

Petition for Zoning Re-Classification

To The Zoning Commissioner of Baltimore County—

In re: MAP #8 SEC 3-D

All that parcel of land in the Eighth District of Baltimore County beginning in the center line of Parks Avenue and Tyler Street, thence running easterly and southerly on the centerline of Parks Avenue and southerly the following courses and distances: South 81 degrees 30 minutes East 1050 feet thence South 9 degrees 00 minutes West 1325.45 feet thence North 10 degrees 43 minutes West 423 feet thence South 53 degrees 31 minutes West 195 feet thence North 15 degrees 10 minutes East 2165 feet thence North 8 degrees 30 minutes East 1752.25 feet thence South 81 degrees 30 minutes East 130 feet to the place of beginning.

herely petition that the zoning status of the above described property be reclassified, pursuant to the Zoning Law of Baltimore County, from an "R-20" zone to an "R-10" zone.

Reasons for Re-Classification: For the construction of individual homes on lots, each having an area of not less than 10,000 square feet.

Size and height of building: front feet; depth feet; height feet. All setbacks agree to conform to the zoning requirements specified in an R-10 zone.

Property to be used as prescribed by Zoning Regulations. I, or we, agree to pay expense of advertisement, 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.



Address: 1409 Mercantile Trust Building
Baltimore 2, Maryland

ORDERED BY The Zoning Commissioner of Baltimore County, this 10th day of November, 1959, that the subject matter of this petition be advertised, as required by the "Zoning Law of Baltimore County," in a newspaper of general circulation throughout Baltimore County, that property be posted, and that the public hearing be held in the office of the Zoning Commissioner of Baltimore County, in the Rockland Bldg., in Towson, Baltimore County, on the 16th day of November, 1959, at 10:30 A.M.

Noted: Attorney's Name, James D. C. Downes
Address: 212 Washington Avenue
Towson 6, Maryland
Phone: VA 5-5900

Baltimore County, Maryland
OFFICE OF LAW
Inter-Office Correspondence

TO: County Board of Appeals Date: May 5, 1961
FROM: James D. Nolan
SUBJECT:

Reference is made to the "Petition for Separate Hearing on Matters Unrelated to the Reclassification Petition" filed in the matter of Ida M. Parks, et al. It is my opinion that the Board is without jurisdiction to hear this matter. Your attention is invited to the memorandum opinion to the Board, dated November 6, 1959, from the writer.

If you desire any additional information or assistance, please do not hesitate to contact this office.

James D. Nolan
Assistant Solicitor

JUN/10

RE: RECLASSIFICATION OF PROPERTY
FROM AN "R-20" Zone to "R-10" Zone - Parks Ave. and Tyler St., 8th District - Ida M. Parks, et al, Petitioners

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. 14621

OPINION

This is a petition for reclassification of a tract of land of approximately 1 1/2 acres situate on Parks Avenue and Tyler Street, in the 8th District of Baltimore County, from an "R-20" Zone to an "R-10" Zone. The petition is seeking a reclassification of the northernmost 127.5 acres of the entire tract.

In lieu of testimony the Board received a stipulated statement of facts clearly describing the subject tract and surrounding area; also the changes which have taken place in the immediate area since the adoption of the Land Use Map for the Eighth District of Baltimore County on December 20, 1955.

After carefully reviewing the stipulated statement of facts the Board is unanimous in its opinion that sufficient changes have taken place in the immediate area of the subject tract to warrant a reclassification from an "R-20" Zone to an "R-10" Zone.

It is, therefore, the unanimous opinion of the Board of Appeals that the reclassification from an "R-20" Zone to an "R-10" Zone should be granted.

ORDER

For reasons set forth in the foregoing Opinion, it is this 13th day of April, 1961, by the County Board of Appeals, ORDERED that the aforesaid reclassification should be and the same is hereby granted from an "R-20" Zone to an "R-10" Zone.

Any appeal from this decision must be in accordance with Rule 1101 (b) of the Rules of Practice and Procedure of the Court of Appeals of Maryland.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

James D. Nolan
Assistant Solicitor
J. Mitchell, Jr.

IN THE MATTER OF PETITION
FOR RECLASSIFICATION OF
PROPERTY on Parks Avenue
and Tyler Street - 8th
District - Ida M. Parks,
et al, Petitioners

BEFORE

BOARD OF APPEALS

OF BALTIMORE COUNTY

Case No. 14621

ORDER

For the reasons which are fully set forth in the Board's Memorandum Opinion, on the 14th day of January, 1960, re Oxford Land Company, the petition is denied.

