

COPY

FILED APR 8 - 1947

HARRISBURG, PENNSYLVANIA

ANTHONY BRACCA and
ANNA BRACCA, his wife,
DAVID SOLINGER and
RENA SOLINGER, his wife,
Appellants
vs
FOR BALTIMORE COUNTY
AT LAW

TO THE HONORABLE, THE JUDGES OF SAID COURT:

This Petition and Appeal of Anthony Bracca and Anna Bracca, his wife, David Solinger and Rena Solinger, his wife, by Shaljon and Hesbia, their Attorneys, respectfully represents:

1. THAT they are property owners and taxpayers in Baltimore County, State of Maryland, residing in Pikeville, Baltimore County, Maryland.

2. THAT under date of December 2, 1946, John Karts and Marie Karts, his wife, owners of a lot or parcel of unimproved ground situate on the South side of Sherwood Avenue at Pikeville in the Third Election District of Baltimore County, State of Maryland, being known and designated as Lot No. 298 on the Plat of "Halston", adjoining the property of your Petitioners, David Solinger and Rena Solinger, his wife, filed a Petition with the Zoning Commissioner of Baltimore County for the reclassification of the westernmost fourteen (14) feet of said Lot No. 298 on the Plat of "Halston", as aforementioned, from an "A" Residence Zone to an "R" Commercial Zone, in order to enable said John Karts and Marie Karts, his wife, to erect a twenty-four (24) foot building thereon to be used as a shoe repair shop. That on December 30, 1946, despite the vigorous protest of your Petitioners, as well as the great majority of property owners and residents in said development known as "Halston", the Zoning Commissioner of Baltimore County approved said application and passed an Order reclassifying the westernmost fourteen (14) feet of Lot No. 298 on Plat of "Halston" from an "A" Residence Zone to an "R" Commercial Zone.

3. THAT subsequent to the passage of the aforementioned Order of December 30, 1946 by said Zoning Commissioner of Baltimore County, your Petitioners

ANTHONY BRACCA and
ANNA BRACCA, his wife,
DAVID SOLINGER and
RENA SOLINGER, his wife,
Appellants
vs
FOR BALTIMORE COUNTY
AT LAW

TO THE HONORABLE, THE JUDGES OF SAID COURT:

And now come Samuel H. Hoover, Earle L. Dingle and William A. Sepp, constituting the Board of Zoning Appeals of Baltimore County, and in answer to the writ of certiorari directed against them in this case, herewith submit the record of proceedings had in the above entitled matter, consisting of the following certified copies or original papers on file in the office of the Zoning Department of Baltimore County:

Nov. 7, 1946 ZONING MATTER FROM SOURCE OF ZONING DEPARTMENT OF BALTIMORE COUNTY

Nov. 9, 1946, Petition of John Karts, et al, for reclassification of property, southernmost side of Sherwood Ave., Pikeville, 3rd Dist., beginning 120' west measured at right angles from Westernmost Road, thence easterly on said side of Sherwood Ave. 10' more or less, to division line between Lots Nos. 298 and 299 on plat of "Halston" with a right angle depth southerly of 114' filed.

Nov. 9, 1946, Order of Zoning Commissioner directing advertisement and posting of maps - date of hearing set for December 2, 1946, at 9:30 o'clock a.m.

Nov. 20, 1946, Certificate of posting of property on November 19, 1946, filed.

Nov. 20, 1946, Certificate of publication of advertisement in newspaper, filed.

tioners, on January 8, 1947, filed an Order for Appeal to the Board of Zoning Appeals for Baltimore County from said decision and Order of the Zoning Commissioner for Baltimore County; that said Appeal came on for hearing before said Board of Zoning Appeals for Baltimore County on February 27, 1947, and said Board, by its Order passed on March 6, 1947, sustained the Order of the Zoning Commissioner of December 30, 1946, in granting the Petition for reclassification, as aforementioned, without assigning or stating any reasons for their said action.

4. THAT your Petitioners are aggrieved by the decision of the Board of Zoning Appeals for Baltimore County, as aforesaid, and aver that the result of said decision will be detrimental to the health, safety, morals and general welfare of the community in which said property is located.

5. THAT the aforementioned Order of the Board of Zoning Appeals for Baltimore County dated March 6, 1947 is void, unlawful and without legal force and effect and should be reversed in whole, set aside and annulled by this Honorable Court for the following reasons:

(a) That the Board of Zoning Appeals for Baltimore County was without jurisdiction and without statutory or administrative authority to enter said Order.

