

William S. Baldwin, Sec.  
County Board of Appeals  
Towson, Maryland

Re: No. 44-292-V  
(Zoning File 2275)

Dear Mr. Baldwin:

The Board of Appeals has asked the Zoning Commissioner to investigate the current status of the above entitled matter.

The following is the present status:

#66-292-V Marvin Topper, Lessee,  
Texaco Oil Co., owner

#2275 Allen & Bessie Kermisch  
(Zoning File) Liberty & Milford Mill Roads  
2nd Dist.

District Proposed: C. C. C.

Zone: B-L

Size: 15,775 sq. ft., more or less

On site: 2 trailers  
3 cars (no tags, one car for sale)  
2 bays  
3 nozzles  
3 entrances (no screening  
against residential property)  
2 spot lights (one 18' high, one 20' high)

Mr. Topper is in a C. C. C. District and subject  
to Section 405.8-B, C, D, E, and F.

Page 2 - 66-292-V  
(Zoning File #2275)

He violated the old law by keeping trailers on his  
property and selling used cars. Under the new law the lot  
size requirements for ancillary use are as set forth in Section  
405.4-C.

Very truly yours

Zoning Commissioner

GASOLINE SERVICE STATION VIOLATION CASES PENDING BEFORE THE  
BOARD OF APPEALS AS OF MAY 5, 1967

#66-292-V

Marvin Topper, Lessee  
Texaco Oil Co., Owner

#2275  
(Zoning File)

Allen & Bessie Kermisch  
Liberty & Milford Mill Roads  
2nd District

District Proposed: CCC District

Zone: BL

Size: 15,775 sq. ft., more or less

On Site: 2 trailers  
3 cars (no tags, one car for sale)  
2 bays  
3 nozzles  
3 entrances (no screening  
against residential  
property)  
2 spot lights (one 18' high &  
one 20' high)

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2 spot lights (one 18' high &  
one 20' high)

PROPOSED CCC DIST.  
Legal Owners of land -  
Allen & Bessie Kermisch -  
Holding as -  
Marvin Topper -  
Sp. Co. of Milford Mill -  
Liberty Road  
Containing 16.875 A+  
Zoned BL.

CERTIFICATE OF POSTING  
ZONING DEPARTMENT OF BALTIMORE COUNTY  
Towson, Maryland

District: 2nd Date of Posting: 5-29-52  
Posted for: Allen & Bessie Kermisch  
Petitioner: Allen & Bessie Kermisch  
Location of property: Sp. Co. Liberty & Milford Mill Rd. third running NW corner of lot 15  
Lot 15, 100' wide by 100' deep, 100' wide by 100' deep, 100' wide by 100' deep, 100' wide by 100' deep  
Location of sign: 2 spot lights on the southeast corner of Liberty & Milford Mill Rd.  
Remarks: 2 spot lights on the southeast corner of Liberty & Milford Mill Rd.  
Posted by: George R. Hummel Date of return: 5-29-52

June 21, 1952

\$22.00

RECEIVED of Albert Kermisch the sum of Twenty Two  
(\$22.00) Dollars, being cost of appeal to the Board of Zoning  
Appeals from the decision of the Zoning Commissioner denying the  
reclassification and a special permit for a gasoline service  
station at the southeast corner of Liberty and Milford Mill  
Roads.

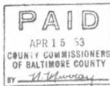
Zoning Commissioner

PAID  
JUN 25 1952  
COUNTY COMMISSIONERS  
OF BALTIMORE COUNTY  
By: Thomas J. Williams

April 13, 1953

RECEIVED OF Michael Paul Smith, Attorney for Albert Kermisch, et al, appellants, the sum of \$22.50, being cost of certified copies of papers filed in the matter of reclassification of property at the southwest corner of Liberty and Milford Mill Roads.

