

#4896

RE: PETITION FOR RECLASSIFICATION
OF PROPERTY ON SOUTH SIDE OF
SHAWAN ROAD, EAST SIDE OF
BALTIMORE HARRISBURG EXPRESS-
WAY AND WEST SIDE OF YORK ROAD,
8th District - (Opfer-Dickinson
Co., Inc., Petitioner)

BALTIMORE COUNTY

No. 68-6

Pursuant to the advertisement, posting of property and public hearing on the above petition for reclassification of three parcels of land, lying on the south side of Shawan Road, east side of Baltimore-Harrisburg Expressway and the west side of York Road, in the Eighth District of Baltimore County, the first parcel from a "B-1" Zone to a "M-1" Zone; the second, from an "B-2" Zone to a "M-1" Zone, and the third, from a "B-1" Zone to a "M-1" Zone, from the facts presented at the hearing and the changes which have taken place in the area are sufficient to warrant the granting of the reclassification as petitioned. Also the comments of Mr. George G. Garrels, Deputy Director of the Office of Planning, substantiate the reclassification for the following reasons:

"1. When the Eighth District Zoning Map was adopted in December of 1955, the zoning for the area east of the Harrisburg Expressway to York Road and south from Shawan Road to Heister Run and Cockeysville Roads was based primarily on land use proposals by this office. "B-2" or "B-1" zone lot zoning was proposed for most of the area defined above because it was the earliest residential zone that could be applied to an area where neither public water nor sewerage facilities was anticipated as being available in the foreseeable future. Some manufacturing zoning (M) was proposed for the Towson Nursery property on the south side of Wight Avenue at York Road existing industrial uses near Cockeysville Road were recognized with "B-1" zoning. Commercial area was created at the corner of Shawan and York Roads.

"2. The zoning established by the 8th District Zoning Map for the area defined above was logical and appropriate at the time the map was adopted in 1955. Four years have elapsed since the adoption of the map and the ensuing time period has brought about changes in thinking and changes of conditions which warrant re-evaluation of existing zoning for the area between the Harrisburg Expressway and York Road south of Shawan Road. They are:

a. A better knowledge of industrial land requirements for Baltimore County.

Studies by the Regional Planning Council indicate the need for increasing the extent of existing industrially-zoned land in the Baltimore Region by 20%. In view of the participation in making recommendations for borrowing for capital projects as well as for the contents of the Capital Budget and Program, this office is well aware of the need for logical and appropriate land use sites for industrial activity. More industrial land in Baltimore County will help to attain the goals of the greater selectivity and choice of sites made available to meet a multitude of locational needs. New industrial activity also will strengthen the economic base of Baltimore County not only with respect to the tax base but also with respect to primary and secondary manufacturing and commercial uses and employment opportunities.

b. Analysis of areas suited for industrial re-zoning. With a knowledge that more industrially-zoned land was essential to the economic foundations of Baltimore County, the planning staff re-evaluated the land use patterns of the 8th District (among others) to determine which areas now zoned otherwise might be proposed for industrial use. The areas embraced by the subject petition is manifestly suited for industrial land use. It is situated adjacent to an interchange of the Harrisburg Expressway - a part of the inter-state highway system. The expressway, Shawan Road, and York Road provide excellent means for the movement of people and goods to and from the proposed industrial area - not only on a north-south basis, but on a metropolitan and nationwide basis as well. Topography of the site also makes it well suited for industrial use. Topographic changes provide a definite break between the residential and institutional uses to the north. The Harrisburg Expressway serves also as an appropriate stopping point for the westerly expansion of industrial zoning. The area of the site is large enough to enable subdivision controls exercised by the County to provide for an effective pattern of interior vehicular circulation and lotting for the tract.

c. Changes in physical conditions in the vicinal area affecting industrial zoning. No projects are programmed for the area which will affect changes of conditions leading to a re-industrial zoning for the subject tract. The first is the Cockeysville sewer project which will make sanitary sewerage facilities available to the subject property. The zoning map which placed it in a predominantly "B-2" category primarily because of the absence of utilities now becomes obsolete here inasmuch as more intense land uses are warranted. The State Roads Commission shortly will expand the present interchange of the Harrisburg Expressway and Shawan Road in a manner which provides for a greater traffic carrying potential and a greater accessibility to the expressway for the vicinal area.

