

JOHN H. MURPHY, III

vs.

H. GUY CAMPBELL  
CARP F. BOHREN  
DANIEL W. HUBERT, Constituting the  
BOARD OF ZONING APPEALS FOR  
BALTIMORE COUNTY

IN THE  
CIRCUIT COURT

DONALD M. TYRREMAN  
MARGARET H. TYRREMAN, Intervenor

FOR

JOHN H. MURPHY, III

BALTIMORE COUNTY

vs.

H. GUY CAMPBELL  
CARP F. BOHREN  
DANIEL W. HUBERT, Constituting the  
BOARD OF ZONING APPEALS FOR  
BALTIMORE COUNTY

At Law

LILLIE A.M. LYNCH, Intervenor

These appeals question the validity of the action of the Board of Zoning Appeals reclassifying the property here involved from an "A" residential to an "B" commercial zone and granting a special permit herein for a gasoline filling station.

The testimony is rather sparse and it would serve no useful purpose to analyze it.

If the reclassification is sustained part of the land will be improved by the erection of an office, sales room and storage place for the National Airco Company, which has its manufacturing plant in Baltimore City.

The property fronts approximately 225 feet on the Baltimore National Pike and is shaped in the form of a triangle.

The legal principles governing the Court in this type of litigation are now definite and certain and they too, need no elaboration. They may be found in the case of Kintner, et al vs.

Board of Zoning Appeals of Baltimore County, decided in this Court and appearing in the Daily Record of June 26, 1952, and in the decision of the Court of Appeals of Maryland in Wakefield et al vs. Kraft et al, 96 A (2nd) 27.

These cases hold that to justify reclassification, i.e., re-zoning, it must appear that either there is a mistake in the original reasoning or that the character of the neighborhood has changed to an extent which justifies the amendatory action.

In the Wakefield case, the court said:

"It is not the function, duty or right of a court to sons or re-zone, but only to determine whether the legislative body has properly applied the governing law of the facts. If there is room for reasonable debate as to whether the facts justify the municipal legislature in deciding the need for its enactment, it must be upheld."

Suffice it to say here that this record clearly shows a change in the composition of the neighborhood since the residential classification was adopted. Commercial uses have sprung up in reasonable proximity to the property here involved, on either side of it, and almost immediately on the other side of the Baltimore National Pike a reclassification has been approved permitting the operation of a drive-in movie.

Additionally the record here shows at least debatable if not clearly, that this lot is practically useless for residential purposes.

The action of the Board in reclassifying this property certainly can not be characterized as arbitrary or capricious. The Board has done its best to retain the original residential classification of the property in this area fronting on the Baltimore National Pike. It has been unable to do so because of over-riding legal and factual situations.

To continue the present residential classification of this property would amount to confiscation in view of all of the circumstances disclosed by this record.

In my view therefore, the record clearly shows that the Board acted within the legal limits imposed upon it in granting the reclassification and in approving the special permit for a gasoline filling station.

Its order to this effect is accordingly affirmed.

J. Howard Murray, Judge

RE: PETITION FOR RECLASSIFICATION FROM AN "A" RESIDENCE ZONE TO AN "B" COMMERCIAL ZONE AND A SPECIAL PERMIT FOR A GASOLINE SERVICE STATION - S. E. Cor. Edmondson Ave. Ext'd. and Commonwealth Ave., 1st District - Lillie H. A. Lynch, Petitioner.

The appeal in the above entitled matter coming on for hearing on the 26th day of March, 1953, before the Board of Zoning Appeals of Baltimore County from an Order of the Zoning Commissioner of Baltimore County dated February 10, 1953, denying the reclassification from an "A" Residence Zone to an "B" Commercial Zone and denying 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 reclassification from an "A" Residence Zone to an "B" Commercial Zone and the granting of a special permit for gasoline service station would not be detrimental to the general welfare of the community and for reasons set forth in said opinion; therefore,

It is this 7<sup>th</sup> day of May, 1953, Ordered by the Board of Zoning Appeals of Baltimore County that this property be reclassified from an "A" Residence Zone to an "B" Commercial Zone and that a special permit for gasoline service station be granted.

