, we would move for

20 the introduction of that into evidence.

21 THE COURT: It will be marked Defendants'

22 Exhibit No. 5.

23 (Defendants' Exhibit No. 5 was received

24 and marked in evidence by the Court.)

1 BY MR. BROADDUS:

2 Q Captain, how does that number of accidents
3 compare with the accidents throughout the County at the various
4 intersections?

5 A Each calendar year we prepare what we call
6 an annual report on traffic accidents and present it to the
7 chief of police, along with others who may have interest in it.
8 The annual report on traffic crashes for the calendar year
9 1973, was finally prepared on March 27 of this year.

10 There are eight locations in that report
11 which you will find on page 10, gentlemen. The pages are not
12 numbered, and I apologize for that. But it is on the tenth
13 page. There were eight intersections that had 16 recorded
14 traffic crashes during the calendar year 1973. Gaskins and
15 Gayton was one of those eight, which placed it in a tie, if
16 you will, with eight other intersections for being the 27th
17 most accident prone in the County. There are 26 with more
18 accidents.

19 Q Captain, is this a copy of the report to
20 which you refer?

21 A Yes, sir, it is.

22 MR. BROADDUS: Judge, I move for the
23 admission of this as Defendants' Exhibit No. 6.

24 THE COURT: Defendants' Exhibit No. 6.

1 (Defendants' Exhibit No. 6 was received
2 and marked in evidence by the Court.)
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Q Now, at the Pinchbeck School, which is at the intersection of Gayton and Gaskins, does that school have a large number of walkers, that is, students who walk to school?

A Yes, sir, it does.

Article 10 - B-3 General Business District - Uses

10.1 Principal Uses Permitted

10.11 Any principal use permitted and as regulated in the "B-2" District, subject only to the conditions specified in 10.4.

As amended 1/8/69, 2/12/69 and 8/13/69

10.12 Motel and tourist homes.

10.13 Public garages and automobile sales, service, repair, and equipment establishments.

10.14 Truck, trailer, machinery, and farm implement sales, service, rental, and repair establishments, but not within 100 feet of any "R" district.

10.15 Bowling, skating, billiards, and similar indoor recreational establishments, but not within 100 feet of any "R" district, except that such establishments shall be exempt from the 100 foot setback if conducted wholly within a completely enclosed, air-conditioned, and soundproofed building.

10.16 Drive-in theaters, golf driving ranges, baseball batting ranges, miniature golf courses, pony rides, and similar outdoor amusements or commercial recreation establishments, but not within 200 feet of any "R" district, and provided that for drive-in theaters the screen shall be so located as to be not visible from adjacent streets or highways and to be located at least 100 feet therefrom.

10.17 Drive-in restaurant including parking but not within 100 feet of any "R" district. Summer gardens, commercial swimming pools, taverns, sales lots and stands, (except livestock sales), but not within 200 feet of any "R" district.

10.18 Riding academies, amusement parks, target ranges, but not within 300 feet of any "R" district.

10.19 Bakery, laundry, cleaning and dyeing works, wholesale business, commercial greenhouse, but not within 100 feet of any "R" district.

10.110 Veterinarian hospitals or clinics, including those with facilities for the treatment of large animals, and boarding kennels for small animals, but not within 200 feet of any "R" district, provided all facilities for the care of small animals are within a completely enclosed, air-controlled, soundproofed building; that such hospital or clinic be operated in such a way as to produce no objectionable odors outside its walls; and provided that if large animals are to be treated, no treatment rooms or pens for large animals shall be maintained closer than 200 feet to any property line.

10.111 Outdoor advertising signs and structures as regulated in Section 17.9 (Signs).

As amended 1/8/69, 2/12/69, 5/14/69 and 8/13/69

10.112 Farm supply and service establishments, including custom grain and feed mills, milk depots, creameries and cold storage plants, among others; but not including any use first permitted in any "M" District; and not within 200 feet of any "R" District.

10.113 Building material sales yard, not including concrete mixing.

10.114 Coal and wood yards, provided dust is effectively controlled; but not within 200 feet of any "R" District.

10.115 Sheet metal shops.

10.116 Display houses or "shell" houses but not within 20 feet of any side lot line, nor within 20 feet of each other.

10.117 Public utility service buildings, including facilities for construction or repair, or for the service or storage of utility materials or equipment.

