

# **PETITION FOR ZONING RECLASSIFICATION AND/OR SPECIAL EXCEPTION**

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, or we, **T. BERNARD TODD & MARIE L. TODD**, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition (1) that the zoning status of the herein described property be re-classified, pursuant to the Zoning Law of Baltimore County, from an \_\_\_\_\_ zone to an \_\_\_\_\_ zone; for the following reasons:

See Attached Description

and (2) for a Special Exception, under the said Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property, for **Mobile Home Park**

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 Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I, **T. Bernard Todd**, Contract purchaser  
 Address: **500 Baltimore Ave., Chesapeake, Md.**  
 I, **Martha L. Todd**, Legal Owner  
 Address: **825 Eastern Ave., Balto., Md.**

I, **John N. Maguire**, Petitioner's Attorney  
 Address: **825 Eastern Ave., #51**

ORDERED BY The Zoning Commissioner of Baltimore County, this \_\_\_\_\_ 11th day of \_\_\_\_\_, 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 108, County Office Building in Towson, Baltimore County, on the \_\_\_\_\_ day of \_\_\_\_\_, 1961, at 1:00 o'clock P.M.

AUG 11 1961  
 Zoning Commissioner of Baltimore County

(Seal of Planning & Zoning)  
 (Seal of Planning & Zoning)

RE: PETITION FOR SPECIAL EXCEPTION FOR MOBILE HOMES PARK - 5.2. Side of Philadelphia Road 104' N. of Potomac Ave., 15th Dist., T. Bernard Todd and Martha L. Todd, Petitioners  
 BEFORE  
 ZONING COMMISSIONER  
 OF  
 BALTIMORE COUNTY  
 No. 5362-X

Pursuant to the advertisement, posting of property and public hearing on the above petition for a Mobile Home Park (Trailer Park) on the southeast side of Philadelphia Road 104 feet north of Potomac Avenue, in the Fifteenth District of Baltimore County, and it appearing that by reason of location, the safety, health and the general welfare of the locality involved not being detrimentally affected the special exception should be granted subject to compliance with the provisions stated below.

It is this 16th day of October 1961, by the Zoning Commissioner of Baltimore County, ORDERED that the above special exception should be and the same is hereby granted, from and after the date of this Order, subject, however, to strict compliance with Section 111, of the Zoning Regulations of Baltimore County; that no use of the trailers may be made until after plans have been approved by the Office of Planning & Zoning, and, further, that the Zoning Commissioner shall be notified so that an inspection of the property may be made after plans have been completed.

The granting of the special exception is also subject to approval of plans by the Division of Land Development.

Zoning Commissioner of Baltimore County

RE: PETITION FOR SPECIAL EXCEPTION FOR MOBILE HOMES PARK - 5.2. Side of Philadelphia Avenue 104' N. Potomac Avenue - 15th Dist., T. Bernard Todd et al - Petitioner  
 BEFORE  
 COUNTY BOARD OF APPEALS  
 OF  
 BALTIMORE COUNTY  
 No. 5362-X

This is a petition for special exception on a parcel of land of 9.75 acres presently zoned "M-1", located adjacent to Chesapeake Park, 104 feet north of Potomac Avenue in the Fifteenth District of Baltimore County.

Under Section 502.1 of the Zoning Regulations of Baltimore County, the Board must be satisfied before granting any special exception that six provisions be satisfied. There is no question in the Board's mind that all phases of Section 502.1 have been met, the only question that gave the Board doubt whatsoever was paragraph "B", Section 502.1, "tend to create congestion in roads, streets, or alleys therein." A great deal of time was consumed at the hearing as to the petitioner's rights to widen and improve Philadelphia Avenue. Briefs were filed with the Board on this question, and the Board is in agreement with Mr. Harrison, lawyer for the Protestants, that the Board could not grant the special exception upon condition that the petitioner pave and widen Philadelphia Avenue. However, the Board feels that they are in their legal rights in granting this petition based on the provision that Philadelphia Avenue be widened to a width of 30 feet. As to how the road is widened, by whom, or any other problems attending to the widening of the road, the Board does not feel that it is necessary that these facts be known to them. As stated by the petitioner's lawyer, Mr. Maguire, if we cannot pave Philadelphia Avenue, we would not be able to use the subject property for the use that we seek.

It is therefore, the unanimous opinion of the Board of Appeals that the special exception be granted, subject to the provision that Philadelphia Avenue be widened to a width of 30 feet from Potomac Avenue to Potomac Avenue.

