

IN THE MATTER OF THE RE-ZONING
APPLICATION OF
MARY E. ROGERS' PROPERTY

BERNICE JOHN J. TIMANUS,
ZONING COMMISSIONER OF
BALTIMORE COUNTY.

Mr. Timanus:

Please enter an Appeal to the Zoning Board of Appeals from your decision rendered on May 19th, 1941 in the Application of Mary E. Rogers for the re-classification of her property located at the corner of the York Road and Stevenson Lane, in the Ninth Election District of Baltimore County.

J. Kemp Bertlett
ATTORNEY FOR MARY E. ROGERS

The applicant is the owner of the property on the southeast corner of York Road and Stevenson Road. Her entire property is a tract of land fronting approximately 300 feet on the east side of York Road, with a depth of 780 feet, more or less, in an easterly direction along Stevenson Road. There is a dwelling house upon the property, but the northwest corner of the property (i.e., the southeast corner of York Road and Stevenson Road) has been used for more than 100 years as a blacksmith's shop. For several generations this shop has been known as Rodgers Forge and in fact it has been so prominent in the past as to give its name to the immediate neighborhood.

The application is for permission to use this corner, with a frontage of 100 feet on York Road and 125 feet on Stevenson Road, for a filling station for the dispensing of gasoline, oil and kindred products.

The General Assembly of Maryland, at its 1941 Session, enacted legislation which empowered the County Commissioners of Baltimore County for the purpose of promoting health, safety, morals and the general welfare of the community, to regulate and restrict, within Baltimore County, the use of buildings, structures and land for trade, industry, residence or other purposes. In keeping with the provisions of this Act the County Commissioners, by an order and resolution, on the 15th day of April, 1941, adopted and approved as the rules, regulations and requirements as to the use of land in Baltimore County, the report of the Zoning Commissioner. This report divided the entire area of Baltimore County into two districts, the first of which, the "Metropolitan District", comprises all that area included within the outline of the Metropolitan District of Baltimore County, in which the particular parcel of land herein considered is located. Within this "Metropolitan District" the entire area was classified and limited by the Zoning

utility is for commercial purposes; because both sides of York Road at this point are now being used for commercial purposes; and because, in our opinion, the erection of a filling station on the land involved would not be detrimental to the health, safety, morals or general welfare of the community, inasmuch as the applicant should be granted, and accordingly I cannot concur in the decision reached by the other members of the Board of Zoning Appeals.

J. Kemp Bertlett

Petition for Zoning Re-Classification

To the Zoning Commission of Baltimore County—

I, MARY E. ROGERS, legal owner, of the property situated at southeast corner of York Road and Stevenson Lane, in the 9th Election District of Baltimore County, fronting 100 ft. on the east side of York Road with a rectangular depth easterly, binding 100 feet on the south side of Stevenson Lane,

herely 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, R-100, to a commercial use area, COMMERCIAL USE.

Reasons for Re-Classification: EXISTING COMMERCIAL USE

Character of commercial use for which above property is to be used: Gasoline Service Station

Material of Construction of Building: single block, stone, built-up roof.

Size and height of building: front, 30 feet; depth, 25 feet; height, 12 feet.

Front and side set backs of building from street line: front, not less than 50 feet; side, not less than 10 feet; from Stevenson Lane, 10 feet.

Property to be posted as prescribed by Zoning Department.

I, MARY E. ROGERS, agree to pay expenses of above re-classification, advertising, etc., upon filing of this petition, not to exceed \$500, and further agree to and are to be bound by the rules, regulations, provisions and requirements herein set forth and as set forth in the resolutions and orders of the Zoning Commission of Baltimore County, pursuant to the Zoning Act for Baltimore County and as prescribed by or referred to in the "Applications for Building Permits" now adopted and used in the Baltimore County Metropolitan District.

Mary E. Rogers
Legal Owner
Address 221 York Road, Towson, Md.

ORDERED BY THE Zoning Commission of Baltimore County, this 11th day of April, 1941.

That the subject matter of this petition be advertised, as required pursuant to the Zoning Act, in a newspaper of general circulation throughout Baltimore County, Maryland, on the 15th day of May, 1941, at 2 o'clock P. M.

J. Kemp Bertlett
Zoning Commission of Baltimore County

SWAYANNA

Zoning Clerk

(over)

Commissioners' report for residential uses or purposes, "excepting therefrom existing commercial uses".

It is therefore apparent that if the property here involved was being used at the time of the adoption of this report for a commercial enterprise, as distinguished from a residential use, the property in question was zoned as commercial.

The evidence is uncontradicted that this particular corner has, for a period of more than 100 years, been used for commercial purposes as a blacksmith's shop. About five years ago it was converted into a store and has been used as such and was so being used at the time the Zoning Commissioners' report was adopted by the County Commissioners. Two pieces of property immediately across York Road on the west side, were and are now being used for commercial purposes. The northeast corner of York Road and Stevenson Road was and is being used for commercial purposes as a real estate office, but there is testimony to the effect that this use is only temporary and will be abandoned when there is no longer occasion for a real estate office in the development that it is connected with.