10.118 Fortune teller, palmist, astrologist, numerologist, clairvoyant, craniologist, phrenologist, a card reader, spiritual reader, or advisor.

10.119 Dancing establishments and dance halls, but not within 200 feet of any "R" District and when conducted wholly within a completely enclosed, air-conditioned and sound-proof building.

10.120 Office-warehouses, when the warehouse area does not exceed 15,000 square feet and all materials are stored within an enclosed building for use by the business concern occupying the building.

As amended 2/12/69, 6/25/69, 11/12/69 and 1/13/71

10.2 Conditional Uses Permitted by Special Exception

10.21 Any conditional use permitted and as regulated in the "B-2" District, except as otherwise provided herein.

10.22 Carnivals, fairs and circuses.

10.23 Any other retail business not otherwise permitted in this district, or specifically excluded therefrom, including any kind of manufacturing or treatment incidental to the conduct of a retail business on the same premises but not including any use which is first permitted or is prohibited in the "M-1" District.

10.3 Accessory Uses Permitted

10.31 Accessory uses as permitted and as regulated in the "B-2" District.

10.32 Other accessory uses, not otherwise prohibited, customarily accessory and incidental to any permitted use.

10.4 Required Conditions

10.41 Not more than 30 persons may be engaged in manufacturing on the premises.

10.42 Processes and equipment employed and goods processed or sold shall be limited to those which are not objectionable by reason of odor, dust, smoke, cinders, gas, fumes, noise, vibration, refuse matter or water carried waste.

10.43 The following conditions are applicable to those principal uses permitted in Sections 10.13 and 10.14.

All repair work shall be conducted entirely within an enclosed building.

No vehicle incapable of being operated, and which it would not be economically practical to make operative, shall be placed, located or stored outside an enclosed building, provided, however, that such a vehicle when removed from the highways as an emergency measure, may be stored outside an enclosed building for a period of time not in excess of 15 days.

13.3 Accessory Uses Permitted

13.31 Accessory uses permitted and as regulated in the "M-2" District.

13.32 Other accessory uses customarily accessory and incidental to any permitted use.

Article 13A - PMD Planned Industrial District

13A-1 Purpose and Intent

The planned industrial district is intended to permit, in accordance with the comprehensive plan, the development of a planned industrial district (popularly known as planned industrial park) containing not less than 20 contiguous acres in those areas of the County provided with public sanitary sewer, sewage disposal facilities, and water supply. The district shall be located within one mile of an interchange of a limited access freeway or a primary four lane highway having a carrying capacity of 1,000 vehicles per lane per hour. The location of any compatible commercial facility deemed appropriate shall be controlled in such a manner as to exist solely for such district. Such district, when approved, shall constitute a part of the comprehensive plan for the County as a whole and the preliminary consideration of such district by the Planning Commission shall be based on recognition of this requirement.

13A-2 Principal Uses Permitted

13A-2.1 The manufacturing, compounding, processing, packaging, or treatment of cosmetics, pharmaceuticals and food products, including creameries, bottling plants, bakeries, canneries, ice manufacture, freezer plant and meat packing except fish products, saurekraut, slaughter and dressing of the carcass.

13A-2.2 The manufacturing, compounding, assembling or treatment of articles or merchandise from previously prepared materials such as bone, cloth, cork, fibre, hair, leather, paper, plastics, metals, stone, tobacco, wax, yarn or wood, except where sawmills or planing mills are employed.

13A-2.3 The manufacturing of musical instruments, toys, novelities and moulded plastic or rubber product.

13A-2.4 The manufacturing or assembly of electrical appliances, instruments and devices, communication equipment, professional, scientific and controlling instrument, and photographic and optical goods.

13A-2.5 The manufacturing of pottery or other similar ceramic products using only previously pulverized clay and kilns fired only be electricity or gas.

13A-2.6 The manufacture of electric signs, advertising structures, light sheet metal products, including heating and ventilating equipment.

13A-2.7 Enameling, japanning, galvanizing, lacquering, plating, when accessory to a principal use.

13A-2.8 Printing and publishing plant, type setting, and allied plants, automotive assembly.