Zoning Commissioner



May 21, 1952

RECEIVED

RECEIVED of William T. Harwood the sum of Twenty three (\$23.00) Dollars, being cost of petition for reclassification and special permit, advertising, posting of property south west corner Liberty and Milford Mill Roads, The District of Baltimore County.

Zoning Commissioner

Hearing:  
Monday June 9, 1952  
at 1:00 P. M.



ORDERED by the Zoning Commissioner of Baltimore County this 21st day of May, 1952, that the subject matter of this petition be advertised in a newspaper of general circulation throughout Baltimore County and that the property be posted, as required by the Zoning Regulations and Act of Assembly aforesaid, and that a public hearing thereon be had in the office of the Zoning Commissioner of Baltimore County, Maryland, on the 21st day of June, 1952, at 1:00 o'clock P. M.

*Augusta J. Mulla*  
Zoning Commissioner  
of Baltimore County

ALBERT KERMSCH, ET AL  
VS.  
BOARD OF ZONING APPEALS OF  
BALTIMORE COUNTY, ET AL  
IN THE CIRCUIT COURT  
FOR BALTIMORE COUNTY  
LAW

The Court has considered the above entitled matter and has viewed the property.

The Court is of the opinion that the denial of the petition would be arbitrary and unjustifiable and that the property in question should be rezoned as commercial and the special permit granted. (T.B.G. 6/8/53)  
The action of the Board will be reversed.

JOHN B. GONTRUM  
JOHN B. GONTRUM

May 27, 1953

filed May 29, 1953

OPINION OF THE BOARD OF ZONING APPEALS  
OF  
BALTIMORE COUNTY

This is an appeal by Albert Kermisch from an Order of the Zoning Commissioner of Baltimore County dated June 13, 1952, denying the reclassification from an "A" Residence Zone to an "E" Commercial Zone and a special permit for a gasoline service station in regard to the property described in the said 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 Southwest corner of Liberty and Milford Mill Roads at Rockdale. The property on the South side of Liberty Road between Milford Mill Road and Abbie Place is zoned "A" Residential with the exception of a tract of land at the Southwest corner of Liberty Road and Abbie Place, which said tract of land has a frontage of approximately 200 feet on Liberty Road and is zoned "E" Commercial. The property between Etimiller Road and Rockdale Avenue on the North side of Liberty Road is zoned "A" Residential except for that portion lying between Euler Avenue and Milford Mill Road. The subject property is across Liberty Road from this latter described tract of land. It is a part of the development known as "Millvale" which has been developed exclusively by residential properties. There is at present two gasoline service stations located in this area besides three other special permits which have been granted recently, and this would enable additional service stations to be erected which would adequately provide for the needs in this general community.

The petitioner failed to show any need beyond this, or that there were any special extenuating circumstances why this Board should grant him a special permit for the property

in question. The petitioner admitted that he knew of the residential classification of this property at the time he purchased it; and consequently, he cannot now claim hardship for failure to reclassify and grant a special permit, nor that the property is not suitable for residential use. The case of Edwin J. Kinkner, et al., vs. Board of Zoning Appeals, Daily Record, June 26, 1952; states "A special exception means exactly what the ordinary grammatical use of the words imply, a specially permitted use in a particular area without reasoning it, granted only for overwhelming, and convincing reasons not applying to the whole area, and based on 'need', 'hardship' and other related foundations. In reviewing appeals in these situations, the Court is required to view the record to see whether or not the proof supports the Board's action. The burden on such an applicant is heavy and its showing must be convincing and clear."

The Board is of the opinion that the petitioner has not met this burden, and that the reclassification from an "A" Residence Zone to an "E" Commercial Zone and the granting of a special permit would be detrimental to the general welfare of the community; and it will, therefore, pass its Order denying the reclassification and special permit.

*U.S. Campbell*  
Chairman  
*James W. DeLuna*  
Secretary  
*Carl F. Fisher*  
Board of Zoning Appeals of  
Baltimore County

RE: PETITION FOR RECLASSIFICATION AND  
SPECIAL PERMIT FOR GASOLINE SERVICE  
STATION - E. W. Jorner Liberty and  
Milford Mill Road, and District -  
Allen & Beale Kermisch, Petitioners.

