5282.4

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6 March 7, 1963

MEMO FOR FILE

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Interview with Judge Raine this date in his Chambers revealed that on May 4, 1762, although the Court Stenographer was present in Court at the hearing of this appeal there were no notes taken. Judge Raine, however, recalled the case very vividly and gave as his reason for reversing the Board and disallowing the special exception requested in the original opinion. The Board in its majority opinion granted the special exception but

stated that "No construction work may be done on said service station Until construction work is begun on the widening of Rolling Road from the intersection of Route 40 and Rolling Road in a southerly direction for at least 150 feet in accordance with the plans presented as Patitioners' Exhibit No. 2,"

The Judge felt that to admit that Rolling Road as it now exists is too narrow to permit a garoline service station use, and then to allow such use prior to the widening of said road is inconsistent with sound practice.

Judge Raine used the expression "I feel that the Board in their majority opinion were putting the cart before the horse permitting the special exception for a gasoline service station before the road was actually widened." Judge Raine did say that he regretted that this opinion was not writter up and he has issued orders to his Court that on Zaning cases which come before him, his decision and reasons for his decision are to be written up and forwarded to the Chairman of the Board of Appeals, with a copy to Mr. Malcolm Dill, Director of Planning and Zoning.

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land for certain businesses that without restrictions could be detrimental to the health, safety, or general welfare of the community.

The majority members of the Board feel that this case is a perfect example as to why the Board was given such broad power. To use the subject property for a gasoline service station without the widening of Rolling Foad would in our opinion be detrimental to the health, safety, and general welfare of the community. To grant the special exception subject to the widening of Rolling Road as indicated on Petitioners! Exhibit No. 2, would in our opinion comply with all Sections of 502.1 of the Zoning Regulations. It is our opinion that when a property owner contributes his own money to the improvement of highways in Baltimore County. he is entitled to know what value these improvements will make to his

It is the majority opinion or the Board that the special exception asked for in the petition should be granted, subject to the following provision:-

> 1. No construction work may be done on said survice station until construction work is begun on the widening of Rolling Road from the intersection of Route 40 and Rolling Road in a southerly direction for at least 150 feet in accordance with the plans presented as Petitioners' Exhibit No. 2.

For the reasons set forth in the aforegoing Opinion, it is day of December, 1961, by the County Board of Appeals, ORDERED that the special exception petitioned for, be and the same is

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

RE: PETITION FOR SPECIAL EXCEPTION for Gasoline Service Station W. S. Rolling Road 300' S. Ratimore National Pike let District Rolling Road Realty, Inc., Petitioner

BEFORE COUNTY BOARD OF APPRALS OF

> BALTIMORE COUNTY No. 5282-X

............... DISSENTING OPINION

This is a petition for a special exception for a Gasoline Service Station on the West side of Rolling Road, 300 feet South of Baltimore National Pike, 1st District.

The subject tract has a frontage of 150 feet along Rolling Road and is approximately 116 feet in depth. The land is part of a larger tract zoned "B-R". It was testified, that although a Shopping Center was being considered for the land north of the subject tract at the corner of Rolling Road and Baltimore National Pike or Route 40, no firm committeents existed at this time for such construction.

There was considerable testimony by witnesses for both Petitioner and Protestants as to the traffic situation on Holling Hoad at this point. The present winth of nothing most is 20 feet with no successits Turn in movements to and from the proposed Gasoline Service Station would tie up traffic in both directions and create mazards which are not presently existing at this point.

A spokesman for Baltimore County Hoads Engineer testified that there were no immediate plans for the widening of moiling Road and that no funds has been provided in the Budget.

The Board is unanimous in the opinion that the petition should not be granted under existing road conditions. However, my colleagues feel that it would be in order to grant the petition subject to the widening or Rolling Road. To me, this is putting the cart before the horse if such a metaphor is suitable for a gas station. It does not specify in detail the length of the roadway to be widened and the propose width

In my opinion, the petition is premature and should not be considered until the roadway is widened sufficiently to pliminate hazards and to provide free flow of traffic. The granting of this special exception would be contrary to paragraphs "A" and "B" of Section 502.1 of the Zoning

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For the reasons set forth above, it is the coinion of this member of the Board of Appeals that the special exception petitioned for should be denied.

Charles Stentock

DATE:

- JIN 21 61 AM (PE)

SSOB PARK HEIGHTS AVENUE June 20, 1961

Baltimore County Office of Flanning & Zening Baltimore County Office Building Towson 4, Maryland

Att: Mrs. Haris

SHOPPING CENTER MANAGEMENT CO.

