

MARYLAND & PENNSYLVANIA
RAILROAD COMPANY, and
F. C. COOK, general partner
F. C. COOK & COMPANY,

-vs-

H. GUY CAMPBELL, et al.,
constituting the BOARD
OF ZONING APPEALS FOR
BALTIMORE COUNTY.

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY

The track of the Maryland and Pennsylvania Railroad crosses Charles Street at grade at Woodbrook in a general north-eastern and southwestern direction. At the time of the adoption of the comprehensive zoning plan for the County in 1945, two small tracts east of Charles Street and south of the railroad were zoned commercially as well as several larger tracts north of the railroad, all of which except one, belonged to the railroad. Later a tract further north of the larger tracts was also zoned commercially. For a clearer understanding of the situation, attached hereto is a plat filed with these proceedings showing the zoning status. All of the commercial area shown on this plat, except A and G, belonged to the railroad in 1945, and on November 12, 1951, it conveyed the property outlined in red to F.C. Cook and Company, and is now under contract to convey to that company the portion hatched in red. This portion was zoned residentially under the comprehensive plan. The railroad's application to reclassify it commercially, joined in by the Cook Company as contract purchaser, was denied by the Zoning Commissioner and the Board of Zoning Appeals and the propriety and legality of their action is now under review on appeal. The railroad did not protest the original residential classification of this tract, erroneously assuming that all of its property would naturally be zoned commercial or industrial. This was not an unreasonable assumption nor does it bar the present application. Lot A on the plat is improved by a filling station, there are two large advertising signs on B, filling stations on C and D, and a grocery or drug store on F & G. On the other commercially zoned

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lots there is also a gas storage tank of the Gas and Electric Company, a fruit stand and a County pumping station. As will be observed, the lot in question is irregularly shaped, the western boundary, approximately 150' east of the east line of Charles Street, fronts approximately 150' on the railroad right of way and is roughly 130' wide. It is bounded on the southeast by the property of Mrs. Henry H. Dincoen, which fronts on Madden Hall Avenue, and on the extreme north by other residential properties also fronting on Madden Hall Avenue. The railroad has owned its property since 1882. On its right of way east of Charles Street and to the west of its main line the railroad maintains a siding for the storage, loading and unloading of its freight cars. It operates one north and one south bound freight train daily, except Saturdays and Sundays, when there is normally no freight traffic. The present application is for a reclassification from "A" residential to "B" commercial. If the application is granted it will be improved by an office building, lumber warehouse, and for the storage of lumber, which will be brought in by rail and transported by truck from the switch to the storage area. The testimony shows that the railroad will grant a right of way over its tracks from the switch to the lot in question, so that it will not be necessary when unloading the cars to traverse Charles Street for that purpose. It will be seen that this lot has no road or street frontage but those opposing the reclassification assert that the railroad as owner cannot be heard to assert this objection to its present residential classification because that condition is of its own making, as it could have reserved to itself a right of way to Charles Street when it sold tract B.

Even though this is true, (see *Bruning Brothers vs. M & C.C.* 87 A (2) 539) there is no evidence to show that a right of way to Charles Street, over a commercially zoned lot, which might be used for any number of businesses, would make it available for residence purposes.

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In the case of *Kintner, et al. vs. Board of Zoning Appeals*, D.R. May 26, 1952, this Court laid down the rules by which it is to be governed in considering appeals from reclassification decisions of the Board of Zoning Appeals. It was pointed out that such proceedings are legislative in character and that:

"The legislative action must be sustained if it is reasonably debatable. * * * It is not the Court's duty, right or function to come or re-open * * *. It is only when no reasonable debate can exist and the record is barren of facts legally justifying the Board's action, that the Court can legitimately reverse it."

It was further held that reclassification can be justified only when:

"The record * * * shows facts which if believed, are legally sufficient to prove either that there was an error made in the original zoning or that there has been made such a change of conditions as reasonably justified the re-zoning."

This conclusion was primarily based on an analysis of the cases of *Northwest Merchants Terminal vs. O'Hourke*, 191 Md., 171, and *Krueke v. Seabury* 79 A (2) 317. That this was a correct analysis of these cases was confirmed as recently as April 16, 1953, when the Court of Appeals in the case of *Saksfield Jr. et al v. Kraf et al*, dealing with the Howard County Zoning regulations, said as to re-zoning:

"It must appear, therefore, that either there was a mistake in the original zoning or that the character of the neighborhood has changed to an extent which justifies the amendatory action."

