RE: PETITION FOR RECLASSIFICATION : retition for Reclassification: from "R-6" and "R-A" Zones to a "B-L" Zone, SPECIAL EXCEPTION: for Gasoline Service Station, NE/S of Maiden Choice Lane, 254': from the SE/S of Highview Avenue, 13th District Mary E. Mack, Petitioner

BEEORE COUNTY BOARD OF APPEALS OF

BALTIMORE COUNTY

No. 43-97-98

### OPINION

This case arises from a petition for a change in zoning with a special exception for a gasoline service station of a piece of property on Maiden Choice Lane at its intersection with Shelbourne Road. The land is presently zoned; partly B-L, partly R-6, and partly R-A. The land use map for the 13th District was adopted on June 2, 1959.

The owner of this property, Miss Mary E. Mack, (who admits the age of 66 years) is occupying this property of approximately an acre and one-third where she has lived for over 40 years. As is so frequent under modern conditions of growth in Baltimore County, this lady now finds herself completely surrounded on two sides by commercial land uses and on the other two sides by small individual and semi-detached homes. North of her araperty is a B-L zone accupied by the Leeds Building, a large office building; a Cities Service Gasoline Station; and a large bowling alley. Across Maiden Choice Lane, toward the north, is a large Texaco Service Station, and a big and active shopping center. Behind the Texaco Station is a large paved area used as parking space for the shopping center and service station, the southern most portion of which is zoned R-A but is being used for parking and, to all practical purposes, could be part of the B-L zone. To compound Miss Mack's difficulties the zoning authorities, in their wisdom in 1959, zoned her family lot in three different ways; namely, B-L, R-A and R-6, the bulk of it being R-A as was the land across the street now being used for commercial parking. According to Mr. George E. Gavrelis, Director of the Office of Planning and Zoning for Baltimore County, these two areas were zoned R-A to set up that nebulous zoning classification known as a "buffer strip".

The petitioner desires to have her acre and one-third zoned B-L and has agreed with the Shell Cil Company for the erection of a gasoline service station on a portion of her land, approximately 125 feet by 150 feet, which would face on Maiden Chaire Lane apposite the dead-end intersection of Shelbourne Road. Maiden Chaire Lane was widened from Shelbourne Road north at the time of the construction of the shopping center but narrows down to two lanes south of Shelbourne Road at a point about twothirds of the way from Miss Mack's northern most boundary to her southern limit.

> RE: PATTRICE FOR REDLASSIFICATION AND SPACIAL EXCEPTION FOR Gasoline Service Station -N.E. Side Maiden Choice Lame 25h' from S.E. Side Highview Ave., 13th Dint., Mary E. Inck,

ZONING COMMISSIONER

68 BAIR DARKS COUNTY

No. 63-97-RX

# . . . . . . . . . . . . . . . . . . .

The publicant, in the above entitled nature, requested a respecting of presents on the methods. Life of lation flotes have 25% few from the combinant leds of Highrest Annual, from an Earn and as Mod. Zeno set a Mod. Mod. Seno set a Mod. Zeno, and a special assession for a guarties acressed as the combinant for the combinant for

The property to the east and south is zoned residential, the major portion of the politicans's property is zoned residential in the form of "a-A" zoning.

In the case of the control of the co

For the above reasons the reclassification should not be granted, and the special exception should not be granted.

Country and the Special Association of the Country and the Special Country of the Country of the Country of Special Country of

There is one house on the corner of Maiden Chaice Lane and Shelbourns Road which faces the lower one-third of the Mack property on one side and has a view of the parking lot and service station on its other side. The owner of this property appeared as one of the protestants and testified that he had no objection to the parking lot or other commercial uses but did not like gas stations. Two other residents of the neighborhood testified to the same general effect that their only objection was to the gasoline station use, and one of these had sold her home and had moved away from the neighborhood prior to the hearing on this case. The other testified that there had been no depreciation in his property caused by the other service stations and the extensive commercial development in the next block

- 2.

The pajor witness for the protestants, and apparently the instigator of the opposition, was Mr. P. T. Lemmon who has heretofore described himself, in other cases, as a volunteer expert witness on behalf of all of the taxpayers of Baltimore County. However, in the present case he described himself as a "knowledgeable, interested owner of property concerned cooperating with the neighbors in maintaining the integrity of this zoning map" and also as contributing his services as an unpaid expert consultant. He stated that there was little land left for residential expansion in the neighborhood and that it was a sod situation because there were too many gasoline stations in the neighborhood and many of them, in his opinion, were losing money. He presented aerial photographs, Protestants' Exhibit "A", showing the location of seven gasoline stations two of which are those mentioned above on Maiden Choice Lane, the other five are located on Southwestern Boulevard, a considerable distance from the subject property and related to an entirely different shooning and traffic pattern.