COUNTY BOARD OF APPEALS
BALTIMORE COUNTY

James D. Nolan
Assistant Solicitor
J. Mitchell, Jr.

Date: July 29, 1960

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

NOTICE OF HEARING

Norman H. Orrick
1409 Mercantile Trust Bldg.
Baltimore 2, Md.

Centerline of Parks Ave. & Tyler St.
8th District
Norman H. Orrick-Petitioner

10:00 A.M.

DATE: Tuesday, December 16, 1959
PLACE: Room 106, County Office Building, 111 N. Chesapeake Avenue, Towson, Maryland

Zoning Commissioner
of Baltimore County

RECEIPT

Date: 11/23/59

RECEIVED OF: Eugene F. Smith, Attorney
LOCATION OF PROPERTY: 1409 Mercantile Trust Bldg., Baltimore 2, Md.
AMOUNT: \$128.00
COUNTY: Baltimore
JAMES D. C. DOWNES, 11-24-59 8523 • • • HIL- 12800
212 Washington Ave., Bk

Zoning Commissioner
of Baltimore County

In reference to the construction of the above cited regulations, it is true that the Board has a right to construe the same considering the intent of the author and legislative body which adopted the regulations, as well as the general principles of law controlling interpretation. In this respect, your attention is invited to the definition of the proposition "for", as is set forth in Webster's Dictionary, and in Corpus Juris Secundum, Vol. 36, which in brief states that the said proposition has been used in numerous ways and with many meanings including, but not limited to "in respect of", "on account of", "because of".

With respect to the reasonableness of the fees charged for the appeal, it could be that the authors of the legislation and the legislature decided to place the full cost of sending on the parties involved in such proceedings including, but not limited to the overhead, wages of employees as well as to the costs of the Office of Planning and Zoning.

In view of this fact, it is our thought that it was intended that the fees schedule set forth in section 501.8 was applicable to both property owners and petitioners.

If you wish any additional discussion, please communicate with me.

James D. Nolan
Assistant Solicitor

JDM:mj

cc - Zoning Commissioners

County Board of Appeals
Mr. James D. Nolan
November 6, 1959

Reference is made to the petition of the protestants owner for a hearing relative to the legality and interpretation of Section 501.8b entitled "Appeals to the Board of Zoning Appeals."

First, in reference to the legality of said section, it is the opinion of this office that your Board is not vested with any authority or power to determine the validity of said section of the Baltimore County Zoning Regulations, for such is a judicial matter, which should be determined by judicial proceedings. In this respect, your attention is invited to the case of Cassel vs. City of Baltimore 195, Md. 348, 154, which reads as follows:

"The test of invalidity of a zoning ordinance is whether it is arbitrary, unreasonable and discriminatory, and has no substantial relation to the public health, safety, morals or general welfare. Mayor and City Council of Baltimore vs. Byrd, 191, Md. 612, 82 A 2nd 588; Wilbur vs. City of Newton 302 Mass. 39, 18 N. E. 2nd 365; Bavin vs. Adams 123 Conn. 275, 193 A 124. It is unquestioned that the City Council has the power to amend its City Zoning Ordinance whenever there has been such a change in the character and use of a use district since the original enactment that the public health, safety, morals or general welfare would be promoted by a change in the regulations. Whether an ordinance amending the original zoning ordinance is a valid exercise of the police power is a proper subject for judicial review. It is the duty of the Court to annul such an ordinance if it is clearly arbitrary, unreasonable and discriminatory. Simon vs. Town of Newham, 31 Mass. 340, 42 W. E. 2nd 516, 141 A. R. 688; Zahn vs. Board of Public Works of City of Los Angeles, 274 U. S. 325, 47 S. Ct. 594 71 L. Ed. 1074."

Also your attention is invited to McQuillan on Municipal Corporations Sec. 25.237 entitled "To Determine Constitutionality of Validity of Zoning," which reads as follows:

Ordinarily zoning boards of adjustment, review or appeals have no power to pass on the constitutionality or validity of zoning ordinances under which they act and which they apply to cases before them.

Cost of Advertisement \$

DEPARTMENT OF PUBLIC WORKS
OF BALTIMORE COUNTY

Inter-Office Correspondence

From: ALBERT B. KALTENBACH
To: WILBIE H. ADAMS
Subject: AVAILABILITY OF UTILITIES - PARKS PROPERTY

Mr. WILBIE H. ADAMS
Re: AVAILABILITY OF UTILITIES - PARKS PROPERTY

WATER SUPPLY (CONTINUED)

ICE TO THIS PROPERTY FROM A NEW ZONE OF SERVICE, TO BE CALLED THE POT SPRING FIFTH ZONE. A ROUTE STUDY HAS BEEN COMPLETED WHICH INDICATES THAT THE BEST ALIGNMENT FOR A TRANSMISSION MAIN TO SERVE THE NEW AREA WILL TRAVERSE THROUGH THE PROPOSED STREETS IN THE PARKS PROPERTY.