(b) That the said Order of the Board of Zoning Appeals for Baltimore County constitutes an arbitrary and capricious act and a gross abuse of administrative discretion.

(c) That there was no substantial or sufficient evidence produced before the Board of Zoning Appeals for Baltimore County to justify said Order and the Applicants in said proceeding failed to meet the burden of proof imposed upon them by Law.

(d) That the land abutting and in the general locality of the property above mentioned, other than the Halston Road frontage, is exclusively residential.

(e) That the granting of said Petition will effect the existing use of the other residential property in the community; and

(f) That no evidence was submitted before said Board of Zoning Appeals as to the community need for a shoe repair shop nor any other commercial enterprise.

Dec. 9, 1946, At 9:30 o'clock a.m. hearing held on petition by Zoning Commissioner and case held sub curia.

Dec. 30, " Order of Zoning Commissioner granting petition for Re-Classification.

Jan. 8, 1947, Order of appeal to Board of Zoning Appeals of Baltimore County from Order of Zoning Commissioner of December 30, 1946, filed.

Feb. 27, 1947, Hearing on appeal before Board of Zoning Appeals of Baltimore County -- case held sub curia by the Board.

March 6, 1947, Order of Board of Zoning Appeals of Baltimore County sustaining the order of the Zoning Commissioner and granting the Petition for Re-Classification from an "A" Residence Zone to "R" Commercial Zone.

April 6, 1947, writ of certiorari and appeal to Circuit Court for Baltimore County served on Board of Zoning Appeals on April 9, 1947.

April 28, 1947, Transcript of testimony taken at hearing on appeal before the Board of Zoning Appeals of Baltimore County by the stenographer who took and transcribed the same, filed.

Plat and written exhibits, filed.

June 5, 1947, Transcript of docket entries and all papers filed in Circuit Court for Baltimore County.

The rules and regulations pursuant to which said Order was entered and said Board acted are permanent records of the Zoning Department of Baltimore County as are also the use district maps and your Respondents respectively suggest that it would be inconvenient and inappropriate to file the same in this proceeding, but your Respondents will produce any and all such rules and regulations together with its zoning use district maps at the hearing on this petition or whenever directed to do so by this Court.

Respectfully submitted,

Attorney for Board of Zoning Appeals of Baltimore County.

6. THAT this Petition and Appeal is filed pursuant to the provisions of Chapter 502 of the Acts of 1945 of the General Assembly of Maryland.

WHEREFORE, your Petitioners pray:

(a) That a Writ of Certiorari be issued by this Honorable Court directed to the Board of Zoning Appeals for Baltimore County to review the decision of said Board of Zoning Appeals for Baltimore County and prescribe the time within which a return thereto must be made and served upon the Petitioners' Attorneys;

(b) That this Honorable Court reverse, set aside, annul, declare void and of no effect the Order of the Board of Zoning Appeals for Baltimore County dated March 6, 1947;

(c) That the Board of Zoning Appeals for Baltimore County be required to return to this Honorable Court the original papers acted upon by it, or certified or sworn copies thereof, and that such return consist of set forth such other facts as may be pertinent and material to show the grounds of the decision or Order appealed from; and

(d) For such other and further relief as the nature of their cause may require.

AND, AS IN DUTY BOUND, etc.

Petitioners

Attorneys for Petitioners

Petition for Zoning Re-Classification

To The Zoning Commissioner of Baltimore County--

WEAK we, John Karts and Marie Karts, his wife, legal owners of the property situate

on southernmost side of Sherwood Ave., Pikeville, in 3rd District of Baltimore Co., beginning 120' west measured at right angles from Halston Road, thence easterly, on said side of Sherwood Ave. 10' more or less, to division line between Lots Nos. 298 and 299 on plat of "Halston", with a right angle depth southerly of 114'. Being westernmost portion of Lot No. 298 on plat of "Halston".

herby petition that the zoning status of the above described property be re-classified, pursuant to the Zoning Law of Baltimore County, from an "A" Residence Zone to an "R" Commercial zone.