Mr. Lemmon stated that he was trying to be objective under the circumstances, but his testimony has very little weight in view of the fact that it came out during the trial of this case that he owns the Cities Service Station property and has a half interest in the shanning center including the Texaco Service Station. Although he expressed the opinion that Miss Mack's property was suitable for apartment use, it is to be noted that the land which he himself owns and which is zoned R-A, is now being used as a parking area for his shopping center. It was further testified that Mr. Lemmon had, sometime ago, made an offer to Mirr Mack of \$50,000 for her property as he but it "hoping for commercial zoning". He himself admitted this on the witness stand and said that, under the present circumstances, he would offer Miss Mack \$25,000 for her property as is. This would seem to indicate that at least at the time of his \$50,000 offer he must have believed that this property was a fit subject for commercial zoning. The Board is afraid that this leaves Mr. Lemmon in a position of a man with an ax to grind and no grindstone

. PETITION FOR ZONING RE-CLASSIFICATION, 3-97  $^{RX}$ 

AND/OR SPECIAL EXCEPTION TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY

legal owner of the property situate in Baltimere Lor-we. Mary E. Mack County and which is described in the description and plat attached hereto and made a part hereof. # 12 hereby petition (1) that the zoning status of the herein described property be re-classified, pursua  $\frac{1}{2}$   $\frac{1}{4}$   $\frac{2}{3}$ to the Zoning Law of Baltimore County, from an B-6 and R-A BLX

zone: for the following reasons:

A portion of this property is already zoned commercial. The entire property is immediately adjacent to a Building and Loan Assn. property. In the immediate vicinity is a large shopping center, a biwing alley and several other commercial enterprises. The property is no longer desireable as a residential property.

and (2) for a Special Exception, under the said Zoning Law and Zoning Regulations of Baltimor County, to use the herein described property, for a gasoline service station.

See attached plats for respective uses.

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

> Mary & Mark. MARY E, MACK
> Legal Owner

Contract purchaser

J. Francis Ford

Legal Owner
Address 1121 Maiden Choice Rd. allowing for Protestants Addecaly in 1311 Fidelity Bldg 416 Gut 5, D. 12. (2)

9125/63

406 - 1 N. Charles St.

ORDERED By The Zoning Commissioner of Baltimore County, this 8th

....... 196\_3., 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 Tewson, Baltimore MN 8.83 - day of Getober ... 196.3 at 10:00 o'clock

Mr. C. Gordon Gilbert, a reputable real estate appraiser, testified that he felt the best use of the property would be R-A zoning with a special exception for an office building, and that a change in zoning might possibly devalue other property in the area. However, on the other hand, Mr. William A. Garde, a real estate broker who has been actively engaged in this immediate vicinity for twenty-five years, testified that he had made every effort to sell Miss Mack's property for apartment use and could not do so even though he had many inquiries from buyers who wanted the land for commercial uses. He further stated that under present building regulations the number of apartment units which could be placed on this small tract of land would not be economically feasible and, even so, the portions of the land zoned B-L and R-6 would have to be rezoned before the entire tract could be developed for any use. He felt that the highest and best use was B-L zoning as applied for. Mr. John G. Cribbs, of the Shell Oil Real Estate Department, indicated l.is company's plans and presented a picture of the proposed type of service station (Exhibit No. 2).

Under the circumstances the Board feels that the proposed use of part of this land for the service station would have no greater, if any, effect on property in the neighborhood than any other commercial use which it seems to us is obviously called for. Certainly a well managed service station would be less of a nuisance to the neighborhood than some of the present conditions under which Miss Mack's property has become a repository for beer bottles, cans, and other trash from the parking lots of the Leeds Building as well as that of Mr. Lemmon. It appears to the Board that the application meets all of the criteria required for a special exception under Section 502.1 of the Zoning Regulations, and this coupled with the fact that there was obviously an error in the original zoning and that there have been many changes in the neighborhood, leads us to the following con-

The change in zoning classification will be granted in accordance with the request in the patition, and the special exception will be granted subject to the following restrictions:

- It is required that there be screened planting no less than six (6) feet in height when planted between the service station and the existing residents on the south
- Egress and ingress from the subject property must be approved by the proper State and County authorities

DOLLENBERG BROTHERS

Regio. red Professional Engineers & Land Surveyors

TOWSON 4. MD.

June 24, 1963

709 WASH NOTON AVENUE AS YOUR

Zoning Description

All that piece or parcel of land situate, lying and being in the Tmirteenth Election District of Baltimore County, State of Maryland and described as follows to wit:

The greater por' on of the above de cribed parcel of land is now zoned Residential-Apartments and a small portion is now zoned Residential- 6 as shown on the attached plat.

There may be no more than one vending machine located on the outside of the building

ORDER

For the reasons set forth in the aferegoing Opinion, it is this 57h day of March, 1965 by the County Board of Appeals, ORDERED that the reclassification and special exception petitioned for, be and the same is hereby granted, subject to the aforementioned restrictions

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

G. Mitchell Austin, Cho W Giler Parks

William S. Baldwin

BALTIMORE COUNTY, MARYLANT

INTER-OFFICE CORRESPONDENCE

TO Mr. John G. Rose, Zoning Commissioner Date. September 27, 1963 FROMMr. George E. Gavrelis, Deputy Director

SUBJECT #63-27-EX. R-6 and R-A to B-L and Special Exception for Gasoline Service Station. No theast side of Maiden Choice Lame 25% feet Sout ...st of Highriew Avenue. Being property of Mary Mack.

