

MEMORANDUM

On October 1, 1947 W.A. Gardin Co. Inc. filed its petition with the Zoning Commissioner of Baltimore County requesting a rezoning of the tract of land in question from B-6 classification to B-1 classification and for a special exception for the operation of a gasoline filling station thereon.

That the said petitioner thereupon appealed the decision of the Zoning Commissioner to the Board of Zoning Appeals of Baltimore County, now designated as the Board of Appeals, and after hearing thereon the petition was likewise denied by order of the Board of Zoning Appeals, dated May 3, 1956.

That on June 1, 1956 the petitioner appealed and a writ of certiorari was issued by this Court for a judicial review of the action of the Board of Zoning Appeals of Baltimore County. Thereafter, on July 17, 1956, by order of this court, Richard S. Hightlet, protestant, was permitted to intervene in these proceedings as a party defendant.

That on October 26, 1956 W.A. Gardin Co. Inc. filed a petition in this court alleging that since the ruling of the Board of Zoning Appeals there

has been substantial changes in the character of the neighborhood of the property involved which would justify a reconsideration of the action previously taken by the Board.

That upon this petition and affidavits this Court, on October 26, 1956, ordered that the proceedings be remanded to the Board of Zoning Appeals of Baltimore County for the taking of additional testimony on changes occurring in the character of the neighborhood since the order of the said Board, provided that no cause to the contrary be shown by the Board or by Command for the protestant, Mr. Hightlet, on or before a certain date, as set forth in said order. No cause having been shown by either of the interested parties, this Court by its order dated November 24, 1956 remanded the proceedings to the Board of Zoning Appeals for Baltimore County for the taking of additional testimony solely on the question presented by the petitioner, as heretofore set forth.

That on January 28, 1957, after the taking of additional testimony, the Board of Zoning Appeals passed a new order revoking and annulling its order dated May 3, 1956 and passed its order granting the reclassification of the subject property from B-6 to a B-1 classification together with a special exception for the operation of a gasoline filling station.

That on February 18, 1957 Richard W. Hightlet, protestant, filed a petition in this Court alleging that the Board of Zoning Appeals of Baltimore County had no jurisdiction in the proceedings other than to take additional testimony as set forth in the order of this court dated October 26, 1956

and that the order of the Board of January 28, 1957, granting the reclassification and a special exception for a filling station, was void, illegal and without legal force and effect. Upon this petition and affidavits this Court, on February 18, 1957, ordered that the Board of Zoning Appeals strike out and annul its order of January 28, 1957, and to return a transcript of the testimony taken before the Board on November 24, 1956 to this Court, unless cause to the contrary be shown by the Board of Zoning Appeals or by W.A. Gardin Co. Inc. and its Attorney at record before a certain date as set forth in said order. Both the Board of Zoning Appeals and W.A. Gardin Co. Inc. failed to answer the aforesaid petition and the above-mentioned order of this Court, and no cause having been shown by either of the interested parties as to why the relief prayed should not be granted, upon petition of Richard S. Hightlet, the Court by its order dated April 11, 1957 ordered the Board of Zoning Appeals to revoke, strike out and annul its order dated January 28, 1957, and further ordered the said Board to return a transcript of the testimony taken before the said Board on November 24, 1956 to this Court for further hearing in this cause. No motion to reconsider, exception or appeal was filed as to this final order.

It therefore seems clear to the Court that there is no necessity for it to consider the legal propriety of its order of November 24, 1956 remanding the proceedings to the Board for the taking of additional testimony before a hearing of the case on appeal, or of its order of April 11, 1957 ordering the Board to strike out its order dated January 28, 1957 and to

return a transcript of the testimony taken before the Board on November 24, 1956 to this Court.

The question, therefore, before this Court in the appeal of the petitioner from the order of the Board of Zoning Appeals dated May 3, 1956 by which the petition for reclassification and for a special exception, was denied.

