

CHARLES D. MILKE and
HELEN S. MILKE, his wife
800-C King Avenue
Baltimore County, Maryland
Plaintiffs

vs.

B. CITY CAMPBELL
DANIEL W. HUBER
CARL F. TOLDEN
constituting the
BOARD OF ZONING APPEALS
FOR BALTIMORE COUNTY
Towson, Maryland
Defendants

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
AT LAW

PETITION FOR WRIT OF HABEAS CORPUS

TO THE HONORABLE, THE JUDGE OF SAID COURT:

THE Petition of Charles D. Milke and Helen S. Milke, his wife, Petitioners, by Spauldin & Hession, their Attorneys, respectfully represents unto your Honor:

1. THAT the Petitioners, Charles D. Milke and Helen S. Milke, his wife, are the title holders of a lot or parcel of land situate on the South side of King Avenue, 1100 feet East of Baltimore Road, in the Fourteenth Election District of Baltimore County, State of Maryland.

2. THAT on the 3rd day of March, 1952, your Petitioners filed an application with the Zoning Commissioner of Baltimore County for the zoning reclassification of the aforementioned lot or parcel of land from an "A" Residence Zone to an "B" Commercial Zone, in order to enable your Petitioners to use said premises for the purpose of operating a restaurant thereon. That a hearing on said Petition was held by the Zoning Commissioner of Baltimore County on the 3rd day of March, 1952 and thereafter, on April 1, 1952, said Zoning Commissioner passed an order in said case denying said Petition for reclassification.

3. THAT subsequent to the passage of the aforementioned Order of April 1, 1952, your Petitioners, on April 8, 1952 filed an Order for Appeal to the Board of Zoning Appeals of Baltimore County from the aforesaid decision and Order of the Zoning Commissioner of Baltimore County that said Appeal came on for hearing before said Board of Zoning Appeals for Baltimore County on

June 26, 1952 and said Board, by its Order passed on August 22, 1952, sustained the Order of the Zoning Commissioner of April 1, 1952, denying said Petition for reclassification, as aforesaid.

4. THAT the aforementioned decision and Order of the Board of Zoning Appeals for Baltimore County dated August 22, 1952, whereby your Petitioner is aggrieved and injured, is void, illegal, unlawful, without legal force and effect, and should be reversed, set aside and annulled by this Honorable Court for the following reasons, viz:

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

(b) That there was no substantial or sufficient evidence presented before the Board of Zoning Appeals for Baltimore County, in the proceedings conducted before it, to justify or support its Order of August 22, 1952;

(c) That no evidence was submitted before said Board of Zoning Appeals for Baltimore County supporting the finding of said Board that it would be bad zoning and detrimental to the safety and general welfare of the community to reclassify this property in accordance with the wishes of the petitioners;

(d) That no evidence was submitted before said Board of Zoning Appeals for any of the findings and conclusions set forth in the Opinion and Decision of the Board of Zoning Appeals for Baltimore County; and

(e) That there is a need for a restaurant in the vicinity or neighborhood in which the land involved in these proceedings is situated; and

(f) For such other and further reasons as may be shown at the hearing on this Petition.

WHEREFORE, your Petitioners pray:

(a) That a writ of Certiorari be granted by this Honorable Court directed against the Defendants, constituting the Board of Zoning Appeals for Baltimore County, to review the decision and Order of said Board of Zoning Appeals of August 22, 1952, in the within proceedings, and prescribing therein the time within which a return thereto shall be made and served upon the Petitioner's Attorneys;

(b) That said Board of Zoning Appeals for Baltimore County may be required to return to this Honorable Court the original papers acted 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 copies of the Orders entered by said Zoning Commissioner of Baltimore County and Board of Zoning Appeals for Baltimore County;

(c) That this Honorable Court may permit your Petitioners to take such other and further testimony as may be necessary for the proper disposition of the matter;

(d) That this Honorable Court may reverse, set aside, annul, and declare void and of no effect the decision and Order of the Board of Zoning Appeals for Baltimore County dated August 22, 1952;

(e) And for such other and further relief as the nature of the case may require.

Spauldin & Hession
Attorneys for Petitioners

HEATH OF MARYLAND, BALTIMORE COUNTY, to wit:

I HEREBY CERTIFY, that on this _____ day of September, 1952, before me, the undersigned, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared Charles D. Milke and Helen S. Milke, his wife, Petitioners herein, and made oath in due form of law that the matters and facts as set forth in the foregoing Petition are true to the best of their information, knowledge and belief.

IN WITNESS my hand and Notarial Seal.

Notary Public

CHARLES D. MILKE and
HELEN S. MILKE, his wife
800-C King Avenue
Baltimore County, Maryland
Plaintiffs

vs.