13A-2.9 Rolling drawing, extruding, casting, and foregoing of nonferrous metals and plastics.

13A-2.10 Research, experimental and testing laboratories and research and development centers; computer and data processing centers; engineering service centers; editorial publications and/or distribution centers for periodical, books, records, films and similar publications; central billing and record center; management and real estate offices for industrial district operation; and storage and repair facilities for industrial district maintenance subject to screening requirement in Section 13A-7.

13A-2.11 Services primarily for industries located in the industrial district such as industrial instruments repair service, small machine "job" shops, photographic service and development, computer and data processing service, printing and duplicating service.

13A-2.12 Commercial facilities whose services are solely oriented to the needs of the industries located in the industrial district and must be located within the interior of the district.

13A-2.13 Underground facilities for pipe lines, electrical power and energy, distribution lines, telephone and telegraph lines. Control instrumentation, substation and similar

above ground equipment installation shall not be subject to minimum lot size or maximum floor space requirements, but must be screened by planting or by ornamental wall, as specified in Section 13A-7.

13A-2.14 Wholesale warehouses and service facilities for retail and chain stores and distribution facilities, public warehouse, cold storage warehouse, except that no retail sales shall be permitted on the premises.

13A-2.15 Helistop, subject to standard recommendations by the Federal Aviation Agency or its successor agency.

13A-2.16 Any other uses determined by the Director of Planning, after a duly authenticated report or investigation that he shall make or have made, to be of the same general character as the permitted uses, including new products and technological processes.

13A-3 Accessory Uses

13A-3.1 Accessory uses demonstrably related to permitted uses, including a central heating and/or air conditioning facility to service occupants of the district, indoor and/or outdoor recreational facilities; eating facilities for employees and their guests, health clinics and first aid station, technical library, auditoriums, class rooms, meeting and display room; provided that all the facilities described, whether located to be shared by a group of industry residents in the district, or for use in connection with operation of principal permitted uses and are restricted for use primarily by employees and official visitors.

13A-3.2 Antenna; cooling towers; and air cleaning equipment and structure. All such equipment and structures, except antenna, are subject to screening requirements set forth in Section 13A-7.

13A-3.3 Temporary buildings, trailers and vehicles for uses incidental to construction work, which building shall be removed within one month of substantial completion or abandonment of construction or moved to the next approved section of the district scheduled for construction.

13A-3.4 Other accessory uses and structures customarily incidental to any permitted principal use not otherwise prohibited.

13A-4 Required Conditions

13A-4.1 Performance Standards.

13A-4.11 Processes and equipment employed, and materials or goods used in manufacture and/or storage shall be limited to those which are not objectionable at the property line, without the use of instruments, of each industrial occupant by reason of odor, dust, smoke, fumes, noise, vibration, refuse matter or water carried waste.

13A-4.12 Each future industrial occupant shall be required to submit to the Planning Commission as a part of the application for a building permit, a qualified engineer's report describing the proposed operation, all machines, processes, product and byproduct, stating the nature and expected levels of emission or discharge to land, air/or water of liquid, solid or gaseous effluent and electrical impluses under normal operations, and the specifications of treatment mechanism and methods to be used in restricting the emission of dangerous or objectionable elements.

13A-5 Plan of Development

13A-5.1 In acting upon a plat for the district or site plan for a lot, the Planning Commission shall approve, based upon such following consideration:
Preservation of topographic features and natural amenities such as water courses and trees; with the objective of achieving maximum compatibility among the proposed industrial facility, the district and the surrounding areas.

13A-5.2 Plan for and the processing of the district shall conform to the provisions of Chapter 14, Subdivision of the Code of Henrico County, Virginia.

13A-5.3 All site plans shall conform to the requirements for a Plan of Development as set forth in Section 17.A-1.

13A-6 Vehicular Access

13A-6.1 All streets within the industrial district shall be built to Henrico County specifications and be dedicated to the County.

As amended 8/12/70

13A-7 Landscape Development and Screening Plan

13A-7.1 A preliminary landscape development plan shall be submitted for approval of the Planning Commission as part of the preliminary development plan. This plan shall show: those natural topographic features such as water sources, large trees, tree groves to be preserved and those to be altered or removed; architectural treatment or plantings to be used for screening peripheral lots abutting highways and/or residential or agricultural district; and detailed landscape development plan for specific lot for which building permit is requested, including all required screening.