The property in question is located on the northeast corner of Edmondson Avenue and Harlan Lane. It is uncontroverted from the testimony that at the time zoning became effective in Baltimore County the subject property was more or less surrounded by non-conforming commercial uses. Directly across Harlan Lane and located on the northwest corner of Edmondson Avenue at Harlan Lane was and is a drive-in bakery and delicatessen store. On the south side of Edmondson Avenue and approximately 100 feet or so to the east of the subject property was and now is located the 7-Up Bottling Plant, a plant for the making and bottling of a soft drink known as 7-Up, and which also includes a reasonably large parking area for trucks and automobiles. In addition there is a small commercial enterprise including a restaurant and cleaning and drying establishments located on the north side of Edmondson Avenue and to the west of the subject property, near Inglewood Avenue. Immediately close by on the west of the last mentioned property is an Amoco Filling Station. To the east of the subject property, situated at a distance of approximately 500 feet is a Cities Service Filling Station. All of these locations were non-conforming business uses at the effective date of zoning

in Baltimore County and are still so used. As Robert V. McCurdy, a real estate broker testifying for the Petitioner, states, there are commercial enterprises in the immediate neighborhood of the subject property give this area quasi-commercial characteristics. On the north side of Edmondson Avenue and directly across from the subject property is an undeveloped lot referred to as Eden Terrace. While Eden Terrace is a fully developed community, and has been so for a number of years, yet this lot is still undeveloped and Mr. McCurdy testified that it is not economically feasible to develop it as residential due to, among other reasons, the cost of changing the stream and the necessary fill and questionable sub-soil. These factors are quoted by the Court in its consideration as to whether there was an error in the original zoning of the immediate area in which the subject property is located.

As to changes in the character of the neighborhood, the Petitioner introduced several files #2893-IX which shows that the Zoning Commissioner of Baltimore County reclassified the Cities Service Filling Station property, a non-conforming use heretofore referred to, from an "R" residential zone to an "C" commercial zone and granted a special permit to use said property for a gasoline service station. The order was passed on March 22, 1956 and the only reason given for the change in classification was "and it appearing that by reason of location the granting of the special permit will not be detrimental to the safety and general welfare of the community, therefore, the petition should be granted."

It might, therefore, be assumed from the action of the Zoning Commissioner in this instance that, upon application of the owners of the other non-conforming uses heretofore mentioned for reclassification, same should also be granted as each are in no less favorable position than the Cities Service site. If this would be true then there would be ample changes in the general character of the immediate neighborhood of the subject property to grant the application of this Petitioner.

In referring to the testimony taken by the Board on December 20, 1956 as to changes in the neighborhood occurring after the order of the Board of Zoning Appeals of May 3, 1956, the Petitioner testified that since that last hearing ballroads for the new beltway have been established which rise approximately 25 to 30 feet in the air and cross over Edmondson Avenue. He further stated that the houses that adjoin the bakery on the west thereof are being demolished for an access road to the beltway and that the beltway is located approximately 500 feet westerly from the intersection of Harlan and Edmondson Avenues. He further testified that Edmondson Avenue has been widened to the extent of 60 feet and that it now practically abuts the corner of the property in question and that in addition thereto 10 feet of his property was taken over by the County for the use of relocations and the widening of Harlan Lane and for the relocation of storm drains. He had previously testified at the first hearing on the proposed taking by the County of the Harlan Avenue frontage which he stated destroyed the look

in such a manner that it would be impossible to build houses as he had planned. It was also developed that a package goods license was issued on May 26, 1956 to one of the non-conforming use properties in the small commercial enterprise.

As has been heretofore stated, the Board of Zoning Appeals, after hearing the additional testimony, on December 20, 1956, as to changes that had occurred since their order of May 3, 1956, (the order appealed from) reversed its order of May 3rd and granted the petition for reclassification and the special exception, which order was stricken out by the Court for the reasons heretofore given. While it is true that the testimony of the Petitioner in the first hearing before the Board anticipated those changes to be made, yet they were not entirely certain as to location and the effect it might have on his property. His testimony at the second hearing, together with his exhibits clearly brought to attention the actual physical changes which had been accomplished and demonstrated their effect on the immediate neighborhood. It seems obvious from the testimony and from the photographs that the beltway, due to its elevation, practically severs the subject property plus the bakery and one house to the west thereof from the rest of the community lying to the west of the beltway.

The Court realizes that the law has been well established that in order for reclassification of zoning to be valid, it must appear that either there was a mistake in the original zoning or that the character of the neighborhood has changed to such an extent as to justify such rezoning. It is also thoroughly well established that it is not the function, duty or right of the Court to

some or re-some, or to substitute its judgment or discretion for that of the Board, but merely to pass upon whether the Board has acted arbitrarily, capriciously and illegally.