13th District

Wednesday, October 9, 1963 (10:00 A.M.)

Due to the exigencies of time the Planning staff was unable to

GEO: bms

#63-97RX

SEC

BL-X



NORMAN T. CRANDELL . IN THE CIRCUIT COURT BALTIMORE COUNTY COUNTY BOARD OF APPRAIS 7/486/3221

Please enter an appeal to the Court of Appeals of Maryland in the above entitled case.

> J. FRANCIS FORD

I HEREBY CERTIFY that on this day of Sapte no. 1965 a copy of the aforegoing was mailed to Marvin I. Singer. Esq., C. Square Bending, Baltimore, Maryland 21202 and John H. Hessey, IV. Asquire, 1311 Fidelity Building, Saltimore, Maryland 2 20

I FRANCIS PORD

NORMAN T. GRANDELL, et al IN THE CIRCUIT COURT FOR BALTIMORE COUNTY COUNTY BOARD OF APPEALS

# OPINION

The Appellee-Petitioner, MARY E. MACK, is the owner of property in the Thirteenth District of Baltimore County, on Maiden Choice Lane. For purposes of this Opinion, Maiden Choice Lazo will be treated as running east and west, So oriented, the property in question has a frontage of about 207' on the north side of Maiden Choice Lane, with a rectangular depth northerly of about 300°. Its western border is 254' east of Highylew Avenue. Shelbourne Road enters the south side of Maiden Choice Lane (but does not extend through the north side). at a point opposite the approximato center of the Petitioner's land.

Adjoining the subject property on the east is property bearing "BL" zoning presently utilized by a building and loan association; adjoining on the north is property bearing R-6 zoning; adjoining on the east is property bearing R-6 zoning. Property immediately across from the subject property and lying on the south side of Maiden Choice Lane is somed "BL" in part and "RA" in part.

The subject property itself heard somewhat bizzare zoning. The westernsost 8° or 12° of the property is zoned "BL". The easternmost 20° is zoned R-6. The property lying between the two and comprising about 85% of its total area.

The subject Petition sought a reclassification of all of the property to "BL" with a requested "Special Exception" for a gasoline service station for that part of it having 150° frontage on Maiden Choice Lane (commencing at the east property line) with an even depth northerly of 125'. Both the reclassification and the Special Exception were granted by the Board.

dains of the Board implies and this Court finds that the appli to this property of three superate zoning classifications, two of which because

J. FRANCIS FORD JOSEPH H A ROGAN LAW OFFICES

BALTIMORE 2 MARYLAND December 2, 1963

- DEC -3'63" ZONING PEPANIME

Mr. John G. Rose oner of Baltimore County Zoning Commissioner of Balt County Office Building 111 West Chesapeake Avenue Towson 4, Maryland

Please enter an appeal to the Board of Zoning Appeals of Baltimore County from your decision dated November 26, 1963 denying the Petition of Mary E. Mack for a special exception for the rection of a gasoline filling station at her property located at the N. E. side Maiden Choice Lane in Baltimore County.

Yours very truly.

Joannes Josef J. Francis Ford

P.S. 1 am enclosing herewith check in the amount of \$70,00 to cover

of their size and shape, would be incapable of utility in such class. loations, is an error in zoning. The Petitioner contends and the Board found that this error or mistake required the grant of the requested reclassification.

In granting this reclussification, the Board stated that commercial use seemed to the Foard to be obviously called for and made the further finding that there was obviously an error in the original coning, and that there have been many changes in the neighborhood. The Court will consider these findings in

### As to changes in the neighborhood

The Court has carefully searched for any evidence to support this state and has found none. Counsel for the Petitioner, on questioning by the Court at time of hearing, conceded that such finding of fact is not supported in the Record.

### Error in original zoning

As heratofore stated, this Court has no difficulty whatever acrosing with the Board that "there was obviously an error in the original zoning". But this fact of error or mistake does not necessarily justify a particular reclassification.

It seems clear to this Court that what the Zoning Board did in this case was to conclude (as they must) that an error was made, and to find, ergo, that the property must be reclassified to a "BL" zoning. This is a clear non sequitur on this Record. There is an uncontradicted explanation of why and how error arose, and what is the appropriate action to correct it. The witness Gorege Gavrelis said at case 94 of the Records

"I would like to simply esticate the comments made provious; that with the history of soning and land use and planning factors as previously stated, the opinion of the Planning stati singly is this, that the 11th District Toning Map was haved on maps at a scale of 1,400 feet to the Lach, and of that scale it is extraordly difficult to the contract of the province on with respect to the validity, the correctness, the function atment soning for the Mack property, remains unchanged. Treas a planning viewpoint I feel that there was error in this but the error is exclusively that in terms of not having in the

boundaries of the Mack ownership as they actually exist on the

.

ground. It only in that wells that the Stanning staff feels that there is serred by notwithstanding this, own within the sounder of the soning that had been applied to the property. as consist of the soning that had been applied to the property. As the soning that the descriptions, there is, as I understand it, showt if I feet that is mosed for Susinass-Local, the substance of the property, the most substantial portion of it is a sond R-A, with an dope of R-G on the

There is not a scintilla of evidence from any source that suggests that the error, as applied to this property, occurred in any other fashion.

