

2741  
231  
HUBERT H. HARKER  
and  
ELIZABETH H. HARKER  
VS  
BOARD OF ZONING APPEALS  
OF BALTIMORE COUNTY  
IN THE CIRCUIT COURT  
FOR BALTIMORE COUNTY  
LAW

The Court has read the testimony, the opinions of the Zoning Commissioner and of the Board of Zoning Appeals and the memorandum of the "Planning Commission staff". In addition, the Court has viewed the premises and the surrounding territory.

It was disclosed by an inspection of the community that the "Planning Commission staff" was substantially in error in stating that "two of the four corners of the subject intersection are now zoned for Commercial B". As a matter of fact three of the corners are used for commercial purposes; two having been reclassified, according to the information received from the Zoning office, by the zoning authorities and one corner being commercial under a non-conforming use. It appears from information received from the Zoning office that the plate in that office do not show non-conforming uses.

At the hearing it was revealed that the Board of Zoning Commissioners had based its finding upon a recommendation made by the "Planning Commission staff", when in turn had based its recommendation on incomplete information received from the Zoning office.

The "Planning Commission staff's" memorandum was not in the papers originally sent to the Court and at the Court's request it was re-filed. This recommendation was made upon an erroneous understanding of the situation and apparently without an inspection of the premises and without the property owner being given an opportunity to be heard.

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The difference between the value of the lot zoned as residential and the lot zoned for commercial purposes would be quite a large sum. It should not be necessary to call attention to the fact that there is a constitutional guarantee that no one may be deprived of his property without due process of law.

The "Planning Commission staff", it seems to the Court, has assumed too much authority. In a matter of such importance to the property owner he should have been given an opportunity to have been heard before the Planning Commission itself. The owner's rights should not have been passed on or purloined by the "staff" in such a casual manner. It is hard to understand why the Planning Commission should interfere at all in matters of such particularity as the one at bar.

The Court is of the opinion that there is only one fair and reasonable conclusion: that the corner in question should be zoned as Commercial B and the special permit granted. The action of the Board of Zoning Appeals, which was in effect an expression of the uninformed opinion of the "Planning Commission staff", was capricious, unreasonably arbitrary and illegal.

As has been said by our Court of Appeals, in order to justify a restriction it is basic to the law of property that a man shall be allowed the widest use of his property consistent with the protection of his neighbors. In order to justify therefore a restriction of that use, it must be shown that such restriction is in some manner related to the police power of the sovereign.

In this case there is no testimony whatever that the public health, morals, safety or welfare is involved. The mere reference to the "general welfare" does not sanction an otherwise illegal action.

For the reasons given the action of the Board of Zoning Appeals will be reversed and the lot ordered rezoned as Commercial B and the special permit granted.

April 9, 1954

John H. Mathias, Judge

2741-R-5  
MAP  
#28  
RE: PETITION FOR RECLASSIFICATION FROM AN "A" RESIDENCE ZONE TO AN "B" COMMERCIAL ZONE AND SPECIAL PERMIT FOR GASOLINE SERVICE STATION, M. S. Corp. Liberty and McDonough Roads, 2nd District - Hubert H. and Elizabeth H. Harker, Petitioners.

The appeal in the above entitled matter coming on for hearing on the 11th day of January, 1954, before the Board of Zoning Appeals of Baltimore County from an Order of the Zoning Commissioner of Baltimore County dated November 12, 1953, denying reclassification from an "A" Residence Zone to an "B" Commercial Zone and denying the 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 said reclassification and special permit would be detrimental to the general welfare of the community and for reasons set forth in the opinion; therefore,

It is this 4th day of February, 1954, Ordered by the Board of Zoning Appeals of Baltimore County that the reclassification of the said property from an "A" Residence Zone to an "B" Commercial Zone and the special permit for a gasoline service station be denied.

Off by  
Grand Court

Approved:

County Commissioners  
of Baltimore County

Charles H. DeLong  
April 8 1954

OPINION OF THE BOARD OF ZONING APPEALS  
OF  
BALTIMORE COUNTY

This is an appeal by Hubert H. Harker and Elizabeth H. Harker from an Order of the Zoning Commissioner of Baltimore County dated November 12, 1953, denying reclassification from an "A" Residence Zone to an "B" Commercial Zone and the denial of a special permit for a gasoline service station in connection with 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 a tract of land 136 feet 9 inches on the north side of the Liberty Road at the intersection of McDonough Road for a depth of 100 feet. A portion of this property was subject to a petition for reclassification and special permit in 1948 and was denied on the grounds that it would be spot zoning, and upon subsequent appeals was finally denied by the Circuit Court for Baltimore County.

