

OPINION OF THE BOARD OF ZONING APPEALS
OF
BALTIMORE COUNTY

This is an appeal by Howard E. Holland from an Order of the Zoning Commissioner of Baltimore County dated August 22, 1952, granting 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 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 North side of the Baltimore National Pike, 450 feet East of Spur, leading Northerly to Ingleside Avenue, First Election District of Baltimore County. The location for the proposed gasoline station is between a Drive-In Restaurant and the WFER Broadcasting Station and also across from a gasoline station on the other side of the Baltimore National Pike.

This highway is a very heavily traveled route and does not lend itself particularly for the development of residential properties; and the Board is of the opinion that this particular tract of land is more suitable for commercial use and would not be detrimental to the health, safety, or general welfare of the community; and will, therefore, pass its Order granting the reclassification from an "A" Residence Zone to an "E" Commercial Zone and a Special Permit for a gasoline service station; subject, however, to the following restrictions and conditions:

1. The filing of a plat bearing the approval and signature of the Baltimore County Planning Commission and the Maryland State Roads Commission.
2. That the exhaust from the lift in the Service

3. That the entrance to the rest rooms, facing a residential area, shall be so screened as to make them invisible.
4. There shall be sufficient screening, such as a well constructed fence or shrubbery between the service station property and any residential area on which it may border.
5. That the flood-lights shall be so directed as not to cast any glare or reflection into any residential areas or on the road-bed of the Baltimore National Pike.
6. All signs shall be erected separately and shall not be attached to the flood-light poles. (All signs require a sign permit issued by the Buildings Engineer).

H. E. Campbell
Chairman
James W. Williams

Board of Zoning Appeals of
Baltimore County

RE: PETITION FOR A RECLASSIFICATION AND A SPECIAL PERMIT FOR A GASOLINE SERVICE STATION - N. S. Baltimore National Pike, 450 ft. E. of Spur leading northerly to Ingleside Avenue, First District - William T. and Florence C. Herman, Petitioners.

The appeal in the above entitled matter coming on for hearing before the Board of Zoning Appeals of Baltimore County on October 16, 1952, granting 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 not be detrimental to the health, safety, and general welfare of the community; therefore, It is this 26th day of November, 1952, Ordered by the Board of Zoning Appeals of Baltimore County that the Order of the Zoning Commissioner of Baltimore County granting 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; subject, however, to the following restrictions and conditions:

1. The filing of a plat bearing the approval and signature of the Baltimore County Planning Commission and the Maryland State Roads Commission.
2. That the exhaust from the lift in the Service Station shall be muffled so as not to create any noise.
3. That the entrance to the rest rooms, facing a residential area, shall be so screened as to make them invisible.
4. There shall be sufficient screening, such as a well constructed fence or shrubbery between the service station

5. That the flood-lights shall be so directed as not to cast any glare or reflection into any residential areas or on the road-bed of the Baltimore National Pike.
6. All signs shall be erected separately and shall not be attached to the flood-light poles. (All signs require a sign permit issued by the Buildings Engineer).

H. E. Campbell
Chairman
James W. Williams

Board of Zoning Appeals of
Baltimore County

RE: PETITION FOR A RECLASSIFICATION AND A SPECIAL PERMIT FOR A GASOLINE SERVICE STATION - N. S. Baltimore National Pike, 450 ft. E. of Spur leading northerly to Ingleside Avenue, First District - William T. and Florence C. Herman, Petitioners.

Upon hearing on petition, first, for reclassification of the parcel of land described therein from an "A" Residence Zone to an "E" Commercial Zone and second, for a special permit to use said property for a gasoline service station, and it appearing that by reason of location being on a heavily traveled boulevard; also that said Service Station will be located within the vicinity of existing gasoline service stations; it is the opinion of the Acting Zoning Commissioner that in view of the above together with the fact that it will have a tendency to keep the service stations in a confined area, the said special permit petitioners, should be granted, therefore:

- It is this 22nd day of August, 1952, ORDERED by the Acting Zoning Commissioner of Baltimore County, that the aforesaid special permit, be and the same is hereby granted and that the property described therein be used for a gasoline service station, subject, however, to the compliance with the following provisions:
1. The filing of a plat bearing the approval and signature of the Baltimore County Planning Commission, the Highway Department of Baltimore County and the Maryland State Roads Commission.
 2. That the exhaust from the lift in the Service Station shall be muffled so as not to create any noise.
 3. That the entrance to the rest rooms, facing a residential area, shall be so screened as to make them invisible.
 4. There shall be sufficient screening, such as a well constructed fence or shrubbery between the service station property and any residential area on which it may border.
 5. That the flood-lights shall be so directed as not to cast any glare or reflection into any residential areas or on the road-bed of the Baltimore National Pike.
 6. All signs shall be erected separately and shall not be attached to the flood-light poles. (All signs require a sign permit issued by the Buildings Engineer).