13A-7.2 Any part of a lot not used for buildings or other structures, or off-street parking, loading and maneuvering areas, drives and pedestrian walks, shall be planted with appropriate planted ground cover, trees, flowers, shrubs, and grass lawns, all of which shall be properly maintained in a healthy condition at all times.

13A-7.3 Where screening is required by this section, all facilities shall be screened as much as possible from view of any adjacent property by planting or by ornamental wall, all of which shall be properly maintained.

13A-7.4 All required screening, described in other sections of these district regulations, whether planted or architectural, shall be properly maintained. Dead plant materials shall be removed within a reasonable time and replaced during the normal planting season.

13A-8 Utilities Plan

A preliminary utilities plan shall be submitted for approval to the Planning Commission as a part of preliminary development plans. This shall show the size and the proposed location of all exterior lines and equipment. All utilities shall be underground, except control instrumentation and substations which must be screened by planting or ornamental wall. No overhead wires are permitted within the district.

13A-9 Height, Area and Yard Requirements: Nothwithstanding any other requirements in this ordinance, height, area and yard requirements shall be provided in accordance with the following schedules:
Height regulations

13A-9.1 No building shall exceed 35 feet in height, except that antenna towers and other such structures are excluded from height control.

13A-9.2 The minimum district size shall be 20 acres. The minimum frontage on an existing principal highway shall be 600 feet. The minimum tract addition, where such tract adjoins and has a common boundary with an existing district, M-1 or M-2 District shall be two acres, except that there shall be no size limit to an addition to the district when such addition is for expansion of an existing industrial facility.

13A-9.3 The minimum parcel shall be two acres. The minimum lot frontage shall be 200 feet except where otherwise stated.

13A-9.4 The minimum ground coverage of any principal building shall be 10,000 square feet, except public utility buildings and structure necessary for public convenience and service. A principal building may be occupied by two industrial occupants, providing the subdivided structure is constructed for compatible industrial uses.

13A-9.5 The maximum ground coverage of any lot by a structure, including accessory building, shall not exceed 40% of the total area of the lot. Enclosed portions of off-street loading areas under roof shall not be included in computation of ground coverage of structure.

13A-10 Signs Permitted: Legibility rather than conspicuousness is the intended function of signs to identify the occupant of premises in the industrial district; therefore, size of the signs and the letters thereon shall be determined by the distance the sign is to be viewed.

13A-10.1 The Planning Commission, in reviewing proposed signs as part of the development plan and site plan, may require an increase or decrease in the size of sign or letters.

13A-10.2 Real estate signs subject to requirements of Subsection 17.92c; signs to identify the industrial district, shall be limited to:

1 sign for each highway frontage.
1 sign for each entrance to the district.
1 directory of occupants for each district entrance.

13A-10.3 Signs to identify the use or occupant which shall be designed as part of the architectural motif of and attached to the building. Any identification signs detached from building shall be executed in planted materials except for lighting fixtures, and designed as a part of the site plan for the lot.

13A-10.4 Directional or information signs; flags or pennants representing United States, State of Virginia and Henrico County; flags, temporary for honorary day or week; flags of other states, nations or bodies such as United Nations, civic or religious. All flags are to be displayed only on official flag poles.

13A-11 Signs Prohibited

Billboards; any form of signs advertising a business, profession, commodity, service or entertainment conducted, sold or offered; flashing, revolving, rotating, or changing light intensity or color signs or signs simulating movement; hanging or projecting signs; signs extending above roof or parapet of any structure, painted or affixed upon any wall.

13A-12 Exterior Lighting

Major structures and detached signs located in planted areas may be flood or spot lighted, providing such lights are not directed toward any other districts, highways or streets.

Parking lot or loading area lights or light standards, if located near screening strips adjacent to residential or agricultural districts shall be shielded to direct lights away from adjacent areas.

Article 14 - C-1 Conservation District - Uses

14.1 Principal Uses Permitted

14.11 Farming, dairy farming, livestock, rabbit and poultry raising, and all uses commonly classed as agricultural, subject to the same provisions and limitations as in the "A-1" District.