Reasons for Re-Classification--

Character of use for which above property is to be used: Shoe Repair Shop to be erected

Size and height of building: to be approved by Buildings Dept. feet
Front and side set back of building from street lines: to be approved by Zoning Dept. feet
Property to be posted as prescribed by Zoning Regulations.

WE, agree to pay expenses of above re-classification, advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

John Karts
Marie Karts
Legal Owner
Address: 28 Chestnut Avenue, Baltimore, Md.

ORDERED by The Zoning Commissioner of Baltimore County, this... day of... 1947, that the subject matter of this petition be advertised, as required by the "Zoning Law of Baltimore County, in a newspaper of general circulation throughout Baltimore County, that property be posted, and that the public hearing hereon be had in the office of the Zoning Commissioner of Baltimore County, in the Record Bldg., in Towson, Baltimore County, on the... day of... 1947, at... o'clock A.M.

By...
Zoning Commissioner of Baltimore County

Not filed - 22, 4th day of April, 1947
Not filed - 21, 4th day of April, 1947
Not filed - 20, 4th day of April, 1947
Not filed - 19, 4th day of April, 1947

STATE OF MARYLAND, BALTIMORE COUNTY, to wit:

I, JAMES GUNTER, Clerk of said County, do hereby certify that on this... day of April, 1947, before me, the undersigned, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared Anthony Bracca, one of the within named Petitioners, and each of them in due form of law that the matters and facts as set forth in the foregoing Petition and Appeal are true to the best of his knowledge, information and belief.

AS WITNESS my hand and Notarial Seal.

Notary Public

P R R R R

UPON the foregoing Petition and Appeal and Affidavit, it is this... day of April, 1947, by the Circuit Court for Baltimore County, ORDERED that a writ of Certiorari issue directed to the Board of Zoning Appeals for Baltimore County to review the decision and Order of said Board of Zoning Appeals dated March 6, 1947 and that a return thereto must be made and served upon the Petitioners' Attorneys within... days from the date of this Order; and

IT IS FURTHER ORDERED that the Board of Zoning Appeals for Baltimore County be and it is hereby required to return to this Court the original papers acted upon by it, or certified or sworn copies thereof, and said return shall consist of set forth such other facts as may be pertinent and material to show the grounds of the decision and Order appealed from, together with a transcript of the testimony taken at the hearing before said Board of Zoning Appeals and copies of exhibits filed therewith.

John R. Gontz
Judge

True Copy Test

John R. Gontz
Clerk

Pursuant to the advertisement, posting of property, and public hearing on the above petition and it appearing that by reason of the fact that the subject matter of this petition is already on file in the office of the Zoning Commissioner of Baltimore County, it is hereby ordered that the same be re-classified, pursuant to the Zoning Law of Baltimore County, from an "A" Residence Zone to an "R" Commercial zone.

It is Ordered by the Zoning Commissioner of Baltimore County, this... day of... 1947, that the above described property or area should be and the same is hereby re-classified, from an "A" Residence Zone to an "R" Commercial Zone. This Order is based on the strict compliance with the following setback distances of buildings or structures from the abutting road and side lines of property, to wit: That any buildings or structures erected or placed on said property should be on line with the main wall of the dwelling on the property to the west, being at least 15 feet from the front property line on Sherwood Ave. and at least 10' from the westernmost side line.

Pursuant to the advertisement, posting of property and public hearing on the above petition and it appearing that by reason of the fact that the subject matter of this petition is already on file in the office of the Zoning Commissioner of Baltimore County, it is hereby ordered that the same be re-classified, pursuant to the Zoning Law of Baltimore County, from an "A" Residence Zone to an "R" Commercial zone. It is Ordered by the Zoning Commissioner of Baltimore County, this... day of... 1947, that the above described property or area be and the same is hereby re-classified and that the above described property or area be and the same is hereby confirmed and to remain as such.

Zoning Commissioner of Baltimore County

RECEIVED MAR 6 1947

Upon hearing on appeal from the Order of the Zoning Commissioner of Baltimore County of December 30, 1946 on the within petition for zoning reclassification and it appearing by reason of location, being an extension of an existing commercial zone, that the decision of the Zoning Commissioner should be sustained:

It is this... day of March 1947, ORDERED by the Board of Zoning Appeals of Baltimore County that the decision of the Zoning Commissioner be and the same is hereby sustained.