The appeal in the above entitled matter coming on for hearing before the Board of Zoning Appeals of Baltimore County on December 11, 1952, denying the reclassification from an "A" Residence Zone to an "E" Commercial Zone and a special permit for a gasoline service station in regard to the property described therein; and it appearing from the facts and evidence adduced at the appeal that the granting of the reclassification and the special permit would be detrimental to the general welfare of the community and for other reasons stated in the opinion; therefore,

It is this 26th day of March, 1953, Ordered by the Board of Zoning Appeals of Baltimore County that the Order of the Zoning Commissioner of Baltimore County, denying the reclassification from an "A" Residence Zone to an "E" Commercial Zone and a special permit for a gasoline service station, be and the same is hereby ratified and affirmed.

*U.S. Campbell*  
Chairman  
*James W. DeLuna*  
Secretary  
*Carl F. Fisher*  
Board of Zoning Appeals of  
Baltimore County

PETITION FOR RECLASSIFICATION AND  
SPECIAL PERMIT FOR GASOLINE SERVICE  
STATION - E. W. Jorner Liberty Road  
AND MILFORD MILL ROAD, SECOND DISTRICT,  
ALLEN AND BEALE KERMSCH, PETITIONERS  
BEFORE THE  
BOARD OF ZONING APPEALS OF  
BALTIMORE COUNTY

MEMORANDUM OF LAW ON BEHALF OF PETITIONERS

This appeal was taken from an Order of the Zoning Commissioner of Baltimore County, dated June 13, 1952, which refused reclassification of the subject property, from "A" Residential to "E" Commercial and also refused to issue a Special Permit to erect a gasoline service station thereon.

From the undisputed testimony in the record, the existing zoning on Liberty Road, between Rolling Road and Milford Mill Road, is almost entirely commercial on the north side of Liberty Road and is roughly fifty percent commercial on the south side of Liberty Road. In addition, on the south side of Liberty Road there are several non-conforming uses and the Consolidated Gas and Electric Company operates a transformer station and the Baltimore County Commissioners operate a sanitary sewage pumping station under Special Permits. The re-zoning of this area on Liberty Road has taken place since the Zoning Regulation was passed in January of 1945, with the greatest number being re-zoned during the year 1952. As a matter of fact, five parcels of land lying in this area were re-zoned from "A" Residential to "E" Commercial during the first six months of 1952, three parcels being located on the south side of Liberty Road and two being located on the north side.

It is true that the purpose of the Zoning Law is, of course, to devote general areas or districts to selected uses. The whole value of zoning lies in the establishment of more or less permanent districts, well planned and arranged. It is also true that there is a presumption that the original zoning was correct in considering applications for Special Permits. However, it is respectfully submitted that it is obvious from the zoning map and from the record in this case that the neighborhood has so greatly changed, insofar as zoning is concerned, since the Zoning Regulations were enacted in 1945, that

the Petitioners are legally entitled to re-zoning of their property.

The just and legal test for re-zoning was clearly and concisely stated by the Court of Appeals of Maryland in *Kracker vs. Weinberg*, 79 Atl. 2nd 387, at page 392:

"Where property is re-zoned, it must appear that either there was some mistake in the original zoning, or that the character of the neighborhood has changed to such an extent that such action ought to be taken."

To refuse re-zoning of the Petitioners' property not only results in preventing the owners from using it for its most suitable use, but for any practical use at all. Under these circumstances, as was stated by the Court of Appeals in the *Kracker vs. Weinberg* case, their property is being taken from them without compensation, and the owners would be denied a privilege which has been extended to practically all of its neighboring property owners on Liberty Road.