FUNDS FOR THE CONSTRUCTION OF THE NEW ZONE OF SERVICE WERE AUTHORIZED BY THE COUNTY EXECUTIVE AND COUNTY COUNCIL IN THE 1959 AND 1960 CAPITAL BUDGETS.

ASK/JDM/LB

CC: MR. DILL
MR. KEYS
LAND DEVELOPMENT
DEVELOPER'S DESIGN APPROVAL

THERE IS SUBMITTED HERewith a REPORT ON THE AVAILABILITY OF WATER AND SANITARY FACILITIES FOR THE SUBJECT PROPERTY:

SANITARY SEWERS

THE PARKS PROPERTY CONSISTS OF APPROXIMATELY 142 ACRES AND IS BOUNDED ON THE SOUTH BY THE STRATFORD SUBDIVISION, ON THE EAST BY SPRINGLAKES, AND ON THE NORTH BY A PROPOSED CEMETERY.

APPROXIMATELY 55 ACRES OF THE AREA ARE SITUATED WITHIN THE DEVER DAM WATERSHED. THIS PORTION OF THE AREA CAN BE SEWERED WHEN THE TEXAS BEAVER PUMPING STATION, NOW UNDER DESIGN, IS COMPLETED. AN INTERCEPTOR CAN BE EXTENDED FROM THE PROPERTY DIRECTLY INTO THE PROPOSED PUMPING STATION. A SECOND PORTION OF DRAINAGE AREA IS LOCATED IN THE KELLY BRANCH DRAINAGE AREA. THIS PORTION OF THE PROPERTY CAN BE SEWERED BY EXTENDING A GRAVITY SEWER FROM THE SPRINGLAKES TRACT.

THE REMAINING 87 ACRES OF THE PROPERTY ARE LOCATED IN THE SPRING BRANCH WATERSHED. THIS PORTION CAN BE SEWERED BY MEANS OF THE EXTENSION OF APPROXIMATELY 2,000' OF SEWER FROM TIMOTHY ROAD THROUGH THE STRATFORD SUBDIVISION.

A REVIEW OF THE CAPACITY OF DOWNTOWN SEWERS IN GREEN MEADOW DRIVE SOUTH OF THE PARKS PROPERTY INDICATES THAT BETWEEN HATHAWAY AND CINDER ROADS THE SEWERS HAVE A CAPACITY OF APPROXIMATELY 1/2 M.G.D., WHEREAS THE ULTIMATE FLOW FROM THE AREA WITH COMPLETE DEVELOPMENT OF THE PARKS PROPERTY WILL EXCEED 1.0 M.G.D. IN THE EVENT THE PARKS PROPERTY IS DEVELOPED, THEREFORE, THE DEVELOPER WILL BE REQUIRED TO SUPPLEMENT APPROXIMATELY 500' OF EXISTING SEWER IN GREEN MEADOW DRIVE.

WATER SUPPLY

THE PARKS PROPERTY IS GENERALLY ABOVE ELEVATION 470. THIS IS THE LOWEST LIMIT WHICH CAN BE PRO IDED FROM THE TOWSON FOURTH ZONE OF SERVICE. A STUDY HAS BEEN COMPLETED WHICH INDICATES THAT IT WILL BE FEASIBLE TO FURNISH WATER SUPPLY SERV-

RE: PETITION FOR RECLASSIFICATION
From "B-20" Zone to "B-10" Zone
Center line of Parks Avenue
and 72nd Street, 8th District
Ida M. Parks, Esther J. Shriver,
Norm Parks, Jeanne, Florence G.
Summa, Fred. H. Parks, Robert
Lapp and Margaret Bryant Lapp,
Petitioners

REPORT

DEPUTY ZONING COMMISSIONER

OF

BALTIMORE COUNTY

No. 4821

Petitioners have requested a reclassification, pursuant to the Zoning Law of Baltimore County, from an "B-20" Zone to an "B-10" zone, the purpose being to construct individual homes.

