

Petition for Zoning Re-Classification

To The County Commissioners of Baltimore County:

Know all men by these presents, that **Investment Realty Co., Inc.**, a corporation organized under the laws of the State of Maryland, and having its principal office at the Northwest corner of Frederick Road and St. Timothy's Lane, at Catonsville, in the First Election District of Baltimore County, fronting 100 ft. on the north side of Frederick Road, with a rectangular depth northwesterly, binding on St. Timothy's Lane, of 160 feet,

hereby petition that the above described property or area, (being within the Baltimore County Metropolitan District), be changed or re-classified (as to zoning) from a residential use area, district or division, to a commercial ~~residential~~ use area, district or division.

Reasons for Re-Classification: growing commercial area

Character of commercial ~~residential~~ use for which above property is to be used: Filling Station

Material of Construction of Building: concrete foundation and walls, composition roof

Size and height of building: front 25 feet; depth 25 feet; height 15 1/2 feet

Front and side set backs of building from road line: front 42 feet; side 50 feet

Property to be posted as prescribed by Zoning Department.

Investment Realty Co., Inc.
Contract Order MARK
3300 607-B Court Square Bldg.,
Baltimore, Md.

ORDERED by The County Commissioners of Baltimore County, this 14th day of February, 1940 that the subject matter of this petition be advertised, as required by the "Zoning Act", in a newspaper of general circulation throughout the Metropolitan District of Baltimore County, that property be posted, and that the public hearing herein be held in the office of the County Commissioners of Baltimore County, in the Court House, in Towson, Baltimore County, on the 4th day of March, 1940 at 11:00 o'clock a.m.

James H. Jenifer
County Commissioners of Baltimore County.

I James H. Jenifer the granting of the above Re-Classification

JENIFER and JENIFER
ATTORNEYS AT LAW
TOWSON, MD.
FILED MAY 1 1940

April 30, 1940.

Mr. John J. Timanus
TOWSON
Maryland.

Dear Mr. Timanus:

At the request of St. Timothy's School we have today entered an appeal from the order of the County Commissioners granting the reclassification of the property on the Northwest corner of Frederick Road and St. Timothy's Lane. A copy of the order to appeal is enclosed.

Very truly yours,
Thomas J. Jenifer

TJJ:DHL

ST. TIMOTHY'S SCHOOL,
A BODY CORPORATE,
Appellant,
VS.
COUNTY COMMISSIONERS OF
BALTIMORE COUNTY,
Appellee,
Towson, Maryland, July 23, 1940.

ORAL OPINION OF THE COURT:

THE COURT: Well, gentlemen, this subject of zoning is a very difficult subject. The County Commissioners have a very hard task before them in administering this Act of 1939, Chapter 715, and are doing their very best to make a good job of it.

I have read this Act with care, and the Legislature had in mind the setting up of certain zones in the Metropolitan District, and I doubt that it intended that the whole of that District was to be one zone in its entirety. The Commissioners by its order of September 5, 1939, has made a residential zone of the entire Metropolitan District. The commercial concerns existing at the time were exempted from the operation of the order. I understand by this order that the County Commissioners ruled that on September 5, 1939, all property in the Metropolitan District was residential property with the exception of such properties as were then actually used for commercial purposes. By that order the right from time to time to exempt such property, which is now by the order determined to be residential property, from its operation and to confer upon said property the status of commercial property.

Filed April 30, 1940

ORDER

FILED MAY 1 1940

IN THE MATTER OF THE : BEFORE THE BOARD OF
APPLICATION OF INVESTMENT : COUNTY COMMISSIONERS
REALTY COMPANY, INC. FOR :
RECLASSIFICATION OF ZONING : OF BALTIMORE COUNTY

Mr. Clerk:
Please enter an appeal on behalf of the Corporation of St. Timothy's School, a body corporate, from the Order of the County Commissioners of Baltimore County dated April 5th, 1940, to the Circuit Court for Baltimore County, which order pertains to the reclassification of the zoning law in connection with the application filed by Investment Realty Company, Inc., and send the original Order along with all the records in said proceeding to said Court.

Jenifer & Jenifer
Attorneys for Appellant

Service of Copy of the within Order for Appeal admitted this 1st day of April, 1940.

James H. Jenifer
Robert Earl Jenifer
May 13, 1940

James H. Jenifer, Clerk
Clerk and Auditor of the
County Commissioners of
Baltimore County.

