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Mr. John M. Adder - 2833 Redden Ave. - Baltimore
Case Standard Oil Station - proposed fuel type
fence. So from Joppa Rd to rear of property, there existing 10
ft. ave. West Side lot figures 11,000 ft. on Joppa Rd.
East from rear of lot 150 ft. on Joppa Rd.
11th & 14th streets
Mr. Knapp - 14th St. - Baltimore - 33 years
Case Standard Oil Station - proposed fuel type
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ft. ave. West Side lot figures 11,000 ft. on Joppa Rd.
East from rear of lot 150 ft. on Joppa Rd.
11th & 14th streets

Mr. J. H. Hession: Protestants
Miss Frances Green - 283 Joppa Road - adjacent to proposed
gas station. House also new from Baltimore and
right in lot.
Miss Margaret McInerney - 283 Joppa Road - 32 ft. from
proposed gas station and 20 ft. from front lot.
Miss Frances Green - 283 Joppa Rd. - South of East Avenue
approximately 400 ft.

JOHN W. WESTERMAN and
EDNA M. WESTERMAN, his wife, et al
VS.
CHARLES H. KNOX,
DAVID M. WOODS and
CARL H. WOODS, Constituting the
Board of Zoning Appeals of
Baltimore County
IN THE CIRCUIT COURT
FOR
BALTIMORE COUNTY
No. 1575
Docket 5 folio 226

This is an Appeal by the Protestants from a Decision and Order of the
Board of Zoning Appeals of Baltimore County dated January 12, 1956, granting
a Special Permit for the operation of a gasoline service station on the
property located on the southeast corner of Joppa Road and Virginia Avenue,
in Towson, as more particularly described in this case, subject to certain
conditions and restrictions as more fully set forth in the said Order of the
Board.

The Petition in this case was originally for a zoning reclassification
from "A" Residence Zone to an "M" Commercial Zone and for a special permit for
the erection of a gasoline service station on the said property.

Since the Petition was originally filed, and prior to the hearing before
the Board of Zoning Appeals for Baltimore County, the County Commissioners
adopted a New Zoning Map for a portion of the Ninth Election District, and
zoned the property in question as Business Major, so that the question as to
reclassification had become moot prior to the time of the hearing before the
Zoning Board.

The record in this case conclusively shows that there was such a change
in zoning by the adoption of the New Zoning Map by the County Commissioners,
which zoning map became effective as of November 14, 1955.

Counsel for the Protestants urged the Court not to permit an extension
of commercial zoning in this residential area, but it is obvious that the Court
has no control or jurisdiction to comply with this request as the new Zoning
Map for the Ninth Election District had changed the classification of the
property in question from "A" Residence Zone to a Business Major Zone even
prior to the hearing before the Board of Zoning Appeals of Baltimore County.

An examination of the record discloses that the zoning of the southeast

traffic. So we are very careful and we do our best, and
I might say, we do it efficiently to direct the light
where it is most needed and will not interfere with either
motorists or the surrounding property.

It also appears from the record that the danger of fire is not an undue
hazard, as set forth by the record on Pages 10 and 11 as follows:

"Q. As far as a fire hazard, your service station which you
propose to erect would be completely fireproof to the
best of the gasoline supplier's ability?

A. Yes, sir. And, as a matter of record, the fire
experience or the possibility of the possibilities of
a fire in a gasoline filling station are much favorable
as compared with other commercial enterprises and the
frequency rate of fire in gasoline stations is very low."

There is also testimony as set forth on Page 11 of the record, as to the
filling station being not objectionable to the surrounding area, as to odor,
which is as follows:

"Q. How about the fumes?

A. The fumes are actually, unless you are within three feet
of the vent pipes, the fumes would be completely dissipated
in the air and you would not be able to smell them and
there is no fire or explosion hazard as a result thereof."

While it is true that the amount of traffic will be increased by the
operation of a filling station at this location, yet it is also true that traffic
would also be increased by the operation of any successful retail commercial
business which could be operated on this Business Major zoned property without
the necessity of a permit.