In addition, there was testimony that due to neighboring zoning and the peculiar size and shape of the lot in question, it could not be satisfactorily or feasibly used for residential development, although the most suitable use was for a gasoline service station. The protestants testified that they objected to a Special Permit being issued to erect a gasoline station at this location although they admitted that they did not protest the issuance of Special Permits to erect filling stations on three other properties located on the same side of Liberty Road and immediately to the west of the Petitioners' property. As a matter of fact, the record shows that they went so far as to give written approval to the applications for those Special Permits. Regarding a similar situation, the Court of Appeals said in the *Kracker vs. Weinberg* case, *supra*:

"If a residential neighborhood desires protection by a border of unused property, necessarily it must provide its own property, not appropriate its neighbors, for this purpose. \* \* \* Property owners in a residential district cannot create a 'no man's land' at the border of

their own property, thereby depriving the owners of their property in an adjoining district from making any use at all of his property or any use for which it is 'peculiarly suitable' - especially when the adjoining district has been zoned for suitable uses for fifteen years."

Certainly, regulations which restrict property within or upon the boundary of a commercial zone to a use which the property is not adapted is unreasonable, and thereby destroys the greater part or all of its value. In this case, the protest is clearly an attempt to prevent the Petitioners from using their property for its most suitable use and such action is capricious and unreasonable. There is little doubt that it is inconsistent with proper zoning to permit public excitement and clamor to deny the Petitioners the re-zoning to which they are entitled and to permit arbitrary interference with the lawful and legitimate use of property.

As the Court of Appeals stated in *Northwest Merchants Terminal vs. O'Rourke* 171 Md. 171, at page 190, (also quoted by Judge Murray in *Inland v. Kintner et al vs. Board of Zoning Appeals for Baltimore County*, Daily Record, June 26, 1952):

"There is no magic in the word zoning, but there is a wide difference between the exercise of the police power in accordance with the comprehensive zoning plan, which imposes mutual restrictions and confers mutual benefits on property owners, and arbitrary permission to 'A' and prohibition to 'B' to use their property, at the pleasure of neighbors or at the whim of others."

In this same case the Court in quoting from the New York case of *Arverne Bay Construction Company vs. Thatcher* 278 N.Y. 222, stated:

"An ordinance which unreasonably so restricts the use of property that it cannot be used for any reasonable purpose, goes, it is plain, beyond regulation, and must be recognized as a taking of property. The only substantial difference, in such case, between restriction and the actual taking,

is that the restriction leaves the owner subject to the burden of payment of taxation, while outright confiscation would relieve him of that burden."

The record is replete with testimony of experts that this is a very logical spot for the location of a service station, that it is required due to the tremendous expansion and development of the Liberty Road area, that its location is at the widest spot on Liberty Road, that there has been a definite change in the zoning characteristics of the neighboring properties on Liberty Road since January 1, 1945, and that the property is peculiarly suitable for a gasoline service station. In addition, there was also testimony that the location of a service station at this point would not create any depreciation in value of neighboring real estate, nor would it be in any way detrimental to the health of the community. Therefore, it is respectfully submitted by the Petitioners, that they have fully met the burden placed upon them in their application for re-zoning to "B" Commercial and for a Special Permit to erect a gasoline service station at this location.

Respectfully submitted,

Michael Paul Smith  
Michael Paul Smith

W. Lee Harrison  
W. Lee Harrison  
Attorneys for Petitioners

OFF.  
MA. 5381  
MA. 9412

FILED JUN 21 1952

RECORD  
LJ-4844  
FD-6582

# KERMISCH'S REAL ESTATE

*Albert Kermisch, Realtor*  
PROPERTIES - BOUGHT - SOLD - MANAGED  
1318 W. NORTH AVENUE  
BALTIMORE, MARYLAND

June 20, 1952

Board of Zoning Appeals of  
Baltimore County  
200 Washington Ave.  
Towson 4, Maryland

Gentlemen:

I enclose find my check for \$12.00.

