

RE: PETITION FOR RECLASSIFICATION
From "B-4" Zone to "B-6" Zone
N. W. Cor. Rolling Road and
Fowers Lane, 1st District
Fred. R. Diehlmann and Cecilia
Diehlmann, Petitioners

BEFORE
COUNTY BOARD OF APPEALS

OF
BALTIMORE COUNTY

No. 4598

OPINION

The matter came on for hearing and the protestants made a preliminary motion to dismiss the appeal on the basis that the petitioners had failed to comply with Section 250.2 of the Zoning Regulations. The particulars of the protestants' objections went to the petitioners' failure to file a preliminary development plan designating the projected uses of the complete tract of a little more than 5 acres.

The petitioners contend that the preliminary development plan submitted was complete insofar as the projected Metasol building was concerned, a aid building utilizing approximately slightly more than one and one-half acres of the tract; further, that its failure to supply at the time the specific information required by the Zoning Regulations for the remainder of the tract should not bar the petition. The gist of the petitioners' argument in this respect was that further applications could properly be made to this Board in the future, thereby forfeiting the detail required with regard to the balance of the tract, and the Board could then pass on the utilization of the remaining portion.

While we recognize the validity of the petitioners' contention that "B-4" areas originating by land use maps are subject to later modification, we do not think this applies in the instant situation. Under Section 250.1 of the Zoning Regulations it is clearly indicated that "B-4" areas may be designated on the zoning map and/or may be created by petition in accordance with the procedure outlined in the following sections (underwriting supplied). Section 250.2 requires such a petition to be accompanied by complete (underwriting provided) preliminary development plans.

The plans in this case are incomplete and the Board finds itself with no definite information on more than three and one-half acres of the subject property. The Board feels that without such information it cannot maintain effective control over the property as it is required to do by the Regulations. However, we feel that under the existing Regulations we have no statutory authority to entertain a petition to reopen a matter already fully determined by us.

For the foregoing reasons the petition is denied.

ORDER

For the reasons set forth in the foregoing Opinion, it is ordered, this day of December, 1960, by the County Board of Appeals, that the reclassification petitioned for, and the same is hereby denied.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

John T. G. S.
William M. G. S.
W. H. Hatcher, Jr.

The subject property consists of 5,405 acres on the northeast corner of Fowers Lane and North Rolling Road. The northeast corner of the Baltimore National Pike and Rolling Road is approximately 550 feet to the south. On this corner is a large diner known as the Double D Diner. Immediately north of the diner is a large convalescent home situated well back of Rolling Road with a well kept and spacious lawn in the front of the home. This is known as the Shady Brook Convalescent Home. The next property to the north is the one under consideration as "B-4".

On the northeast corner of Baltimore National Pike and North Rolling Road is a Robert Hall Clothing Store. The land on the east side of Rolling Road is some "Business Motor" from the intersection approximately 500 feet north. Immediately north of the Robert Hall Store is undeveloped, but a building known as the Science Center is erected directly across the street from the proposed "B-4" site. About 506 of the frontage across North Rolling Road from the proposed "B-4" site is zoned "B-6". All north of that is "B-4".

Returning to the west side of North Rolling Road from the Double D Diner going north is "B-4"; however, approximately 150 feet north of the proposed "B-4" site is a strip approximately 110 feet wide leading from North Rolling Road into the proposed Catonsville Pumping Station and Reservoir. Testimony indicated the pumping station was well under way and would have park like aspects. This would serve as a buffer between the "B-4" Zone and the very fine residential sections to the north.

In considering this site in comparison with other sites in "B-4", the petitioner is willing to confine himself to the "B-4" Zone is a choice favorable to adjacent residential neighborhoods.

If the zoning is in accord and in harmony with the comprehensive zoning plan and is open for the public good, that is, it serves one or more of the purposes of the enabling statute, and so bears a substantial relationship to the public health, safety, morals and general welfare it is valid.

The petitioners have met all of the requirements and tests, therefore, it is this day of April 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, from an "B-4" Zone to a "B-6" Zone, subject, however, to substitution of plans for approval by the Office of Planning and the Bureau of Land Development. These plans returned to the Zoning Commissioner and made a part of this Order so that all buildings and grounds may be subject to inspection by the Zoning Commissioner at any reasonable time and that buildings and grounds shall be maintained in a manner not to affect visual properties adversely.