The Order of the Zoning Board requires that a stockade fence in the manner
used in residential developments be erected along the east line of the property
(adjoining the property of Miss Green) at an ornamental height, beginning on
the north at the normal sidewalk line and running southerly to the front of the
existing dwelling on the property line to the east; thereafter, continuing in
a southerly direction at a height of ten feet above the existing grade to a
point fifteen feet beyond the rear of said dwelling, thereafter tapering off
to a height of seven feet to the garage now standing on the rear of the
property adjoining on the east. That said fence shall be continuously maintained
in good condition so long as the property lying to the east and now owned by
Frances Green shall be used for residential purposes. That no direct beams of

light shall be so directed as to shine above the top of said fence.

In addition, the record discloses on Page 6 that Esso Standard Oil offers
to carry out the spirit and intent of the Order of the Zoning Commissioner as
to shrubs and evergreens. "In other words, we will plant shrubbery, evergreens
of such height along the eastern edge of the property running perpendicular to
Joppa Road to the southern boundary line and likewise we would also plant
shrubbery from Virginia Avenue to meet the other shrubbery so that the station
itself will be set apart from any surrounding residential property by evergreens
or shrubs On the southeast station side of the shrubbery, we
would surround the property with a ranch type fence which would be painted white.

This will be done to give some protection to the property of Miss Frances
Green, which property is contiguous on the east to the instant property.

On Pages 9 and 10 of the record, testimony is offered that the Esso Standard
Oil Company feels it would be advantageous to have a service station on this
corner and then recites the State Roads Commission's check of the number of
automobiles that pass this location daily for the years 1953 and 1954, with an
estimate that, based on the 1954 traffic count figure, two hundred automobiles
would visit the proposed station a day. This testimony was apparently offered
to show a need for a filling station and this Court has heretofore held that the
need for a gasoline service station at any given location can be determined by
the gasoline companies themselves as well as the general public, zoning
authorities or the Courts.

From Page 22, the following testimony appears:

"Q. Except for construction and various color schemes and some
details, most of the companies use generally the same, so
wouldn't you say on that basis the Mobil Station is lighted
similar to what you propose?

A. I would say so, yes, because they are all trying to
accomplish the same thing."

It, therefore, appears from the record that it is proposed, under the
Special Exception granted by the Board of Zoning Appeals, that a gasoline
service station be constructed and maintained, generally similar to the gasoline
service station which is now operating at the southeast corner of Joppa Road and
Virginia Avenue, concerning which said filling station, the zoning classification
was changed from "A" Residence to "M" Commercial and a Special Exception for the

corner of Joppa Road and Virginia Avenue was reclassified from "A" Residence
Zone to "M" Commercial Zone, and a special permit granted for the operation of
a gasoline filling station on said property, over a year ago, and that the
property is at this time being operated as a filling station. The northwest
corner of Joppa Road and Virginia Avenue is being used as a parking lot for
Huteler's. The record in this case shows that the classification of the
property in question in this case was changed by the New Zoning Map from "A"
Residence to Business Major and an examination of the New Zoning Map discloses
that the property on the northeast corner of Joppa Road and Virginia Avenue was
also changed in classification from "A" Residence to Business Major. So that
the immediate area of the intersection of Joppa Road by Virginia Avenue is
zoned Business Major and the property in question, as well as the property
directly across from it on the north, can legally be used for practically any
retail business purposes without the necessity of a Special Permit.

The sole question now before the Court is whether the Board of Zoning
Appeals has acted arbitrarily, capriciously and without substantial evidence
to support its findings in granting a special permit for a gasoline service
station to be operated on this Business Major commercial location.

In connection therewith, it must be kept in mind that it is not the
function, duty or right of the Court to come or reason, or to substitute its
judgment or discretion for that of the Zoning Board, but merely to pass upon
whether the Zoning Board has acted arbitrarily, capriciously and illegally and
without substantial evidence to support its findings in granting the special
permit. As was stated by Judge Hamond, speaking for the Court of Appeals, in
Wicksford versus Knapp 96 Atl. 2d at Page 27

"In deciding the challenge to the action of the County
Commissioners substituting as a municipal legislature,
the Court must use rigorous self-discipline, as it must
always in such cases, to avoid substituting its judgment
or views as to the wisdom or soundness of the action
taken for that of the legislative body to whom such
questions are confided exclusively under our governmental
system of separation of powers, and only to decide
whether the action is illegal, arbitrary or discriminatory."