After a full consideration of all the testimony in this case, together with the exhibits, and including the testimony which was taken by the Board on December 20, 1956, which is subject to this appeal, the Court has concluded that the action of the Board by its order of May 3, 1956 was arbitrary and that the petition for reclassification of the subject property from B-6 classification to a B-1 classification with a special exception for the operation of a gasoline filling station should have been granted.

The said order of the Board dated May 3, 1956, is therefore reversed.

May 11, 1957

John P. Baruth

#3647 RX
MAP
#1-A
BL-X

IN THE MATTER OF PETITION
FOR RECLASSIFICATION AND
SPECIAL EXCEPTION FOR
GASOLINE SERVICE STATION
W. E. Garde, Edmondson Ave.
and Harlan Lane, 1st Dist.
W. A. Garde Company, Inc.
Petitioner

BEFORE THE
BOARD OF ZONING APPEALS
OF BALTIMORE COUNTY

OPINION

This is an appeal from an Order of the Zoning Commission refusing a petition for reclassification from "R-2" (residence) Zone to "B. L." (Business local) Zone and for a Special Exception for a Gasoline Service Station.

The property is located at the southeast corner of Edmondson Avenue and Harlan Lane in the First Election District.

Although there are several non-conforming commercial uses in the area it is predominately residential in character and there has been no substantial change in conditions since the original zoning plan was adopted in 1945.

The petitioner has failed to prove that the original zoning was erroneous or a genuine change in conditions. This being so we are required to refuse the reclassification.

ORDER

For the reasons set forth in the foregoing Opinion it is this Seal day of May, 1956, ORDERED by the Board of Zoning Appeals of Baltimore County that the petition for reclassification and for a special exception be denied.

BOARD OF ZONING APPEALS OF
BALTIMORE COUNTY

Paul F. Hildebrand
Chairman

January 12, 1959

Marvin P. Sklar, Esq.,
Suite 1301 Tower Building
Baltimore 2, Maryland

Re: Special Exception for Gasoline
Service Station - W.E. Garde,
Edmondson Ave. & Harlan Lane,
1st Dist. Petition No. 3647-RX

Dear Mr. Sklar:

In reply to your letter of January 2, 1959 requesting an extension of the special exception granted in the above matter, please be advised that I have today granted the extension for one year beginning January 21, 1958 and ending January 21, 1959.

Very truly yours,

Zoning Commission

W. A. GARDE CO., INC.
BUILDERS OF BETTER BUILT HOMES



REAL ESTATE AND INVESTMENTS
5302 EDMONDSON AVENUE
ROSBURY 7-1100
BALTIMORE 29, MD.



November 29, 1955.

To the Honorable Chairman
Baltimore County Zoning Commission
Towson 4 Maryland

Dear Mr. Chairman:

Please enter an appeal from your decision for reclassification of zoning on the property located on the corner of Edmondson Avenue and Harlan Lane, known as 6126 Edmondson Avenue.

Very truly yours,
W. A. Garde
William Garde, President.
W. A. GARDE COMPANY, INC.

October 28, 1955

\$5.00

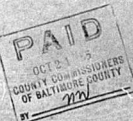
RECEIVED of W. A. Garde Co., Inc., the sum of Five (\$5.00) Dollars, being additional cost of advertising on the petition for reclassification of property, northeast corner of Edmondson Avenue and Harlan Lane, 1st District, Baltimore County.

Thank you.

Zoning Commissioner of Baltimore County

REAR NO:

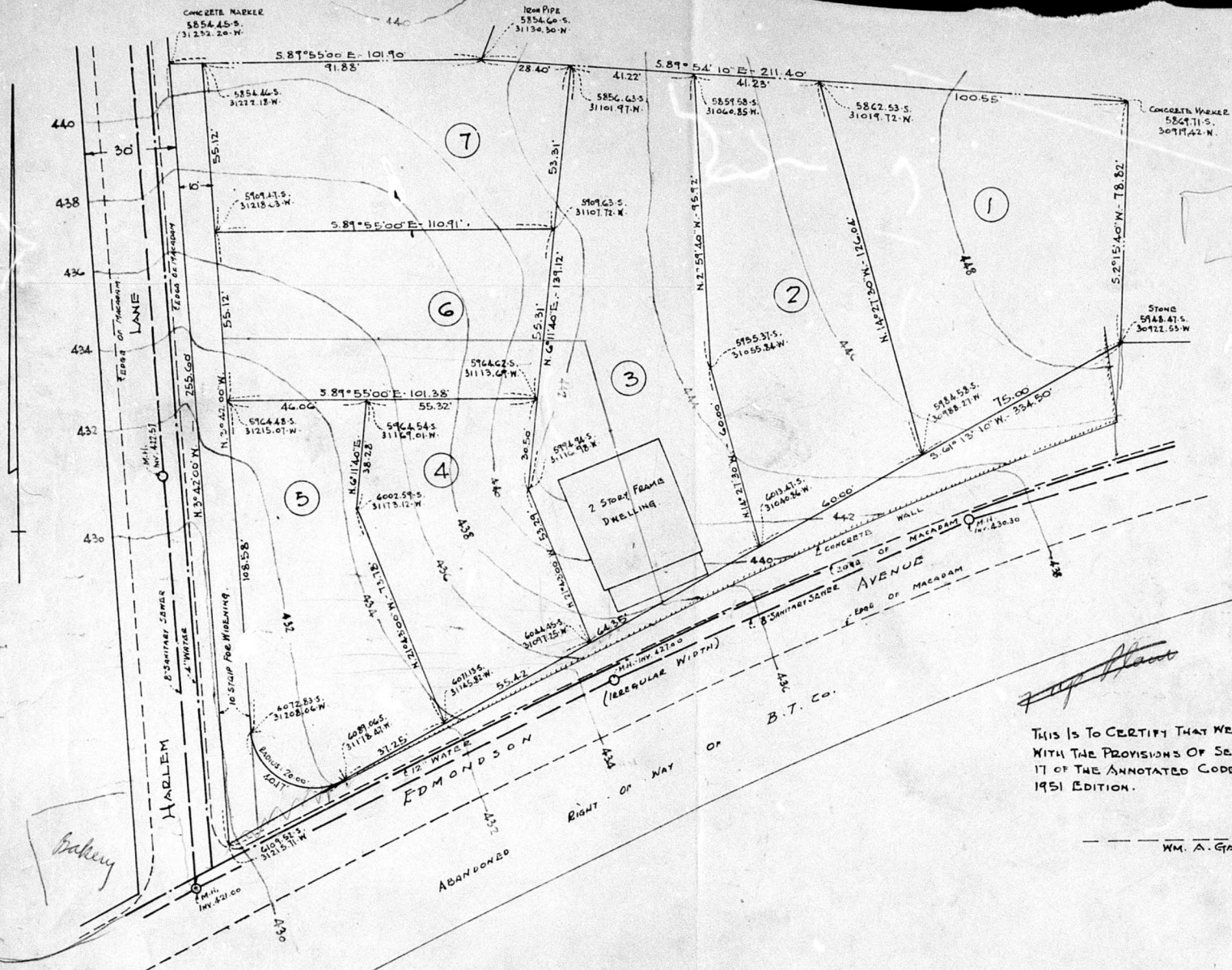
Monday, October 31, 1955
at 10:00 a.m.



CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

#3647

District: 1st Date of Posting: 10-18-55
Posted for: Carl P. B. L. Zoning Department for a Gasoline Service Station
Petitioner: W. A. Garde Co., Inc.
Location of property: W. E. Garde, Edmondson Ave. & Harlan Lane, 1st Dist. Petition No. 3647-RX
Location of Signs: Northwest Corner of Edmondson Ave. & Harlan Lane
Remarks: Corner of 285 ft. each of Harlan Lane on the N.E. of Edmondson Avenue.
Posted by: George R. Hummel Date of return: 10-20-55



True Plat

THIS IS TO CERTIFY THAT WE HAVE COMPLIED WITH THE PROVISIONS OF SECTION 72 OF ARTICLE 17 OF THE ANNOTATED CODE OF MARYLAND, 1951 EDITION.

WM. A. GARDE - OWNER

A Under Home Eq
Da 57 300
1950
 NOTE: - *man* *1950*

CONTOURS & ELEVATIONS ARE REFERRED TO DATUM OF BALTIMORE COUNTY METROPOLITAN DIST. - M.L.T. COORDINATES ARE REFERRED TO TRUE MERIDIAN & COORDINATES TO SYSTEM ESTABLISHED BY BALTIMORE COUNTY METROPOLITAN DIST.

SCALE: 1" = 30' MAR. 12, 1955
 J. F. DOUTHIRT, JR.
 SURVEYOR & CIVIL ENGR.
 5906 AYLESBIRE RD.
 BALTIMORE - 12, MD.