I wish to appeal in re: Petition for Reclassification, from and  
"A" Residence Zone to an "B" Commercial  
Zone and a Special Permit for Gasoline  
Service Station - i.e., Cor. Liberty &  
Milford Mill Roads, Albert and Louise  
Kermisch, Petitioners

Very truly yours,

Albert Kermisch  
Albert Kermisch

7/7  
1/30

AK/SLG

RE: Petition for Reclassification from an "A" Residence Zone to an "B" Commercial Zone and a Special Permit for a Gasoline Service Station - i.e., Cor. Liberty & Milford Mill Roads, Second District of Baltimore County, Allen & Louise Kermisch, Petitioners

The property which is the subject of this petition is located at the southwest corner of Liberty and Milford Mill Roads, in the Second District. The lot in question is a part of the development known as "Millvale" where approximately one hundred cottages have been built and occupied for residential use. The land between Milford Mill and Ellen Roads, which lies to the west, is zoned "A" residential with the exception of the property at the southeast corner of Liberty and Milford Mill Roads, having a frontage of approximately four hundred feet on Liberty Road and nine hundred feet on Milford Mill Road, being the property of Mr. August Mathan, is also zoned "A" residential.

All the property on the south side of Liberty Road between Milford Mill Road and Abble Place, a distance of approximately twelve hundred feet is zoned "A" residential with the exception of a lot at the southeast corner of Liberty Road and Abble Place which has a frontage of two hundred feet on Liberty Road. This lot is zoned "B" commercial.

On the north side of Liberty Road all the property between Etchell Road and Rockdale Avenue is zoned "A" residential with the exception of the block between Bulter Avenue and Milford Mill Road. The property in question is immediately across Liberty Road from this commercially zoned property.

Mr. John B. Galtner, Jr. who developed "Millvale" stated that he sold the lot in question for residential use, representing it as such but did not restrict the lot as he did the other residential lots in "Millvale". Mr. Mathan who owns the property heretofore described testified that it is his intention to continue the use of his property residentially. The lots to the west of the lot in question extending to the commercial lot at the southeast corner of Ellen Road had been improved for residential use.

In view of the foregoing it appears that the reclassification to commercial use and the granting of a special permit for the erection of a gasoline service station on the property in question would break into an area which is otherwise being used for cottages and, therefore, would be detrimental to the general welfare of the community. It is true that this lot lies across Liberty Road from commercial property. However, if this property is zoned commercially it would appear that the Mathan property would have the same right and, therefore, the area would be opened up to commercial uses to the detriment of surrounding residential properties.

It is this 13<sup>th</sup> day of June, 1952, ORDERED by the Zoning Commissioner of Baltimore County that the reclassification of the property or area described in the petition and a special permit to use same for a gasoline service station, be and the same is hereby denied.

Charles E. Smith  
Zoning Commissioner  
of Baltimore County

## PETITION FOR (1) ZONING RECLASSIFICATION AND (2) SPECIAL PERMIT

To the Zoning Commissioner of Baltimore County:

~~xxxx~~ vs. Allen & Louise Kermisch Legal Owners

All that parcel of land at the southwest corner of Liberty and Milford Mill Roads, thence running northeasterly and westerly on the southeast side of Liberty Road 115 feet with an irregular rectangular depth southeasterly of 125 feet and bisecting on the north side of Milford Mill Road.

herby petition (1) that the zoning status of the above described property be reclassified, pursuant to the Zoning Law of Baltimore County, from an "A" Residence Zone to an "B" Commercial Zone; and (2) for a Special Permit, under said Zoning Law and Zoning Regulations of Baltimore County, to use the above described property, for GASOLINE SERVICE STATION.