Door Bra. Harris:

Please enter our appeal from the ruling by the soning coordination on the petition for Special Exception for Sacline Service Station - W. S. Holling Road 300 S. of Baltimore National Pike, 1st Hist., 10 West Shopping Center Inc., Contract Purchaser.

Enclosed please find check in the amount of Seventy-Five (\$75.00) Bollars to cover cost of posting.

Very truly yours,

40 WEST SHOPPING CENTER, INC.

Melup Salesnan

MC rbd

RE: PATIFICAL FOR SPECIAL EXCEPTION For a Gasoline Service Station W. S. Rolling Road 300' S. of Baltimore Mational Pike, 1st Dist., Rolling Road Realty Co., Petitioner - A West Shopping Petitioner - / West Shopping Center, Inc., Contract Purchase

BEROSE ZOLING CONTEST CHE

CF BALTIMORE COUNTY

No. 5282-X

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On April 11, 1961 a patition for a Special Exception for a special exception for a special screen station was filed by Fatricia G. Feach, Vice-Fresident the Bolling Roud Bealty Company, Logal Courry, and by sations of E. West Shopping Counter, Inc., Special E. Arderson, attorney law, represented the patitioner and Cities Service Cil Company. at law, represented

An Order was issued on the 17th day of April, 1961 to advertise property. The public hearing was scheduled and held on June 7, 1961 at 10:00 a.m.

mp and a plat showing the layout of the filling station and reiently map. Present soning was listed as "conservial soning. Actual sociality map. Present soning was listed as "conservial soning. Actual socialing Read or modelide. Coming on adjacent preparty or reperty accusing Read or proposed road to the south was not indicated. Soning the property is proposed road to the south was not indicated. Soning the property is the east of Relling Read, known as the "dissemall Property", is Business Readside and the property to the south of the property of the Research of the control of the south of the property of the property of the south of

The plat indicated two entrances for traffic southbound on Rolling Road. Northbound traffic would have no direct access to the service scaled by two sold makes a left turn into the proposed road to the sorth of the service station and then make a right turn into the corvice station.

The plat and description furnished do not have a surveyor's scal as prescribed in a joint directive of the Director of Flm ming and Zoning and the Zoning and scales of scales of the String and directive analysis, 1961. This directive as published by the control Scales Somer in Baltimore County weekly means and the July Mecord of Baltimore City in accordance with authority contained in Section 500.9 of the Baltimore County Zoning Regulations.

Zoning furnished a tentative development plan of the Ostpor Granting and Zoning furnished a tentative development plan of the Ostpo Commercial Site Containing the property which is the subject of this patient. The plan was propared by Nate, Orlins Planning Contained This plan was tentatively approved by the Joint Substitute of Public Norths on January 26, 1961 by Gorge Planning and the Danary Admits Government of the Contained Conta

RE: PETITION FOR SPECIAL EXCEPTION for Gasoline Service Station, West side Rolling Road 300 South Baltimore National Pike 1st District Rolling Road Realty Co.-Petitioners

BEFORE COUNTY BOARD OF APPEALS CE BALTIMOPE COUNTY No. 5282-X

This is a petition for a special exception for a Gasoline Service Station on the west wide of Rolling Road 300 feet south of Baltimory National Pike in the 1st District of Baltimore County. The property has a frontage of 150 feet on the west side of Rolling Road and approximate depth of 116 feet. Property to the south of the subject property lying between the northern boundary of subject property and Route ho carries a WH-RW zoning -- such land being contemplated for development as a Supermarket and other retail establishments. The present width of Bolling Road is 20 feet any has no sidewalks. The use of the subject property for a gasoline service station with Holling Road in its present condition would not be feasible.

Mr. Phillip Klein, one of the owners of the subject property as well as one of the owners of the other "B-R" property mentioned above, testified that it would be impossible to develop the larger "B-R" tract for commercial use without the widening of Rolling Road, and that the development of subject tract for a gasoline service station depends on the development of the larger trust for commercial uses.

The majority numbers of the Board of Appeals recognize that in order for Rolling Road to be widened, that the owners of property both on the east and west side of Rolling Road would materially contribute to the cost of such widening. Without knowledge as to the use that could be made of their land, a preparty owner would be unwise to commit monies for such widening as he could then find himself with an unusable piece of property. The Zoning Regulations of Baltimore County grants the Board of A reals the wight to write restrictions which would allow for the use of

This plan indicated the proposed commercial develor sunt of the site and an entrance to the morth of the proposed service statum clirectly opposite or the proposed service statum clirectly opposite containing the proposed service service. This plan reason that the plan for the "Saussald Proposy" was sent for. This plan reason proposed by John Strong Smith, Registered Professional Engineer and evidently has not received approval. Intel plan indicated a proposed feed store across Rolling Road from the positionar's proceed service station. Directly ratch of the Food store is a proposed service station.