## ORDER

For the reasons set forth in the foregoing Opinion, it is this day of June, 1962 by the County Board of Appeals, ORDERED that the special exception petitioned for be and the same is hereby granted.

Any appeal from this decision must be in accordance with Chapter 1100 subtitle B of Maryland Rules of Procedure, 1961 edition.

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

Chairman  
 G. Mitchell Austin

OFFICE OF PLANNING AND ZONING  
 Inter-Office Correspondence

Date September 22, 1961

To: Mr. John G. Rose, Zoning Commissioner

From: George E. Garveris, Deputy Director

Subject: #5362-X, Petition for Special Exception for Mobile Home Park. Southeast side of Phila. Ave., 104 feet north or less North of Potomac Avenue.

15th DISTRICT

HEARD: Monday, October 2, 1961 (1:00 P.M.)

The staff of the Office of Planning and Zoning has reviewed the subject petition for Special Exception for a Mobile Home Park and has the following advisory comment to make:

1. It has been ascertained that Special Exceptions are a matter of right unless it can be shown that the specific use being sought contravenes the conditions listed in Section 502.1 of the Zoning Regulations. We note that forty six (46) mobile homes are proposed to be located on subject property if the Special Exception is granted. The Planning staff is suspicious of the adequacy of the roads leading to the subject property from Philadelphia Avenue for the purposes of providing adequate circulation here. It is not in a position to say that the addition of forty six (46) more families would in fact create traffic hazard or congestion. The Planning staff would look upon the subject petition and the Mobile Home use of the property as an interim measure.

CED:sms



T. BERNARD TODD vs. # 5362-X

This appeal in a zoning case from Baltimore County involves a special exception for a mobile home park in an M-1 zone. The Board of Appeals granted the exception, and on appeal the case was remanded for the taking of additional testimony. A second appeal resulted in an affirmance of the Board's action.

We find it unnecessary to review the record in detail, or to discuss the contention of the appellants that the zoning authorities have no power to grant a special exception for a trailer park in an M-1 zone. The key issue, as both sides agree, is whether there was a sufficient showing of ready access to the proposed development. It seems to be conceded that the only practicable means of ingress and egress, except by recourse to a network of narrow, winding and inadequate roads in an old development to the north, is by way of Potomac Avenue in the vicinity of the main line of the Pennsylvania Railroad. After crossing the railroad at grade, a left turn leads into an existing dirt road known as Philadelphia Avenue, parallel to the tracks, into the proposed nine acre development. The developer testified he proposed to widen and pave Philadelphia Avenue, shown on the plat as a paper street. This street had never been dedicated to or accepted by the County; indeed, the appellants argue that under sec. 28-16 of the County Code (1962 Supp.) the County lacks the power to accept a road under 40 feet in width. See *Chapman v. Rogers*, 222 Md. 12, 17. The Board granted the special exception "based on the provision that Philadelphia Avenue be widened (to 30 feet) As to how the road is widened, by whom, or any other problems attending to the widening of the road, the Board does not feel that it is necessary that these facts be known to them." We disagree.

Before a special exception may be granted in Baltimore County, it is necessary that the Board find that the proposed development, among other things, will not create congestion in the roads, streets or alleys. The burden of proof is upon the petitioner. The record shows that both sides of Philadelphia Avenue, from Potomac Avenue to the property in question are owned by the Pennsylvania Railroad. Mr. Hipple, local supervisor of real estate for that company, testified that the Railroad had no present objection to the maintenance or use by others of Philadelphia Avenue, but he also testified that any conveyance of title or interest would have to be approved by the Board in Philadelphia. He further testified that the Railroad was "supposed to use that thirty-foot strip (Philadelphia Avenue) for this additional tract, extension of Bayview Yard northward. It is still on the books. It may come about someday. They bought additional property for the relocation of this thirty-foot road."

The most that we can make of this testimony is that the Railroad Company, insofar as it could be bound by the statement of a local supervisor, was willing to grant a revocable license to the petitioner. Clearly, there was no showing that the petitioner had title, or even a claim of title, to the bed of Philadelphia Avenue, and no showing of the grant of an easement to anyone. Philadelphia Avenue was obviously not a public road. Presumably, the title was in the Railroad Company. There was no evidence of public use of what was

T. BERNARD TODD

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obviously a cul de sac. There was not even a showing of any reasonable expectation, for less a commitment by the petitioners to obtain title or a permanent easement in the future. The undisputed evidence is that the Railroad Company intended ultimately to close Philadelphia Avenue and relocate it at an undisclosed location.