In order to obtain the reclassification it is necessary for the petitioners to meet the tests as set forth in Zina vs Board of Appeals of Baltimore County, 207 Md. at page 358:

"It is an established rule that where an application is made for reclassification of a tract of land from one zone to another, there is a presumption that the zones established by the original zoning ordinance were well planned and arranged and were intended to be more or less permanent, subject to change only when there are genuine changes in conditions, that, before a zoning board rescues a property, there should be proof either that there was some mistake in the original zoning or that the character of the neighborhood had changed to such an extent that reclassification ought properly to be made. The burden is upon the proponents of change to justify it by proof of original mistake or substantial change in the character of the neighborhood."

Existing zoning was never intended to be irrevocable and permanent as is so aptly explained in Offutt vs Zoning Appeals of Baltimore County, 206 Md. at page 557:

"It is universally recognized that zoning is not static. If it could not change with the changing conditions and the complexities of the modern world, progress would be retarded. A restriction of property use which might be considered reasonable today could be so unreasonable under changed conditions as to amount to confiscation. Zoning officials have the power to alter zoning lines from time to time when there are substantial changes in conditions and such alteration has a reasonable relation to the public welfare."

There is no vested or contractual relation created between the County and the property owner by land use ordinances. This is expressed clearly in Offutt vs Board of Zoning Appeals of Baltimore County, 206 Md. at page 551.

"We acknowledge that a property owner has the right to rely upon the rule of law that a classification made by an ordinance will not be changed unless the change is required for the public good. However, property owners have no vested rights in consequence of the enactment of a zoning ordinance establishing use districts. No contractual relations are created thereby. Property is held subject to the valid exercise of the police power of the State."

The reclassification of a tract of land from "B-20" to "B-10" does not in itself constitute a traffic hazard. The street layout on the preliminary plan of the petitioners' property is similar to that of adjoining developments and will not be any more conducive to traffic problems than the street layout in the adjoining developments.

First, the matter of error in creating the Eighth District Land Use Map, approved December 20, 1955, should be considered. Usually the zones are divided from "B-20" to "B-10" to "B-10" to "B-10". In the present case an "B-20" zone is isolated. An "B-10" exists to the east and to the west. An "B-20" zone is situated to the south. To the north is property owned by Baltimore County.

The Deputy Planning Director expressed some doubt that the "finger" of "B-10" immediately to the east of the subject property should ever have been so zoned. However, the "B-10" zone is there and is being brought to full development. He also testified that the creation of the existing "B-10" zone because sewer and water were lacking, while thought reasonable at the time, was itself an error. The protestants do not believe the petitioners should be permitted to reclassify their property because sewer and water will soon be available. Both are correct. The property should not have been recommended to the County Commissioners as "B-10" because of lack of sewerage and water. Building permits could not have been issued for "B-10" type development until facilities were available. The Deputy Planning Director recommended that the petitioners be granted a reclassification from "B-20" to "B-10". There was, therefore, an error in designating the subject property "B-10" on the Eighth District Land Use Map.

Secondly, in the matter of "genuine changes in conditions":

1. Directly to the north a Special Exception for a 70-ft. sewer easement was approved September 19, 1957.
2. On the east side of York Road and the north side of Alma House Road, known as the "Kelley property", 160 acres were reclassified from "B-20" to "B-10" on February 25, 1958.
3. A portion of the "Kelley property" was zoned as follows on October 19, 1959:
 - a. 11.85 acres "B-20" to "B-10"
 - b. 1.75 acres "B-20" to "B-10"
 - c. 8.77 acres "B-20" to "B-10"

4. The north side of Warren Road south of Sherwood Road, known as the Roberts property, 150.2 acres were reclassified from "B-20" to "B-10" on October 19, 1959.

These changes came about because of a great increase in industrial development in the vicinity with the resulting need for an increase in housing.

There have been other zoning changes, but the above mentioned changes are major ones. The Eighth District Map has not been static.

The developer may set up a buffer zone if that is desired by the developer, but the maintenance of a buffer zone at the expense of one landowner for the benefit of the owners of other land when both zones are of a low density zoning would not be a proper zoning requirement. The future owners of property in the buffer zone would have no buffer zone, yet they would have as much entitlement as present property owners.

It is a basic to the law of property that a man shall be allowed the evident use of his property consistent with the protection of his neighbors. The neighbors are suffering no real harm, there is evidence of error in the original Eighth District Map and there have been sufficient changes to warrant that reclassification ought properly to be made.

It is this 18th day of December, 1959 by the Deputy Zoning Commissioner of Baltimore County, ORDERED that the above described property, or areas, should be and the same is hereby reclassified, from and after the date of this order, from an "B-20" Zone to an "B-10" Zone.

Deputy Zoning Commissioner
of Baltimore County

NO PLAT
IN
THIS FOLDER