B. CITY CAMPBELL
DANIEL W. HUBER
CARL F. TOLDEN
constituting the
BOARD OF ZONING APPEALS
FOR BALTIMORE COUNTY
Towson, Maryland
Defendants

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
AT LAW

UPON the foregoing Petition and Affidavit, it is this 18th day of September, 1952, by the Circuit Court for Baltimore County, at Law,

ORDERED that a writ of Certiorari issue directed to B. City Campbell, Daniel W. Huber and Carl F. Tolden, constituting the Board of Zoning Appeals for Baltimore County, to review the decision and Order of said Board of Zoning Appeals, dated August 22, 1952, 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; and that a return to this Petition shall be made and served upon Petitioner's Attorney within 30 days from the date of this Order; and

IT IS FURTHER ORDERED that the 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 exactly set forth such other facts as may be pertinent to show the grounds of the decision and Order appealed from, together with a transcript of all the testimony taken at the hearings and copies of the minutes filed therewith.

NOTARY PUBLIC
CHARLES D. MILKE
Helen S. Milke

James C. Carr, Esq.
Attorney for Petitioners

Howard J. Murray
Judge

RE: PETITION FOR RECLASSIFICATION FROM AN "A" RESIDENCE ZONE TO AN "B" COMMERCIAL ZONE - S. S. King Ave., 1100 ft. E. of Baltimore Road, 14th District - Charles D. & Helen S. Milke, Petitioners.

The appeal in the above entitled matter coming on for hearing before the Board of Zoning Appeals of Baltimore County on June 26, 1952, denying the reclassification from an "A" Residence Zone to an "B" Commercial Zone in regard to the property described therein; and it appearing from the facts and evidence adduced at the appeal that to reclassify this property would be spot zoning and would introduce a commercial enterprise in a community and area which is definitely residential, and it is the opinion of the Board that it would be detrimental to the safety and general welfare of the community to reclassify this property; therefore,

It is this 22nd day of August, 1952, Ordered by the Board of Zoning Appeals of Baltimore County that the Order of the Zoning Commissioner of Baltimore County denying the petition for reclassification be and the same is hereby reaffirmed and affirmed.

Carl F. Tolden
Chairman
James C. Carr
Attorney for Petitioners

Board of Zoning Appeals of
Baltimore County

OPINION OF THE BOARD OF ZONING APPEALS
OF
BALTIMORE COUNTY

This is an appeal by Helen S. and Charles D. Milke from an Order of the Zoning Commissioner of Baltimore County dated April 1, 1952, denying the reclassification from an "A" Residence Zone to an "B" Commercial Zone in regard to the property described in the petition.

The case came on for hearing before the Board, testimony was taken, and counsel heard.

The property which is the subject of this petition is located on the South side of King Avenue, between Baltimore Road and Philadelphia Road.

It is the intention of these petitioners, that if this reclassification is granted, to operate a lunch room and tavern in the building now on the property, and they will add three large rooms on the side of the house. The witnesses in the case testified in general that they would like to see an eating place in the neighborhood as a matter of convenience, but there was no testimony in the case that the neighborhood would suffer from the lack of a restaurant, nor was there any testimony that the original classification of this property was erroneous or that there had been substantial changes since the original zoning to justify the reclassification. One witness testified that there are "so many cars on the road that I cannot allow my ten-year old boy to ride a bike on King Avenue."

In spite of the testimony in the case, it is clear that to reclassify this property would be spot zoning and would introduce a commercial enterprise in a community and area which is definitely residential.

It is the opinion of the Board that it would be bad zoning and detrimental to the safety and general welfare of the community to reclassify this property in accordance with the wishes of the petitioners; and, therefore, it will pass its Order denying the reclassification.

Carl F. Tolden
Chairman
James C. Carr
Attorney for Petitioners

Board of Zoning Appeals of
Baltimore County

FILED APR 9 1952

IN THE MATTER OF:
PETITION FOR RECLASSIFICATION FROM AN "A" RESIDENCE ZONE TO AN "B" COMMERCIAL ZONE - S. S. King Ave., 1100 ft. East of Baltimore Road, 14th Election District of Baltimore County, Maryland.
Charles D. Milke and Helen S. Milke

vs.

BOARD OF ZONING APPEALS, BALTIMORE COUNTY, MARYLAND.

ORDER FOR APPEAL

Mr. Commissioner:

Please enter an Appeal to the Board of Zoning Appeals for Baltimore County in the matter of the Order of the Zoning Commissioner of Baltimore County, State of Maryland, passed in the above captioned case on April 1, 1952, and transmit all papers and records incident thereto to said Board of Zoning Appeals.

