

RE: PETITION FOR RECLASSIFICATION
from an "R-6" Zone to an "R-A" Zone,
S/S Old Frederick Road, 113' west
of Dunbar Avenue,
1st District
Frederick W. Heinicken, et al
Petitioners

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. 5741

OPINION

The petitioners herein seek to reclassify a tract of approximately 8-1/3 acres on which is located their residence. The property has a frontage of 372 feet on the south side of Old Frederick Road and is approximately 700 feet deep along its eastern boundary and approximately 900 feet deep on its western boundary.

All land surrounding the subject property is zoned "R-6". Directly across Old Frederick Road on the north side are individual cottages. Immediately adjoining to the west is a residence containing a non-conforming grocery store in the front portion. On the eastern boundary is a strip of vacant land zoned "R-6" and next to this vacant strip are a row of well kept cottages and ranch type homes along Suter Road in an "R-6" Zone.

Mr. Donald H. Gobell, contract purchaser, testified that he plans to build garden type apartments containing 120 units with an equal number of parking spaces. The principal entrance and exit will be on Old Frederick Road which has a paved width of 20 feet and no sidewalks.

The petitioners contend that there was an error in the land use map adopted by the County Council on April 5, 1960 in that it did not recognize as "R-A" zoning the apartments on Melvin Avenue and on the east side of Suter Road. These residences, which were erected approximately ten years ago, have the appearance of individual homes but are being rented as apartments. They are separated from the subject tract by Suter Road, the row of individual cottages on the west side of Suter Road and the above mentioned vacant strip of land.

The only change in zoning classification submitted by the petitioners was a change from "R-6" to "R-A" at Edmondson and Edgewood Avenues in October 1961. This location is more than 1-1/2 miles from the subject tract.

The protestants, who are residents in the immediate neighborhood, testified that the erection of apartments would adversely affect the value of their homes. They also stated the traffic on Old Frederick Road would be greatly increased by the

construction of 120 apartment units.

The protestants introduced another factor in this case which is worthy of some consideration. The subject land is in the center of an all negro community. The protestants contend that there is a need for individual homes for negroes in this area and that the Heinicken tract is the only large piece of land available for such construction.

In the case of Shadybrook Improvement Association, Inc. v. Lawrence W. Malloy, a case quite parallel to this petition, the Maryland Court of Appeals stated that "it is a well established rule in this State of the strong presumption of the correctness of original zoning and of comprehensive rezoning and that to sustain a place-meal change therefrom there must be strong evidence of mistake in original zoning or in the comprehensive rezoning or else of a substantial change in conditions".

The Board is of the opinion that the petitioners failed to prove an error in the original zoning or sufficient change in the neighborhood since the adoption of the map in 1950 to warrant reclassification. Therefore, the reclassification sought for should be denied.

ORDER

For the reasons set forth in the foregoing opinion, it is this 5th day of September, 1963 by the County Board of Appeals, ORDERED that the reclassification petitioned for, be and the same is hereby denied.

Any appeal from this decision must be in accordance with Chapter 1100, subtitle 8 of Maryland Rules of Procedure, 1961 edition.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

John Warfield Armiger
Chairman (acting)
Charles H. Heinicken

Note: Mr. Kaufman did not sit at this hearing.

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from an "R-6" Zone to an
"R-A" Zone,
S/S Old Frederick Road,
113' west of Dunbar Avenue,
1st District
Frederick W. Heinicken, et al
Petitioners

BEFORE THE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. 5741

MR. CLERK:

Please note an Appeal on behalf of Frederick W. Heinicken and Leta Heinicken of Baltimore County to the Circuit Court of Baltimore County, in the matter of the Petition for Reclassification of real property situate s/s Old Frederick Road, 113' west of Dunbar Avenue, 1st District, Baltimore County, being the property of the petitioners.

This appeal is from the decision of the County Board of Appeals of Baltimore County, dated September 5, 1963, denying the requested re-classification and is filed pursuant to the provisions of Maryland Rules 1101 b.

John Warfield Armiger
John Warfield Armiger
Atty. for Petitioners
406 Jefferson Building
Towson 4, Maryland
Valley 5-7666

I hereby certify that a copy of the foregoing ORDER OF APPEAL, was, prior to the filing thereof, served on the County Board of Appeals of Baltimore County by leaving a copy of same with the Secretary of the said Board at its office in the County Office Building, Towson 4, Maryland, pursuant to the Maryland Rules of Procedure.