The same witness had at page 69 of the Record clearly explained that the nning Department had sought to provide a transition-the Mack propertyrotal zoning on the west and R-5 zoning on the east; that it had nded that its reclassification from R-6 to "RA". He went on at page 99 to point out that the County Council was aware of the Planning Department's views; was aware of the desires of Miss Mack thather property be accorded a rcial classification, that it did, after consideration and judgment, adopt Planning's recommendation and rejected Miss Mack's requested on (See Levy v. Seven Slade, 234 Md. 145, 154)

The Record also shows that an application by the same Petitioner for a reclassification to a "BL" label was rejected by the Zoning Commissioner in 1961.

Counsel for the Petitioner suggests that the testimony of Miss Mack and the testimony of the Witnessas Garde and Cribbs are sufficient to strike down the "RA" zoning applied to the largest portion of the subject property. It is sugge-ted that such testimony meets the "heavy burden" of showing that this mistake or error in soning required the reclassification upon the ground that no ssonable use of the property is possible.

I shall simply state that this Court believes that the evidence of these three witnesses is locally insufficient to strike down the presumptive validity of

I HEREBY CERTIFY that a copy of the aforegoing Order of Appeal was mailed this / day of April , 1965, to the County Board of Appeals, County Office Building, Towson, Maryland 21204.

Please enter an appeal on behalf of Norwan T. Crandell

IN THE

CIRCUIT COURT

(At Law)

. Folio

Misc. Docket

and Helen M. Crandell, his wife, and George G. Dorer and Muriel W. Dorer, his wife, from the Order of the County Board of Appeals for Baltimore County passed on the 6th day of March, 1965, in Petition No. 63-97-RX, granting a reclassification from B-L, R-A and R-6 to a B-L classification, and granting a special exception for a gasoline service station on the property of Mary E. Mack, known as No. 1121 Maiden Choice Lane.

ORDER OF APPEAL

e. Maryland 21229

G. MITCHELL AUSTIN, W. GILES PARKER, WILLIAM S. BALDWIN, and R. ERUCE ALDREMAN, as a to G. Mitchell Austin

Mr. Clerk:

Constituting the County Board of Appeals of Baltimore County Office Building Towson, Maryland 21204

corneys for Norman T. Crandell, Nelen M. indell, George G. Dorer and Muriel W. er. Appellants

The requested reclassification of the property to "BL" is denied and with it must fall also the requested Special Exception

W. ALBERT MENCHINE, Judge



SHELL OIL COMPANY

4831 YORK ROAD BALTIMORE, MARYLAND 21212 #63-97 EX MAP V

September 6, 1963 RE: PREMISES AT MAIDEN CHOICE LANE & SHELBOURNE AVENUE, ARBUTUS , ND.

SE (.2-A 93-A BL-X 9/25/63

Nr. James E. Dyer Baltimore County Planning & Zoning Dept. County Office Building Towson 4, Naryland

Further to our phone discussion of yesterday, mailing you seven copies of a revised plot plan he development of the above premises.

You will note that an inside entrance to the shopping center area has now been shown on the plat. With kindest regards,

> Sincerely, John G. Cribbs

\$63-97 PX

J. Frances Ford, Esq. h06 - 1 N. Charles Street Baltimore 1, Maryland

The Zoning Advisory Committee has rised the above referenced petition and have the foliog comments to make:

1. A driveway should be provided between the retail stores and the service station.

The parallel parking spaces should a minimum of 22 feet in length.

If you have any questions concerninghis matter, o not hesitate to centact me.

Yours truly, Janus E Key

JED/1b

Court of Appeals of Maryland

No. 52, September Term, 1963-Filed November 21, 1963 DONALD J. ELLIOTT ET UN.

TR. ROBERT A. JOYCE

Appeal from the Circuit Court for Baltimore County, John Grason Turnbull, Judge. Argued by Robert J. Rossudka (Leonard A. Vadata, on the brief), both of Baltimore, Maryland, for appellants. Argued by Robert J. Jopee, pro se. Baltimore, Md. (no brief filed by appeller) for appeller.

Argued before BRUNE, C.J., HAMMOND, PRESCOFT, HORNEY and SYBERT, JJ.

Angeles Sord's MICNA, CA., IMMOND, FIESCOT,
Maries Indiana, Catal Michael S. Alex for Sond
international Conference of the Conference of t

13

CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY Towson, Maryland

#63-9 CO

Dutrict. 13th
Posted for Partition for Reclassification from H-6 & H-A to Ball.

Posted for Partition for Special Exception for Gas Station. Petitioner: .Mary. E. Mack .... Location of property: NE/S. Maiden Choice Lane 254! from Highview Ave. NE/S

Location of Signar Space, Except: On Meddenchoice Lease 360 - S of High view Ave. Reclass: On NE/S Meidenchoice Lane opposite dead-end Shelbourne Rd, on tree 2 eigne

BALTIMORE COUNTY, MARY AND No. 22003 OFFICE OF FINANCE Division of Collection and Receipt COURT HOUSE TOWSON 4, MARYLAND Office of Planning & Zening County Office Eldg., Baltimore 2, Md. COST Cost of appeal - Mary E. Mark 63-97 16-563 7493 . . . TIL-IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWS PLEASE RETURN UPPER SECTION OF THIS BILL WITH YOUR REMITTANCE.

