

RECU JUL 15 1947

Some false statements in form below

ARTHUR E. MORGAN
3604 Cedar Drive
Baltimore County, Maryland

VS. Petitioner

MANUEL H. HOOPER,
MARLE L. SINGLE
and WILLIAM A. HAPP,
being and constituting
the Board of Zoning Appeals
for Baltimore County,
Record Building
Towson, Maryland.

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY

Defendants.

APPEAL FROM A DECISION OF THE BOARD OF ZONING APPEALS.

TO THE HONORABLE, THE JUDGE OF SAID COURT:

The Petitioner of Arthur E. Morgan, by Julius G. Neurer, his attorney, and any other person or persons approved by the decision of the Board of Zoning Appeals and who may here to join in these proceedings, respectfully represents unto your Honor:

I. That Arthur E. Morgan is a resident and a taxpayer of Baltimore County, and is the owner of the property located at 3604 Cedar Drive in Baltimore County.

II. That on or about January 29, 1946, Clara A. Stewart and Mary G. Botterell, as Trustees for "Legal Owners," filed a Petition with the Zoning Commissioners of Baltimore County for a Zoning Re-Classification, from an "A" Residence zone to an "B" Commercial zone, of the property described in said Petition as follows:

"On the southwest side of Liberty Road, at 'Lochness', in the 2nd District of Baltimore County, beginning 31 feet southeast of the east side of Patterson Avenue if extended southeasterly, thence northeasterly, on said side of Liberty Road, 493.35 feet, with a rectangular depth southeasterly of 150 feet."

That subsequent to the filing of the said Petition, the Zoning Commissioners of Baltimore County passed the following order:

"Pursuant to the advertisement, posting of property and public hearing on the same petition and it appear-

"A lawful non-conforming use existing on the effective date of the adoption of these Regulations may continue, provided, however, upon any change from such non-conforming use to a conforming use, or any attempt to change from such non-conforming use to a different non-conforming use or any discontinuance of such non-conforming use for a period of one year, or in case a non-conforming structure shall be destroyed by fire or otherwise to extent of seventy-five (75%) per cent of its value, the right to continue to resume such non-conforming use shall terminate, provided, however, that any such lawful non-conforming use may be extended or enlarged to an extent not more than one-half the area of the land used in the original non-conforming use." (Underlining by your Petitioner)

(7) The said Order of the Board of Zoning Appeals, dated June 16, 1947, does not indicate a compliance with the requirements of Paragraph III (e) of Section XIII, entitled "Power Relative to Special Exceptions and Special Permits" of the Zoning Regulations and Restrictions for Baltimore County approved by the County Commissioners of Baltimore County on January 22, 1945, reading as follows:

"In the granting of any special permit under this Section (Section XIII) the Zoning Commission, and the Board of Zoning Appeals, upon appeal, shall be governed and controlled by the following principles, standards, rules, conditions and safeguards:

- Before any such special permit shall be granted it must appear that the use, for which special permit is requested, will not:
- Be detrimental to the safety, health, morals and general welfare of the community involved.
- Tend to create congestion in roads, streets and alleys in the area involved.
- Create a hazard from fire, panic or other dangers.
- Tend to overcrowd land and cause undue concentration of population.
- Interfere improperly with adequate provisions for schools, parks, water, sewerage, transportation and other public requirements, conveniences and improvements.
- Interfere with adequate light and air."

(e) The said Order of the Board of Zoning Appeals dated June 16, 1947 contains no statements or findings of fact in support thereof which thus preclude this Honorable Court from determining whether or not the said Board, in reaching its said decision, conformed to and complied with the provisions and requirements of Article 66 B of the Annotated Code of Maryland, 1939 Edition, and the aforesaid Regulations promulgated thereunder by the County Commissioners of Baltimore County.

ing that by reason of location, being 'spot' zoning and no public or community need shown, the above re-classification should NOT be had:

"It is ordered by the Zoning Commissioners of Baltimore County, this 10th day of February, 1946, that the above petition be and the same is hereby denied and that the above described property or premises and the same be and is hereby continued to and to remain in an "A" Residence zone."

(s) John P. Tinsman
Zoning Commissioner of Baltimore County.

That on February 29, 1946, the said Clara A. Stewart and Mary G. Botterell, by Zenifer and Zenifer, their attorneys, entered an appeal from the said decision of the said Zoning Commissioner, dated February 12, 1946, as aforesaid, to the Board of Zoning Appeals of Baltimore County; that on or about February 29, 1947, the said Clara A. Stewart and Mary G. Botterell, wrote to the said Zoning Commissioner of Baltimore County, requesting that the said Commissioner "withdraw the appeal on the property located at 3604 Liberty Road," which is the same property as that described in Paragraph II hereof; that on March 5, 1947, the then Zoning Commissioner of Baltimore County acknowledged the said request of withdrawal and stated:

"On February 27, 1947, we received your letter withdrawing your appeal to the Board of Zoning Appeals of Baltimore County, filed February 29, 1946 in the above-entitled matter."