The two plans indicate that Rolling Rosi, south from the Rolling more lational Plee for a datasance of 70° cmg, are have be proceed for read to the south of the pottiered of a critical read to the south of the patitions of a critical read to the "Museual Property" entering from the east adde of the "Gaipe Property". The west side of the "Hauwald Property" entering from the east adde of the "Gaipe Property". The west side of the "Hauwald Property" entering from the east side of the "Hauwald Property" entering from the east side of the "Hauwald Property" entering from the east side of the "Hauwald Property" entering from the east side of the "Hauwald Property" entering from the entering fr

There has been such comment upon poor planning and soning on the Baltimore National Pike, Ingleside Avenue between Ealtimore National Pike and Johnvendes Read and the "Sandy Better" pertien of York Read. All of that is "fait acceptit". It would be detrimental to the health, safety, and general welfare of this locality to grant the requested speci- ex-tion until such time as that portion of Section 500,9 of the Baltimore County Zoning Regulations reading as follows has been compiled with:

"No such plate or plans, showing the opening or laying out of reads or streets, shall be approved by the Zening Coemissionar unless such plate or plans shall have been previously approved by the Office of Planning and the Department of Public Works of Saltiacoe County."

This information was not presented by the petitioner at

A special exception is described in the Baltimore County Zont - Regulations, Section 502, as follows:

to allow them to be placed in one came crosses in which their unconvivolud occurrence might cause unsatifactory results of one kind or another. A few uses, such as duepe and junk yards, are inherently so objectionable as to make extra regulations and controls evidently one of the thin. Zone, to which they are restricted. Chirs, like a censerry, do not fit into any of the some categories, that is, restionatial, business, and intustrial, and tharviers must be located with discribination in relation to their and the control of the some categories, that is, restionatial, business, and intustrial, and tharviers must be located with discribination in relation to their control of the control of Appeals. " Certain types of uses are required to secure a permit

In Heath v. Mayor and City Council of Baltimore, 187 Md., 295, Judge Delaplaine wrote at page 803:

-2

"One of its (the Board's) functions is to grant special exceptions or variances in exceptional causes. As 'exception' within the meaning of a soming continuous is a disputation permissible where the Board of Zending Appulse first sufficient to varant a deviation from the specified in the ordinance of Baveraux Folks. The Arrival of Baveraux Folks of the Microstration of Santana and the second of the second

This puts the matter squarely on Section 502.1- "Before any Special Exception shall be granted, it must appear that the use for which the Special Exception is requested will not:

- a. Be detrimental to the health, safety, or general welfare of the locality involved;
- b. Tend to create congestion in roads, streets, or
- c. Create a potential hazard from fire, panic or other
- d. Tend to overcrowd land and cause undue concentration of population;
- e. Interfere with adequate provisions for schools, parks, water, severage, transportation or other public requirements, communicaes, or improvements;
- f. Interfere with adequate light and air."

f. Interfers with adequate light and air."

The the design of the design

The only other witness for the potitioner was Mr. Philip E. Klein, a real estate broker and a man recognized in his field as well

qualified on matters portaining to shopping centers and service stations, list sestimony did not meet the burden of proof as delineated by Judge Delaplains, although he did say there were roughly Moto car movements in commention with a food store monthly as opposed to 2500 car movements in commention with a service station.

The protestants did not have counsel. They felt that something was definitely wrone, but they were unable to put across their thoughts clearly and succinctly. It did some extrative clear to those assembled that more guseline service stations have been approved altimately, then disapproved.

The point was made that it is possible to point to other businesses which are equally objectionable if you consider only one ground of objection at a time. However, it would be difficult to find another business which would be equally objectionable on all the grounds specified. The fact that there are been and will be uncounted cases concerning gasoline service stations would include that each ow needs intividual attention.

Therefore, for the following reasons the special exception

- Potitionar's request is premature in that no competent testinomy was presented concerning the own-all traffic pattern and access to Bolling Road. This definitely comcerns the balth, safety or the general welfars of the locality.
- Petitioner did not present competent testimony initiating that the requested special exception meets the standards as not jorth in Section 502.1 of the Baltimore County Zoning Regulations.

It is this 44 day of June, 1961 by the Zoning Commissioner of Baltimore County, GROSED that the aforesaid Special Exception should be and the same is hereby denied.