BALTIMORE COUNTY, MARYIOND TELEPHONE VALLEY 3-3000 OFFICE OF FINANCE Bultimore County 150.50 MOUNT 50.50 10-863 - 770 . . . 121-5050

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

BALTITORE COUNTY, MARY AND No. 29905 OFFICE OF FINANCE TOT\$ 117:00" Cost of Certified Documents \$ 11.00 4-965 32 85 · 29985 TIP-11.00

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

OCTOMER 5 1981 at 2000 ALV
OCTOMER 5 1981 at 2000 ALV
OCTOMER CORPORITION TO 1000 AT 1

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Howing courses and dista
t: North 39 degrees 05 min.
seconds East 125 feet, No
legrees 28 minutes 20
110 feet

THE BALTIMORE COUNTIAN THE COMMUNITY NEWS

No. I Newburg Avenue

CATONSVILLE, MD.

September 23, 1963.

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

was inserted in THE BALTIMORE COUNTIAN, a group of three weekly newspapers published in Baltimore County, Maryland, once a week for One Week successive weeks before day of September, 1963, that is to say the same was inserted in the issues of

THE BALTIMORE COUNTIAN

By Parl J. Morgay Editor-and Manager

BALTIM RE COUNTY, MARY AND

OFFICE OF FINANCE Division of Collection and Receip COURT HOUSE TOWSON 4, MARYLAND

DATZ/81/63

J. Francis Ford, Esq. hO6 One North Charles Baltimore 2, Md

Baltimore County

"\$55.00" Petition for Reclassifica ton for Mary Hart 50.00 IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND

INFORMATION MARK CHELAS PATABLE IN BROCKIPTS, COURT HOUSE, TOWSON 4, MARYLAND PLEASE RETURN UPPER SECTION OF THIS BILL WITH YOUR REMITTANCE.

#63-97 CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY Towson, Maryland

Date of Posting Jun. 11, 1964 Posted for: Anneal ... Location of property: NZ/S Maiden Choice Lenc. 254! from the Se/S of High view Ave

toration of Signs. On tree on lawn of #1126 Walden Choice Lame



THE DAILY RECORD, BALTIMORE, MONDAY,

Court of Appeals of Maryland No. 330, September Term, 1962—Filed July 32, 1963

ONLINE THE POYEMENT ASSOCIATION, INC. VS.

LAWRENCE W. MOLLOY

Appeal from the Circuit Court for Baitimore C Grason Turnbuilt Judge

Argued by John H. Hessey, IV, (Hessey & Hessey and Mahlon V. Hessey on the brief), all of Baltimore, Maryland. Argued by Kenneth C. Proctor (Proctor, Royalon & Mueller on the brief), both of Townen, Maryland, for appellee.

Argued before BRUNE, C. J.; HAMMOND, PRESCOTT, HORNEY and MARBURY, JJ. assistation of soning of tract of land in ming for duplex houses was requested to be

CONSTABLE'S SALI DOLS CLINTON STREET

Being recorded among the Land courds of Baltimers City in Libe-L.P. May P.

63-97 A IN THE COURT OF APPEALS OF MARYLAND

some buffering, some reasonable set of use potentials for the

Mack property, and it turned out to be the edge property, the

one that was closest, as to whether it might go commercial or

remain residential or possibly be recommended for land use poten-

tials that were something in between outright single-family resi-

dential and outright commercial. After a great deal of consideration,

The same consideration led to the establishment of the

It seems clear to me that the future zoning of these small "buffer" zones depends upon the actual development in the

the Planning Board recommended here the third alternative \* \* \* and

the map does in fact show that the County Council as a matter of

legislative intent did affirm the fact that the Mack property

Lane and to the west of Shelbourne Road, already mentioned.

buffer, as a transition." (Emphasis supplied).

should be zoned for apartment purposes, and should be used as a

small R-A "buffer" zone, 100 feet by 400 feet, across Maiden Choice

area, that is, as Mr. Gavrelis states "whether it might go commer-

of the County Board of Appeals, in the exercise of its delegated

rezoning of the small "buffer" area. The Maryland "mistake-change"

rule should not, in my opinion, apply in this special situation,

a buffer zone originally contemplates a re-examination of its

development in the area. If the development is predominately

commercial the Board may reasonably rezone the small area as commercial; if the development is predominately residential it may reasonably rezone it R-A or leave it zoned as R-A.

inasmuch as the placing of a small area of individual property in

zoning status in the future by the Board depending upon the actual

legislative power to rezone when the land owner appears for a

cial or remain residential." This is a matter for the consideration

No. 414 Sentember Term. 1965

MARY E. MUCK

٧. NORMAN T. CRANDELL, et al

> Hammond, C.J. Horney Oppenheimer McWilliams

> > 7.7

Dissenting Opinion by Barnes, J.

