

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

COUNTY OFFICE BUILDING
111 W. CHESAPEAKE AVE.
TOWSON 4, MARYLAND
VA 3-3000

MALCOLM H. DILL
DIRECTOR

JOHN G. ROSE
ZONING COMMISSIONER

March 8, 1962

Robert J. Romacka, Esq.,
821 Eastern Avenue,
Baltimore 21, Maryland

Re: Petition for Reclassification
and Special Exception for Gasoline
Service Station - S.E. Cor. Dogwood
Road and Clarke Ave., 1st District -
Donald J. Elliott and Violet Elliott,
Petitioners --- No. 5239-RX

Dear Mr. Romacka:

On February 8, 1961 you filed a petition on behalf of the above petitioners, for reclassification of property at the southeast corner of Dogwood Road and Clarke Avenue, in the First District of Baltimore County, from an "R-6" Zone to a "B-L" Zone and a special exception for a gasoline service station.

After hearing the facts in the case the reclassification and special exception were denied by the Zoning Commissioner.

On May 25, 1961 an appeal from the above decision was filed with the County Board of Appeals. After the hearing before the Board of Appeals, the majority members of the Board granted the reclassification and special exception, one member dissenting.

At the time of the hearing on the Western Area Planning Map, before the County Council, on which map your property is located, the Council did not change the zoning as requested, therefore, your property remains in its original zoning status as "R-6" and you are not permitted to conduct a commercial business on the subject property.

Very truly yours

Zoning Commissioner

cc: Dr. S. P. Bessman, 2410 Woodchaffe Ave., Ellicott City, Md.
Mr. Edgar A. A. Sampson, 6610 Dogwood Road, Baltimore 7, Md.
Mr. Jos. Papar, 6601 Richardson Road, Baltimore 7, Md.
Mr. Chas. G. Young, Pres., Woodlawn Improvement Ass'n, Balto. 7, Md.

INVOICE
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE
Division of Collection and Receipts
COURT HOUSE
TOWSON 4, MARYLAND

No. 4725
DATE 5/15/61

TO: Robert J. Romadka, Esq.,
621 Eastern Avenue
Baltimore 21, Md.

BILLED BY: Zoning Department of
Baltimore County
113 County Office Bldg.,
Towson 4, Md.

QUANTITY	DETAILS UPPER SECTION AND RETURN WITH YOUR REMITTANCE	TOTAL AMOUNT
	Cost of appeal to Board of Zoning Appeals	70.00
	Posting property	5.00
		75.00

DEPOSIT TO ACCOUNT NO. 01.622

IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND
MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON 4, MARYLAND
PLEASE RETURN UPPER SECTION OF THIS BILL WITH YOUR REMITTANCE.

INVOICE
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE
Division of Collection and Receipts
COURT HOUSE
TOWSON 4, MARYLAND

No. 4724
DATE 5/25/61

TO: Robert J. Romadka, Esq.,
621 Eastern Avenue
Baltimore 21, Md.

BILLED BY: Zoning Department of
Baltimore County
113 County Office Building
Towson 4, Md.

QUANTITY	DETAILS UPPER SECTION AND RETURN WITH YOUR REMITTANCE	TOTAL AMOUNT
	Cost of advertising and posting property of Donald J. Elliott, et al No. 5239	41.00
		41.00

DEPOSIT TO ACCOUNT NO. 01.622

IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND
MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON 4, MARYLAND
PLEASE RETURN UPPER SECTION OF THIS BILL WITH YOUR REMITTANCE.

INVOICE
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE
Division of Collection and Receipts
COURT HOUSE
TOWSON 4, MARYLAND

No. 10751
DATE 1/23/62

TO: James J. Dolan, Esq.,
723 Little Building
Baltimore 2, Maryland

BILLED BY: County Board of Appeals

QUANTITY	DETAILS UPPER SECTION AND RETURN WITH YOUR REMITTANCE	TOTAL AMOUNT
	Cost of Certified Documents for Donald J. Elliott, et al, Dogwood Rd. & Clarke Ave.	12.00
		12.00

DEPOSIT TO ACCOUNT NO. 01.51.01.05

IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND
MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON 4, MARYLAND
PLEASE RETURN UPPER SECTION OF THIS BILL WITH YOUR REMITTANCE.