The petitioners lay much stress upon the fact that there have been numerous changes in this general area which would justify the Board reclassifying the property and granting a special permit for a service station. While it is true that the Board must find either that there was an error in the original zoning or that changes have taken place since January 1, 1945, to justify the reclassification, it does not necessarily follow that even should the latter be found that the Board must reclassify.

The petitioners' property is now, and has been for a long period of time, improved by a dwelling which is being occupied for residential purposes; and it would hardly be said that the commercial enterprises on both sides of the Liberty Road west of McDonough Road have so injured them as to require

2741-R-5  
FILED NOV 17 1953

IN THE MATTER OF:

Petition for Reclassification from an "A" Residence Zone to an "B" Commercial Zone and Special Permit for Gasoline Service Station - M. S. Corp. Liberty and McDonough Roads, 2nd District - Hubert H. & Elizabeth H. Harker, Petitioners.

VS  
The Commissioners

Please enter an appeal in the above entitled matter to the Board of Zoning Appeals from your order of November 12, 1953

Hubert H. Harker

Elizabeth H. Harker  
Petitioners

John H. Mathias  
Attorney for Petitioners

RE: PETITION #2741-R-5, FOR RECLASSIFICATION FROM "A" RESIDENCE TO "B" COMMERCIAL AND FOR A SPECIAL PERMIT FOR A GASOLINE SERVICE STATION, for the southernmost 100 feet of lots numbered 110 and 111 shown on the assessed plat #3 of Pikesville, recorded among the Land Records of Baltimore County, in plat book W. T. C. #5 folios 98 and 99 by Hubert H. Harker and wife.

The portions of the two lots of ground described in the foregoing petition has an aggregate frontage on the northernmost side of Liberty Road of 136 feet 9 inches and a depth on the easternmost side of McDonough Road of 109 feet and a width on the rear of 147 feet and a depth on the east side thereof of 100 feet. Lot numbered 111 is unimproved. Lot numbered 110 is improved with a three story three apartment dwelling owned by the applicants and which they propose to move to the rear portion of said two lots and use the front portion of said two lots for a gasoline service station. The lot adjoining said two lots on the east is also improved with a very fine two story frame dwelling as is most of the lots in this sub-division. Should the application for reclassification and special permit be granted this fine dwelling, adjoining on the east, would almost be up against a gasoline service station and would thereby be greatly depreciated.

In 1948 (see petition #1262) a petition for a reclassification and special permit for a gasoline service station, covering lot numbered 111, was before the Zoning Department and was refused on the ground that a reclassification of said lot would be "spot" zoning. The applicant took an appeal to the Board of Zoning Appeals and said Board sustained the action of the Zoning Commissioner, whereupon an appeal was taken to the Circuit Court, and the Circuit Court by Order of Hon. J. Howard Murray, Judge, on March 9th, 1950, sustained the Board of Zoning Appeals.

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the lowering of the classification of their property. There must be a boundary line between zones, and the Board is of the opinion that McDonough Road is the proper dividing line at this time, especially in view of the fact that to hold otherwise and grant the petition would result in opening up a new and large area of land which is now used exclusively for residential purposes, and many of the homes now located in the block are large, well-constructed residences.

While it may be true that these various property owners might well provide a dividing strip from their own land for the protection of their own property, the Board is of the opinion that the present natural boundary of McDonough Road is the proper line of demarcation, and that to hold otherwise would be detrimental to the general welfare of the community and it will, therefore, pass its Order denying the application for reclassification and for the special permit for a gasoline service station.

Carl F. Widen  
Chairman  
Board of Zoning Appeals of  
Baltimore County

JOHNSON BOWNE  
ATTORNEY AT LAW  
TOWSON 4 MD.

Date: November 12, 1953

Charles H. DeLong  
Zoning Commissioner

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

To the Zoning Commissioner of Baltimore County:

we, Hubert H. & Eva P. Harker, Legal Owners of the property situated at the northeast corner of McDonough Road and Liberty Road, Randallstown, Baltimore County, Maryland, and more particularly described as follows on the reverse hereof

herby 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 "C" 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 Robert Johnson DOWD

Property to be posted as prescribed by Zoning Regulations.

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.

Hubert H. Harker  
Eva P. Harker  
Legal Owners

Robert Johnson DOWD  
Attorney

Notary

MA. Johnson DOWD  
DOWD & DOWD

10/26  
10 A.M.

CONFERRED by the Zoning Commissioner of Baltimore County this 1st day of October, 1953, 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 October, 1953, at 10:00 o'clock A.M.

