

# Petition for Zoning Re-Classification

To The Zoning Commissioner of Baltimore County

I, or we, Joseph V. Mushaw  
Mary L. Mushaw  
 on the north west side Dorchester Ave. at Catonsville Manor, in  
 the 1st District of Baltimore County, beginning at the south west  
 side Cecil Ave., thence southeast on the east side of Dorchester  
 Ave. 250' to the northeast side of Harford Ave. with a rectangular  
 depth northwesterly of 125', being lots 9, 10 & 11 in subdivision  
 Plat 3, Catonsville Manor, recorded First Book 6, folio 126.

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" Residential zone to an "B" Commercial zone.

Reasons for Re-Classification: Community need

Character of use for which above property is to be used: Approved commercial use.

To be approved by Buildings Department  
 Size and height of building, front, 40 feet; depth, 125 feet; height, 12 feet.  
 To be approved by Zoning Department  
 Front and side setbacks of building from street lines, front, 10 feet; side, 10 feet.  
 Property to be posted as prescribed by Zoning Regulations.

I, or 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.

Joseph V. Mushaw  
Mary L. Mushaw  
 Legal Owner

Address \_\_\_\_\_

ORDERED by The Zoning Commissioner of Baltimore County, this 31st day of  
December, 1948, 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 herein be had in the office of the Zoning  
 Commissioner of Baltimore County, in the Richard Bldg., in Towson, Baltimore, on the \_\_\_\_\_  
20th day of \_\_\_\_\_, 1949, at 8:30 o'clock A.M.

Joseph V. Mushaw  
 Zoning Commissioner of Baltimore County  
 (over)

Pursuant to the advertisement, posting of property and public hearing on the above petition and  
 it appearing that by reason of \_\_\_\_\_ the above re-classification should be \_\_\_\_\_  
 It is Ordered by the Zoning Commissioner of Baltimore County this \_\_\_\_\_ day of  
 \_\_\_\_\_, 19\_\_\_\_, that the above described property \_\_\_\_\_ should be and the same is  
 hereby reclassified, from and after the date of this Order, from \_\_\_\_\_ zone to \_\_\_\_\_ zone.

Pursuant to the advertisement, posting of property and public hearing on the above petition and  
 it appearing that by reason of \_\_\_\_\_ the above re-classification should be \_\_\_\_\_  
 It is Ordered by the Zoning Commissioner of Baltimore County this 20th day of  
January, 1949, that the above petition be and the same is hereby sustained and that the  
 above described property or area be and the same is hereby sustained as and to remain an "A" \_\_\_\_\_  
Residence zone.

The above matter coming up for hearing before the Board of  
 Zoning Appeals of Baltimore County from the Order of the Zoning  
 Commissioner passed on January 10, 1947 in which the reclassifi-  
 cation of the entire area as described therein, from an "A" Residence  
 zone to "B" Commercial zone, was denied by the said Zoning Com-  
 missioner, and it appearing to the Board, from the location of the  
 property, evidence and facts adduced at the hearing that a portion  
 of said entire area described in said petition, being that portion  
 thereof hereinafter particularly described, should have been re-  
 classified as petitioned for and that the remaining portion of said  
 whole tract remain as an "A" Residence zone as theretofore classi-  
 fied, therefore: \_\_\_\_\_ day of March, 1947, ORDERED by the Board of  
 Zoning Appeals of Baltimore County, that the aforesaid Order of the  
 Zoning Commissioner in denying the reclassification of the entire  
 area described in petition, should in part be rescinded and that said  
 area described in petition, should in part be reclassified as now de-  
 petition for reclassification as to that portion thereof as now de-  
 scribed, be and the same is reclassified, from and after the date of  
 this order, from an "A" Residence zone to an "B" Commercial zone and that  
 as to the remaining portion of said whole tract the said order of said  
 Zoning Commissioner be and the same is hereby sustained. That portion  
 as aforesaid hereby reclassified for commercial purposes being thusly  
 described:

Beginning for the same at the intersection formed by the north-  
 west side of Dorchester Ave. with the southeast side of Cecil Ave., at  
 Catonsville Manor, 1st District of Baltimore County, and running thence  
 southwesterly on said side of Dorchester Ave. 40', with a rectangular  
 depth northerly of 125' and ending on said side of Cecil Ave.

and it is further ORDERED that the respective setbacks of any  
 building now or hereafter placed or erected, or any additions thereto,  
 shall set back the respective distances of 10 feet from both the north-  
 westerly and easterly right-of-way line of Dorchester Ave. and the southwesterly  
 side of Cecil Ave. the respective setbacks prescribed as afore-  
 said together with the setbacks as stated by applicant in his appli-  
 cation for building permit.