And in the case of Offutt versus Board of Zoning Appeals, 204 Md. 551 at

operation of such filling station was permitted by a Decision of this Court
a little more than a year ago.

The case has been fully argued by Counsel, a Brief submitted by Counsel
for the Protestants, and the proceedings are submitted to the Court for decision
on the record forwarded to this Court from the Board of Zoning Appeals. The
law is clear that if the question decided by the Board is fairly debatable, the
Court cannot supersede its judgment for that of the Zoning authority. Without
reference as to how the Court might have decided this case in the first
instance, the only function of this Court on appeal from the decision of the
Board is for the Court to decide whether the zoning authorities have acted
arbitrarily, capriciously, discriminatorily or illegally in deciding the
Petition.

After a careful reading of the Brief submitted by Counsel, examination of
all exhibits and the record before the Board, the Court cannot say that the
action of the Zoning Board of Baltimore County in the granting of a Special
Permit for the erection of a gasoline service station was arbitrary, capricious,
discriminatorily or illegal.

The Decision and Order of the Board of Zoning Appeals dated January 12,
1956, in this case, is, therefore, affirmed.

March 16, 1956
Lester L. Barrett, Judge

Page 562, the Court of Appeals stated
"We cannot disregard the general rule that in an appeal
from a decision of a zoning board, the Court will not
substitute its own judgment as to the wisdom or soundness
of action taken by the Board, but will decide only
whether or not such action was arbitrary or discriminatory
and illegal. It is not the duty of the Court to
come or reason, but only to decide whether the
Board properly applied the applicable law to the facts.
The Court should not substitute its own judgment for the
judgment of the Board if the question as decided is
fairly debatable. If there is room for reasonable debate
as to whether the facts justify the Board in deciding the
need for its action, the decision must be upheld. It is
only where there is no room for reasonable debate, or
where the record is devoid of supporting facts, that the
Court is justified in declaring the legislative action of
the Board arbitrary or discriminatory."

And in the case of Orsler versus Board of Zoning Appeals, 204 Md. at
Page 105, which is a case involving a Special Permit to operate a restaurant
in an "A" Residence Zone, the Court of Appeals stated

"The function of a Zoning Board is to exercise the discretion
of experts and the Court on appeal will not disturb the
Board's finding where it has complied with the legal require-
ments of notice and hearing, and the record shows substantial
evidence to sustain the finding."

The record discloses that Esso Standard Oil Company has negotiated a lease
with the owners of the property for the erection of a "modern three bay
porcelain-enamel station. It is modern in every sense of the word, it complies
with the Building Code of Baltimore County and, of course, will also comply
with sanitary regulations. It is modern in design and it is attractive. It
is very easy to maintain, as far as keeping clean, with the porcelain-enamel
finish It is as modern and efficient a service station a
building can be made to be." Record Page 5.

The lighting around the station, according to the record, would be of a
shielded nature to protect the surrounding area, as is set forth in Page 7 of
the record as follows:

"We would use a type light that has a shield which completely
surrounds the building, where the light comes from, and it
directs the rays downward on the service station property or
toward the ground. Actually, we are mainly interested at
night in our lighting to illuminate the entrance and
driveaway of the service station itself, to make it safe for
people to enter and to leave. Likewise, when we put up lights,
we concentrate on getting them down in the area we want to
illuminate. And, in addition, we also take in consideration
the glare, not only from the neighborhood surrounding
properties but also any glare that might shine on incoming

RE: PETITION FOR SPECIAL PERMIT TO
ERECT A SERVICE STATION AND RECLASSI-
FICATION FROM "A" RESIDENCE ZONE TO
AN "M" COMMERCIAL ZONE, S.K. OR. OF
JOPPA ROAD AND VIRGINIA AVENUE, NINTH
DISTRICT,
EDNA M. AND CLARA M. KNAPP, OWNERS
VS.
BOARD OF ZONING APPEALS
OF
BALTIMORE COUNTY

OPINION AND ORDER

The Petition in this case was originally for a zoning reclassification
from an "A" Residence Zone to an "M" Commercial Zone and for a Special Per-
mit for the erection of a gasoline service station on property at the southeast
corner of Joppa Road and Virginia Avenue in Towson.