This is another zoning proceeding, which has pursued more or less of a "zigzag" course since its institution. Appellants, as the owners of a parcel of land in Baltimore County, applied to the Zoning Commissioner for a change of classification of said parcel from an R-6 Residential Zone to a B-1 Commercial Zone and a special exception for a gaso'line station, and said application was denied by the Commissioner. Petitioners appealed to the Board of Appeals, and that Board, in a two-to-one decision, reversed. Thereupon, the appellee here entered an appeal to the Circuit Court, and the trial judge reversed the decision of the Board. The appeal to this Court followed.

The question to be decided is whether the action taken by the Board was fairly debatable, or was it arbitrary and capricious in a legal sense, because it lacked substantial evidence to support it?

The appellants rely principally upon a "change of neighborhood" to support the action of the majority of the Board. The appellee filed no brief, and, from the record extract and the exhibits contained therein, it is difficult to state, with accuracy, the exact zoning of some of the surrounding and neighboring properties.

It seems that the subject property (103 by 155 feet) is surrounded, or almost surrounded, by residentially zoned properties. It is located on the southeast corner of the intersection of Dogwood Road and Clarke Avenue, and is improved by a small dwelling. Dogwood Road, running generally in an east-west direction, is a rather narrow two-lane highway, without sidewalks. Immediately to the east of the subject property and within some seven feet from its boundary line is the residence of one of the protestants. Apparently, the property further to the east along Dogwood is residential for some 2,000 feet, and then some commercial uses begin. Diagonally across Dogwood, there is a small nursery school and a small apartment house containing three apartments, but the property immediately north of the subject property

and across Dogwood is residential. The contiguous property to the south is residential for about 150 feet, where it joins the Security Senior High School site. The bulk of this site is in a southeasterly direction from appellants' property. Its area is substantial (estimated to be some thirty acres), and it extends southeasterly on Clarke Avenue (described below) to a distance of some 1,800 to 1,900 feet from the intersection. Further to the southeast, some 2,500 feet from the subject property, and across Security Boulevard, 120 feet wide, is the Meadows Industrial Park, on which is located the Social Security site.

We return to the intersection of Dogwood and Clarke. Clarke Avenue is a fairly new street, and when it was constructed, appellants sold the county three to five feet of their land for its construction. It intersects Dogwood at a 90-degree angle. At the intersection, Clarke runs in a generally north-south direction, but, at a point about 500 feet south thereof, it curves in a southeasterly direction so that some of the property directly south of appellants' is across Clarke Avenue from it. Shortly to the south of the subject property runs a fair-sized stream called Dead Run. Further south at a point some 600 feet from the intersection and across Clarke Avenue is a gasoline filling station. Still further south, some 1,500 feet from the intersection, is the proposed site of a shopping center. The property immediately to the west and across Clarke Avenue is zoned residential, but, beginning about 1,400 feet west of the intersection, there are some commercial uses.

Appellants made an attempt to show a "need" in the community for the filling station, but no great weight can be afforded this testimony, for the evidences discloses at least four such stations within a radius of about one-half of a mile.

We have set forth, on innumerable occasions, the function of the Court of appeals when determining questions of reclassification in zoning. The Court will note zone or rezone, nor will it substitute its own judgment as to the wisdom or soundness of the

action taken by the Board, if supported by substantial evidence. In other words, if there be room for reasonable debate as to whether the facts warranted the Board in deciding the need for its action, the decision must be upheld. For one of the many cases stating the rule, see Missouri Realty v. Ramer, 216 Md. 442, 140 A. 2d 655. Judge Harbury, for the Court, in City of Baltimore v. Sapero, 230 Md. 291, 186 A.2d 834 stated the substantial evidence test to be: "(It) means whether on the record the agency could reasonably make the finding. This is the extent of the reviewing court's inquiry."

The trial judge stated:

"In my opinion, there is no evidence whatever which would support the Board's action in granting this reclassification. The changes which were testified to in the record were changes which either took place long before the Board's action, and, incidentally, the adoption of the land use map for the area, or were so far removed from the subject property as not to have any effect upon the subject property."

We agree that the record before us fails to meet the requirements of the "substantial evidence" test.

There is no suggestion of claim that the failure to grant the reclassification with the special exception would deny the property owners of all reasonable use thereof in a constitutional sense. As a matter of fact, it is presently improved by a dwelling, used by the appellants as their residence. They claim, however, that the increased traffic and new lights on Clarke Avenue render their dwelling less desirable as a habitation, but, as pointed out by Mr. Steinbock in the minority opinion of the Board, "residents in other sections of the County live on thoroughfares with similar lights and it is possible to shade such lights in a manner so as to prevent glare into residences."