In the *Kintner* case this Court concluded that the case of *Chayt v. Maryland Jockey Club*, 179 Md., 390, which apparently expressed a different view, was no longer the law of Maryland. While the Court of Appeals in the *Saksfield* case, (supra) did not go that far it did say that:

"The statement of the Chayt case that re-zoning from a higher to a lower classification need not be based on a valid exercise of the police power is undoubtedly too broad and too general."

So now turn to the facts to see whether or not there was either an error in the original zoning of this property as

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OPINION OF THE BOARD OF ZONING APPEALS
OF
BALTIMORE COUNTY

This is an appeal by the Maryland-Pennsylvania Railroad Company and the P. C. Cook and Company from an order of the Zoning Commissioner of Baltimore County dated February 21, 1952, denying the petition for reclassification from an "A" Residence Zone to an "E" Commercial Zone in regard to the property described in said petition.

The case came on for hearing before the Board, testimony was taken for and against said petition, and counsel for both sides heard.

The property which is the subject of this petition is located 150 feet east of Charles Street and southeast of the Maryland-Pennsylvania Railroad right of way and North 150 feet, more or less, from McKim Avenue. The tract of land sought to be reclassified is irregular in shape, binding partly on the Maryland-Pennsylvania Railroad right of way and partly on the commercial area, having been heretofore reclassified to a depth of 150 feet from Charles Street Avenue in an easterly direction; the commercial area extending from McKim Avenue northerly to the drug store property.

The Appellants contend that the location of their property, sought to be reclassified, does not lend itself to residential development and has no practical use; and, in fact, has little or no value, but rather, that it can readily be used commercially, and that to deny their request would make it impossible for the owner to use the property in any manner whatsoever; and also that such zoning restrictions, as applied to that parcel, are unconstitutional because they amount to the confiscation of the land in question.

It is further contended that the property under consideration is at present burdened with arbitrary, unreasonable,

and confiscatory restrictions, and this Board has been requested to correct the situation by removing such restrictions. The Appellants also state that only one question is involved, "Is the present classification of the property in question arbitrary, unreasonable, and confiscatory?" The Board does not believe that this matter can be decided on this one question alone, but rather that proper planning and zoning must also take into consideration a matter of the health, safety, morals, and general welfare of the community.

The testimony on behalf of the Appellants was to the effect that this property was to be used as a lumber yard; and that in the operation of the business there would be no material increase in the traffic area, but the protestants thought otherwise and were of the opinion that this would constitute a serious traffic hazard. It was noted by the Board that the siding that would be used in the unloading of the lumber is located on the west side of the tracks in the present commercial area, and that it would be necessary for the trucks to be loaded on the west side of the tracks and then emerge on Charles Street North of the American Oil Company Service Station, then proceed in a southerly direction on Charles Street to the south side of the property and enter South of the Baltimore County Metropolitan Pumping Station. This would result in an undue increase in traffic on Charles Street, which is a heavily traveled artery, and the zig-zagging of trucks across this thoroughfare would be most dangerous. Furthermore, the sideling operations of the yard would have a tendency to impede the flow of traffic on Charles Street. To install a spur on the east side of the railroad tracks would interfere with the proposed extension of Stevenson Lane from York Road to Charles Street; and while this in itself would not be sufficient reason for an adverse

decision for the Appellants, it is, nevertheless, a part of the plan submitted by Mr. Malcolm H. Hill, Director of the Baltimore County Planning Commission. It is also stated by the Appellants that the commercialization of this property is a natural extension of an existing commercial zone, and that they should be granted their request under their petition; but it was noted from the plans filed in this case that all this property does not adjoin a commercial area and, furthermore, if the tract of land in question has been made useless because of the commercial area on Charles Street, such a condition has arisen as a result of the Petitioners' acts and does not constitute confiscation. To reclassify this property would open up a new area which the adjoining property owners would and could request that their property be made commercial, with the result that zoning in this area would be haphazard, improper, and against the general welfare of the community.

The Board is of the opinion, from the testimony and facts in this case and reviewing of the property, that the operation of a lumber business in this location, which is in the neighborhood of three filling stations and the booster station of the Gas & Electric Company and within very close proximity of the property of Mrs. Eiseen, would materially increase the fire hazard in this community.

It is the opinion of the Board that the reclassification of this property from an "A" Residence Zone to an "E" Commercial Zone would be detrimental to the safety and general welfare of the community; and, therefore, it will sign an order denying the reclassification and sustaining the order of the Zoning

Commissioner of Baltimore County.

