

THEODORE A. KUCHTA, et al.
Appellants
vs
COUNTY BOARD OF APPEALS OF
BALTIMORE COUNTY,
Appellee

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

MISC. DOCKET No. 7 Folio 299
Case No. 5519-V

OPINION

This is an appeal from an Order of the County Board of Appeals refusing an exception under Section 409.5 of the Zoning Regulations from the requirements of Section 409 with respect to off-street parking.

The Petitioners for the exception plan to build a one story tavern and restaurant with a basement for storage. Their property is near the end of Old Frederick Road which is only fourteen feet wide so that parking on the street is impossible.

Section 409 requires one parking space for each fifty square feet of total floor area in connection with the operation of a restaurant. The Board calculated the entire floor area of the first floor and basement and arrived at 6400 square feet which would require 128 parking spaces. The Petitioners plan makes provision for 43 spaces.

The property is in a "Business, Major" zone and by reason of its unusual location is clearly unsuitable for residential purposes. Unless some relief is granted by way of an exception to the strict requirements for parking the property cannot be used for any business purpose with the result that it cannot be used at all which, as a practical matter, amounts to confiscation of the land which is illegal.

Section 409.5 was intended to cover just such a situation where "undue hardship" exists.

This Court believes that the Board was in error in including portions of the building not to be used by the public in calculating "total floor area." If the kitchen area, rest rooms and basement are excluded from "total floor area", the 43 parking spaces provided appear to be adequate.

Although not spelled out in the Regulations this Court holds

that the Board has the inherent power to impose restrictions on the use of the property when an exception is granted. The section of the Regulations provides for an exception but in practical effect it is similar to a variance. With respect to variances it is stated in Yekley Zoning Law and Practice, one of the best known text books on the subject, as follows:

"There can be no doubt that a zoning board must be allowed to attach reasonable conditions to the granting of variances in some cases, else the board, for lack of such right, might be forced to deny a variance in a situation which really requires relief. The power to thus impose conditions is well settled."

"There can be no question but that the right to attach reasonable conditions to the granting of variances is implicit in the proper performance of a board's duty in granting a variance."

Yekley Zoning Law and Practice, 2nd edition, volume 1, section 114.

In this case appropriate restrictions should limit the use of the property by the public to the area shown on the plan and exclude the basement from such use. With such a restriction the 43 parking spaces appear to be adequate.

This Court feels this is a real "hardship" case and that the Board acted arbitrarily in refusing to grant the exception with reasonable restrictions as suggested herein.

The Petition is therefore remanded to the Board which is directed to grant the exception with such reasonable restrictions, not inconsistent with this Opinion, as the Board may find appropriate.

Judge

March 11, 1963

RE: PETITION FOR VARIANCE
to Section 409.2 of the
Zoning Regulations
52 1/2 Old Frederick Road,
215 N.E. Ingleside Avenue
First District
Theodore A. Kuchta et al.
Petitioners

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. 5519-V

OPINION

Under date of the 18th of September, 1962, the County Board of Appeals wrote an opinion in the matter of Theodore A. Kuchta, et al. for a variance to the Zoning Regulations under Section 409.2 (b), Section 3 denying a variance requested.

The Order of the Board was appealed to the Circuit Court for Baltimore County. Under the date of March 11, 1963 the Honorable Judge George M. Berry, of said Court, remanded the petition to the Board directing that the variance be granted with such reasonable restrictions not inconsistent with the order of the Court as the Board may find appropriate.

Such a hearing was held on April 16, 1963. The Board is unanimous in its opinion that, in accordance with the order of Judge George M. Berry of the Circuit Court for Baltimore County, the variance from Section 409.2 (b), Section 3, be granted in accordance with the authority granted to the Board under Section 409.5 of the Zoning Regulations; such variance allowing for forty-three (43) parking spaces. The variance is granted subject to the following restriction:

That the basement of said building shall be excluded from all public use.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 18th day of April, 1963 by the County Board of Appeals, ORDERED that the variance petitioned for, be and the same is hereby granted, subject to the aforementioned restriction.

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

William H. Kaufman
CHAIRMAN
S. Mitchell Austin
Charles H. Sturtevant, Jr.