"3. The Office of Planning recommends for the proposed industrial reclassification sought by the petitioner. If we had been able to predict the certain availability of utilities for the tract in the early 1960s rather than in the vague future, if we had a better knowledge of the need for

providing more new industrial land in Baltimore County, and if we had been aware that the interchange of the Harrisburg Expressway would be improved, doubtlessly the Office of Planning would have recommended that the subject property be placed in an industrial zoning category when it made its original land use proposals for the 8th District in 1955. We believe that it is in the best interest of Baltimore County to provide for industrial zoning here."

For the above reasons the reclassification should be granted.

It is this 9th day of February, 1960, by the Deputy Zoning Commissioner of Baltimore County, ORDERED that the above described property, or area, should be and the same is hereby reclassified, from and after the date of this Order, the first parcel from a "B-1" Zone to a "M-1" Zone; the second, from an "B-2" Zone to a "M-1" Zone, and the third from a "B-1" Zone to a "M-1" Zone, subject, however, to approval of plans for the development of said property by the Office of Planning and the Bureau of Land Development of Baltimore County.

Deputy Zoning Commissioner
of Baltimore County

No. 68-77-R -

On August 29, 1967, Growth Properties, Inc., petitioned for a reclassification of property on the west side of York Road, 975 feet north of Phoenix Road from R-6 Zone to M-L Zone, consisting of 241 acres, more or less. This is the petition herein considered.

On October 18, 1967 Hilltop Joint Venture petitioned for a reclassification of property on the northwest side of York Road 1550 feet north of Thornton Mill Road from R-6 Zone to M-L Zone, consisting of 114.9 acres, more or less.

These two petitions comprise a total of 356 acres, more or less, submitted to the Zoning Commissioner for consideration as Industrial Use.

These two petitions are really the result of a petition by Opfer-Dickinson Co., Inc., on November 30, 1959.

At that time the Deputy Director of the Office of Planning, who is now the Director, advised the Deputy Zoning Commissioner who is now the Zoning Commissioner as follows:

Quote: *from RB 4 444*

With the full realization that this would have a tremendous impact on future planning and zoning, the Deputy Zoning Commissioner granted the reclassification on Feb. 9, 1960. It was upheld on July 14, 1960 by a two man County Board of Appeals, Spiro T. Agnew and Nathan Kaufman.

It is interesting to note that the Maryland State Roads Commission was less than happy as evidenced by their comment on January 8, 1960:

"This office has reviewed the subject petition and has found that the property will be seriously affected by the proposed rights of way necessary for the tentatively proposed Outer Baltimore Beltway. Since the proposed route is a future project, this office requests the rezoning be delayed to give both the State Roads Commission and the Baltimore County Planning

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Commission time to study the route more thoroughly. If this is not possible, then it is requested that development of the subject property be delayed."

The Industrial Park, now known as the Greater Baltimore Industrial Park is now a model and, at this time, is served by a railroad spur.

For the present petition the Director of the Office of Planning advises as follows:

"1. Studies by the Planning staff with respect to industrial land use needs indicate that yet additional area is required throughout the County and in the northeastern sector of the County for industrial purposes. The Planning staff has indicated that the industrial corridor should be extended northerly between York Road and the Harrisburg Expressway. This indication is affirmed in the recently adopted General Development Plan for the Baltimore Region.

"2. The Planning staff is in accord with the proposal for industrial zoning here, although we would have preferred M. L. R. zoning. It recognizes that problems exist now with respect to both utilities and accessibility. It notes that both water and sewer extensions are programmed for a limited area in the corridor as part of the current capital program. It notes also that industrial development lags well behind the making of zoning decisions. It is important to increase the County's economic potential by having designated suitable zoned industrial areas in advance of actual development."

Albert B. Kaltenbach, Director of the Department of Public Works for Baltimore County, made it very clear that sewer and water will be made available if zoning is granted and public works agreements are consummated by the petitioner within a year and a half. Consulting engineers estimate construction of industrial park to be under way in one and a half years with completion within two and a half years.