Filed: October 19, 1966

Barnes I dissenting.

I dissent because I cannot agree that upon the facts appearing in the record in this case, the action of the County Board of Appeals in granting the rezoning of the R-A and R-6 portion of the subject property to the B-L zone to conform with the B-L zoning of the northern portion of that property and the B-L zoning of the property to the north was arbitrary, capricious or unreasonable. I quite agree with the last sentence in the majority opinion that the test is whether the action of the Board was arbitrary and unreasonable.

In my dissenting opinion in MacDonald v. Board of County Commissioners of Prince George's County, 238 Md. 549, 576-582, 210 A.2d 325, 340-344, I have already indicated that, in my opinion, the Court is in error in applying the Maryland "mistake-change in conditions" rule as the exclusive test in rezoning cases, and gave my reasons for my opinion. These reasons need not be repeated here. I also indicated that, in my opinion, the presumption of reasonableness is just as strong in support of a rezoning action as it was in support of the original zoning action, and this view appears to be the general rule throughout the United States. The Maryland "mistake-change" rule is a minority one, and is being abandoned by jurisdictions which originally followed it. See MacDonald, supra, 238 Md./590-600, 210 A.2d/348-354. Under these circumstances, the Maryland "mistake-change" rule should not be extended to situations in which the Court has not specifically applied the rule and in which the public interest requires a

broader and more resilient treatment. In my opinion, the case at bar presents such a situation. It does not involve a rezoning which alters the general outlines of a comprehensive zoning area, but is one which considers a small, isolated area or "spot", if you will, of approximately an acre and one-half with a frontage of approximately 209 feet on Maldon Choice Lane with a depth of approximately 299 feet. The northerly portion of the subject property - a strip 12 feet by 299 feet-was originally zoned B-L which is also the zoning classification of the property to the north; the southern portion of the subject property -, strip 20 feet by 299 feet-was originally moned R-6 which is also the moning classification of the property to the east and south. The westerly side of the subject property fronts on Maiden Choice Lane and Shelbourne Road dead-ends at Maiden Choice Lane directly across from the subject property. At the southwest corner of Maiden Choice Lane and Shelbourne Road, also across from the subject property, is a small area moned R-A but which is actually used as a parking lot for the Texaco Service Station in a B-L zone adjoining the parking lot on the west.

When the zoning map was adopted by the Baltimore County Council on June 2, 1959 the area of the subject property between the strips of B-L on the north and R-6 on the south was finally zoned R-A (residential-apartments) as a "buffer" zone. Mr. Gayrelia described the considerations leading to the establishment of the small "buffer" zone as follows: The Planning Board "sought to protect a comprehensive and orderly net of Land use potentials for the edge situation that on one hand would provide some transition.

The suggested basis for the Maryland "mistake-change" rule - a preservation of the comprehensive zones from unjustified piecemeal rezoning - should not, in my opinion, be made applicable to this small, individual parcel of land forming a "buffer" zone.

The facts in the record indicate that the actual development in the area has indeed been commercial and that the Board could reasonably conclude that the R-A and R-6 portions of the subject property should be rezoned to the B-L zone.

At the time of the 1959 zoning, the property to the north zoned B-L had not been developed. Afterthe zoning, the construction of the Leeds Federal Building (a large office building) was begun and completed. The Food Fair was already built in 1959 as was . Cities Service Service Station and a large bowling alley. As has been stated, across Maiden Choice Lane toward the north is a large

Texaco Service Station and there is also a large and active shopping center. Behind the Texaco station there is a large paved area used as parking space for the shopping center and the service station, the southern portion of which is the 100 feet by 400 feet R-A zone which is used for parking in connection with the use of the B-L zone

Miss Mack, the owner of the subject property testified that the air-conditioning unit outside the Leeds Federal Building & Loan Association emits a great deal of noise making it impossible for her to use the bedroom on the north side of the existing dwelling house. Her yard is cluttered with beer bottles, beer cans and other debris which the people using the adjacent parking let throw on her property and the police have been unable to sten it. She indicated that the had tried unsuccessfully to sell the property in recent years. The only offers she has had have been those of a

It may be observed also that since Shelbourne Road deadends at Maiden Choice Lane opposite the subject property, the lights from motor vehicles using that road would necessarily shine directly at the subject property, making it difficult - one would think - to develop the subject property for apartment purposes.

An expert for the property owner testified that in his oninion the highest and best use for the subject property would be for the uses permitted in the B-L zone with a special exception for a gasoline service station; that because of the way the land is situated, it would not warrant the erection of apartments on the land; that the proposed special exception and use would not

<sup>1.</sup> I agree with the majority has been 'in the' an anying three comes on the subject property in the the 'ty dee' threated in original control on the subject property in the the 'ty dee' threated in original confire contemplated by the "intitude-chapter with threated in original confire" contemplated by the "intitude-chapter with the subject property, respectively, respectively, resulted from a "point and one which required in a strip of 20 feet on one side an against a surje of 25 feet on the others), this confine situation which would justify correction by the Beard. That compare the control of the subject is supported by the subject in the control of the subject in the control of the subject in the control of the subject in the subject is subject to the subject in the subje

sewerage, transportation or other public requirements, conveniences

or improvements or interfere with adequate light and air.2

In the light of this testimony, and all of the circumstance, mentioned, the granting of the B-L zoning and special exception was, in my opinion, fairly debatable and in approving the application with three restrictions, 3 the Board did not act arbitrarily, unreasonably or capriclously.