Since the Petition was originally filed the County Commissioners
adopted a New Zoning Map for a portion of the Ninth Election District and zoned
the property in question as "Business Major" so that the question as to reclassi-
fication has become moot and is no longer before us.

The case as presented to us resolves itself into an Appeal by Pro-
testants from an order of the Zoning Commissioner granting a Special Exception
for a gasoline service station with certain restrictions as set forth in his Or-
der.

Since the property has now been zoned "Business Major", it can be
used for practically any retail purpose so that the property could now be used
for a retail store or similar establishment without a Special Exception.

It is our opinion that the operation of a gasoline service station
can be detrimental to only one property and that is the property of Miss Frances
Green immediately adjoining on the east. We feel that the restrictions which we
will place on the property providing for the screening of the filling station
from the Green property by a fence will largely eliminate any damage or inconve-
nience even to the Green property and that she will find herself in a better posi-
tion than if some retail store were erected on the premises.

The Esso Standard Oil Company of New Jersey, who will build and
maintain the service station, have agreed to comply with the restrictions.

It is our opinion that when the restrictions are complied with,

neighboring properties will not be adversely affected by the operation of a gasoline service station on the property and for this reason we will sign an Order granting the Special Exception.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 17th day of January, 1956, by the Board of Zoning Appeals of Baltimore County,

ORDERED that a Special Exception for the operation of a gasoline service station on the property described in this case be and the same is hereby granted, subject, however, to the following conditions and restrictions:

1. That a stockade fence of the type normally used in residential developments be erected along the east line of the property at an ornamental height beginning on the north at the normal sidewalk line and running southerly to the front of the existing dwelling on the property lying to the east; thereafter continuing in a southerly direction at a height of ten (10) feet above the existing grade to a point fifteen (15) feet beyond the rear of said dwelling; thereafter tapering off to a height of seven (7) feet to the garage now standing on the rear of the property adjoining on the east.
2. That said fence shall be continuously maintained in good condition so long as the property lying to the east and now owned by Frances Green shall be used for residential purposes.
3. That no direct beams of lights shall be so directed as to shine above the top of said fence.

BOARD OF ZONING APPEALS OF BALTIMORE COUNTY

Charles L. Fitzpatrick
George A. Hession, III
John W. Hession, III

W. Hession, III
JOHN W. Hession, III
JOHN W. Hession, III

LAW OFFICE
SMALKIN & HESSIAN
CAMPELL BUILDING
TOWNSHIP 4, MD.
April 20, 1955

Mr. Charles L. Fitzpatrick,
Deputy Zoning Commissioner,
303 Washington Avenue,
Towson 4, Maryland.

Re: Special Permit, southeast corner Joppa Road
& Virginia Avenue - Edward R. Khaman & wife

Dear Mr. Fitzpatrick:

Enclosed herewith please find an Order and Notice of Appeal to the Board of Zoning Appeals of Baltimore County on behalf of Frances S. Green, et al, from your order of April 10th, 1955, which I will thank you to file in the above captioned matter.

A check in the amount of \$50.00 in payment of the costs of said appeal is enclosed.

Yours very truly,

George A. Hession, III
John W. Hession, III

h/s
encl.

CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY Towson, Maryland

Filed for *George A. Hession, III* Date of Posting *2-17-55*
Postage for *George A. Hession, III* *2-17-55*
Postage for *George A. Hession, III* *2-17-55*
Location of property *SE corner of Joppa Rd & Virginia Ave, Towson 4, Md.*
Location of signs *on the SE corner of Joppa Rd & Virginia Ave, Towson 4, Md.*
Remarks
Posted by *George A. Hession, III* Date of return *2-17-55*

April 13, 1955

\$26.00

RECEIVED of A. Gordon House, attorney, for Edward R. Khaman, petitioner, the sum of Twenty Six (\$26.00) Dollars, being cost of petition for Special Permit, Reclassification, advertising and posting property, southeast corner of Joppa Road and Virginia Avenue, 9th District, Baltimore County, Maryland.