RE-classification in zoning as well as original zoning must bear some reasonable relationship to the general public interest in promoting the health, safety or welfare of the community. Code (1957), Article 56B § 21; Missouri Realty v. Ramer, supra; Purpura Branch Land Company v. Board of City Comm.,

"It appears that this was done in November of 1962."

IN THE COURT OF APPEALS OF MARYLAND

NO. 52

September Term, 1963

DONALD J. ELLIOTT, et ux.

v.

ROBERT A. JOYCE

Brunn, C. J.
Hammond
Prescott
Horney
Sybert,

JJ.

Opinion by Prescott, J.

Filed: November 21, 1963

Md. No. 48, This Term, just decided. Mr. Gavrilis, Deputy Director of Planning for the County, who was called by the petitioners, stated that the office of Planning and Zoning is not in favor of the petition or reclassification and special exception because: it is not appropriate due to the surroundings; commercial changes in the area have been confined to the Security Boulevard (a street some 1,800 to 2,000 feet south of the subject property); Dogwood Road frontage has not been changed; and it would be out of character with the residential surroundings (this last reason seems to be included in the first). The record as it has been presented to us, we think, clearly supports these conclusions. In addition to the facts which we set forth above, there was testimony that two schools are located in the neighborhood of the intersection of Dogwood Road and Clarke Avenue, and there is a school bus stop at the intersection. These factors contribute to producing a heavy pedestrian traffic, and, since Dogwood has no sidewalks and accommodates but two lanes of traffic, Mr. Steinbock was of the opinion that the "turn in movements to and from the proposed service station * * * would tie up traffic in both directions (on Dogwood) and create hazards, which are not presently existing at this point."

We hold that "on the record" before us, the Board could not "reasonably make" the reclassification and grant the special exception. Therefore, its action in so doing was arbitrary and capricious in a legal sense. To permit a gasoline station in the residential surroundings of the subject property would not promote the safety, health or general welfare of the community, but would constitute, we think, invalid "spot zoning." Baylis v. City of Baltimore, 219 Md. 164, 148 A. 2d 429; Havitt v. County Commrs., 220 Md. 48, 151 A. 2d 144.

ORDER AFFIRMED, WITH COSTS.

ROBERT J. ROMADKA
ATTORNEY AT LAW
EDEL, MARYLAND

RE: PETITION FOR RECLASSIFICATION
AND SPECIAL EXCEPTION for
Gasoline Service Station
Southeast corner of Dogwood
Rd., and Clarke Avenue
1st District
Donald J. Elliott-Petitioner
BALTIMORE COUNTY
No. 5239-RX

The petitioner seeks reclassification of a rectangular tract of ground on the Southeast corner of Dogwood Road and Clarke Avenue in the First District of Baltimore County. The petitioner also seeks a special exception if this petition is granted, for the erection of a gasoline service station on the subject property for which the Socony-Mobil Oil Company has an option to purchase.

Mr. Donald J. Elliott, the owner of the instant property gave testimony to the effect that the tract of ground in question is bounded on the west by Clarke Avenue which is 70-80 feet wide at this point, the said Clarke Avenue having been recently widened to this width as an access road to the Social Security Building, Woodlawn Senior High School, Whitehead Industrial Park, as well as being a cut-off road for traffic proceeding to Ingleside and Emerson Avenue. At the same time that this road was widened, mercury vapor lights were installed on Clarke Avenue. The necessary property for the widening of Clarke Avenue on the east side was purchased from Mr. Elliott materially cutting down the lawn space of his home. Some 2500 feet from Mr. Elliott's residence is the Johnny Unitas Bowling Alleys, two gas stations are located on Deyn Oak Avenue. One hundred-fifty feet to the north running off Clarke Avenue in a westerly direction is an entrance to the Whitehead Metal Products plant and Whitehead Industrial Park.

Mr. Robert C. Lase, an employee in the Bureau of Engineering of Baltimore County, testified that it was necessary to make major road improvements in this area due to the increase traffic brought to the area by the Social Security Building, as well as future development which encompasses a major governmental agency. Mr. Lase testified further that Clarke Avenue would be eventually a major traffic artery carrying north-south traffic.