There was, of course, testimony offered before the Board which might have led it to a different conclusion if it had accepted that testimony, but it is entirely clear that the evaluation of the facts is for the Board and not for the Courts. The Courts will not substitute their judgment for that of the Board,

when there is evidence before the Board to make its determination "fairly debatable". Pallace v. Inter City Land Company, 239 Md. 262, 212 A.2d 262 (1965).

Although I agree with the majority that the facts do not establish a constitutional taking of property without due process of law or the payment of just compensation, as the owner has not established that no reasonable use whatever can be made of the subject property under the existing zoning, nevertheless the difficulty of use for residential purposes, the development of the immediate area to the north and west for commercial purposes and the other facts already mentioned, are important facts to be considered on the issue of whether the action by the Board was arbitrary, unreasonable and capricious. The basic doctrine to be kept constantly in mind is that there should be a free use of private property and that restrictions upon that free use by the governmental power to zone is only justified by the exercise of the police power. As Judge Delaplaine, for the Court, aptly stated in City of Baltimore v. Cohn, 204 Md. 523, 533, 105 A.2d 482. 486 (1954):

"\* \* the governmental power to Interfere by zoning regulations with the general rights of the landowner by restricting the charas or of the use of his land is not unlimited, if such restriction cannot be imposed if it does not bear a substantial relation to the public health, safety, morals, or general welfare. Sugislative bodies have no authority undernable and unnecessary bedies have no substantial results of private property in pursuit of useful activities. Nectow c City of Cambridge, 277 U. S. 183, 48 S.C. 447, 72 L.Ed. EMEZ STATE of Washington ex rel. Scattle Title Trust Co. V. Noberge, 278 U. S. 116, 49 S.C. Do, 73 L.Ed. 210, 80 A.L.R. 654.

See also <u>Feldman v. Star Homes</u>, 199 Md. 1, 6, 84 A.2d 903, 905 (1951). When the expert body exercising delegated legislative power determines upon conflicting evidence that the proposed use will not injure the public welfare and that the elements justifying the exercise of the police power are not injuriously affected by reason of a freer use to be made of an individual property, the Courts should most certainly not disturb an action granting such a freer use of private property.

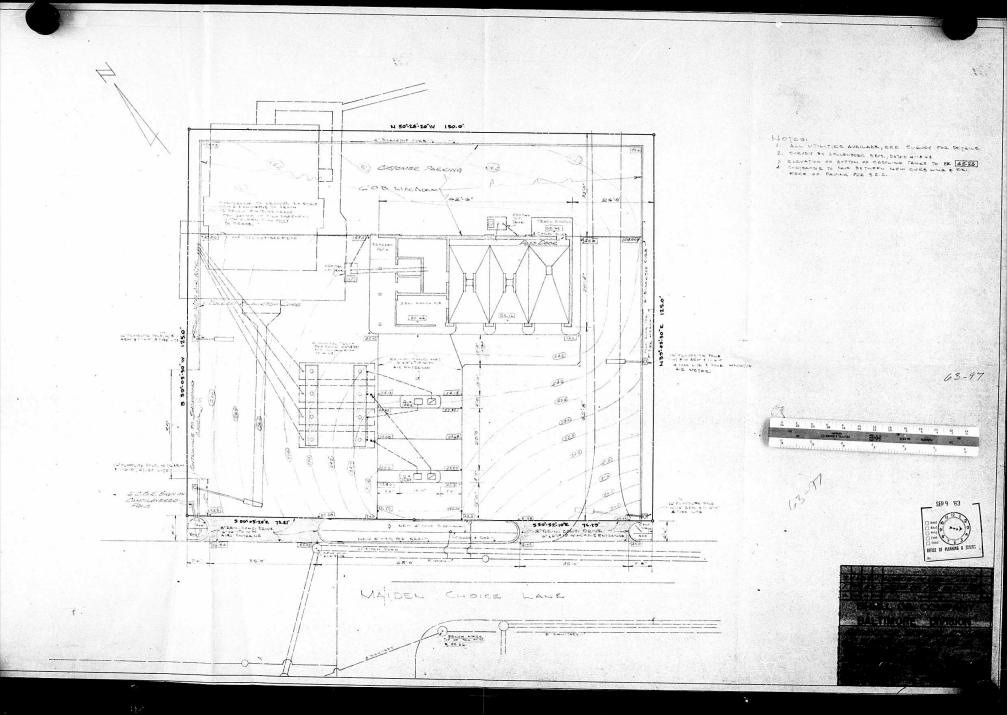
Then too, it should be kept in mind that inflexible zoning may create and perpetuate monopolies, declared by Article 41 of the Declaration of Rights of the Maryland Constitution to be "odious, contrary to the spirit of free government and principles of commerce, and ought not to be suffered." The case at bar is a good illustration of this, as a substantial part of the opposition to the granting of the special exception for the proposed Shell Service Station came from the owner of a nearby Cities Service Station who the owner of a half-interest in the shopping center including the Texaco Service Station across Maiden Choice Lane to the west of the subject property. This observation is not intended to be critical of an owner who neeks to preserve an existing advantage created by the zoning 1 ws; it is intended to point out the desirability of upholding the action of boards of appeal in the exercise of a delegated legislative power for the freer use of private property when such action is fairly debatable.