RE: PETITION FOR VARIANCE
to Section 409.2 of the
Zoning Regulations
52 1/2 Old Frederick Road,
215 N.E. Ingleside Avenue
First District
Theodore A. Kuchta et al.
Petitioners

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. 5519-V

OPINION

The petitioners herein seek a variance with regard to required parking spaces as outlined under Section 409.2, Section 3 (b) of the Zoning Regulations. The Regulations require that a dance hall, night club or restaurant provide one parking space for each 50 square feet of total floor area.

The petitioners testified that they plan to erect a restaurant building on the subject property, which is zoned Business Major, with parking spaces for 43 cars. The plans for the building indicate a basement and one story building with 3,200 square feet on each level or a total floor area in the building of 6,400 square feet. Under the Zoning Regulations, parking spaces for 128 cars must be provided.

The Board is unanimous in its opinion that the difference between the required 128 parking spaces and the 43 spaces possible on the subject property is too great a deviation from the spirit and intent of the Zoning Regulations. Because Old Frederick Road is only 14 feet in this vicinity and dead-ends at the subject property, there is no possibility of any street parking for customers of the proposed restaurant. For this reason, it is essential that the off-street parking spaces be adequate to meet the potential capacity of the proposed building.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 18th day of September, 1962 by the County Board of Appeals, ORDERED that the variance petitioned for, be and the same is hereby denied.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William H. Kaufman
CHAIRMAN
Charles H. Sturtevant, Jr.
S. Mitchell Austin

PETITION FOR ZONING VARIANCE FROM AREA AND HEIGHT REGULATIONS

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, or we, Theodore Kuchta and Ann Kuchta, his wife
Legal owner... of the property situated in Baltimore
County and which is described in the description and plat attached hereto and made a part hereof,
hereby petition for a Variance from Section 409.2, (3) 1. PARKING SPACES FOR STREETS...
50' total floor area. Reason for variance to permit 43 parking spaces instead
of the required 64 parking areas.

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (Indicate hardship or practical difficulty)

Due to size and shape of the lot, it is impossible to lay out the required number of parking areas; however, the 43 parking areas provided in the attached plat is deemed sufficient to serve the proposed design capacity of the restaurant and bar of 60 persons. The usable floor space in the building, excluding kitchen, bar, rest rooms and cloak room facilities, is approximately 2000' for which 40 parking areas will be in compliance with regulations. It is felt to be economically unwise to consider reduction in building size.

See Attached Description

Property is to be posted and advertised as prescribed by Zoning Regulations.
I, or we, agree to pay expenses of above Variance 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.

Theodore Kuchta
Theodore Kuchta
Ann Kuchta
Legal Owner
Contract purchaser
Address: *Irvin L. Fishbein*
Irvin L. Fishbein
104 Knickerbocker Building
Baltimore 2, Md. Petitioner's Attorney
Address: *Richard C. Murray*
Richard C. Murray
Jefferson Building
Towson 4, Md. Va 3 6200
Protestant's Attorney

Address: 4013 Frederick Avenue
Baltimore County 29, Maryland

Ordained By The Zoning Commissioner of Baltimore County, this 13th day of February, 1963.

It is hereby ordered, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be held before the Zoning Commissioner of Baltimore County in Room 104, County Office Building in Towson, Baltimore County, at 10:00 A.M. on the 13th day of April, 1963.

Irvin L. Fishbein
Irvin L. Fishbein
104 Knickerbocker Building
Baltimore 2, Md. Petitioner's Attorney

Richard C. Murray
Richard C. Murray
Jefferson Building
Towson 4, Md. Va 3 6200
Protestant's Attorney

William H. Kaufman
William H. Kaufman
CHAIRMAN
Charles H. Sturtevant, Jr.
S. Mitchell Austin

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. John G. Rose, Zoning Commissioner Date: March 23, 1962

FROM: Mr. George E. Gavrilis, Deputy Director

SUBJECT: 5519-V. Variance to permit 43 parking spaces instead of the required 64 parking areas. Southeast side of Old Frederick Road 215 feet Northeast of Ingleside Avenue. Being property of Theodore Kuchta.