RE: PETITION FOR RECLASSIFICATION
AND SPECIAL EXCEPTION for
Gasoline Service Station
Southeast corner of Dogwood
Rd., and Clarke Avenue
1st District
Donald J. Elliott-Petitioner
BALTIMORE COUNTY
No. 5239-RX

DISSENTING OPINION

This is a petition for reclassification from "R-6" to "B-1" and Special Exception for a Gasoline Service Station on the southeast corner of Dogwood Road and Clarke Avenue in the First District.

The subject tract is 103 feet by 155 feet and is improved by a residence occupied by the petitioner. Clarke Avenue is a relatively new street and was constructed to provide access to the Social Security Building and the Woodlawn Senior High School which is approximately 150 feet south of the subject property.

The principal reasons cited by the petitioner in behalf of his request for reclassification and special exception were the amount of traffic on Clarke Avenue, the bright street lights erected on the new street, and the commercial changes in the area.

Certainly the County would not have borne the expense of cutting a new street through if it were not expected to carry a reasonable amount of traffic. Residents in other sections of the County live on thoroughfares with similar lights and it is possible to shade such lights in a manner so as to prevent glare into residences. The commercial changes have all been confined to the Security Boulevard area and are separated from the residential area by a stream, Dead Run.

Mr. George E. Gavrellis, Deputy Director of Planning, testified that the Office of Planning and Zoning is not in favor of the petition for reclassification and special exception because:

1. It is not appropriate because of the surroundings.
2. Changes in the area have been confined to the Security Boulevard.
3. Dogwood Road frontage has not been changed.
4. It would be out of character with the residential surroundings.

Mr. George E. Gavrellis, Deputy Director of Planning, testified that the Planning Board adopted the Master Plan on November, 1959, which encompassed this area and that it was not planned for the subject property to be commercial. He testified that the neighborhood has had many land use changes but in his opinion they have been confined to the area on Social Security Boulevard, and had not affected the Dogwood Road frontage.

Property owners in the 6500 and 6600 block Dogwood Road voiced their objections to the use of subject property for commercial use. Mrs. Alvessa Simpson, 6610 Dogwood Road, testified that industrial uses and the Social Security Building had gotten in ahead of planning in the area and had caused many problems. She stated that she would probably not buy her property today under present conditions. Other residents of the area as well as Mr. Robert A. Joyce, representing the North Rolling Road Improvement Association, seem to be of the opinion that traffic has had an adverse effect on residential uses--part of this adverse effect being caused by the tractors going to the industrial properties in the immediate area.

The majority members of the Board are of the opinion that many changes have taken place in this area since the adoption of the Zoning Map for this area in 1945. The building and completion of the Social Security Building, along with the Social Security Boulevard, and other roads in the area brought heavy traffic and have changed what once was a quiet country community. There is no question that when the residents in the 6500 and 6600 block Dogwood Road built their homes that they had every right to expect a country atmosphere to continue. The development of the Whitehead Industrial Park with an entrance off Clarke Avenue--just some 150 feet from the subject property, cannot be overlooked. The commercial uses in the area, such as the bowling alley, drive-in bank, and gasoline stations have further changed the character of the neighborhood. It seems only reasonable to expect that the widening of Clarke Avenue, the deletion of property from Mr. Elliott's tract of land, the new vapor lights on Clarke Avenue, have had a detrimental effect on the value and desirability of the subject property for residential use.

Protestants who reside in the area objected to this petition on the grounds that it would adversely affect the general welfare of the community and the public safety. It was pointed out that two schools in the neighborhood cause a heavy pedestrian traffic at this intersection. There is a school bus stop at this corner. Furthermore, it was testified that Dogwood Road has no sidewalks and is wide enough for only two lanes of traffic. Turn in movements to and from the proposed service station on Dogwood Road would tie up traffic in both directions and create hazards which are not presently existing at this point.

The owner of the property on Dogwood Road adjoining the subject tract stated that her home was located only seven feet from the side boundary of her lot adjoining the proposed service station.

It is the opinion of this Member of the Board of Appeals that the petitioner has failed to show an error in original zoning or sufficient change in the neighborhood so as to warrant reclassification; and furthermore, that the granting of this special exception would be contrary to paragraphs A and B of Section 502.1 of the Zoning Regulations of Baltimore County.