John B. Conrum  
 Board of Zoning Appeals  
 of Baltimore County.

WHEREFORE your Petitioners pray an order of this  
 Honorable Court authorizing them to intervene and making them  
 parties plaintiff-appellant.

Attorney for Petitioners

Upon the foregoing Petition it is ORDERED by the  
 Circuit Court for Baltimore County this \_\_\_\_\_ day of August, 1947,  
 that August B. Gross and Margaret Gross, Harry L. Mahon and Ida L.  
 Mahon, Julius Schweinsberg and Hilda G. Schweinsberg, Oliver H.  
 Farinbolt and Neulah F. Farinbolt, Franklin H. Keonta and Marion  
 E. Keonta, Anna M. Keonta, Evelyn B. Anderson, William C. Taylor, Jr.,  
 and Lettie Taylor, Harry B. Blackburn and Virginia Blackburn,  
 T. Duncan Ross, Harry L. Sanders and Helen M. Sanders, Fred Bernhart  
 and Marie Bernhart, Walter Fischer and Agnes Fischer, Alice R.  
 Pruitt, Karen D. Chaney, Jr. & Mrs. Clarence Caver, William Bern-  
 hardt and Alice Bernhardt, Clara Walker, Willard Redford and Mildred  
 Redford, James L. Gents and Ida Ruth Gents, be and they are hereby  
 authorized to intervene in the within cause and they are hereby  
 made parties plaintiff-appellant in this cause, along with the  
 original plaintiff-appellants, unless cause to the contrary be  
 shown on or before September 5, 1947, provided a copy of this  
 Petition and Order be served on counsel of record of defendant-  
 appellees on or before August 27, 1947.

True Copy Test  
John B. Conrum  
 Clerk

John B. Conrum  
 Judge

HENRY WERE and wife  
 vs  
 BOARD OF ZONING APPEALS  
 FOR BALTIMORE COUNTY  
 IN THE  
 CIRCUIT COURT  
 FOR  
 BALTIMORE COUNTY  
 IN LAW

The action of the Board in the above-named  
 case is sustained.

John B. Conrum  
 John B. Conrum, Judge

December 14, 1948

True Copy Test  
John B. Conrum  
 Clerk

HENRY WERE and  
 BARBARA S. WERE, his wife  
 vs  
 DR. SAMUEL H. HOOVER  
 ELM L. FIDELL and  
 WILLIAM A. SAPP  
 constituting the BOARD OF  
 ZONING APPEALS FOR BALTIMORE  
 COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT.  
 The parties hereinafter named respectfully petition  
 this Honorable Court as follows:

1: The above entitled cause is an appeal from a  
 decision of the Board of Zoning Appeals of Baltimore County grant-  
 ing a rezoning application by one Joseph V. Mushaw of a residential  
 property to commercial in an entirely residential neighborhood.

2: Being property owners in the area affected by the  
 decision of the Board of Zoning Appeals in a manner similar to that  
 in which Henry Were and Barbara S. Were are affected, the following  
 named persons, taxpayers on real property located in Baltimore  
 County, desire leave of this Honorable Court to intervene in these  
 proceedings as parties plaintiff-appellants:

August B. Gross and Margaret Gross  
 Harry L. Mahon and Ida L. Mahon  
 Julius Schweinsberg and Hilda G. Schweinsberg  
 Oliver H. Farinbolt and Neulah F. Farinbolt  
 Franklin H. Keonta and Marion E. Keonta  
 Anna M. Keonta  
 Evelyn B. Anderson  
 William C. Taylor, Jr. and Lettie Taylor  
 Harry B. Blackburn and Virginia Blackburn  
 T. Duncan Ross  
 Harry L. Sanders and Helen M. Sanders  
 Fred Bernhart and Marie Bernhart  
 Walter Fischer and Agnes Fischer  
 Alice R. Pruitt  
 Karen D. Chaney  
 Dr. & Mrs. Clarence Caver  
 William Bernhardt and Alice Bernhardt  
 Clara Walker  
 Willard Redford and Mildred Redford  
 James L. Gents and Ida Ruth Gents