John T. G. S.
Deputy Zoning Commissioner
of Baltimore County

RE: PETITION FOR RECLASSIFICATION
FROM "B-4" ZONE TO "B-6" ZONE
N. W. Cor. Rolling Road and
Fowers Lane, 1st District
Fred. R. Diehlmann and Cecilia
Diehlmann, Petitioners

BEFORE
DEPUTY ZONING COMMISSIONER

OF
BALTIMORE COUNTY

No. 4598

The purpose of this reclassification from "B-4" Zone to "B-6" Zone is to enable Samuel J. Dillmore and S. Donald Dillmore to erect an office and plant to house their business known as American Metasol Corporation of Maryland and Metasol, Inc. The petitioners submitted plans labeled S-1 and S-2 to the Zoning Commissioner who in turn forwarded them to the Office of Planning in accordance with Section 250.1 of the Baltimore County Zoning Regulations. On March 21, 1960, Mr. George S. Gervelle, Deputy Director of the Office of Planning made recommendations of the Office of Planning as follows:

The Office of Planning has reviewed the petition for reclassification of the subject property from "B-4" to "B-6" zoning together with the specific proposal of the American Metasol Corporation to erect an office and plant at the southeast corner of the tract. Its recommendations are herewith presented.

The Office of Planning endorses the reclassification and the proposed use by the American Metasol Corporation. The location of the tract on Rolling Road in close proximity to the Baltimore National Pike makes it eminently suited for manufacturing uses as limited and controlled in the "B-6" Zone. The development plans as proposed by American Metasol are in accord with the spirit and intent of the "B-6" zone and are considered by the Office of Planning to be satisfactory.

The leading case concerning the Manufacturing Restricted Zone is Huff, et al., v. Board of Zoning Appeals of Baltimore County, 211 Md. 48. At page 51 of the Huff case the Court has this to say:

"The very purpose of creating this type of Zone in the Zoning Regulations that were adopted last March was to provide the flexibility necessary to meet the requirements of the new type of industry previously referred to as wanting a prepossessing environment in keeping with the attractive nature of the factory building and its setting. Many such industries do not need or desire access to railroads. It is, therefore, difficult to anticipate and designate on the zoning map in advance all or more than a few of such sites in locations that meet the particular needs of certain industries, hence the provision that makes possible the petitioning for an "B-6" Zone."

The question as to future amendment of the plan will become definite if, as is anticipated, County Council Bill No. 56 becomes law. Section 250.1 of this Bill authorizes the Zoning Commissioner to approve changes in such a plan upon request and after public hearing.

The decision of the Board is reversed and the case remanded for further proceedings not inconsistent with this opinion.

June 2, 1960

or semi-precious metals or stones, sheet metal (excluding large stampings such as motor vehicle fenders and bodies), light steel or other light metal mesh, pipes, rods, shapes, strips, wire, or similar component parts, shells, textiles, tobacco, wax, wood and yards."

250.7 - No dwellings are permitted.

251 - "B-4" Zone Regulations are applicable and there is no violation.

252.1 - Front yard - Plan S-2-1 indicates compliance.

252.2 - Side yard - Plan S-2-1 indicates compliance.

252.3 - Rear yard - Plan S-2-1 indicates compliance.

252.4 - Permitted use of lot is 25% of the land area. Building area allowed is 61,000 square feet. Building area is 49,710 square feet. Requirement has been met.

252.5 - Submitted plan S-2-1 indicates compliance, with parking, etc.

252.6 - This section on display of products and storage of materials is subject to constant enforcement.

The Court of Appeals in Huff v. Board of Zoning Appeals of Baltimore County, 211 Md. at page 62, commented further concerning the "B-4" Zone:

"We read the provisions of the Regulations as to the purpose and intent in establishing 'B-4' Zones and as to the mechanics employed to be sure that the plan approved will continue to protect the uses in neighboring residential areas and not adversely affect 'residential properties', to mean that an area cannot be properly zoned or rezoned Manufacturing Restricted harmonious part of the comprehensive plan and serve the purpose of the enabling act; that is, that the zoning will be not only in the public good but in the interests of nearby property owners. If the Regulations be read as we have them, it is clear that the Manufacturing, Restricted classification is analogous to a special exception, and the rules which are applicable to special exceptions would apply, not the general rules of original error or change in conditions or the character of the neighborhood, that control the propriety of rezoning. This is because, as in the case of a special exception, there has been a prior legislative determination, as part of a comprehensive plan, that the use which the administrative body permits, upon application to the particular case of the specified standards, is in fact proper in the environment in which it is permitted. This prior determination and the establishment of sufficient standards effectively refutes the claim of improper delegation of legislative power."