1st District

HEARING: Wednesday, April 4, 1962 (10:00 A.M.)

The staff of the Office of Planning and Zoning has reviewed the subject petition for a variance on the parking requirements of the Zoning Regulations. There is insufficient information available prior to the hearing with which to make comment prior to this petition.

CEG:mas

PETITION FOR VARIANCE
to Section 409.2 of the
Zoning Regulations - S.E.
side Old Frederick Road
215 N.E. Ingleside Ave.,
First District, Theodore
A. Kuchta and Ann Kuchta
Petitioners - No. 5519-V

BEFORE THE
ZONING COMMISSIONER
FOR BALTIMORE COUNTY

APPEAL TO COUNTY BOARD OF APPEALS

Mr. Commissioner:

Please enter an appeal to the County Board of Appeals from your decision and Order of April 4th, 1962 in the above entitled matter. Check for \$35.00 costs attached hereto.

Dated: April 11, 1962

Irvin L. Fishbein
Irvin L. Fishbein
Knickerbocker Building
Baltimore 2, Md. Sa 7 7966

Richard C. Murray
Richard C. Murray
Jefferson Building
Towson 4, Md. Va 3 6200

Attorneys for Petitioners



CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

5519

Date of Posting: 3-14-62

District: 1st
Posted for: *Appeal to zoning regulations*
Petitioner: *Howard L. Ann*
Location of property: *S.E. of Old Frederick Rd. 215 ft. N.E. of*
Frederick Rd. 5653 ft. E. of
Location of Signs: *Posted on property known as 5653 Old Frederick Road*
Remarks: *George R. Hammond*
Posted by: *George R. Hammond* Signature

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

5519

Date of Posting: 8-1-62

District: 1st
Posted for: *Appeal to zoning regulations*
Petitioner: *Howard L. Ann*
Location of property: *S.E. of Old Frederick Rd. 215 ft. N.E. of*
Frederick Rd. 5653 ft. E. of
Location of Signs: *Posted on property known as 5653 Old Frederick Road*
Remarks: *George R. Hammond*
Posted by: *George R. Hammond* Signature

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

No. 11545

DATE 4/27/62

TO: *Mayor, Smith & Harrison, The Jefferson Building, Towson 4, Maryland*
BILLED BY: *Office of Planning & Zoning, 215 County Office Bldg., Towson 4, Md.*

DEPOSIT TO ACCOUNT NO.	01.622	TOTAL AMOUNT
QUANTITY	DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE	COST
1	Cost of appeal for variance to zoning regulations No. 5520-7	805.00
	PRD - Baltimore County, Md. - Office of Finance	
	8-1862 3138 * * * TIL -	35.00

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. 10766

DATE 10/29/62

TO: *Mr. Ann Smith, 201 Ballingfield Road, Baltimore 28, Maryland*
BILLED BY: *County Board of Appeals (Zoning)*

DEPOSIT TO ACCOUNT NO.	01.712	TOTAL AMOUNT
QUANTITY	DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE	COST
1	Cost of Certified Documents for - <i>Mr. Ann Smith, 201 Ballingfield Road, Baltimore 28, Maryland</i>	80.00
	PRD - Baltimore County, Md. - Office of Finance	
	10-3042 1944 * * * TIL -	8.00

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. 10339

DATE 2/13/62

TO: *Irvin L. Flathman, Esq., 701 Eisenhower Building, Baltimore 2, Md.*
BILLED BY: *Zoning Department of Baltimore County*

DEPOSIT TO ACCOUNT NO.	01.622	TOTAL AMOUNT
QUANTITY	DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE	COST
1	Petition for a Variance for Theodore Smith	25.00
	PRD - Baltimore County, Md. - Office of Finance	
	2-1362 729 * * * TIL -	25.00