Thank you.

Zoning Commissioner.

PAID
APR 13 1955
COUNTY COMMISSIONERS
OF BALTIMORE COUNTY

\$50.00

RECEIVED of John W. Hession, III, Esquire, the sum of Fifty (\$50.00) Dollars, being cost of appeal to the Board of Zoning Appeals of Baltimore County from the decision of the Zoning Commissioner granting the reclassification of property at the southeast corner of Joppa Road and Virginia Avenue, and special permit for a gasoline service station.

Zoning Commissioner

PAID
MAY 4 - 55
COUNTY COMMISSIONERS
OF BALTIMORE COUNTY

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

To the Zoning Commissioner of Baltimore County:

I, or we, Edward R. & Clara M. Khaman

All that parcel of land in the Ninth District of Baltimore County, on the southeast corner of Joppa Road and Virginia Avenue; thence running easterly and binding on the south side of Joppa Road 133.5 feet; thence south 1 degree 10 minutes west 134.5 feet; thence north 89 degrees 10 minutes west 139.2 feet to the east side of Virginia Avenue; thence north 1/2 mile and binding on the east side of Virginia Avenue 138.15 feet to place of beginning.

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 "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 erection of a 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.

Edward R. Khaman
Clara M. Khaman
Legal Owners

1212 North York Road
Address

ORDERED by the Zoning Commissioner of Baltimore County

County this 1st day of February, 1956.
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 Acts of Assembly aforesaid, and that a public hearing, thereon be had in the office of the Zoning Commissioner of Baltimore County, Maryland, on the 28th day of February, 1956, at 1:00 o'clock P.M.

Zoning Commissioner
of Baltimore County

After having completed much thought and study of the petition, with reference to the proposed gasoline service station to be located at the southeast corner of Joppa Road and Virginia Avenue, and after having visited the subject site on many occasions, and in view of the County recent decision and determined action of a similar situation regarding the commercialism of any intersection once one corner has been commercialized, it is the opinion of the Deputy Zoning Commissioner that this petition for the reclassification and for a Special Exception be granted.

It is also to be noted, with reference to another recent Court Order, that the need for a gasoline service station at any location is to be determined by the gasoline companies themselves and not by the general public; zoning authorities or even the Courts, so by the very fact that the gasoline company has applied for this location indicates they feel there is a need at this location.

Further investigation indicates that this property upon recommendation of the Baltimore County Planning Commission, should be zoned as a B-1 Zone and is indicated as such on their proposed land use maps to be adopted in conjunction with the new Zoning Regulations for Baltimore County.

It is therefore this 14th day of April, 1955 ORDERED by the Deputy Zoning Commissioner that the above described property be and the same is hereby reclassified from an "A" Residence Zone to a B-1 Zone (Business Local) and for a Special Exception for a gasoline service station, subject however, to compliance with the following provisions:

1. That trees and shrubs be planted from Joppa Road southerly along the eastermost boundary between the gasoline station and the adjacent property and house, that a similar type tree or shrub be planted from Virginia Avenue along the eastermost boundary to intersect with the eastern boundary of trees, shrubs, and
2. That a ranch type fence as described by the petitioners be erected parallel to the eastern and northern boundary of said trees and shrubs, and
3. That all lights for this gasoline service station be so directed so as to minimize any glare or reflections.

Deputy Zoning Commissioner

February 21, 1956

\$7.00

RECEIVED of Lawrence E. Khaman, attorney for petitioners, the sum of seven (\$7.00) Dollars, being cost of certified copy of petition and other papers filed in the matter of a special exception for Gasoline Service Station, southeast corner of Joppa Road & Virginia Avenue, 9th District, Edw. R. Khaman and Clara M. Khaman, petitioners.

Zoning Commissioner

RECEIVED
FEB 21 1956
COMMISSIONER'S OFFICE
790

NO PLAT
IN
THIS FOLDER