BALTIMORE COULTY DEPARTMENT OF PUBLIC WORKS BUREAU OF PURLIC SERVICES Inter-Office Correspondence

Fre. n GEORGE R. LEWIS

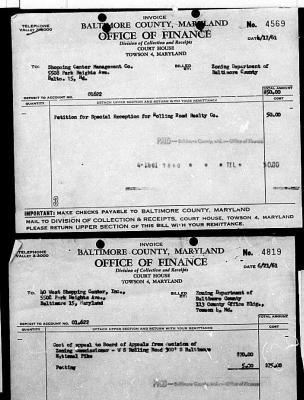
To JOHN G. ROSE - Zoning Commissioner Subject PETITION NO. 5282-X

.IUN -7 '61 AM

JUNE 6, 1961

his office has the following comment on the referenced

Any soning of this property shall be subject to approval of site plans by the Bureau of Public Services and the Office of Planning along with recording of the subdivision plat known as Geipe Commercial Site.



6-2161 1318 · · · TIL-

6-6161 1318 · · · Mt-

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.

75.00

500___

PETITION FOR ZONING RE-CLASSIFICATION, 5282 AND SPECIAL EXCEPTION THE ZONING COMMISSIONER OF SALTIMORE COUNTY I, or we Rolling Road Bealty Company legal owner .. of the property situate if County and which is described in the description and plat attached hereto and made a part hereof, See Attached Description: County, to use the herein described property, for ... a gasolene service station ... Property is to be posted and advertised as prescribed by Zoning Regulations I, or we, agree to pay expenses of above re-classification and/or Special Exception advertising. posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baitimore County adopted pursuant to the Zoning Law for Baltimore 40 West Shapping Center duc. Bolling Road Realty Company

Logical School Contract purchaser Vice-President, Legal Owner Address 5508 Val Negata are Address 6323 Baltimore National Pike Boston Ja Abdernah Baltimore 28, Maryland Address (213 Delylword Ld. Bell 8, M.

... 1961., 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 had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore 7th day of June , 1961 , at 10:00 clock Col Coe Zoning Commissioner of Baltimore County.

17/61 x (over) 1- pigs no de expertino -

BALTIMERE COUNTY, MARY ND

OFFICE OF FINANCE

Mo. 10750 DATE 1/15/62

Division of Collection and Receip COURT HOUSE TOWSON 4, MARYLAND

To: James J. Boherty, Esq. 733 Title Building Baltimore 2, Maryland

TELEPHONE

County Board of Appeals

EPOBIT TO AC	COUNT NO. 01 51 (11 05	\$ 10.00
YTITHAU	DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE	COST
	Cost of Certified documents - M/S Rolling Rd. 300° S. Relte. Rat 'l Pike-Relling Rd. Realty Co.	10.00
	FAIL - Affice Co. 1, 100 - Officed phone	
	FBM \$143 * * * NL=	10.00
	52	00/95
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MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON 4, MARYLAND PLEASE RETURN UPPER SECTION OF THIS BILL WITH YOUR REMITTANCE.

CERTIFICATE OF POSTING PTMENT OF BALTIMORE COU 5-25-41 Posted for Special Collegation Special Service Matter Positioner of Williams Road Really Constant Matter Matter Mary Road Seally Constant of Ballo Mal She Welling Road & Poff South of Ballo Mal She ell It Ital Location of Symp West nell of Golding Road 650ft Sand of Balt. Mat. Pale: Posted by General R. Date of return:

OFFICE OF PLANNING AND ZONING Inter -Office Correspondence

Date __ May 26, 1961 _____

John G.Ross, Zoning Commissioner m: George E. Gavrelia, Deputy Director

6/7/61

10:00 A.H.

The staff of the Office of Planning and Zoning has reviewed the subject petition for special exception for service station and has the following advisory comments to sake with respect to pertunent planning factors:

1. The subject service station site was provided in connection with an overall development plan for pryperty at the continect corner of the control of th

GEO:be

CATION: West side of Roll-Road 300 feet South of The

oncerning all that parcel of land the Pirst District of Baltimore

unty.

Beginning for the same at a int N. 70° 45° 50° W. 35,00 feet sm a point in the 8th or S. 22. %



OFFICE OF MAY 22 THE BALTIMORE COUNTIAN THE HERALD - ARGUS

No. I Newburg Avenu

May 19, 1961.

CATONSVILLE, MD.

THIS IS TO CERTIFY, that the annexed advertisement of John G. Rose, Zoning Commissioner of Ealtimore County

was inserted in THE BALTIMORE COUNTIAN, a group of three weekly newspapers published in Baltimore County, Maryland, once a week for One the 19th day of May. 19 60, that is to say the same was inserted in the issues of May 18, 1961.

THE BALTIMORE COUNTIAN

By Paul I Margay Editor and Managor