Samuel H. Hill
Chairman
Carl F. Cohen

Board of Zoning Appeals of
Baltimore County

FILED FEB 27 1952

OFFICE TOW 461

JAMES A. REDMOND, JR.
ATTORNEY AT LAW
11 W. FULTON AVE.
TOWSON 4, MARYLAND

February 26, 1952

Augustine G. Mueller
Zoning Commissioner of Baltimore County
Towson 4, Maryland

Re: PETITION FOR RECLASSIFICATION FROM
A RESIDENCE ZONE TO AN "E" COMMERCIAL
ZONE - E.B. Charles St. at Woodbrook Station -
Maryland and Pennsylvania
Railroad Company-Petitioner

Dear Mr. Mueller:

On behalf of the Maryland and Pennsylvania Railroad Company and the P. C. Cook and Company petitioners in the above matter, Mr. Anderson and I wish to enter an appeal from the decision of the Zoning Commissioner denying the requested change in classification.

Sincerely yours,
James A. Redmond, Jr.
Attorneys for the Petitioners

Re: PETITION FOR RECLASSIFICATION FROM AN "A"
RESIDENCE ZONE TO AN "E" COMMERCIAL ZONE -
E.B. Charles St. at Woodbrook Station -
Maryland & Pennsylvania Railroad Company,
Petitioner

The property which is the subject of this petition is located 150 feet east of Charles Street to the east of Maryland & Pennsylvania Railroad right-of-way and approximately 150 feet north of McKim Avenue, Woodbrook, Ninth District of Baltimore County. The commercial zoning in this area extends from McKim Avenue northerly to include the drug store property and extends easterly from Charles Street to a depth of 150 feet south of the Railroad and easterly to the Railroad right-of-way on the northernmost portion of the commercial zone. The area sought to be rezoned by this petition is the property of the Maryland & Pennsylvania Railroad lying to the east of the presently zoned commercial area and to the southeast of the Railroad right-of-way.

The petitioner contends that the commercialization of this property is a natural extension of an existing commercial zone and that it is proper that all of the land in a particular parcel be zoned accordingly if a portion has been so zoned. It is also the contention of the petitioner, that if the property cannot be used for commercial purposes in connection with the commercially zoned frontage on Charles Street, it amounts to confiscation of the property, and that the property has no value for residential use and could not be developed for said residential use except possibly in connection with Mrs. Eiseen's property which lies to the rear; also that it is of peculiar shape and does not lend itself to development for residential use except for one or two houses and that ingress and egress to this property would necessarily be through the presently zoned commercial area.

The petitioner further contends that the use of this property by the contract purchaser for the operation of a lumber yard would not materially increase the traffic in the area, over and above the traffic that the yard would generate if the property on Charles Street, now commercially zoned, were used for a lumber yard. Also, that the use of this property for a lumber yard would not interfere with the flow of the train west of Charles Street and placing the cars on the siding would not impede the flow of traffic any more than it is impeded.

The petitioner further contends that the operation of a lumber yard on this property could not increase the fire hazard. The petitioner presents a letter from the Fire Underwriters' Association, in their opinion the insurance rates of the neighboring properties would not be increased any, based upon this petition, except that the petitioner argued that it would necessarily follow there would be no increase in the fire hazard.

The protestants contend that any extension of the existing commercial zone in this area would be detrimental to the general welfare of the community. They feel that the original zoning in this area by which an agreement was entered into and placed on record, wherein the lot to the north of the drug store was to remain residential, pointed out the policy of the Zoning Department in dealing with further extension of commercial in this area.

The protestants also contend that if this lot has the right of commercialization then Mrs. Eiseen's property also accrues such right and there is no logical stopping point for commercialization in the area. It is further contended that if this land has been cut off to itself by the use of the commercial area on Charles Street, that this condition was created by the petitioner and that this does not amount to confiscation. In addition, the protestants pointed out that the projected road which is planned by the County, taking in a portion of the northernmost end of the lot in question, would also provide access to the lot and allow it to be developed for residential use.

It is the contention of the protestants that the use of this property in connection with the operation of a lumber yard in the commercially zoned area along Charles Street would constitute a serious traffic hazard. The siding which would be used in the unloading of lumber is located on the west side of the tracks in the presently zoned commercial area. It would be necessary to lead the trucks on the west side of the tracks, come out on Charles Street north of the American Oil Company's service station, go south on Charles Street to the southernmost driveway of the property and enter to the south of the Baltimore County Metropolitan Pumping Station or over said Pumping Station. This would require a left turn on Charles Street and another left turn crossing north bound traffic on Charles Street into the property.