Charles D. Milke
Attorney for Petitioners

THOMAS
MIDLAND
STATION

FILED MAR 3 1952

2206
#2206

Petition for Zoning Re-Classification

To The Zoning Commissioner of Baltimore County
 Signed by Mr. & Mrs. Charles D. Milke, legal owner(s) of the property situate
 on the south side of King Ave., 11th District of Balto. Co., beginning 1100 feet
 east of Bablow Road, thence easterly, on the south side of King Avenue, 113 feet,
 thence South 3/4 degree 52 minutes west 365 feet; thence North 3/4 degree 27 minutes
 west 80.20 feet and thence North 26 degrees 10 minutes East 395.35 feet to beginning

RE: PETITION FOR RECLASSIFICATION FROM AN
 "A" RESIDENCE ZONE TO AN "B" COMMERCIAL
 ZONE - S. S. King Ave., 2100 Ft. E. of
 Bablow Road, 11th District -
 Chas. D. & Helen S. Milke, Petitioners

The property which is the subject of this petition is located
 on the south side of King Avenue, between Bablow Road and Philadelphia
 Road, Fourteenth District. The immediate area in which the property
 is located is developed with approximately fifteen cottages. With
 the exception of this cluster of houses the general area is sparsely
 developed. The closest commercial zone to this property is located
 on the Philadelphia Road at Middle River Road. The closest commercial
 zone in a westerly direction, with the exception of the filling station
 at the intersection of Ridge Road and Fish Avenue, is at Red Air Road
 and Putty Hill Avenue.

It is the intention of the petitioner if this reclassification
 is granted is to operate a lunch room and tavern on his lot which is
 improved with a frame dwelling. The houses in this neighborhood are
 well kept and fairly substantial.

In addition to the reclassification of this property to
 an "B" Commercial Zone being "spot zoning", it appears that the use
 of this property for any commercial use, especially for the use
 described in the petition, could not but be detrimental to the
 proper enjoyment of the adjoining properties for residential use
 and, therefore, be detrimental to the general welfare of the
 community.

There were no protests at the hearing
 to the granting of this reclassification. This may have been
 prompted by the fact that the petitioner has lived in the neigh-
 borhood all his life and is well known and respected by all the
 neighbors. However, it is the responsibility of this Department
 to protect residential properties against the encroachment of
 commercial uses and, therefore, it is incumbent upon the Zoning
 Commissioner of Baltimore County to deny the reclassification.

It is this 15th day of April, 1952, ORDERED
 by the Zoning Commissioner of Baltimore County, 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 D. Milke
 Zoning Commissioner
 of Baltimore County

hereby petition that the zoning status of the above described property be re-classified pursuant to the
 Zoning Law of Baltimore County, from an "A" RES. ZONE to an "B" COMM. ZONE.
 Reasons for Re-Classification: APPROVED COMM. USE
(LUNCH & TAVERN)

Size and height of building: front 18 feet; depth 28 feet; height 22 feet
 Front and side set backs of building from street lines: front 25 feet; side 65 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.

Charles D. Milke
Charles D. Milke
 Legal Owner
 Address King Ave. Bldg. 402-C
Baltimore 6 Maryland

ORDERED By The Zoning Commissioner of Baltimore County, this 3rd day of
March 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 Reckord Bldg., in Towson, Baltimore County, on the
24th day of March 1952, at 11:00 o'clock A. M.

Zoning Commissioner of Baltimore County
 (over)

3/24/52
 11

CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY Towson, Maryland

District 14th Date of Posting 3/12/52
 Posted for Chas. D. Milke, legal owner of property
 Petitioner Charles D. Milke, et al
 Location of property 38 King Ave., 11th Dist. Balto. Co., 113 ft. E. of Bablow Rd., 11th Dist.
374° 31' W. with the 11th Dist. line 365 ft. East 275 ft. N. 26° 10' E.
 Location of Signs SS King Ave. 1200 ft East of Bablow Rd. 11th Dist.
 Remarks:
 Posted by George A. Hunsicker Date of return 3/12/52

December 3, 1952

RECEIVED of H. Richard Shalkin, Attorney for
 Chas. D. Milke, et al, petitioners, the sum of \$7.20 being
 cost of certified copies of petition and other papers
 filed in the matter of reclassification of property on
 south side of King Avenue, 11th District.

Zoning Commissioner

PAID
 DEC 3 - 1952
 COUNTY COMMISSIONERS
 OF BALTIMORE COUNTY
 By Harvey J. Williams

\$22.00

RECEIVED of H. Richard Shalkin, Attorney for Chas. D.
 and Helen S. Milke, 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 the south side of King Avenue,
 1100 feet east of Bablow Road, 11th District of Baltimore County.

Zoning Commissioner

PAID
 MAY 3 - 1952
 COUNTY COMMISSIONERS
 OF BALTIMORE COUNTY
 By Harvey J. Williams

March 3, 1952

\$20.00

RECEIVED of Charles D. Milke, et al, the sum of
 Twenty (\$20.00) Dollars, being cost of petition for
 reclassification, advertising and posting property,
 south side of King Avenue, 11th District of Baltimore
 County.

Zoning Commissioner

Hearing at
 March 24, 1952
 at 11:00 a.m.
 basement of Reckord Building
 Towson 6 Md.

PAID
 MAR 3 - 1952
 COUNTY COMMISSIONERS
 OF BALTIMORE COUNTY
 By Harvey J. Williams

NO PLAT
 IN
 THIS FOLDER