It has been very appropriately said by Judge Offutt that the "private use and ownership of property has always been regarded by the Courts of this State as one of the most valuable privileges guaranteed by its Constitution, as one of the most durable and solid foundations of its Government, and as indispensably necessary to the prosperity and welfare of the people".

Goldman v. Crowther, 147 Md., 282 - 296.

Any impairment of that right can only be justified by invoking the police power of the State through legislation or regulations that bear a substantial relation to the public health, safety, morals or welfare.

To again quote Judge Offutt:

"Such ordinances are in derogation of the common law right to so use private property as to realize its highest utility, and while they should be liberally construed to accomplish their plain

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

It is Ordered by the County Commissioners of Baltimore County, this _____ day of _____, 1941, that the above described property or area should 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 use area, district or division.

Pursuant to the advertisement, posting of property and public hearing on the above petition and it appearing that by reason of _____ the above reclassification should NOT be had.

It is Ordered by the County Commissioners of Baltimore County, this _____ day of _____, 1941, that the above petition be and the same is hereby denied and that the use area, district or division, subject, however, to the further order of the County Commissioners of Baltimore County.

TO COUNTY COMMISSIONERS FOR BALTIMORE COUNTY
PETITION FOR ZONING RE-CLASSIFICATION
PETITION NO. _____

Upon hearing on appeal from the Order of the Zoning Commission of Baltimore County, dated May 28th, 1941, granting the Re-Classification of property described and for the purpose as set forth in this petition, it is this _____ day of June, 1941, ORDERED by the Board of Zoning Appeals of Baltimore County, that the aforesaid Order of the Zoning Commission be and the same is hereby approved and sustained.

J. Kemp Bertlett
Chairman
Mary E. Rogers
Legal Owner

June 23, 1941.
Dissenting opinion of J. Kemp Bertlett, Jr., the remaining member of said Board, filed.

Purpose and intent, they should not be extended by implication to cases not clearly within the scope of the purpose and intent manifest in their language".

Albert Landay v. Board of Zoning Appeals, 173 Md., 460 - 466.

In the light of this pronouncement of the Court of Appeals of Maryland it seems clear that the report of the Zoning Commissioners classified "existing commercial uses" as non-residential property and therefore as property that should continue to be used for commercial purposes, unless to allow it to be so used would impair the public health, safety, morals or welfare.

It is not denied in this case by the protestants that the greatest utility of the particular lot of ground is for commercial purposes. The protestants, however, do assert that the construction of a filling station upon this corner would be detrimental to the health, safety, morals and general welfare of the community involved and would tend to create congestion on the road and a fire hazard, but when this testimony is analyzed it is apparent that it is based upon rather general observation and argument, and not upon a scientific or expert study and investigation. The Chief of Police of this County, testifying for the applicant, stated that in his opinion, (which opinion, in the absence of other expert testimony, it seems to me should be given great weight), the construction of a filling station, as shown by the plans and prospectus offered in evidence upon this site would not only not be detrimental to the health, safety, morals and general welfare of the community, or tend to create congestion on the roads, or create a fire hazard, but would improve a traffic hazard that now exists at that corner, due to the fact that the present shop is built so close to the corner that anyone approaching York Road along Stevenson Road cannot see northbound traffic until he reaches the east side of York Road.

Because, therefore, this particular corner is in fact already non-residential by use; because, also, its greatest

APPLICATION FOR BUILDING PERMIT

ZONING AND BUILDING DEPARTMENTS
BALTIMORE COUNTY, M.D., MAY 1941

No. _____
District _____
Address _____
Applicant _____
Building Inspector _____
Application is hereby made for a Building Permit as follows:
Proposed Owner _____
Former Owner _____
Builder's Name _____
Use of Building _____
Type of Building _____
Location of Building _____
Distance of Building _____
Name of Development _____
Number of Lot, Block and Section on Plat _____
Front set-back of building _____
Side set-back of building _____
Size of Building _____
Character of Construction _____
Plans and specifications of above building to be furnished Building Engineer if requested.
Is existing building: Repaired _____ Altered _____ Enlarged _____
Describe Repairs, etc.: _____
Water Supply _____
Sewage Disposal _____
ACTUAL TOTAL VALUE of new Building, repairs, etc. at time of completion \$ _____

NOTE: This application and the permit, if issued, are both subject to the following provisions:
1. The applicant of this application or licensee of permit does not waive or affect existing building restrictions.
2. The applicant of this application or licensee of permit does not waive or affect existing building restrictions.
3. Work must be done within the limits of the building and site plan.
4. Work must be done in accordance with the Building Code of Baltimore County.
5. This application and building permit, if issued, are subject to the Building Code of Baltimore County.
6. The applicant of this application or licensee of permit does not waive or affect existing building restrictions.
7. For more information, consult the Building Code of Baltimore County, and the rules and regulations thereunder.