J. H. Williams
Acting Zoning Commissioner
of Baltimore County

PETITION FOR (1) ZONING RECLASSIFICATION
(2) SPECIAL PERMIT
To the Zoning Commissioner of Baltimore County:
Accused by, William T. Herman and Florence C. Herman, Legal Owner

All that parcel of land on the north side of Baltimore National Pike (Baltimore Avenue Extended) in the 1st District of Baltimore County, beginning 150 feet east of the spur leading northerly to Ingleside Avenue, thence westerly, on the north side of Baltimore Pike, 150 feet with an average depth northerly of 200 feet.

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 "E" 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.

1. 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.

William T. Herman
Florence C. Herman
Legal Owner

James W. Williams
Acting Zoning Commissioner

COMM. ONLY
NO. 504. PMT.
(J. H. W. MURKIN)
ORDER

ORDERED by the Zoning Commissioner of Baltimore County this 17th day of August, 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 19 day of August, 1952, at 11:00 o'clock A.M.

Zoning Commissioner
of Baltimore County

RECORDED of J. Leo Smith, Attorney for protestants, the sum of \$5.20 being cost of certified copy of petition and other papers filed in the matter of reclassification and a special permit for gasoline service station, north side Baltimore National Pike, 1st District.

Zoning Commissioner

PAID
JAN 9 - 1953
COUNTY COMMISSIONERS
OF BALTIMORE COUNTY
by *James W. Williams*

HOWARD K. HOLLAND
VS.
H. GUY CAMPBELL,
CARL F. FLORENCE,
DANIEL V. MERRAN,
constituting the
BOARD OF ZONING APPEALS
FOR BALTIMORE COUNTY

This is an appeal from a decision of the Board of Zoning Appeals re-classifying, upon the application of William T. and Florence C. Merman, the owners, of a lot 150' wide and 200' deep on the north side of Edmondson Avenue from (a) residential to (b) commercial and the granting of a special permit permitting the erection of a gasoline service station thereon. The territory to the east of this lot on the north side to the intersection of Edmondson Avenue and Johnnycake Road, a distance of approximately 300', is all zoned commercial. The property immediately adjacent to this lot on the west is likewise zoned commercial, so that it appears that this lot is entirely surrounded by property zoned for commercial use (one of which it is true is a non-conforming use) and for this reason the lot is practically useless and valueless in its (a) residential classification. Under these facts, question as to whether the classification was not actually commercial when the zoning regulations were adopted. This is due to the fact that there was some difficulty in determining the exact beginning point of the commercial area east of Ingleside Avenue, and it would probably require a survey to accurately determine whether or not the lot in question is within a commercial zone.

It is that as it may be, the record abundantly shows that the re-classification was proper and justified. On the state of facts here presented the correctness of the Board's action falls precisely within the legal principles set out by this Court in the case of Kintner, et al., vs. Board of Zoning Appeals, Daily Record, May 29th, 1952. Here the showing is that there was an error in the original classification of this property as (a) residential, because under that classification as has been remarked, the property has no real value, and cannot be used profitably or otherwise, for the uses permitted under such a classification. It is entirely in a commercial zone, and should undoubtedly have so been classified in the first

instance. Not having been done so, the present re-classification is not only proper, but legally required. There is no debate whatever on this record in this respect. The Board was clearly correct in this phase of its action and will be affirmed.

The special permit which the Board granted for a gasoline filling station falls in a different category.

As has been stated many times, a special permit or a special exception can only be granted for overwhelming and convincing reasons, based on the need or hardship which the owner and his property will suffer if it is refused. The burden of showing these pre-requisites is on the applicant, and his showing must be convincing and clear. *BOATH V. BALTIMORE*, 187 Md., 296; *CITY V. BIRD*, 191 Md., 632; *OLSON V. KESWICK IMPROVEMENT ASSOCIATION* 70 A.(2d) 164. *CLEVELAND V. MAYOR AND CITY COUNCIL* 44 A.(2d) 49.

This record does not attempt to show any hardship involved in the property here dealt with if the special permit for a gasoline filling station is denied. On the other hand the attempt is made to show a need for the use which this special exception will permit.

However, the record shows an abundance of filling stations on the north side of Edmondson Avenue between Ingleside Avenue and this property, although there is none between Johnnycake Road and this property which is only a very short distance away between 300 and 500', depending upon which estimate of that distance is accurate. There are no such facilities west of this property on the north side of Edmondson Avenue until the Howard County line is reached. There is a station directly across from this property on the south side of Edmondson Avenue and one further west on the south side at Winter's Lane.

Summarized the testimony shows that there are three filling stations 1200' east of this location on the north side of Edmondson Avenue and three in the west Edmondson area, about 1200' west of this property, on the south side of Edmondson Avenue. There is a total of eleven stations within a half mile of this property in each direction.

With this testimony it seems to me clear that the area involved is well served with filling stations, and that the record conclusively fails

to show any need for another station either at this location or at any other location in the vicinity. Modern day travel undoubtedly requires adequate service stations for motorists, but it does not follow that each brand of gasoline is required for this purpose, and that each gasoline distributor is entitled to a filling station, on the basis of need or hardship. It is only required that a reasonable amount of these facilities be available, not that every brand of gasoline must be available in every block on a heavily travelled through highway.