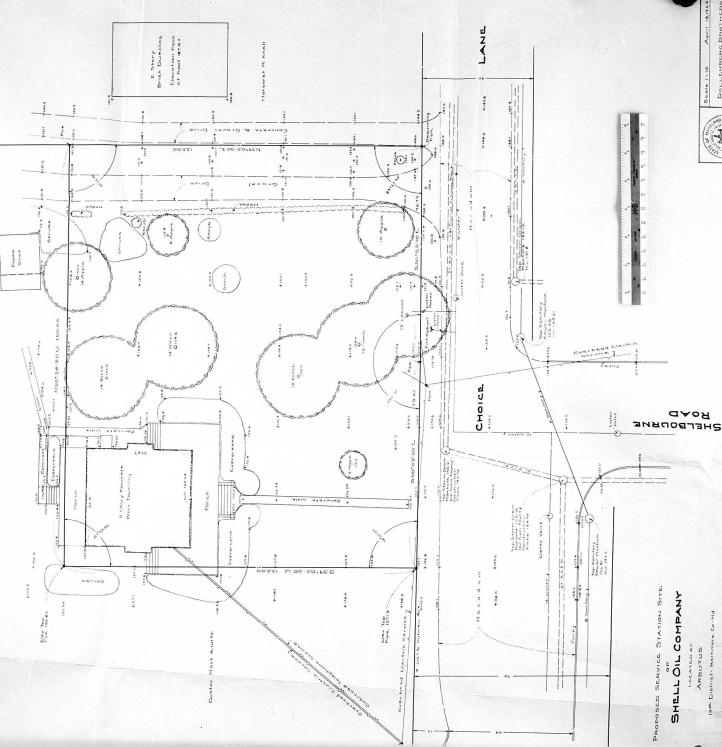
I would reverse the order of the Sircuit Court and affirm the order of the Board of March 6, 1965.

Not only does this testimony indicate that no element of the
police power would be injured by the proposed rezoning, but absence
of injury to these elements is necessary to grant a special exception
See Section 502.1 of the Baltimore County Zoning Regulations.

<sup>3.</sup> These restrictions were: 1. Screened planting no less than six feet in height was required to be planted between the service station and the existing residents to the south. 2. Egress and ingress must be approved by the proper State and County authorities, 3. There would be no more than one vending machine on the outside of the building.

<sup>4.</sup> The County Board of Appeals was not bound to accept the recommendations or the Planning Board but could adopt the recommendations of the owner's expert. See Bujno v. Montgomery County Council, 243 Ed. 130, 118, 220 A.24 126, 130 (1966).

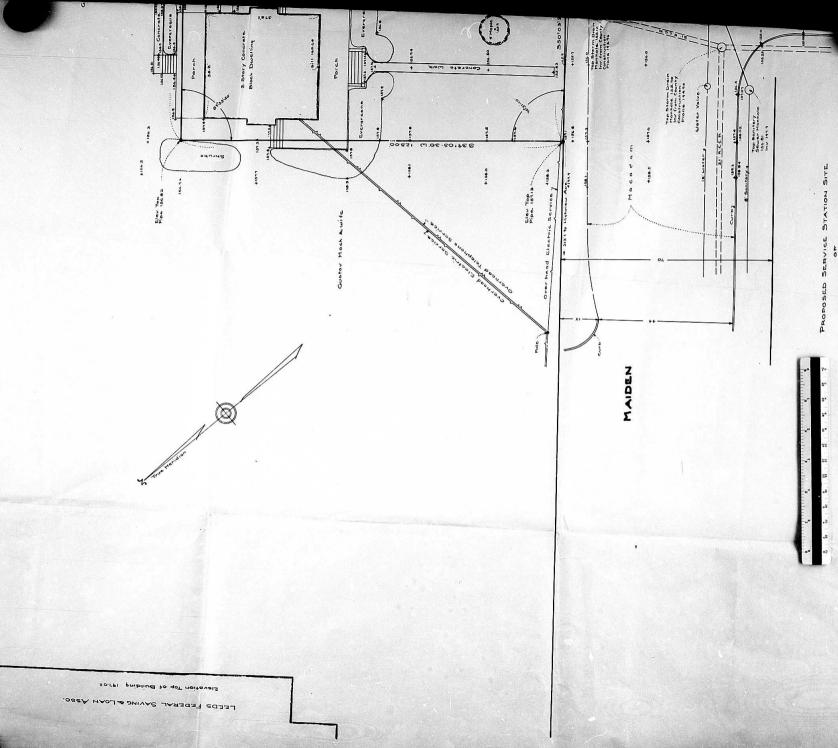




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