On this state of the record we think the Board was clearly in error in granting the special exception. The Board stated at one point that it agreed with counsel for the protestants that it "could not grant the special exception upon condition that the petitioner pave and widen Philadelphia Avenue, but went on to say that it had a legal right to grant the petition based on the provision that Philadelphia Avenue be widened \*\*\*\*." We think this is a distinction without a difference. There was no showing that anyone other than the petitioner had any intention of widening the road, and to grant the petition contingent upon the road being widened by some undisclosed person would be even more objectionable than to grant it contingent upon action by the petitioner.

We have held that zoning authorities may not require a developer to defray the cost of public improvements beyond the boundaries of his own property, *Balto. Co. v. Security Mfg.*, 227 Md. 234, 239. This does not mean that the developer may not validly contract to do so. But the duty of the Board, to make certain that adequate access is provided, is not satisfied by a vague showing of permissive use or indefinite future expectation. *Furnace Branch Land Co. v. Board of County Commissioners of Anne Arundel County*, No. 48 (this Term), Md., and *Bonhage v. Cruse*, No. 15 (this Term), Md., just decided.

ORDER REVERSED AND CASE REMANDED FOR THE PASSAGE OF AN ORDER REVERSING THE BOARD OF APPEALS AND DENYING THE PETITION FOR SPECIAL EXCEPTION, COSTS TO BE PAID BY THE APPELLEES.

IN THE COURT OF APPEALS OF MARYLAND

No. 60

September Term, 1963

Peter C. Gerczak, et al

vs.

T. Bernard Todd et al., etc.

Henderson  
 Hammond  
 Horney  
 Marbury  
 Sybert, JJ.

Opinion by Henderson, J.

Filed: November 12, 1963

PETER C. GERCZAK  
 8025 Edgewater Avenue  
 Dundalk 22, Maryland

THOMAS SOJAN  
 5301 Carter Avenue  
 Dundalk 22, Maryland

and  
 GEORGE M. HUFNAGEL  
 8111 Poplar Avenue  
 Dundalk 22, Maryland

Appellants  
 vs.  
 NATHAN H. KAUFMAN, JR.,  
 G. MITCHELL AUSTIN, and  
 CHARLES STEINBOCK, JR.,  
 being and constituting the  
 County Board of Appeals of  
 Baltimore County

IN THE  
 CIRCUIT COURT  
 FOR  
 BALTIMORE COUNTY  
 AT LAW  
 Misc. Docket No. 7  
 Folio No. 180  
 File No. 2610

ANSWER TO ORDER OF APPEAL TO CIRCUIT COURT FOR BALTIMORE COUNTY AND CERTIFIED COPIES OF PROCEEDINGS BEFORE THE ZONING COMMISSIONER AND BOARD OF APPEALS OF BALTIMORE COUNTY

MR. CLERK:

Please file, &c.

Clerk of Court  
 Secretary to County Board of Appeals of Baltimore County

As of Board  
 off by Judge T  
 m 10/19/63  
 No Opinion written  
 Judge T 3/1/63

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

FROM: Jerome D. Wolff

Date: October 2, 1961

TO: John G. Rose, Zoning Commissioner

SUBJECT: Petition for Special Exception for Mobile Home Park

It has been brought to our attention that a public hearing will be held on Monday, October 2, 1961 at 1:00 P. M. for the purpose of reviewing property on the southeast side of Philadelphia Avenue, 104 feet north or less north of Potomac Avenue.

We feel it is our obligation to inform you that public coverage facilities are not available to this property and that it is improbable that the Maryland State Board of Health will approve the installation of a private disposal system.

This matter is being brought to your attention in the event that it will have a bearing on the result of the hearing.