It is hoped that the present map, now over twenty years old, will be replaced by a new one recommended by the Planning Board about February 1969. That there have been changes is self-evident. To wait until 1969 would not only slow down what will eventually be industrial use, but would set back plans for actual construction of water and sewer lines.

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Only a few residents of the area attended the hearing, but they protested vigorously that they will not have the quiet enjoyment of their properties in a rural atmosphere, and what they say is true; but then, almost every residential, industrial and commercial development now in existence in Baltimore County was once farm land.

The new concept is the construction of handsome industrial buildings on well landscaped properties near an area suitable for fine residences. The subject tract fits this concept admirably.

It has been almost eight years since a petition asked for industrial zoning at Shawan Road between the Harrisburg Expressway and the York Road. The new map, hopefully, will be in the hands of the Baltimore County Council in 1969. Baltimore County cannot stand still at its northern end waiting for a better York Road plan any more than Bethlehem Steel at Sparrows Point could stand still and wait for the needed road complex in Eastern Baltimore County.

The requested rezoning is for the public good and will ultimately benefit the public health, safety, morals and general welfare.

For the above reasons the reclassification should be had.

It is this _____ day of October, 1967, by the Zoning Commissioner of Baltimore County, ORDERED that the herein described property or area should be and the same is reclassified from an R-6 Zone to M-L Zone, subject to approval of the site plan for the development of said property by the State Roads Commission, Bureau of Public Services and the Office of Planning and Zoning.

Zoning Commissioner of
Baltimore County

No. 68-86-R

On October 18, 1967 Hilltop Joint Venture petitioned for a reclassification of property on the northwest side of York Road 1550 feet north of Thornton Mill Road from R-6 Zone to M-L Zone, consisting of 114.9 acres, more or less. This is the petition herein considered.

On August 29, 1967, Growth Properties, Inc., petitioned for a reclassification of property on the west side of York Road 975 feet north of Phoenix Road from R-6 Zone to M-L Zone, consisting of 241 acres, more or less.

RE: PETITION FOR RECLASSIFICATION
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MORE-HARRISBURG EXPRESSWAY AND
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District - upfer-Dickinson Co.,
Inc., Petitioner

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. 1196

OPINION

This petition asks that we reclassify a 176 acre tract in the Eighth Election District north of Towson so as to permit light manufacturing uses. (In the current zoning map, adopted in December of 1955, the said tract is designated residential, except for about 17 acres along York Road for which business uses are indicated. Roughly, the subject property is bounded by Shawan Road on the north, York Road on the east, a sparsely settled residential tract on the south, and the Baltimore-Harrisburg Expressway on the west. The residential acreage which adjoins the southern boundary of the subject tract continues south for distances varying between 1500 and 4000 feet where, generally along the south side of Wight Avenue and the south side of Beaver Dam Road, it meets other land zoned for industrial use. From these roads on south for a distance of several miles, the area is predominantly industrial.

Wight Avenue is a 30 foot country road, emanating from York Road and deadending/Ridway to the Expressway. Beaver Dam Road crosses the Expressway by bridge south of the western portion of the subject land, and runs generally southeasterly to intersect with York Road. Neither Wight Avenue nor Beaver Dam Road provides access to the Expressway, the closest interchange being at Timonium Road a distance of 4.8 miles.

The Board is cognizant that there is a strong presumption in favor of the validity of the existing zoning, which can only be overcome by a showing of error or substantial changes in the area. We further realize that the instant property lies between institutional residential land to the north and the previously described residential tract abutting on the south. The Protestants for this reason contend that to rezone it would amount to "spot zoning".

As to the existence of error in original zoning, we cannot find that the mappers erred in curtailing the northward expansion of industry in 1955. Based on the information then available to them, especially the bleak utility outlook for the area and the then existing road situation, they established the Wight Avenue - Beaver Dam Road boundary. The sagacity

to measure
of that decision cannot be measured by its failure/up to 1960 conditions.
We, therefore, find no error in original zoning sufficient in itself to justify reclassification.