III. That on March 10, 1947, Clara A. Stewart and Mary G. Thurbay, "legal owners," filed a Petition for Zoning Re-Classification, from an "A" Residence zone to an "B" Commercial zone, of the property described in said Petition, as follows:

"On northwest side of Liberty Road, at 'Lochness', in the 2nd District of Baltimore County, beginning 500 feet northwest of Old Mill Road, thence northwest, on said side of Liberty Road, 493 feet with a rectangular depth southwest of 150 feet."

and that the said property is a part of the same property as that described in Paragraph II hereof.

(e) That following the filing of said Petition of March 10, 1947, and after a public hearing, the following order was

(b) That the action of the Board of Zoning Appeals by virtue of its said Order of June 16, 1947 was arbitrary, capricious, unreasonable and illegal, as aforesaid, for the reason that it was not predicated on substantial evidence adduced at the said public hearing held on May 22, 1947.

TO THE HONORABLE:

(a) That this Honorable Court may pass an Order allowing said appeal and setting this cause down for hearing at some early date;

(b) That the Order of this Honorable Court may direct that the following original papers or certified or sworn copies thereof may be transmitted and forwarded to it by the Board of Zoning Appeals of Baltimore County:

(1) All papers, memoranda, correspondence, orders, and any and all other records relating to the application filed by Clara A. Stewart, et al on January 29, 1946; the Order of the Zoning Commissioner thereon dated February 12, 1946, and the appeal dated February 29, 1946 from said Order to the Board of Zoning Appeals and the record of all proceedings subsequent to the filing of said appeal.

(2) All papers, memoranda, correspondence, orders and any and all other records relating to the application of Clara A. Stewart, et al filed on March 10, 1947; the Order of the Zoning Commissioner thereon dated April 16, 1947 and the appeal from said Order to the Board of Zoning Appeals, (including a transcript of the testimony taken at the hearing on May 22, 1947) and the Order of the Board of Zoning Appeals dated June 16, 1947.

(3) A certified copy of the "Zoning Regulations and Restrictions for Baltimore County," approved by the County Commissioners of Baltimore County on January 22, 1945 and all subsequent amendments, if any, thereof or thereto.

(4) That the action of the Board of Zoning Appeals referred to herein may be reversed and the application of the said Mary D. Thurbay, et al, denied;

passed by the Zoning Commissioners of Baltimore County:

"Pursuant to the advertisement, posting of property, and public hearing on the above petition and it appearing that by reason of location, being a community need the above re-classification should be had:

"It is ordered by the Zoning Commissioners of Baltimore County this 10th day of April, 1947, that the above described property or area should be and the same is hereby reclassified, from and after the date of this Order, from an "A" Residence zone to an "B" Commercial zone, subject, however, to the adoption of conditions conforming the existing buildings and the off-street parking area to be as shown by plat filed and made a part of this order."

(s) Clara H. Boing
Zoning Commissioner of Baltimore County

(b) That your Petitioner, being aggrieved at the passage of the Zoning Commissioner's said Order of April 16, 1947, entered an appeal therefrom on April 23, 1947 to the Board of Zoning Appeals of Baltimore County.

(c) That following a public hearing before the Board of Zoning Appeals of Baltimore County, and upon the said appeal the following Order, dated June 16, 1947, was passed by the said Board:

"Upon hearing on appeal from the Order of the Zoning Commissioner of Baltimore County passed on the 16th day of April, 1947, granting the reclassification of the property described in and for the purpose as set forth in the within petition:

"It is this 10th day of June, 1947, ORDERED by the Board of Zoning Appeals of Baltimore County, that the aforesaid Order of Zoning Commissioner be and the same is hereby approved and sustained."

(s) Samuel H. Hooper

(s) William A. Hupp

(s) Marie L. Single

Board of Zoning Appeals of Baltimore County."

IV. That your Petitioner believes and therefore alleges and avers that the action, as aforesaid, of the Board of Zoning Appeals was illegal because:

(a) It is not in conformity with the requirements of Art. 66 B, Section 2, of the Annotated Code of Maryland, 1939 Edition, in that owners of "80 percent or more" of the area of the lots "directly opposite" to the "proposed change" signed a "protest

- 3 -

(d) And for such other relief as your Petitioner's cause may require.

AND AS IN DUTY BOUND, etc.

Arthur E. Morgan
Petitioner

Julius G. Neurer
Attorney for Petitioner

STATE OF MARYLAND)
CITY OF BALTIMORE) SS

I HEREBY CERTIFY, That on this 14th day of July, 1947, before me, the subscriber, a Notary Public of the State of Maryland, in and for Baltimore County, personally appeared ARTHUR E. MORGAN, and after being duly sworn according to law, declared that the matters and facts set forth in the foregoing Petition are true and correct to the best of his information, knowledge and belief.