I, or we, certify that the answers to above questions are true and I, or we, agree to above requirements.
Mary E. Rogers

Approved As To Zoning Only: _____
Date: _____
Issue Building Permit: _____
Date: _____

CAUTION: To Begin Construction Before Building Permit Has Been Issued Violates The Law. Building Code, Zoning Act and Metropolitan District Law Enforce Action Penalties For Non-Compliance. (Over)

November 29, 1941

James C. L. Anderson, Esq.
Messers Temple Building
Towers, Maryland
Dear Mr. Anderson:

Miss Mary E. Rodgers has recently made application to Mr. Clarence C. Gubb, the Building Inspector in the 9th District for building permits to permit of the erection of gasoline service station at the southeast corner York Road & Stevenson Lane near Towson. This application has been forwarded to the zoning department for approval both as to construction of building and as to zoning.

There has been several attempts of your client to obtain permission to erect a gas station at this site. On April 25, 1940 his petition was filed with the Commissioners of Baltimore County pursuant to the Zoning Act of 1939 seeking the re-classification of the above location and at the hearing on this petition the Commissioners by their order on May 13, 1940 denied this petition.

On April 25, 1941 there was again a petition filed seeking the same use of the property with the Zoning Commissioner of Baltimore County under the Zoning Act of 1941, upon hearing on this latter petition this permission was refused by the Zoning Commissioner as of the order of May 19, 1941. From this order an appeal was taken to the Board of Zoning Appeals of Baltimore County and after hearing on appeal, the board by their order of June 25, 1941 again denied the granting of the petition.

The main reason for the refusal of the two first petitions, the first one to the County Commissioners and the second one to the Zoning Commissioner, was the fact that it is in the predominantly residential area and that the location of the gasoline service station at this point would create a traffic and fire hazard

and of course not conforming to the use of surrounding property. These reasons also influenced the Board of Zoning Appeals and their refusal to grant the petition.

This property for a great number of years was used as a Blacksmith Shop and subsequently for the past four or five years has been used as a confectionery and grocery store and, of course, having been thus used for commercial purposes prior to the enactment of the two above mentioned zoning status its commercial use could not be affected.

The area surrounding the above location has been zoned for residential purposes and the use that has made of the property is that of a nonconforming use.

The use of any building for commercial purposes, whether a nonconforming use or not, is entitled to use such adjacent land as is necessarily requisite to be used in the conduct of the business.

The ground occupied by the present building has a depth of 83 ft. from the curb line of York Road. This depth including the open area between the curb line and the front line of the building. The width of the building and in addition to its setback from Stevenson Lane takes up 204.6 ft. of the frontage of the entire property on the York Road. There is an approach to the present building on the south from the York Road of 234 ft. This approach extending around to the south side of the building about a like distance of 234.6 ft. from the curb line of York Road. With an exception of a small frame detached shed or building to the rear of the main building all the land to the east and south of the building is at least 6 or 6 ft. lower in grade than the land on which the main building stands and is not used in connection with the present building or the business conducted in it but is included in the garden and orchard adjacent to the dwelling.

In classification of the distances as mentioned in the preceding paragraph and to concisely give the exact dimensions of the ground which is or could be presumed to be used in connection with the store building, is a plot of ground fronting 70 ft. on the east side York Road, measuring southerly from the south side of Stevenson Lane, and a depth easterly measuring from the east curb line of York Road and including the front open area and to a point east of the small building in the rear of the main store totaling 60 ft.

In the application for building permit the size of the lot on which the gasoline service station is desired to be built is given as 100 ft. front with a depth of 75 ft. This is an excess or additional use of 30 ft. of the property fronting on the York Road and 10 ft. additional land in the rear. This additional land not in any manner being necessary for the proper use of the now nonconforming use.

If this application was approved it would license the use, not only of the present building and its use of the adjoining land, but would also be licensing the use of additional ground for an entirely different use than as formerly used.

By all the zoning authorities it is recognized that if a nonconforming use be discontinued and a new use sought to be had, then the property loses its status as an existing nonconforming use and reverts to the zoning classification of adjacent property.

From the above facts and circumstances I must refuse approval of the application for building permit for gasoline service station and must pass my order as Zoning Commissioner

Very truly yours,
John J. Zimans

Zoning Commissioner

JJZ:hs

\$6.00

April 20, 1941

RECEIVED of Mary E. Rodgers, the sum of Six (\$6.00) Dollars, being cost of advertisement and inspection of property, southeast corner of York Road and Stevenson Lane, 9th District, pursuant to petition being filed for re-classification from residential to commercial use.

Zoning Commissioner

OK
Walker
4/28/41

CERTIFICATE OF PUBLICATION

TOWNSHIP, MD. May 4th 1941

THIS IS TO CERTIFY, That the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md.

day of May, 1941, the first publication appearing on the 2nd day of May by 1941

(THE JEFFERSONIAN,
Manager

Cost of Advertisement, \$.....

NO PLAT
IN
THIS FOLDER

NOTICE OF ZONING RECLASSIFICATION
Notice is hereby given that the Board of Zoning Appeals of Baltimore County has received and considered an application for a change of zoning classification of the above described property from residential to commercial use as follows: [The following text is partially illegible due to blurring and low resolution.]