Earle L. Dingle

William A. Sepp

Samuel H. Hoover

Approved...
County Commissioners of Baltimore County
By...
President

Date: 1/22/47

IN THE MATTER OF: REFORM
RECLASSIFICATION OF PROPERTY
OF JOHN KURT, et al.
S.S. SHERWOOD AVE., 150' W.
OF REISTERSTOWN ROAD, THENCE
S. 141' x S. 134' - FROM N.E.
RESIDENCE ZONE TO "C" COMMERCIAL
ZONE

OF BALTIMORE COUNTY

Mr. Commissioner:

Please enter an Appeal to the Board of Zoning Appeals in
the matter of the Order of the Zoning Commissioner of Baltimore County passed
in the above captioned case on December 30, 1946, and transmit all records
and papers incident thereto to said Board.

Anthony Brescia
Attorney for Petitioner

REC'D JAN 2 1947

FILED APR 8 - 1947

State of Maryland, Baltimore County, Md:

Carl L. Dingle, Samuel H. Hoover and William A. Sapp, constituting
the Board of Zoning Appeals for Baltimore County
Anthony Brescia
YOU ARE COMMANDED that the record and proceedings in a certain case of
and Anna Brescia, his wife, Basil Sellers and Edna Sellers, his wife
VS
Board of Zoning Appeals for Baltimore County

with all thing, touching th same, as fully and perfectly as they remain before you, by whatsoever
name or names the parties aforesaid, or either of them, are called in the same, you send and certify to
John B. Contrum
the CHIEF CLERK FOR BALTIMORE COUNTY, before the Honorable
Associate Judge of the Circuit Court for Baltimore County, presiding, together with this writ, immedi-
ately after receipt of the same

C. GUS G'ASON
WITNESS the Honorable T. SCOTT DEPUY, Chief Judge of the Circuit Court for Baltimore
County, this 3rd March 1947

Subscribed and sworn to before me this 9th day of April 1947
SEAL
John W. Bessner
True Copy Test:
John W. Bessner
Clerk

at the relation of
Anthony Brescia & wife, et al.,
VS
Board of Zoning Appeals for Baltimore
County.
CERTIFICATE

4/25 690

May 26, 1947

\$4.20

RECEIVED of H. Richard Smalkin, Attorney for
Messrs. Brescia, Sellers, et al., the sum of Four (\$4.20)
Dollars, being cost of making certified copies of papers
filed in the matter of John Kurts, et al.

Zoning Commissioner.

PAID

MAY 23 1947
COUNTY COMMISSIONERS
OF BALTIMORE COUNTY
BY *John W. Bessner*

Nov. 8, 1946

\$10.00
RECEIVED of John Kurts, and wife, the sum of
Eighteen (\$10.00) Dollars, being cost of petition
for reclassification, advertising and posting of
property, southernmost side of Sherwood Ave., 3rd
District of Baltimore County.

Zoning Commissioner.

Hearing:
Monday, Dec. 2, 1946
at 9:30 o'clock a.m.

PAID
NOV 12 1946
COUNTY COMMISSIONERS
OF BALTIMORE COUNTY
BY *John W. Bessner*

January 10, 1947.

\$22.00
RECEIVED of Smalkin & Hession, Attorneys for
Appellants, the sum of Twenty Two (\$22.00) Dollars, being
cost of appeal to the Board of Zoning Appeals from decision
of Zoning Commissioner of Baltimore County in granting petition
of John Kurts, et al., for reclassification of property on south
side of Sherwood Avenue, 3rd District of Baltimore County.