H. Guy Campbell  
Chairman  
Daniel W. Hubert

Approved:  
County Commissioners  
of Baltimore County  
By: Carl F. Todd  
Board of Zoning Appeals of  
Baltimore County  
APR 1 1954

2433-RS  
MMP  
#1-B  
E-F-S-V

OPINION OF THE BOARD OF ZONING APPEALS OF BALTIMORE COUNTY

This is an appeal by Lillie H. A. Lynch from an Order of the Zoning Commissioner of Baltimore County dated February 10, 1953, denying the reclassification from an "A" Residence Zone to an "B" Commercial Zone and denying 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 northeast corner of Edmondson Avenue Extended and Commonwealth Avenue in the First District.

From the examination of the Zoning Map of Baltimore County and from the testimony in this case and also from the examination of the property in question and the surrounding neighborhood by the members of the Board of Zoning Appeals, it is apparent that there has been considerable change in the conditions since the original zoning, and several tracts of land have been reclassified to other than residential uses. The property in question is located on a heavily traveled dual lane highway and is close to other existing commercial areas, including gasoline service stations and other commercial enterprises. Across the highway from this property there has been a reclassification of a large tract of land permitting the operation of a Drive-In Theatre.

One of the protestants admitted that the property could not be used for residential purposes and that some of the property around this lot was not adapted for residential development. There is a development known as Lincoln Park and also an adjoining residential development which are fairly close to this property in question, both of which no doubt

could be expanded as there is much unimproved land off the Edmondson Highway.

The Board is of the opinion that this property should be reclassified and will, therefore, pass its order granting the reclassification from an "A" Residence Zone to an "B" Commercial Zone and the granting of a special permit for a gasoline service station.

H. Guy Campbell  
Chairman  
Daniel W. Hubert  
Carl F. Todd  
Board of Zoning Appeals of  
Baltimore County

Mr. Augustine J. Muller  
Zoning Commissioner  
Towson 4, Maryland

Re: Petition for Reclassification from an "A" Residence Zone to an "B" Commercial Zone and a Special Permit for a Gasoline Service Station - S. E. Cor. Edmondson Ave. Ext'd. and Commonwealth Ave., 1st Dist. Lillie H. A. Lynch, Petitioner.

Mr. Commissioner:

Please enter an appeal to the Board of Zoning Appeals of Baltimore County from the Order of the Zoning Commissioner dated February 10, 1953 in the above application for reclassification and special permit, and forward of the record.

Arthur Paul Smith  
Attorney for Petitioner

Dated February 12, 1953

3/24/53 10:30  
J. Howard Murray

FILED FEB 13 1953

RE: PETITION FOR RECLASSIFICATION FROM AN "A" RESIDENCE ZONE TO AN "B" COMMERCIAL ZONE AND A SPECIAL PERMIT FOR A GASOLINE SERVICE STATION - S. E. Cor. Edmondson Ave. Ext'd. and Commonwealth Ave., 1st District - Lillie H. A. Lynch, Petitioner.

The property which is the subject of this petition is located at the southeast corner of Edmondson Avenue, Extended, and Commonwealth Avenue, First District. This property was the subject of a petition for reclassification in February 1952. The Order of the Zoning Commissioner dated March 11, 1952 stated in part as follows:

"Due to the fact that there is sparse residential development on this section of the Baltimore National Pike at the present time with a large residential development planned at the northeast corner of the Pike and Ingleside Avenue, and the prospect of another development to the west of this property, it is the opinion of the Zoning Commissioner of Baltimore County that, that portion of the Baltimore National Pike between the commercially zoned areas at Ingleside Avenue and the commercially zoned areas at Rolling Road should be reserved for residential use for the reason that the setting up of commercial areas could not be detrimental to the general welfare of the residential properties existing and planned in this area, and the reclassification should be denied."

It is the opinion of the Zoning Commissioner of Baltimore County that for the reasons set forth in the excerpt of the aforesaid Order, the pending petition for reclassification should be denied. It is true that changes are planned which will affect this portion of Edmondson Avenue, Extended, between Ingleside Avenue and Rolling Road. The major change is the fact that the Beltway is proposed to cross Edmondson Avenue, Extended, to the east of the property in question. It is difficult to foresee whether or not the construction of this Beltway as proposed would adversely affect the properties in the immediate area and make them unsuitable for residential use. It is the opinion of the Zoning Commissioner that the policy of protecting this portion of the road for residential use should be continued until such time as the changes which are planned prove

that the area is untenable for residential use.