4894

HENRY WHEE and  
BARBARA S. WHEE, his wifevs  
THE CIRCUIT COURTFOR  
BALTIMORE COUNTY  
CONSTITUTING THE BOARD OF  
ZONING APPEALS FOR BALTIMORE  
COUNTY

TO THE HONORABLE, THE JUDGES OF SAID COURT

The petition of Henry Whee and Barbara S. Whee, his wife, respectfully shows unto your Honor:

1. That your petitioners are tax payers and property owners in Baltimore County, State of Maryland, and have been such for many years; that your petitioners are the owners of property located and fronting on Cecil Avenue in the development known as "Oatonsville Manor" in the County of Baltimore, State of Maryland, which property is subject to property owned by Joseph V. Mushaw and wife, located at the southeast corner of Dorchester and Cecil Avenues, in Baltimore County, for which the said Joseph V. Mushaw filed an application for rezoning and reclassification from an "A" residential or cottage zone to "C" commercial or business zone, with the Zoning Commissioners of Baltimore County, the complete denial of which application was partially reversed by the Respondents herein, in that said Respondents granted the reclassification as to a portion of the entire tract sought to be reclassified, the reclassification being of a lot fronting sixty-five (65) feet on Dorchester Avenue and running northerly a distance of 120 feet on Cecil Avenue on which is located a house fronting on Cecil Avenue, the reclassification of the remaining frontage of 860 feet on Dorchester Avenue being denied; that the aforesaid reclassification directly and injuriously affects your petitioners who are therefore, both as parties aggrieved and as tax payers, entitled under the provisions of Chapter 502 of the Acts

of 1945 and amendments thereto, and regulations promulgated thereunder, entitled to maintain this petition and appeal.

2. The Respondents Dr. Samuel H. Hoover, Earl L. Single and William A. Sapp, countywide and comprise the Board of Zoning Appeals of Baltimore County, [hereinafter referred to collectively as the "Board"] having been appointed to said Board by the County Commissioners of Baltimore County, as provided by law.

3. That the application for rezoning and reclassification of the property of Joseph V. Mushaw and wife, was denied by the Zoning Commissioners of Baltimore County on January 20, 1947, because of the "voluntinous written protests and quite a number of protestants at the hearing, and the granting of which would be 'spot zoning'; the reference to 'spot zoning' being based upon the fact that the entire area is wholly residential and further that nearby there is the nucleus of a commercial development which has been in existence for many years at another centrally located point in the development known as "Oatonsville Manor".

4. That from the order of the Zoning Commissioners aforesaid, an appeal was entered to the Board of Zoning Appeals, the Respondent herein, which said Board, a appointive administrative body, by its order on March 20, 1947, in the attempted exercise of an uncontrolled, unrestricted and unguided power, granted to it and exercised by it under purported regulations in violation of and contrary to the Constitution and laws of this State and the Constitution of the United States, reversed the order of the Zoning Commissioners in part, without attempting to state any basis or reason and without any legal right, power or authority so to do, and created rezoning and reclassification for commercial use as to approximately one-half of the property of the applicant, as set forth in paragraph one of this petition.

That the aforesaid order and decision of the Board of Zoning Appeals of Baltimore County, dated March 20, 1947, whereby your petitioners, as tax payers and as property owners, are aggrieved

-2-

and injured, is void, unlawful, without legal force and effect, and should be reversed insofar as it attempts to remove and reclassify the property of Joseph V. Mushaw and wife for a commercial use, and set aside and annulled by this Honorable Court for the reasons that:

(a) The action of the Board in "spot zoning" a small, isolated tract of land in a wholly residential area completely violates the fundamental principles of a general zoning law, is arbitrary and capricious, and unauthorized by law.

(b) There was no substantial evidence before the Board of Zoning Appeals, in the proceedings conducted before it, to justify or support its order of March 20, 1947.