The protestants further contend that if a new spur is built on the east side of the Railroad, the use of this spur would interfere with the proper flow of traffic on the proposed extension of Stevenson Lane from York Road westerly to Charles Street. The protestants also contend that the storage of lumber on this lot would create a dangerous fire hazard. In addition to the three gasoline stations of the Standard Oil Company, Sharrow Brothers and the American Oil Company, being located in the immediate vicinity, there is also a gas booster station of the Gas & Electric Company located to the north of the property and to the west of the Railroad.

Mr. Malcolm H. Hill, Director of the Baltimore County Planning Commission submitted plans at the hearing for the continuation westerly of Stevenson Lane from York Road across Charles Street to Roland Avenue and to the proposed road "A" Supreme. Mr. Hill pointed out that with the exception of the proposed beltway around Baltimore City through the County, that this extension of Stevenson Lane was the most important road extension in the Towson community area. He also pointed out that the Department of Public Works of the County agreed that this plan should be carried out without delay so as to assist the flow of traffic in the Towson area. It is, therefore, important in considering this petition that no impediments be placed in the way of the proper use of this road for the purposes for which it is being planned. Also, in considering this petition it is important that no impediments be placed in the way of the proper use of this road as it is an important road in connecting Towson and its environs with the City.

The petitioner has stated that the commercialization of this property is a natural extension of an existing commercial zone and that it is proper that all the land in a particular parcel should be zoned accordingly if a portion has been so zoned. It was the policy of the Zoning Department of Baltimore County in 1945 when commercial zones were set up under the original zoning to establish commercial zones to a depth of 150 feet. The commercial zoning in this area was set up in that manner with the exception of the property lying to the northeast of the Railroad right-of-way wherein the commercial zone was increased to a depth to include the land to the Railroad right-of-way. Certainly the fact that the property in question extends to a depth greater than 150 feet from Charles Street and is separated from the Railroad right-of-way, would make it appear that this is not a natural extension of an existing commercial zone. If this is a natural extension, it is difficult to determine where the commercially zoned area would stop. The petitioner further stated that to disallow the use of this property for commercial use would amount to confiscation as the only way in which it could be used for residential purposes is the possibly in connection with the development of Mrs. Eiseen's property. The subdivision regulations for Baltimore County take compliance with the fact that small or irregular parcels of land might occasionally have to be developed in connection with another tract, and, as a case, even though it seems impractical to develop this property at this time for residential use except in connection with Mrs. Eiseen's property, the construction of the proposed Stevenson Lane would give proper access to the property without going through the commercial zone.

The protestants contend that the use of the lot in question for commercial use, namely, the operation of a lumber yard would constitute a serious traffic hazard on Charles Street. Not only would the trucking operations necessary for the proper conduct of this business of the Railroad would also create complications. This contention would appear to be well founded. The use of the existing siding to the west of Charles Street, traversing Charles Street for a distance of 100 feet, across or less, and making a left turn across north bound traffic into the unloading area. In addition, the increased business which would necessarily be generated by the use of this lot would increase the number of cars to be placed on the siding and would increase the flow of traffic on both Charles Street and the proposed extension of Stevenson Lane.

The petitioners contend that the use of this property for the operation of a lumber yard would not increase the fire hazard and presented a letter from the Fire Underwriters' Association that the insurance rates on the adjoining properties would not be increased. This does not necessarily mean that the fire hazard would not be increased. A check with the Fire Underwriters disclosed the

fact that it is not the policy of the Fire Underwriters to recommend increase in rates when the situation which might cause the increase in rates takes place on an adjoining property over which the insured has no control. They feel it would not be fair to penalize the insured for this reason. As pointed out by the Underwriters it does not necessarily follow that because the rates would not be increased that the fire hazard would not be increased. It would appear, therefore, that the operation of a lumber yard on the property in question, adjacent to three filling stations and not too far removed from the Reister Station of the "A" & Electric Company and within 20 feet of the property of Mrs. Dinsen, would certainly increase the fire hazard in the area.

From the foregoing facts and deductions, it appears that the use of the property in question for commercial purposes and specifically for the operation of a lumber yard could not but be detrimental to the safety and the general welfare of the community. The increase in traffic hazards necessitated by the trucking operations and the railroad switching operations would appear to be considerable and the operation of a lumber yard in such a small area and so close to residential properties, could not but be hazardous and detrimental to the general welfare of the community.