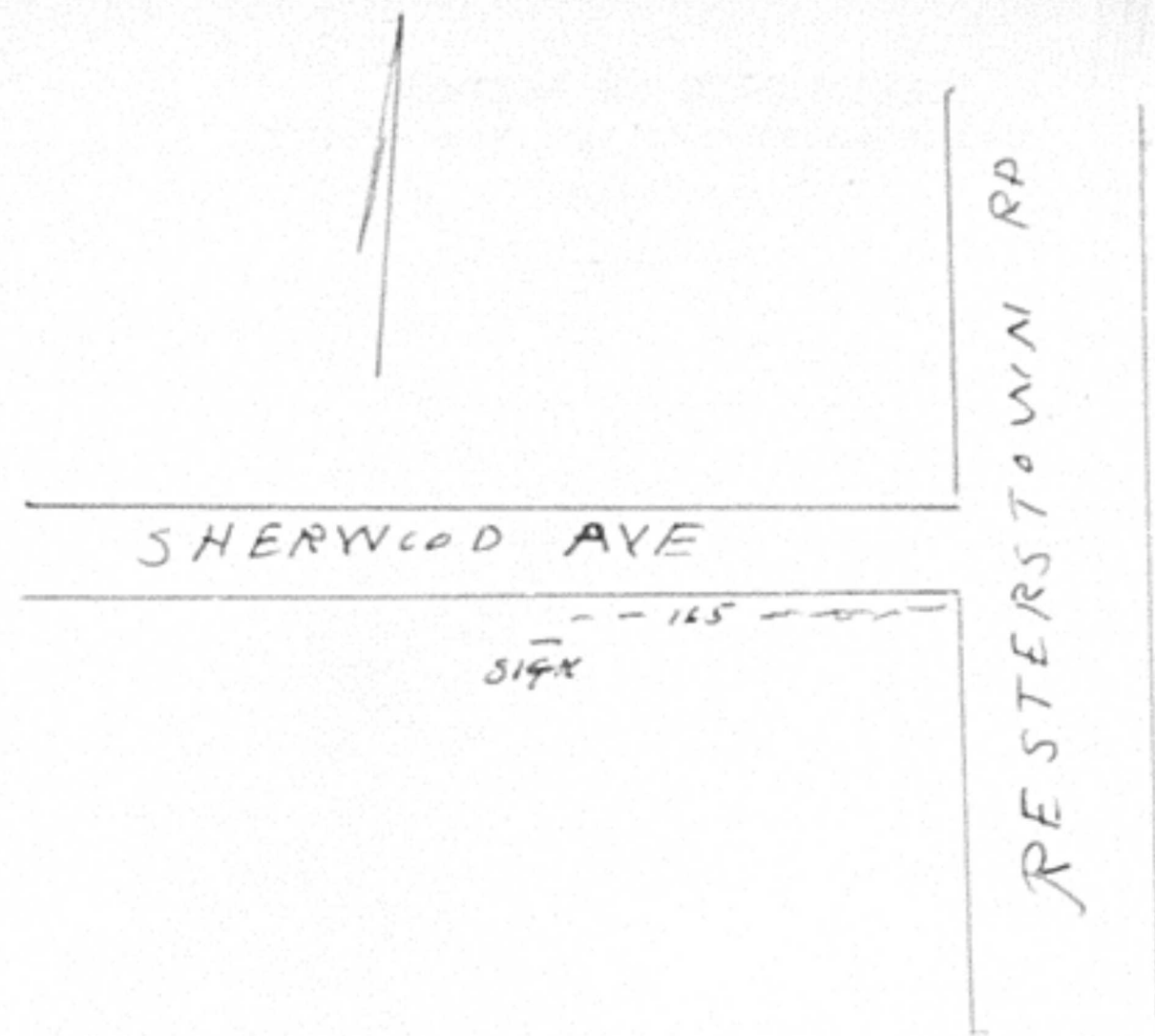
Zoning Commissioner
of Baltimore County.

PAID
JAN 10 1947
COUNTY COMMISSIONERS
OF BALTIMORE COUNTY
BY *John W. Bessner*

NOTICE OF FILING
RECLASSIFICATION
Petition to petition and will be
considered for the purpose of reclassification
of property on south side of Sherwood Ave.,
3rd District of Baltimore County, at a public
hearing to be held at the office of the
Zoning Commissioner of Baltimore County,
on Monday, December 2, 1946.
The Zoning Commissioner of Baltimore County
is hereby notified that the petition has been
filed and that the same will be considered
for the purpose of reclassification of property
on south side of Sherwood Ave., 3rd District
of Baltimore County, at a public hearing to be
held at the office of the Zoning Commissioner
of Baltimore County, on Monday, December 2,
1946.

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 3 Date of Posting: Nov 15/46
Posted for: the Repair shop
Petitioner: John Kurts & Marie Kurts
Location of property: south side of Sherwood Ave
150 feet west of Reisterstown Rd
Location of sign: small side of Sherwood Ave
150 feet west of Reisterstown Rd
Remarks: Henry E. Dunsdale
Posted by: Henry E. Dunsdale Date of return: Nov 20/46



SHERWOOD AVE

SIGN

165

RESTERS TOWN RD