(c) The said order of the Board of Zoning Appeals, of March 20, 1947, constitutes an arbitrary and capricious act and a gross abuse of administrative discretion.

(d) The Board of Zoning Appeals, an administrative agency, was entirely without legal right or legal authority to pass an order purporting the premises of the petitioners and the reclassification of it for a use other than residential.

(e) The order of the Board of Zoning Appeals constitutes an attempted unlawful and unconstitutional exercise of authority by said Board.

(f) There exists no valid and legal law, rule or regulation under which the Board of Zoning Appeals could exercise the power and authority which it attempted to exercise in its order of March 20, 1947.

(g) And for such other and further reasons as may be shown at the hearing hereof.

WHEREFORE, YOUR PETITIONERS PRAY:

1. That a writ of certiorari be granted by this Honorable Court directed against the Respondents, constituting the Board of Zoning Appeals for Baltimore County, to review the decision and order of said Board of Zoning Appeals of March 20, 1947, in the within proceedings and unresisting therein the time within which a return thereon

-3-

shall be made and served upon the relator's attorney.

2. That said Board of Zoning Appeals be required to return to this Honorable Court the original papers filed upon by it or certified or sworn copies thereof, together with a copy of all records in said proceedings and a transcript of all testimony presented before said Board in connection with said proceedings as well as a copy of the order entered by said Board of Zoning Appeals and a copy of any and all rules and regulations pursuant to which said order was entered and said Board purported to act.

3. That this Honorable Court permit your petitioners to take such other and further testimony as may be necessary for the proper disposition of this matter.

4. That this Honorable Court reverse, set aside, annul and declare void and of no effect the order and decision of the Board of Zoning Appeals for Baltimore County, dated March 20, 1947, and attempting to reclassify for commercial use a portion of the property of Joseph V. Mushaw at Dorchester and Cecil Avenues aforesaid.

5. And for such other and further relief as the equities of the case may require.

*Joseph V. Mushaw*  
ATTEST: *Barbara S. Whee*  
Attorneys for Petitioner

STATE OF MARYLAND, CITY OF BALTIMORE, to-wit:

I HEREBY CERTIFY that on this 15th day of April, 1947, personally appeared before me, the undersigned, a Notary Public in and for Baltimore City, State of Maryland, Henry Whee and Barbara S. Whee, his wife, the petitioners named in the foregoing petition, and made oath in the form of law that the matters and facts set forth in the foregoing petition are true and correct.

NOTARY PUBLIC

## VERIFICATION

UPON the foregoing petition and Affidavit, it is ORDERED by the Circuit Court for Baltimore County this 15th day of April, 1947, that a writ of certiorari issue directed to Dr. Samuel H. Hoover, Earl L. Single, and William A. Sapp, constituting the Board of Zoning Appeals for Baltimore County, to review the decision and order of said Board of Zoning Appeals dated March 20, 1947, and requiring it to return to this Court all papers, records and proceedings in said matter and a transcript of all testimony presented before said Board in connection with said proceedings, and a copy of any and all rules and regulations pursuant to which said order was entered and said Board acted, to enable this Court to review said order and decision of the Board and that a return to this petition shall be made and served upon relator's attorney within 15 days from the date of this order.

And it is further ORDERED that said Board of Zoning Appeals for Baltimore County shall return to this Court all the original papers or certified or sworn copies thereof and the return shall set forth such other facts as may be pertinent to show the grounds of the decision and order appealed from.

And it is further ORDERED that said Board of Zoning Appeals for Baltimore County show cause on or before the 22nd day of April, 1947, why the relief prayed in the foregoing petition should not be granted, by filing a copy of the within petition, Affidavit and this order be served on Dr. Samuel H. Hoover, Earl L. Single and William A. Sapp, constituting the Board of Zoning Appeals for Baltimore County on or before the 22nd day of April, 1947.