It is this 12th day of February, 1952, ORDERED by the Zoning Commissioner of Baltimore County that the aforesaid petition for reclassification, from an "R" Residence Zone to an "M" Commercial Zone and a special permit for a gasoline service station be and the same are hereby denied.

*George H. Johnson*  
Zoning Commissioner  
of Baltimore County

✓  
11/12/52  
PETITION FOR (1) ZONING RECLASSIFICATION  
(2) SPECIAL PERMIT  
2433 E  
✓  
MPP  
R1-B

To the Zoning Commissioner of Baltimore County:

I, owner *Killie M. A. Lynch* Legal Owner

All that parcel of land at the southeast corner of Commonwealth Avenue, 1st District of Baltimore County, thence easterly on the south side of Commonwealth Avenue, thence southerly on the east side of Commonwealth Avenue, thence southerly on the west side of Center Avenue 100 feet, thence north 16 degrees 20 minutes east 70 feet, thence north 73 degrees 54 minutes west 100.11 feet to the east side of Commonwealth Avenue and thence southerly on the east side of Commonwealth Avenue 100 feet to the right being the property of Killie Lynch, as shown on plot also filed with the Building and Zoning Department.

I, the undersigned, do hereby petition the Zoning Commissioner of Baltimore County, to use the above described property for Gas Service Sta.

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.

*Killie M. A. Lynch*  
Legal Owner  
*223 N Monument*  
Address

11/12/52  
MPP  
R1-B

100 feet, thence southerly on the east side of Commonwealth Avenue, thence southerly on the east side of Commonwealth Avenue, thence southerly on the west side of Center Avenue 100 feet, thence north 16 degrees 20 minutes east 70 feet, thence north 73 degrees 54 minutes west 100.11 feet to the east side of Commonwealth Avenue and thence southerly on the east side of Commonwealth Avenue 100 feet to the right being the property of Killie Lynch, as shown on plot also filed with the Building and Zoning Department.

I hereby petition (1) that the zoning status of the above described property be reclassified, pursuant to the Zoning Law of Baltimore County, from an "R" Residence Zone to an "M" 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 Gas Service Sta.

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.

*Killie M. A. Lynch*  
Legal Owner  
*223 N Monument*  
Address

MPP  
R1-B  
11/12/52

CERTIFICATE OF POSTING  
ZONING DEPARTMENT OF BALTIMORE COUNTY  
Towson, Maryland

# 2433

District: 1st Date of Posting: 12-3-52  
Posted for: Gas Service Station  
Petitioner: Killie M. A. Lynch  
Location of property: S.E. corner of Commonwealth Ave. and 1st Dist. on the S.E. corner of Center Ave. on the S.E. corner of Center Ave. on the S.E. corner of Center Ave. on the S.E. corner of Center Ave.  
Remarks: George H. Johnson  
Posted by: George H. Johnson Date of return: 12-4-52

December 1, 1952

\$29.00  
RECEIVED of William T. Hirsman the sum of Twenty Nine (\$29.00) Dollars, being cost of petition of Killie M. Lynch for reclassification and a special permit to use property at southeast corner of Commonwealth Ave. and Commonwealth Avenue, 1st District.

Zoning Commissioner

Hearing:  
Wednesday, Dec. 17, 1952  
at 11:00 a.m.  
basement of  
Berkford Building  
Towson, Md.

PAID  
DEC 1 - 1952  
COUNTY COMMISSIONERS  
OF BALTIMORE COUNTY  
By *George H. Johnson*

2433-RS

April 1, 1953

\$22.00  
RECEIVED of William T. Hirsman 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 special permit for a gasoline service station, Baltimore National Pike, 1st District.

Zoning Commissioner

PAID  
APR 1 - 1953  
COUNTY COMMISSIONERS  
OF BALTIMORE COUNTY  
By *George H. Johnson*

2433

Sept. 5, 1953

\$8.20  
RECEIVED of J. Lee Smith the sum of \$8.20 being cost of certified copy of petition and other papers filed in the matter of rec'd classification of property and a special permit, southeast corner of Baltimore National Pike and Commonwealth Ave., 1st District, Killie A. H. Lynch, petitioner.

Zoning Commissioner

PAID  
SEP - 9 - 1953  
COUNTY COMMISSIONERS  
OF BALTIMORE COUNTY  
By *George H. Johnson*

NO PLAT  
IN  
THIS FOLDER