Chief Engineer  
 Metropolitan District

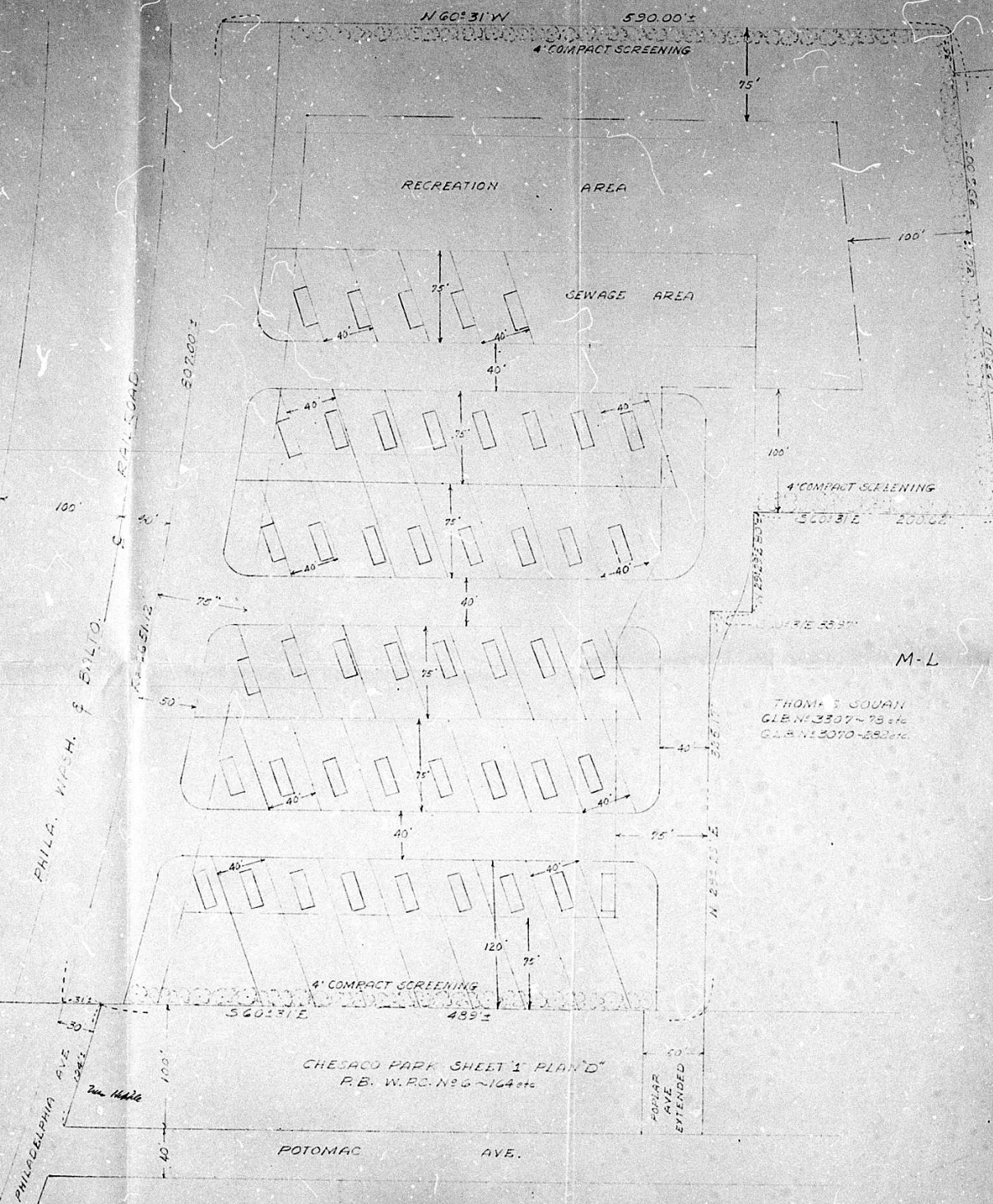
END:sab:mr

cc: S. N. Diver  
 G. R. Lewis  
 T. H. Margum  
 S. A. Bellestr





M-H



G.S. ERWAY & RA. HALL  
G.L.B. N 2579-496 etc.

M-L

M-L

THOMAS SOVAN  
G.L.B. N 2307-73 etc.  
G.L.B. N 2307-282 etc.

9.75 ACRES ±  
46 MOBILE HOMES  
EXIST. USE - VACANT  
PRESENT ZONING - M.L.  
PROPOSED ZONING - SPECIAL EXCEPTION

CHESACO MOBILE  
HOMES SITE

FOR ZONING ONLY

NOTE: PREPARED FROM CLEDS & OTHER INFORMATION  
AND NOT FROM ACTUAL FIELD SURVEY.

MICROFILMED

WILLIAM M. MAYNADIER  
COUNTY SURVEYOR  
CIVIL ENGINEER & LAND SURVEYOR  
COURT HOUSE TOWSON 4, MD.  
SCALE 1/4" = 50' JUNE 25, 1961

15<sup>TH</sup> ELECTION DISTRICT OF BALTIMORE COUNTY, MD.