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. 11568

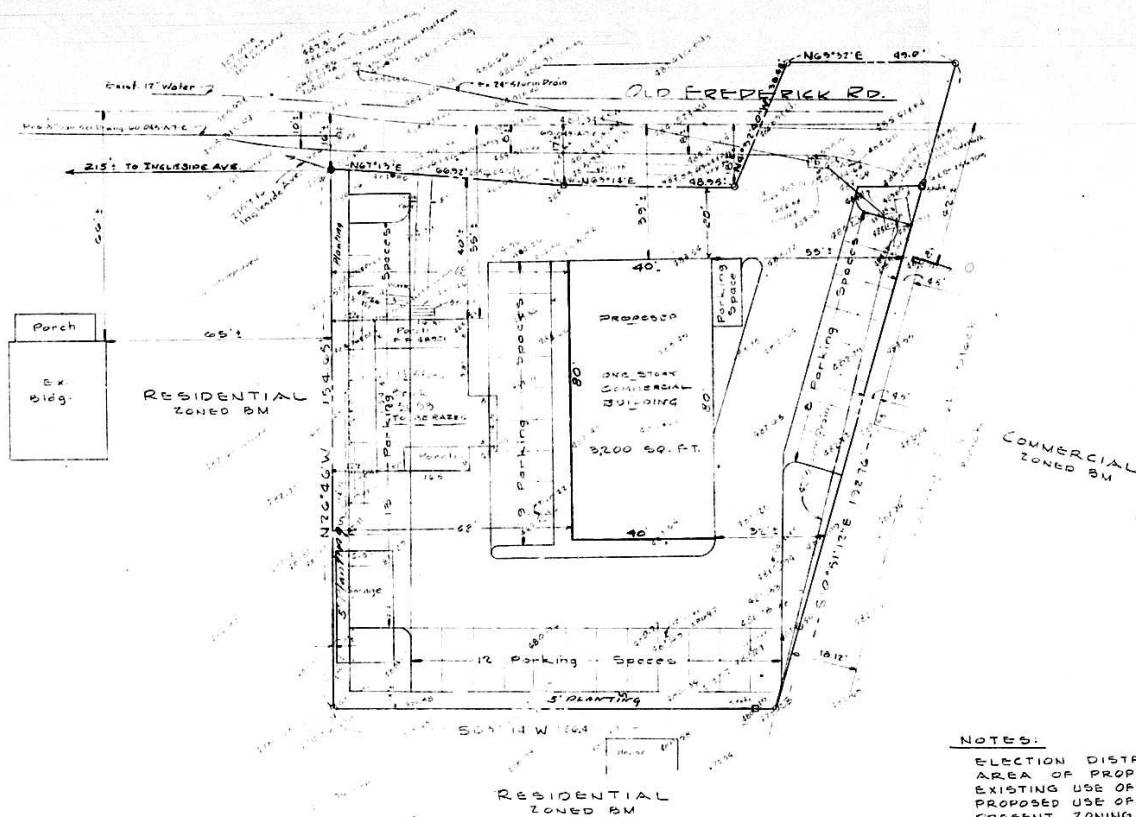
DATE 4/4/62

TO: *Theodore Smith, 201 Ballingfield Rd., Catonsville, Md.*
BILLED BY: *Zoning Department of Baltimore County*

DEPOSIT TO ACCOUNT NO.	01.622	TOTAL AMOUNT
QUANTITY	DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE	COST
1	Advertising and posting of your property	81.00
	PRD - Baltimore County, Md. - Office of Finance	
	2-462 2304 * * * TIL -	81.00

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.

SUNOCO STATION
ZONED BR



RESIDENTIAL
ZONED BM

COMMERCIAL
ZONED BM

PLOT PLAN

TOPOGRAPHICAL SURVEY
OF
5655 OLD FREDERICK ROAD
FOR
THEODORA KUCHTA
4013 FREDERICK AVE.
BALTIMORE 29, MD.

NOTED:

ELECTION DISTRICT - No 1
AREA OF PROPERTY - 24,1801 SQ. FT.
EXISTING USE OF PROPERTY - RESIDENTIAL
PROPOSED USE OF PROPERTY - RESTAURANT
PRESENT ZONING - BUSINESS MAJOR
PROPOSED ZONING - SPECIAL EXCEPTION
TO BM ZONING FOR
PARKING



L. Alan Evans
L. ALAN EVANS
SURVEYOR & CIVIL ENGINEER
6700 ELKRODE AVE. #2104
BALTIMORE 14, MD.
RE-6412077 SCALE: 1"=20' DATE: 4/12/64