True Copy Test

*Joseph V. Mushaw*

HENRY WHEE and  
BARBARA S. WHEE, his wife  
vs  
DR. SAMUEL H. HOOVER,  
EARL L. SINGLE and  
WILLIAM A. SAPP,  
Constituting the  
BOARD OF ZONING APPEALS  
OF BALTIMORE COUNTY

IN THE CIRCUIT COURT FOR  
BALTIMORE COUNTY  
AT LAW

TO THE HONORABLE, THE JUDGES OF SAID COURT:

And now come Samuel H. Hoover, Earl L. Single and William A. Sapp, 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:

No. 764  
ZONING ENTRIES FROM DOCKET OF ZONING COMMISSIONERS OF BALTIMORE COUNTY  
Dec. 31, 1946: Petition of Joe V. Mushaw and Mary E. Mushaw, for reclassification of property, northwest side of Dorchester Ave., "Oatonsville Manor", beginning at southeast side of Cecil Ave., thence northwest on said side of Dorchester Ave. 300' to northeast side of Dorchester Ave. 120' being lots 61 to 74 inclusive, block 27, Plan 2, "Oatonsville Manor", recorded in Plot Book 6, Folio 128. Filed.  
Order of Zoning Commissioners directing assessment and posting of property - date of hearing set for Jan. 20, 1947, at 9:30 a.m.  
Jan. 6, 1947: Certificate of posting of property on Jan. 6, 1947, filed.

Jan. 10, 1947: Certificate of Publication of advertisement in newspaper, filed.  
Jan. 20, " At 9:30 o'clock a.m. hearing held on petition by Zoning Commissioners and case held sub curis.  
" 20, " Order of Zoning Commissioner denying petition for reclassification.  
" 20, " Order of Appeal to Board of Zoning Appeals of Baltimore County from order of Zoning Commissioner of January 20, 1947, filed.  
March 13, 1947: Hearing on appeal before Board of Zoning Appeals of Baltimore County -- case held sub curis by the Board.  
" 20, " Order of Board of Zoning Appeals of Baltimore County reversing order of Zoning Commissioner and granting the petition for reclassification in part from an "A" Residence Zone to an "C" Commercial Zone.  
April 17, 1947: Writ of certiorari and appeal to Circuit Court for Baltimore County served on Board of Zoning Appeals.  
May 5, 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.  
Written petition in favor of and protest against filed.  
May 27, 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.

RE: PETITION FOR RECLASSIFICATION  
FROM "A" RESIDENCE ZONE TO  
"C" COMMERCIAL ZONE, N. W.  
Side Dorchester Ave., 1st  
District,  
Joseph V. Mushaw and  
Mary E. Mushaw,  
Petitioners  
vs  
ZONING COMMISSIONERS  
OF  
BALTIMORE COUNTY

Dr. Commissioners:

Please enter an appeal from your decision in the above entitled matter to the Board of Zoning Appeals of Baltimore County.

*Joseph V. Mushaw*  
*Mary E. Mushaw*  
a petitioners  
By *Joseph V. Mushaw* agent



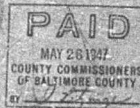
CERTIFICATE OF POSTING  
ZONING DEPARTMENT OF BALTIMORE COUNTY  
Towson, Maryland

District 1 Date of Posting Jan 7/47  
Posted for: Commercial use  
Petitioner: Joseph V. Menahan by Mary V. Menahan  
Location of property: Northwest side of Dorchester Ave. at Baltimore Ave. near  
beginning of the southwest side of Cecil Ave  
Location of signs: Northwest side of Dorchester Ave. 125 feet  
southwest of Cecil Ave  
Remarks: \_\_\_\_\_  
Posted by Harry E. Gant Date of return: Jan 24/47

\$4.00

RECEIVED of M. William Adelson, the son of  
Four (\$4.00) Dollars and Twenty Cents, being cost of  
making certified copies of papers in the matter of the  
appeal to the Board of Zoning Appeals, Joseph V. Menahan,  
et al, petitioners.

Zoning Commissioner,



RECEIVED

Jan. 23, 1947

One Dollar (\$1.)

Philadelphia Road &  
Rushie Ave.,  
Baltimore, Md.

January 23, 1947

\$22.00

RECEIVED of Joseph V. Menahan, et al the sum of  
Twenty Two (\$22.00) Dollars, being cost of appeal to the  
Board of Zoning Appeals of Baltimore County from decision  
of the Zoning Commissioner of Baltimore County, denying the  
petition for reclassification of the property, northwest  
side of Dorchester Ave., 1st district of Baltimore County.

Zoning Commissioner,