Property to be posted as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of the above reclassification and Special Permit, 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 W. Blair

Allen & Louise Kermisch  
Legal Owners

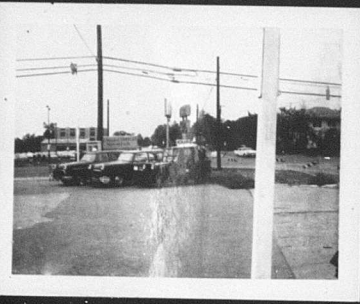
3302 Liberty Heights Blvd.  
Baltimore, Md.

2274  
69-2  
17A  
20/11

L 4846

Med 5252

1609821  
 June 29, 1967  
 11:45 AM Texas  
 8101 Fidelity Rd



1609821  
 June 29, 1967  
 11:45 AM Texas  
 8101 Fidelity Rd



1609821  
 June 29, 1967  
 11:45 AM Texas  
 8101 Fidelity Rd



1609821  
 June 29, 1967  
 11:45 AM Texas  
 8101 Fidelity Rd



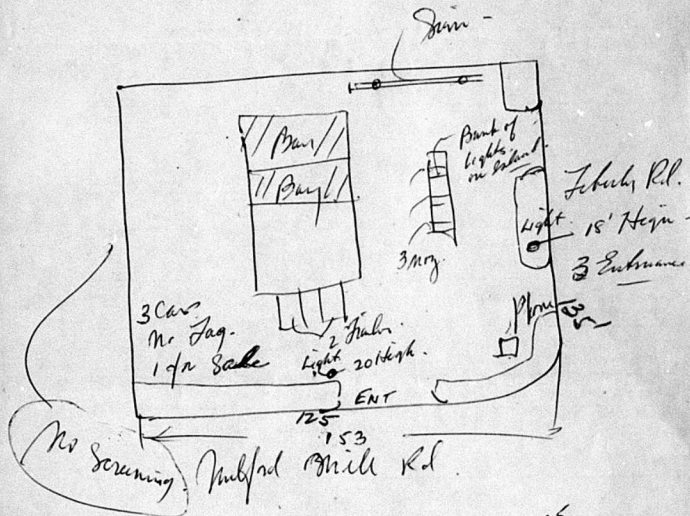
# ACCESSORY BUILDINGS IN RESIDENCE ZONES

SECTION 402.2 - Separate cooking facilities and a separate bathroom shall be provided for each family unit.

## CONVERSION OF ONE-FAMILY DWELLINGS MINIMUM DIMENSIONS

| Zone  | Width of Lot in Feet at Front Building Line |               |                 | Lot Area In Square Feet              |                 | Side Yards-Feet    |                    |
|-------|---------------------------------------------|---------------|-----------------|--------------------------------------|-----------------|--------------------|--------------------|
|       | Duplex                                      | Semi-Detached | Ea. Add. Family | Two Families                         | Ea. Add. Family | Min. for One       | Sum of Both        |
| R. 40 | 175                                         | 175           | 25              | 50,000                               | 10,000          | Int.-25<br>Cor.-50 | Int.-60<br>Cor.-75 |
| R. 20 | 125                                         | 125           | 25              | 25,000                               | 7,500           | Int.-20<br>Cor.-35 | Int.-50<br>Cor.-60 |
| R. 10 | 90                                          | 100           | 15              | 12,500                               | 4,000           | Int.-20<br>Cor.-30 | Int.-40<br>Cor.-50 |
| R. 6  | 80                                          | 90            | 15              | 10,000                               | 3,000           | Int.-15<br>Cor.-25 | Int.-35<br>Cor.-40 |
| R. G. | 70                                          | 80            | 10              | Interior<br>8,050<br>Corner<br>9,200 | 2,500           | Int.-15<br>Cor.-25 | Int.-30<br>Cor.-40 |
| R. A. | 70                                          | 80            | 10              | Interior<br>8,050<br>Corner<br>9,200 | 2,500           | Int.-15<br>Cor.-25 | Int.-30<br>Cor.-30 |

Proposed  
CCC  
Dist  
Marvin Jaffee  
8101 Liberty Rd  
2275



135  
125  
675  
260  
135  
16775