It is ORDERED by the Zoning Commissioner of Baltimore County, this 22 day of February, 1952, 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 an "A" Residence Zone.

Charles H. Smith
Zoning Commissioner
of Baltimore County

Petition for Zoning Re-classification

To The Zoning Commissioner of Baltimore County:-

I, or we, MAINFORD AND PENNSYLVANIA RAILROAD COMPANY, legal owner... of the property situate at or near Charles Street and Woodbrook Station, legal owner, and F. C. Cook, general partner of F. C. Cook & Company, a trust purchaser of the property situated on the east side of Charles Street at Woodbrook Station, beginning at a point on the southern most outline of the tract of the Maryland and Pennsylvania Railroad Company at a point where a line perpendicular to the center line of Charles Street intersects the South 69°30' West line of the aforesaid tract 130' from the Eastern most side of Charles Street, thence North parallel to the center line of Charles Street a distance of 130' to intersect a line parallel with the center line of the main track of the aforesaid railroad and at a distance of 15' to said track, thence parallel with the center line of the said track and at the distance of 15' therefore North about 130' more or less to intersect the South 69°30' East 350' line of the aforesaid tract, thence South 69°30' East along the aforesaid line 130' more or less to intersect the South 30°45' East 350' line of the aforesaid tract, thence along the aforesaid last mentioned line South 20°45' East 350', thence South 69°30' East 55' more or less to the place of beginning.

Now petition that the zoning status of the above described property be re-classified, pursuant to the Zoning Law of Baltimore County, from an Industrial zone to an A Commercial zone.

Reasons for Re-classification: Direct an office building and lumber warehouse and for the storage of lumber.

Warehouse Office front 37 feet, depth 50 feet, height 20 feet.
Size and height of building: front 37 feet, height 20 feet.
Front and side set backs of building from street lines: front 55 feet, side 20 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.

F. C. Cook & Co.
F. C. Cook Gen'l Partner
Contract Purchaser
MAINFORD AND PENNSYLVANIA RAILROAD COMPANY
F. H. Barnes
President Legal Owner
Address 135 W. North Ave., Baltimore 1, Md.

ORDERED By The Zoning Commissioner of Baltimore County, this 11 day of January, 1952, 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 Record Bldg., in Towson, Baltimore County, on the 30th day of January, 1952, at 11 o'clock A. M.

Zoning Commissioner of Baltimore County
(over)

CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY Towson, Maryland

District 9th # 2173
Posted for Approved for Commercial Use Date of Posting 1-16-52
Petitioner F. C. Cook & Co.
Location of property East side of Charles St. at Woodbrook Station in the southeast corner of section of the tract of the main track of the Baltimore and Pennsylvania Railroad Co.
Location of Signs On the east side of Charles St. at the intersection of the main track of the Baltimore and Pennsylvania Railroad Co.
Remarks:
Posted by George R. Hennessey Date of return 1-16-52

January 14, 1952

\$25.00

RECEIVED of James A. Redmond, Attorney for The Maryland & Pennsylvania Railroad Company, the sum of Twenty-five Dollars and fifty cents (\$25.00) being the cost of petition for reclassification, advertising and posting of the property on Charles Street at Woodbrook Station 9th District of Baltimore County.

Zoning Commissioner

JAN 15 1952
COUNTY COMMISSIONERS
OF BALTIMORE COUNTY
BY *[Signature]*

Hearings
Wednesday, January 30, 1952
at 10:00 A. M.
Room 2 of the Record Building
Towson, Maryland

August 11, 1952

\$12.20

RECEIVED OF F. C. Cook & Co. the sum of \$12.20 being cost of certified copies of petition and other papers filed in the matter of appeal to the Board of Zoning Appeals of Baltimore County for reclassification of property on east side of Charles Street, 9th District of Baltimore County.

Zoning Commissioner

PAID
AUG 11 1952
COUNTY COMMISSIONERS
OF BALTIMORE COUNTY
BY *[Signature]*

March 3, 1952

\$22.00

RECEIVED OF F. C. Cook & Company the sum of Twenty Two (\$22.00) Dollars, being cost of appeal to the Board of Zoning Appeals of Baltimore County from the decision of the Zoning Commissioner denying the reclassification of property on east side of Charles Street.

Zoning Commissioner

PAID
MAR 3 1952
COUNTY COMMISSIONERS
OF BALTIMORE COUNTY
BY *[Signature]*

NO PLAT
IN
THIS FOLDER