Zoning Commissioner  
of Baltimore County

CERTIFICATE OF POSTING  
ZONING DEPARTMENT OF BALTIMORE COUNTY  
Towson, Maryland

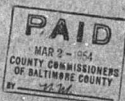
District 2nd Date of Posting 10-14-53  
Posted for Hubert H. Harker, et al. Commercial Zone & Special Permit  
Petitioner: Hubert H. Harker, et al.  
Location of property N.E. Cor. Liberty & McDonough Roads  
Location of Sign N.E. Cor. Liberty & McDonough Roads  
Remarks: None  
Posted by George R. Hummel Date of return 10-15-53

March 1, 1954

\$3.00

RECEIVED of Smith & Smith, Attorneys for petitioners, the sum of \$3.00 being cost of certified copies of petition and other papers filed in the matter of appeal for reclassification and special permit, Northeast corner of Liberty and McDonough Roads, 2nd District.

Zoning Commissioner



October 8, 1953

\$23.00

RECEIVED of Johnson Dowe, Esquire, attorney for Hubert H. Harker, et al., petitioners, the sum of Twenty Three (\$23.00) Dollars, being cost of petition for reclassification and special permit, advertising and posting property, northeast corner of McDonough and Liberty Roads, 2nd District.

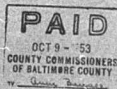
Zoning Commissioner

Hearings

Monday, Oct. 26, 1953

at 10:00 a.m.

Richard H. Gage,  
Towson, Md.

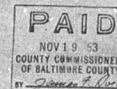


November 19, 1953

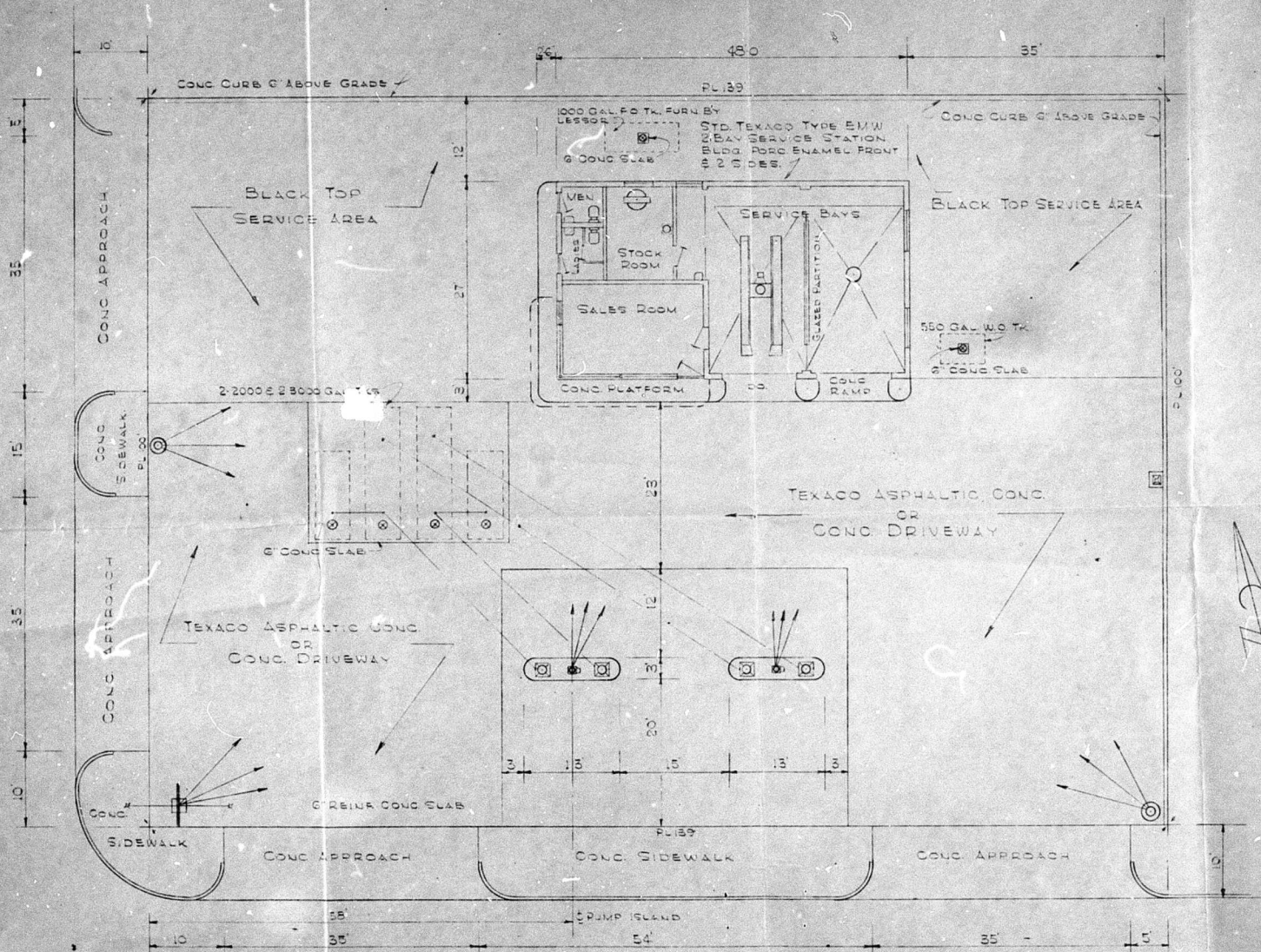
\$30.00

RECEIVED of Johnson Dowe, Attorney for Hubert H. Harker, et al., petitioners, the sum of Thirty (\$30.00) Dollars being cost of appeal to the Board of Zoning Appeals of Baltimore County from the decision of the Zoning Commissioner denying the reclassification and special permit for gasoline service station at the northeast corner of Liberty and McDonough Roads, 2nd District.