However, substantial changes have occurred in the neighborhood, as the evidence of the Petitioner's witnesses amply proved. The testimony of Mr. Jerome B. Wolf, Assistant Director of Public Works shows that although the nearest sewer is now about four miles south of the subject tract, funds are available and construction will begin this summer to take facilities as far north as Texas. He stated that this work should be completed in 18 months and estimated further that sewer facilities would be extended to Shawan Road in two years. Mr. Wolf outlined additional important improvements in other areas of the County which are in the process of completion and which will have a salutary effect on the sewer situation north of Towson.

Mr. George E. Gavrellis, Deputy Director of the Office of Planning, testified partly as follows:

"The Office of Planning recommends for the proposed industrial reclassification sought by the Petitioner. If we had been able to predict the certain availability of utilities for the tract in the early 1960s rather than in the vague future, if we had a better knowledge of the need for providing more new industrial land in Baltimore County, and if we had been aware that the inter-change of the Harrisburg Expressway would be improved, doubtlessly the Office of Planning would have recommended that the subject property be placed in an industrial zoning category when it made its original land use proposals for the 8th District in 1955. We believe that it is in the best interest of Baltimore County to provide for industrial zoning here."

Obviously, this testimony has no probative value as to what the Office of Planning would have done had the present conditions existed in 1955. Neither Mr. Gavrellis nor any individual in his Department can do other than speculate in that regard. What Mr. Gavrellis' testimony actually tells us is that, based on 1960 conditions, the Office of Planning favors the reclassification. In other words, that changes have occurred in utility availability, road adequacy, and industrial need; that because of these changes, the Office of Planning, were it preparing a new map today, would designate the subject tract for industrial zoning.

A more subtle but no less important change in conditions is reflected in the testimony of Mr. J. Walter Jones, a real estate expert appearing for the Petitioner. Mr. Jones' testimony shows that the five year test of time has proven that much of the existing industrial land in the area is unused because of its unsuitability for such development. He cites as reasons the presence of old quarries, severe topographical variations, inadequate ingress and egress, and sewage. If Mr. Jones is correct, and his testimony is uncontradicted in this respect, all the food set aside for the growing 1955 industrial baby is not digestible and additional food must be supplied to keep him healthy. Abandoning

the metaphor, additional usable industrial land must be made available to maintain the economic balance of Baltimore County.

Finally, we must carefully consider the contention of Protestants' counsel that to grant this petition would amount to "spot zoning" in the worst sense.

We cannot ignore the physical fact that the subject property, if rezoned, would have residential land both north and south of it. In that strict sense, it would become an industrial spot. Yet, not all spot zoning is reprehensible. In the Hewitt case, the Court of Appeals stated that "spot zoning" may be either valid or invalid, depending on the circumstances of each particular case. The Court went on to say that if such "spot zoning" is done in accordance with a zoning plan and done for the public good and bears a substantial relationship to the public health, safety, morals and general welfare, it is valid.

Unlawful "spot zoning" has been defined by the Court to be the arbitrary and unreasonable devotion of a small area within a zoning district to a use which is inconsistent with the use to which the rest of the district is restricted. Invalid "spot zoning" singles out a parcel of land and marks it off into a separate category for the benefit of its owner.

The evidence in this case conclusively proves that the rezoning sought bears a substantial relationship to the public health, safety and general welfare and is not for the personal enrichment of individuals. It is, therefore, in our opinion valid "spot zoning".

The Board has most thoroughly examined the evidence before it in this case because of its conviction that the matters decided here are vital to the welfare of the County. It is our decision that this reclassification be granted.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 14th day of July, 1960, by the County Board of Appeals, ORDERED that the reclassification should be and the same is hereby granted.

Any appeal from this decision must be in accordance with Rule No. 1101 (b) of the Rules of Practice and Procedure of the Court of Appeals of Maryland.

COUNTY BOARD OF APPEALS

John J. Jones
William J. Keefe

Note: Mr. G. Mitchell Austin did not sit in the above case.

#4846
MPP #8
SEC. 3-D

MAP #8
SEC. 3-D