John Warfield Armiger
John Warfield Armiger

LAW OFFICES
JOHN WARFIELD ARMIGER
3000 COURT HOUSE SQUARE
TOWSON 4, MARYLAND
JEFFERSON BUILDING

January 30, 1963

Honorable John G. Rose,
Zoning Commissioner for Baltimore County
County Office Building
Towson 4, Maryland

Re: Petition for Reclassification
from "R-6" Zone to "R-A" Zone -
S.S. Old Frederick Road 113'
E. of Dunbar Ave., 1st Dist.
Fred. W. Heinicken and Leta
Heinicken, Petitioners -
Donald H. Gobell, Cont. Pur.
No. 5741

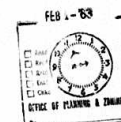
Mr. Commissioner:

Please enter an Appeal to the County Board of Appeals from your Order of January 29, 1963, denying the Petition for reclassification in the above matter.

Very truly yours,

John Warfield Armiger
John Warfield Armiger

JWA:ht



FREDERICK W. HEINICKEN
113' E. OF
DUNBAR AVE.
1st
5741

BALTIMORE COUNTY, MARYLAND INTER-OFFICE CORRESPONDENCE

TO: Mr. John W. Rose, Zoning Commissioner Date: January 15, 1963
FROM: Mr. James E. Buehler, County Director
SUBJECT: 5741, R-6 to R-A, South side of Old Frederick Road, 113' west of Dunbar Avenue, being property of Frederick Heinicken.

It has been brought to my attention that the staff comments concerning the subject petition for zoning reclassification were transmitted incorrectly to you. The last sentence should have read, "the Planning staff believes that the original zoning was not in error."

JBW/cg
CC: Mr. J.W. Armiger

October 25, 1962

John Warfield Armiger, Esq.
Jefferson Building
Towson 4, Maryland

Re: Petition for Reclassification from R-6 to R-A for Frederick Heinicken, located Old Frederick Road at Pine Street

Dear Sir:

The Zoning Advisory Committee has reviewed the above petition and have the following comments:

1. The job in Pine Street at Frederick Road, should be eliminated by realigning the proposed Pine Avenue to provide a four way intersection with the existing Pine Avenue.
2. Pine Avenue as proposed with a 50 foot right-of-way and 30 feet of paving is not sufficient for a development of this type. This street should be a 60 foot right-of-way with 36 feet of paving.
3. A 15 foot widening strip should be indicated for Frederick Road to provide a 70 foot right-of-way.
4. A road connection should be provided between the proposed Pine Avenue and Dunbar Avenue.
5. The entrances to all parking bays should be a minimum of 24 feet.
6. Density calculations should be indicated on the plan.

If you have any questions, concerning this matter, please do not hesitate to contact me.

Yours very truly,

JEB/ba

JAMES E. BUEHLER

PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

Frederick W. and
I, or we, E. Leta Heinicken, legal owner 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 "R-6" zone to an RA (Residential Apt.) 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:

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

Donald H. Gobell
Contract purchaser
Address: *John Warfield Armiger*

John Warfield Armiger
Petitioner's Attorney

JOHN WARFIELD ARMIGER
Address: 406 Jefferson Bldg., Towson 4, Md.
Valley 5-7666

ORDERED BY The Zoning Commissioner of Baltimore County, this 14th day of September, 1962, 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 County, on the 16th day of September, 1962, at 11:00 o'clock A.M.



Frederick W. Heinicken
Frederick W. Heinicken
E. Leta Heinicken Legal Owner
Address: 603 OLD FREDERICK ROAD

Pursuant to the advertisement, posting of property, and public hearing on the above petition and it appearing that by reason of

the above Reclassification should be had; and it further appearing that by reason of

a Special Exception for should be granted.

IT IS ORDERED by the Zoning Commissioner of Baltimore County this 19th day of September, 1962, that the herein described property or area should be and the same is hereby reclassified, from a "R-6" zone to a RA (Residential Apt.) zone, and/or a Special Exception for should be and the same is granted, from and after the date of this order.

Pursuant to the advertisement, posting of property and public hearing on the above petition and it appearing that by reason of location and there has been no change in the area to warrant the granting of a reclassification

the above reclassification should NOT BE HAD, and/or a Special Exception should not be granted.

IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 29th day of September, 1962, that the above reclassification be and the same is hereby DENIED and that the above described property or area be and the same is hereby continued as and to remain an "R-6" zone; and on the Special Exception for should be and the same is granted, from and after the date of this order.

John Warfield Armiger
Zoning Commissioner of Baltimore County

MICROFILMED