The authority of the Deputy Zoning Commissioner to hear the petition was challenged.

The Court of Appeals in the Huff case was very definite as to delegation of power at page 61:

"We find there was no improper delegation of power to the Planning Commission, the Zoning Commissioner and the Board of Zoning Appeals. In Montgomery County v. Melville Club, 250 Md. 779, we said, speaking of the statute then applicable as to special exceptions, that it validly delegated to which the legislative body finds in effect prima facie properly residential, absent any fact or circumstances in a particular case which would change this prima facie finding. The duties given the Board are to judge whether the neighboring properties and the general neighborhood would be adversely affected, and whether the use, in the particular case, is in harmony with the general purpose and intent of the zoning plan. We think that these standards, as applied to the specific uses, enumerated in this Section, are sufficient on which to base a factual claim. We said further 'an exception such as that permitted by Section 11c need only be in the scope of the authorization/out in the ordinance and cannot constitute a proper exercise of the Board's sound discretion.' We think the reasoning of that case is entirely applicable here."

Whether or not the petitioners have complied with Section 250 will be considered section by section.

250.1 - The petitioner meets the conditions as set forth on page 51 of the Huff case.

250.2 - All requirements were met. The area considered is 5,405 acres. The point was raised that other buildings may be erected on the tract at a later date. It was indicated that the preliminary development plans would, therefore, not be complete. That question is not before us in this petition. The petition is for one building only.

250.3 - A copy of the development plan was delivered to the Office of Planning by the Zoning Commissioner on February 26, 1960 and the Office of Planning made its recommendations on March 21, 1960. Requirements for this section were met.

250.4 - The order will be passed and is subject to appeal.

250.5 - The Baltimore County Building Engineer will not issue a building permit until requirements of this section have been met.

250.6 - The petitioner has a permitted use as set forth in the following paragraph:

"Manufacture, compounding, assembling, machining or other comparable treatment of articles of merchandise from the following previously prepared materials: home, canvas, cellophane, cloth, copy, feathers, felt, fibre, fur, glass, hair, horn, leather, paper, plastics, precious

FREDERICK B. DIEHLMANN, et al. IN THE COUNTY COURT
VS. FOR BALTIMORE COUNTY
JAMES J. HILLS, et al. MISC. DOCKET No. 7 PALE MD
Case No. 233

OPINION

The County Board of Appeals denied a petition for the creation of a "Manufacturing Restricted" zone on the grounds that the petitioner had not complied with Section 250.2 of the Zoning Regulations. The Board held that the plans in this case are incomplete and the Board finds itself with no definite information on more than three and one-half acres of the subject property.

The subject tract contains slightly more than 5 acres. The plan filed with the petition shows a proposed building and its appendages, including parking areas, etc., which utilizes only on a very small part of the entire tract with nothing to indicate any definite proposal with respect to the use of the remainder of the tract except that it all remain as open and undeveloped land. The plan appears to be complete in all other respects and to fully comply with the provisions of Section 250.1 of the Regulations which require a preliminary development plan showing the existing topography, proposed grading, screening and planting, extent, location, and character of proposed structures, uses, and open areas.

The Board concluded that because a large portion of the tract was, in effect, designated as "open areas" the plan was not complete.

The Court holds that this construction of the Regulations is in error. There is nothing in Section 250 which requires that the entire tract be five acres or more must be built. On the contrary, it is clear that any portion of the tract may be devoted to "open areas" to use done by the petitioner in this case.

The question as to whether or not the "open areas" may later be used for buildings or other permitted uses is not now before the Court nor was it before the Board. The sole question now presented is whether the plan presented complied with Section 250.2 of the Regulations and the Court holds that it did.