Chapter 715 of the Acts of 1939, under which the Commissioners are acting, confers power upon them to make regulations in accordance with a comprehensive plan. These regulations must be uniform and apply equally to all the property in the Metropolitan District inasmuch as the Commissioners have designated by its order of September 5, 1939, all of that property as a residential area, and that area has not been divided into separate and distinct zoning divisions.

It is the opinion of the Court that in determining whether property has ceased to be residential and changed to industrial, the Commissioners should set up uniform regulations which will act as a standard and guide in determining whether the property has ceased to be residential and is in fact commercial. To deal with each case as it arises without reference to such a standard would vest the County Commissioners with a blanket discretionary power to act as that body determined without any limitations upon its discretion except the limitation imposed generally by the law against arbitrary and capricious action. So, when the County Commissioners in this case reclassified the property involved here from a residential to a commercial status, they were acting without necessary machinery to determine that question and hence their action was void. The Court is of the opinion that the County Commissioners should set up these general uniform regulations which it is attempted under this Act to be given the force of law, before it proceeds to re-classify property in the area covered by this Act.

For this reason the Court will reverse the Commissioners, and refer the matter back to that board for further proceedings.
(Signed) C. One Green.

INVESTMENT REALTY CO., INC. : IN THE CIRCUIT COURT
VS. :
COUNTY COMMISSIONERS OF :
BALTIMORE COUNTY : BALTIMORE COUNTY

The above matter coming on for hearing on appeal from the Order of the County Commissioners of Baltimore County, and after the taking of testimony and hearing of argument of counsel, IT IS ORDERED this 1st day of July, 1940 by the Circuit Court for Baltimore County that the Order of the County Commissioners of Baltimore County dated April 5, 1940 changing and reclassifying the property described in the Petition from a residential use area, district or division to a commercial use area, district or division, be and it is hereby reversed and rescinded, costs to be paid by the County Commissioners.

JUDGE

Pursuant to the advertisement, posting of property, and public hearing on the above petition and it appearing that the above reclassification should be had:

It is Ordered by the County Commissioners of Baltimore County this 2th day of April, 1940, that the above described property or area be and the same is hereby changed and re-classified, from and after the date of this Order, from a residential use, (single or duplex) to a commercial (gasoline) use area, district or division for use only of Gasoline Service Station and subject to set back areas as stated in petition.

Helmut E. Lohr
County Commissioners of Baltimore County.

Pursuant to the advertisement, posting of property and public hearing on the above petition and it appearing that the above reclassification should be had:

It is Ordered by the County Commissioners of Baltimore County, this day of 1940, that the above described property or area be and the same is hereby denied and that the above described property, as area, be and the same is hereby denied and that the same is re-classified as a residential use area, district or division for use only of Gasoline Service Station and subject to set back areas as stated in petition.

County Commissioners of Baltimore County.

ST. THOMAS' SCHOOL,
A NOTY CORPORATE,

Appellant,

vs.

COUNTY COMMISSIONERS OF
BALTIMORE COUNTY,

Appellee.

IN THE

CIRCUIT COURT FOR BALTIMORE COUNTY

GRADON, J.

Towson, Maryland, July 25, 1940.

ORAL OPINION OF THE COURT:

THE COURT: Well, gentlemen, this subject of zoning is a very difficult subject. The County Commissioners have a very hard task before them in administering this Act of 1939, Chapter 715, and are doing their very best to make a good job of it.

I have read this Act with care, and the Legislature had in mind the setting up of certain zones in the Metropolitan District, and I doubt that it intended that the whole of that District was to be one zone in its entirety. The Commissioners by its order of September 5, 1939, has made a residential zone of the entire Metropolitan District. The commercial concerns existing at the time were exempted from the operation of the order. I understand by this Order that the County Commissioners ruled that on September 5, 1939, all property in the Metropolitan District was residential property with the exception of such properties as were then actually used for commercial purposes. By that order it reserved the right from time to time to exempt such property, which is now by the order determined to be residential property, from its operation and to confer upon said property so exempted the status of commercial property.

Chapter 715 of the Acts of 1939, under which the Commissioners are acting, confers power upon them to make regulations in accordance with a comprehensive plan. These regulations must be uniform and apply equally to all the property in the Metropolitan District inasmuch as the Commissioners have designated by its order of September 5, 1939, all of that property as a residential area, and that area has not been divided into separate and distinct zoning divisions.