Zoning Commissioner



MCDONOUGH ROAD  
10% TRANSVERSE  
30' WIDE ASPHALT PAVED



LIBERTY ROAD (V.D.R.\*26)  
DOX TRAFFIC TWO WAY  
60' WIDE ASPHALT PAVED

# LIST OF DRAWINGS AND EQUIPMENT

| SYMBOL | DESCRIPTION                                                              | DRAWING NO.<br>OR MAKE |
|--------|--------------------------------------------------------------------------|------------------------|
| NONE   | SPECIFICATIONS                                                           |                        |
| NONE   | BUILDING FOR REFERENCE<br>DRAWINGS SEE FLOOR PLAN                        |                        |
|        | FENCE                                                                    |                        |
|        | TYPE                                                                     |                        |
|        | RANGE SIGN & POLE                                                        |                        |
|        | W. ISLAND<br>LIGHT & POLE                                                |                        |
|        | SPOT OR FLOODLIGHT                                                       |                        |
|        | HINGED TYPE<br>FLOODLIGHT POLE                                           |                        |
| NONE   | CONCRETE<br>PUMP ISLAND                                                  |                        |
|        | ELECT. COMPUTING<br>GASOLINE PUMP<br>UNDER GROUND TANKS<br>GAL. GASOLINE |                        |
|        | GAL. FUEL OIL<br>GAL. WASTE OIL                                          |                        |
|        | APPROX. TYPE C.I. ANGLE CHECK<br>ASSEMBLY WITH STREET BOX OVER           |                        |
| NONE   | VERTICAL CHECK VALVE<br>IN PUMP                                          |                        |
|        | APPROX. TYPE C.I. GUAGE<br>BOX                                           |                        |
|        | APPROX. TYPE C.I.<br>FILL BOX                                            |                        |
|        | APPROX. TYPE C.I.<br>COMB. GAUGE & FILL BOX                              |                        |
|        | AIR & WATER WELL                                                         |                        |
|        | AIR WELL                                                                 |                        |
|        | WALL TIRE FLATOR                                                         |                        |
|        | PEDESTAL AIR TOWER<br>WITH CONC. BASE                                    |                        |
| NONE   | FIRE EXTINGUISHERS                                                       |                        |
|        | AIR COMPRESSOR<br>H.P.                                                   |                        |
|        | NON-ROTATING AUTO LIFT<br>ROLL-ON TYPE                                   |                        |
|        | NON-ROTATING AUTO LIFT<br>FREE WHEEL TYPE                                |                        |
| NONE   | VENT HEADERS                                                             |                        |
|        | FILL LINES FROM FILL BOXES<br>TO TANKS                                   |                        |
|        | VENT LINES FROM TANKS                                                    |                        |
|        | GASOLINE SECTION LINES FROM<br>TANKS TO PUMPS                            |                        |
|        | WATER LINE                                                               |                        |
|        | SEWAGE & DRAINAGE LINES                                                  |                        |
|        | TELEPHONE LINE                                                           |                        |
|        | ELECTRIC LIGHT AND POWER                                                 |                        |
|        | COMPRESSED AIR LINES                                                     |                        |
| 13.0   | EXISTING ELEVATIONS                                                      |                        |
| 12.0   | FINAL REQUIRED ELEVATIONS                                                |                        |

## APPROVAL RECORD

| DIV. OFF.  | DATE | BY |
|------------|------|----|
| TECH. OFF. |      |    |
| N.Y. OFF.  |      |    |
| H.Y. OFF.  |      |    |

## REVISION RECORD

| DATE | BY | DESCRIPTION |
|------|----|-------------|
|      |    |             |
|      |    |             |

THE TEXAS COMPANY  
DOMESTIC SALES DEPARTMENT  
NORTHERN TERR. & POL. DIV.  
RANDALLSTOWN, MD. 21133  
LIBERTY & MCDONOUGH RDS.  
GENERAL ARRANGEMENT PLAN

SCALE 1"=10'  
DRAWN BY M.H.  
CHECKED BY G.E.R.  
APPROVED G.E.R. NO. 12153  
DATE 12153  
TRACED BY  
NO. 12153

PROPOSED