For the reasons set forth above, it is the opinion of this Member of the Board of Appeals that the reclassification and special exception petitioned for should be denied.

DATE: December 14, 1961

Charles Boninck, Jr.

The majority members of the Board are of the opinion that the changes outlined above are such in number and character to warrant the reclassification of subject property. With regard to the special exception for a gasoline service station, it is difficult to see how the granting of this special exception would in any way violate Section 502.1 of the Baltimore County Zoning Regulations.

It is therefore, the majority opinion of the Board that both reclassification and special exception for a gasoline service station should be granted with the following restrictions:

1. The building must be built in conformity with the plans presented with the petitioner's Exhibit #18.
2. Evergreens must be planted on the eastern boundary of the subject property; from the rear lot line in a southerly direction so that the southernmost evergreen is in line with the front building line of property known as 6603 Dogwood Road. These evergreens to be at least 5 feet in height at the time of planting and planted no less than 6 feet apart.
3. Evergreens to be placed on the northern property line of the subject property for its entire width of 150 feet. Height and spacing to coincide with restriction # 2.
4. All outside flood lights should be focused in such a way that the glare of said lights will not be focused on any residential properties.
5. A trash enclosure shall be built on the rear of the building--such trash enclosure to have similar type construction as the service station itself.
6. The hours of said service station shall not be before 7:00 A.M. in the morning nor later than 10:00 P.M. in the evening.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 14th day of December, 1961 by the County Board of Appeals, ORDERED that the reclassification and special exception petitioned for, be and the same is hereby granted.

RE: PETITION FOR RECLASSIFICATION
from an "R-6" Zone to a "B-1" Zone and Special Exception for
Gasoline Service Station -
S. E. Cor. Dogwood Road and
Clarke Ave., 1st District -
Donald J. Elliott and Violet
J. Elliott, Petitioners
BALTIMORE COUNTY
No. 5239-RX

Upon hearing on the above petition (1) for reclassification from an "R-6" Zone to a "B-1" Zone and (2) for a special exception to use the property described therein for a gasoline service station, the western area land use map having been approved by the Planning Board of Baltimore County and will presently be sent to the County Council of Baltimore County, to consider a change in classification under the circumstances would amount to "place-and-suit" zoning.

In the case of Zimm vs the Board of Zoning Appeals 207 Md. 359, the Court of Appeals said:

"When it is argued that an unanticipated need has developed, this presupposes a fault in the original plan, that should be ideally corrected by a reamendment of the land use map, rather than by 'place-and-suit' alteration."

And further on Page 363:

The fundamental objection lies in the fact that there is apparently not now in existence any more than there was in 1945, a truly comprehensive land use map. In the absence of such a plan, the Board is put in the position of making place-and-suit adjudication on testimony produced by successive applicants and protestants, in which one proposed exception follows another, without any opportunity to consider objectively the long range purposes."

For the above reasons the petition is denied.

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

COUNTY BOARD OF APPEALS

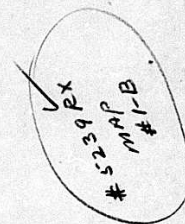
Chairman
S. Michael Austin

It is this 26th day of April, 1962 by the Zoning Commissioner of Baltimore County, ORDERED that the aforesaid petition for reclassification from an "R-6" Zone to a "B-1" Zone and the Special Exception for a Gasoline Service Station are hereby denied.

Zoning Commissioner of
Baltimore County



Revisions	Date	By	Ck.	SOCONY MOBILE OIL COMPANY, INC. PHILADELPHIA, PENNSYLVANIA 19101 TEL. 215-381-1000 FAX 215-381-1001
				PROPOSED SERVICE STATION DOGWOOD RD & CLARK AVE WOODLAWN, MARYLAND
				DRAWN BY BRG CHECKED BRG SCALE 1"=20' DATE 3/8/01
				SHEET NO. 572 OF 1



Plot Plan

No.	DIVISIONS	DATE	By	Ch.

SOCONY MOBILE OIL COMPANY, INC.
 PHILADELPHIA DIVISION
 216 N. 10TH ST.
 PHILADELPHIA, PA. 19107

PROPOSED SERVICE STATION
 DOGWOOD RD & CLARK AVE
 WOODLAWN, MARYLAND

DRAWN BY REG
 CHECKED BYG
 SCALE 1"=10'
 DATE 8/6/61

572
 SHEET NO. 1
 OF 1