It is the opinion of the Court that in determining whether property has ceased to be residential and changed to industrial, the Commissioners should set up uniform regulations which will act as a standard and guide in determining whether the property has ceased to be residential and is in fact commercial. To deal with each case as it arises without reference to such a standard would vest the County Commissioners with a blanket discretionary power to act as they determined without any limitations upon its discretion except the limitation imposed generally by the law against arbitrary and capricious action. So, when the County Commissioners in this case reclassified the property involved here from a residential to a commercial status, they were acting without necessary machinery to determine that question and hence their action was void. The Court is of the opinion that the County Commissioners should set up these general uniform regulations which it is attempted under this Act to be given the force of law, before it proceeds to reclassify property in the area covered by this Act.

For this reason the Court will reverse the Commissioners, and refer the matter back to that board for further proceeding.

CERTIFICATE OF PUBLICATION

TOWSON, MD.

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md. once in each of days before the day of 1940, the first publication appearing on the of 1940.

THE JEFFERSONIAN,

Manager

Cost of Advertisement, \$.....

\$6.00

Towson, Md., Feb. 12, 1940

RECEIVED OF Investment Realty Co., Inc.,

the sum of Six (\$6.00) dollars, being cost of advertisement and inspection of property at west corner of Frederick Road and St. Thomas' Lane, Catonsville.

and petition being filed for re-classification thereof from residential to commercial use.

COUNTY COMMISSIONERS OF BALTIMORE CO.

BY Zoning Clerk.

\$6.00

Towson, Md.

RECEIVED of John J. Timmons, Zoning Clerk, the

sum of Six (\$6.00) dollars, being cost of advertisement and inspection of the above property pursuant to petition filed for re-classification from residential to commercial use.

COUNTY COMMISSIONERS OF BALTIMORE CO.

BY Zoning Clerk.

April 6, 1940.

Thomas H. Jaffier, Esq.,
Jaffier Building,
Towson, Md.

Dear Mr. Jaffier:

After the County Commissioners had inspected the premises at the northwest corner of Frederick Road and St. Thomas' Lane, at Catonsville, relative to the petition for re-classification thereof, and after proper consideration of all matters underlying into whether or not the above location should be re-classified for commercial use pursuant to petition for zoning re-classification by the Investment Realty Co., Inc., the County Commissioners have today passed their Order re-classifying the above location from residential to commercial use. The Order stipulates that the location is to be used only as a gasoline service station and the buildings thereon to conform to the set back areas as stated in the petition. I am enclosing you a carbon copy of the above petition and Order of the County Commissioners.

In the proper zoning of any locality, you will agree, that it is necessary to take into consideration the necessity of business, as well as residential, expansion. It would be unwise, and no doubt illegal, to restrict a commercial area as existing in a rapidly growing location and to say that notwithstanding any increase in buildings or population that the commercial area should not also be increased proportionately.

Taking into consideration the existing commercial use opposite and adjacent to the above location, it seems obvious that the natural or logical re-classification of the above property, as well as that on either side fronting the Frederick Road, would be for commercial use. I feel certain that there will be no further extension for commercial use on the Frederick Road east of the filling station at the northeast corner of Frederick Road and Delray Avenue.

I cannot see that the erection of a modern gasoline service station, by a leading Oil Company, could be as objectionable as the existing improvements. The set back, as stated in the petition and a condition of the Order granting the re-classification, is that the front set back be 42 feet from the curb and 50 feet away from the side of St. Thomas' Lane. This it would seem would give a better approach to this school property.

In my opinion there was no other alternative than that the Commissioners re-classify this property and I feel certain that the Court, if appeal be taken, would uphold this re-classification.

Very truly yours,

JOHN J. TIMMONS,

Zoning Clerk.

JJT-H

Pursuant to the advertisement, posting of property, and public hearing on the above petition and it appearing that the above reclassification should be had:

It is Ordered by the County Commissioners of Baltimore County this day of 19....., that the above described property or area be and the same is hereby changed and re-classified, from and after the date of this Order, from a residential use area, district or division to a commercial (or industrial) use area, district or division.

County Commissioners of Baltimore County.

Pursuant to the advertisement, posting of property and public hearing on the above petition and it appearing that the above reclassification should not be had:

It is Ordered by the County Commissioners of Baltimore County, this day of 19....., that the above petition be and the same is hereby denied and that the above described property or area be and the same is hereby continued as and to remain a residential use area, district or division area, subject, however, to the further order of the County Commissioners of Baltimore County.

County Commissioners of Baltimore County.

To County Commissioners for
Baltimore County

**PETITION FOR
ZONING RE-CLASSIFICATION**

PETITION NO.

Location:

Filed:

No
PLAT