WITNESS my hand and Notarial seal.

Edna H. Hingford
Notary Public

My Commission expires June 1, 1949.

against such change" and it does not appear from the records, of the Zoning Commissioner in this case that there was a compliance with the provisions of the said statute which required a "favorable vote of three-fourths of all the members of the legislative body of such municipality" in a case of the kind in question.

(b) The said action of the said Board of Zoning Appeals, and for the reason given in the preceding paragraph (a) hereof, does not conform to or comply with the requirements of Chapter 802 of the Acts of 1945 passed by the General Assembly of Maryland and reading, in part, as follows:

"No such amendment, supplement or change, however, shall become effective and binding until it shall have been approved in writing by the County Commissioners, but no notice and public hearing before the County Commissioners shall be necessary before such approval."

(c) It was not in conformity with Rule 15, approved by the County Commissioners of Baltimore County on January 8, 1945, entitled "Oaths of Zoning Commissioner and Board of Zoning Appeals Procedure and Changes", reading as follows:

"The new petition for reclassification, or special permit or temporary use, shall be entertained by the Zoning Commissioner in any case which has been considered and acted upon by him until the expiration of six months from the date of his final Order thereon. Where an appeal is taken from any decision of the Zoning Commissioner to the Board of Zoning Appeals, the Zoning Commissioner shall not entertain any new petitions for reclassification, or special permit, until the expiration of six (6) months from the date of the final Order of said Board of Zoning Appeals."

(d) The reclassification of the applicant's lot as ordered by the said Board of Zoning Appeals is equivalent to and in violation of the provisions of Article 66 B, Section 2 of the Annotated Code of Maryland, 1939 Edition, in that the said Order does not authorize the change of any "boundaries" in the Residentially zoned area in which the property of the applicant is located.

(e) It is not in conformity with Section II of the Zoning Regulations and Restrictions for Baltimore County approved by the County Commissioners of Baltimore County on January 22, 1945, reading as follows:

- 4 -

UPON the foregoing Petition and affidavit, it is this 15th day of July, 1947,
ORDERED by the Circuit Court for Baltimore County, that a writ of certiorari be issued directed to Samuel H. Hooper, Marie L. Single, and William A. Hupp, constituting the Board of Zoning Appeals of Baltimore County, to reverse the Order of said Board, dated June 16, 1947 and that the return thereof be made and served upon the relator's attorney within ten days from the date of this Order.

IT IS FURTHER ORDERED That said Board of Zoning Appeals shall return to this Court either the original papers acted upon by it or sworn copies thereof and particularly the following:

- All papers, memoranda, correspondence, orders and any and all other records relating to the application filed by Clara A. Stewart, et al on January 29, 1946; the Order of the Zoning Commissioner thereon dated February 12, 1946 and the appeal dated February 29, 1946 from said Order to the Board of Zoning Appeals, (including a transcript of the testimony taken at the hearing on May 22, 1947) and the Order of the Board of Zoning Appeals dated June 16, 1947.
- A Certified copy of the "Zoning Regulations and Restrictions for Baltimore County," approved by the County Commissioners of Baltimore County on January 22, 1945 and all subsequent amendments, if any, thereof or thereto.

Edna H. Hingford
Judge.

Service of copy of the foregoing Petition and Order admitted this day of July, 1947.

Julius G. Neurer
Relator's Attorney

PAID
MAR 11 1947
COUNTY COMMISSIONERS
OF BALTIMORE COUNTY
BY *[Signature]*

April 23, 1947

\$22.00 ✓

RECEIVED of Julius G. Maurer, Attorney for Arthur E. Norman, being the cost of appeal to the Board of Zoning Appeals of Baltimore County from the decision of the Zoning Commissioner, property situate on northwest side of Liberty Road, at "Lochearn", 2nd District of Baltimore County, Mary D. Thursby, et al, petitioners.

Zoning Commissioner.

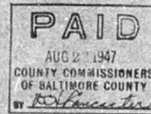


Aug. 22, 1947

\$4.20 ✓

RECEIVED of Liberty Patterson Improvement Ass'n. Inc., the sum of Four (\$4.20) Dollars and Twenty cents being cost of preparing certified copies in the appeal to the Circuit Court of Baltimore County in the matter of petition of Mary D. Thursby, et al, for reclassification of property on northwest side of Liberty Road, "Lochearn".

Buildings & Zoning Commissioner.



CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

864

District: 2
Posted for: Drug and Grocery Stores
Petitioner: Mary D. Thursby
Location of property: Northwest side of Liberty Rd
500 feet Northwest of Old Mill Rd
Location of signs: Northwest side of Liberty Rd
600 feet Northwest of Old Mill Rd
Remarks: _____
Posted by: Harry G. Santosh Date of return: Mar 18/47

OLD MILL RD

600

SIGN

LIBERTY RD

1