The case is unlike that of *Killicott vs. Baltimore* 230 Md., 170, where a special permit for a filling station was approved by the Court of Appeals. There the nearest filling stations to the lot in question were respectively one-half mile west and a mile east, and even with regard to that distance, the Court said: "That provision may possibly be regarded as sufficient for the traffic", but further holding that it did not seem to the Court to be so clearly true as to justify the reversal of the Board's approval of the special permit.

It may be true that this lot does have advantages for a filling station for the owners' profit, but as the Court said in the *Killicott* case: "That alone would not be sufficient for accepting it".

The case of *Young Men's Hebrew Association, et al. vs. Board of Standards and Appeals of the City of New York*, 154 N.Y., page 751, seems precisely in point. There the Court of Appeals of New York reversed the grant of a variance permitting the erection of a gasoline filling station in a business zone. It held that the record failed to show any unnecessary hardship which would be inflicted by the denial of the application although there was testimony that there was a loss of two or three hundred dollars a week from the use to which the property was then subjected. As to this the Court said:

"This data, it may be presumed, does not establish that the property of the intervenor respondent can be applied to profitable business use only as a gasoline service station. * * * it is manifest from the general purpose underlying any zoning act that the power to vary the application of the act is to be exercised sparingly. Unusual circumstances alone justify relaxation in peculiar cases of the restrictions imposed by the

statute * * * the financial situation or pecuniary hardship of a single owner affords no adequate ground for patting forth this extraordinary power affecting other property owners as well as the public."

It will be observed that there is not even any showing here of pecuniary hardship to the owners, and that the record is barren of any facts to show that the property is not adaptable or available for the permitted uses under the present commercial classification. (See *COOK V. BOARD OF ADJUSTMENT OF CITY OF CHICAGO* 197 A., 191.)

The Maryland cases dealing with gasoline filling stations as collected and analyzed in *Bauer vs. Tribbett* 190 Md., 6, are not in point. Most of them deal with special ordinances regulating or prohibiting filling stations and not with the problem as affected by zoning regulations.

In support of the view and conclusions here reached see the case of *American Oil Company vs. Mayor and City Council of Baltimore, Baltimore City Court, Daily Record, March 10, 1952.*

This record conclusively shows that as legally construed, there is no need for a filling station at the site under discussion, that neither the owners nor their property will suffer any hardship by the denial of the special permit, and that they have failed to meet the burden imposed upon them by the law to show the existence of facts legally sufficient to constitute need and hardship, which is the only basis upon which a special exception or special permit can be granted as a matter of law.

This being true it follows that the Board's action in approving the special permit applied for was erroneous, and accordingly that part of its order is reversed.

John W. Holland
HOWARD K. HOLLAND, JUDGE

July 14, 1952

\$20.00

RECEIVED the sum of Twenty (\$20.00) Dollars, being cost of petition for Special Permit for the T. T. Merman, property North side Baltimore National Pike, 150 feet east of the spot leading northward to Ingleside Avenue, 1st District of Baltimore County.

Zoning Commissioner

Hearings:
Monday, August 4, 1952
at 11:00 A. M.
Baltimore, Maryland Building
Towson, Maryland

PAID
JUL 17 1952
COUNTY COMMISSIONERS
OF BALTIMORE COUNTY

September 2, 1952

\$22.00

RECEIVED of Howard K. Holland 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 Acting Zoning Commissioner granting reclassification and a special permit for a gasoline service station, north side of Baltimore National Pike, 150 feet east of spot leading northward to Ingleside Avenue, 1st District, William T. and Florence C. Merman, petitioners.

Zoning Commissioner

PAID
SEP 2 - 1952
COUNTY COMMISSIONERS
OF BALTIMORE COUNTY



RECD SEP 2 1952
THE HOLLAND MFG. COMPANY

MANUFACTURERS OF
TACKS - NAILS - RIVETS - STAPLES
THUMB TACKS - GLAZIER POINTS

BALTIMORE-31, MARYLAND
August 28, 1952

Zoning Commissioner
Baltimore County
Towson, Maryland

Dear Sir:

Enclosed is check for \$22.00 in connection with my request for appeal of the order to reclassify and grant special permit for Gasoline Service Station - T. T. Merman National Pike, 150 ft. E. of spot leading northward to Ingleside Ave. First District, W. T. & Florence C. Merman, petitioners.

I am

Very truly yours

Howard K. Holland
Howard K. Holland
31 Overbrook Road
Cottoville 28, Md.

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: *1st*
Posted for: *Special Permit to erect Gasoline Service Station*
Petitioner: *William T. Merman*
Location of property: *150 feet east of spot leading northward to Ingleside Ave. 1st District, W. T. & Florence C. Merman, petitioners.*
Location of sign: *150 feet east of spot leading northward to Ingleside Ave. 1st District, W. T. & Florence C. Merman, petitioners.*
Remarks:
Posted by: *George A. Hammond*
Date of return: *7-23-52*

WE ARE JUSTLY PROUD OF THE QUALITY OF HOLLAND PRODUCTS