

RE: PETITION FOR RECLASSIFICATION :  
from "B-4" and "B-6" Zones to :  
"B-1" Zone, SPECIAL EXCEPTION :  
for Gasoline Service Station, :  
NE 1/2 of Maiden Choice Lane, 254' :  
from the SE 1/2 of Highway Avenue, :  
13th District :  
Mary E. Mack, Petitioner :  
No. 63-97-RX

#### 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-1, partly R-4, 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 one acre and one-third where she has lived for over 40 years. As is a 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 property is a B-1 zone occupied 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-1 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-1, R-A and R-4, 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. Garvello, 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-1 and has agreed with the Shell Oil 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 Choice Lane opposite the dead-end intersection of Shelbourne Road. Maiden Choice 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 two-thirds of the way from Miss Mack's northern most boundary to her southern limit.

There is one house on the corner of Maiden Choice Lane and Shelbourne 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 the 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 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.

The major witness for the protestants, and apparently the instigator of the opposition, was Mr. P. T. Lennon 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 sad 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 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 shopping and traffic pattern.

Mr. Lennon 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 shopping 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. Lennon had, sometime ago, made an offer to Miss Mack of \$50,000 for her property as he put 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. Lennon in a position of a man with an ax to grind and no grinders.

#### PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, or we, Mary E. Mack, 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 reclassified, pursuant to the Zoning Law of Baltimore County, from an R-A and R-4 zone to an B-1 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 bowling alley and several other commercial enterprises. The property is no longer desirable as a residential property.

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, a Gasoline service station.

See Attached plat for respective uses.

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

Contract purchaser

Address

MARY E. MACK

Legal Owner

Address

1121 Maiden Choice Rd.

John F. Ford

3. Francis Ford

Petitioner's Attorney

Address

406 - 1 N. Charles St.

ORDERED By The Zoning Commissioner of Baltimore County, this 6th day of November, 1963, 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 held before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 15th day of October, 1963, at 10:00 o'clock a.m.

By \_\_\_\_\_  
Zoning Commissioner of Baltimore County

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-1 and R-4 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-1 zoning as applied for. Mr. John G. Cribbs, of the Shell Oil Real Estate Department, indicated his 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. Lennon. It appears to the Board that the application meets all of the criteria required for a special exception under Section 302.1 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 conclusion:

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

1. 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
2. Egress and ingress from the subject property must be approved by the proper State and County authorities
3. There may be no more than one vending machine located on the outside of the building

DOLLEMBERG BROTHERS  
Reg. and Professional Surveyors of Land Surveys  
208 MARSHMOUNT AVENUE AT YORK ROAD  
TOWSON, MD.

June 24, 1963

#### Zoning Description

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

Beginning for the same at a point on the northeast side of Maiden Choice Lane at the distance of 334.1 feet measured southeasterly along the intersection of the northeast side of Maiden Choice Lane with the southeast side of Highway Avenue and running thence blinding on the northeast side of Maiden Choice Lane the two following courses and distances viz: South 20 degrees 03 minutes 20 seconds East 73.21 feet and South 50 degrees 52 minutes 10 seconds East 76.79 feet, thence leaving said lane and 05 minutes 10 seconds East 155 feet, North 39 degrees 28 minutes 20 seconds West 150 feet and South 39 degrees 05 minutes 30 seconds West 125 feet to the place of beginning.

The greater part of the above described parcel of land is now zoned Residential-Apartments and a small portion is now zoned Residential-B as shown on the attached plat.

#### ORDER

For the reasons set forth in the foregoing Opinion, it is this 6th 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, Chairman

W. Gilles Parker

William S. Baldwin

#### BALTIMORE COUNTY, MARYLAND

#### INTER-OFFICE CORRESPONDENCE

TO: Mr. John D. Ross, Zoning Commissioner Date: September 27, 1963

FROM: Mr. George E. Garvello, Deputy Director

SUBJECT: 63-97-RX, R-4 and R-A to B-1 and Special Exception for Gasoline Service Station, Northeast side of Maiden Choice Lane 254 feet South of Highway Avenue, Being property of Mary Mack.

13th District

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

Due to the exigencies of time the Planning staff was unable to complete the comments on the subject petition.

GEG:mas

NORMAN T. CRANDELL  
ET AL  
IN THE CIRCUIT COURT  
FOR  
BALTIMORE COUNTY

COUNTY BOARD OF APPEALS  
7/486/321

Mr. Clerk:

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

J. FRANCIS FORD  
ATTORNEY FOR APPELLANTS  
406 Blaisdell Building  
Baltimore, Maryland 21204

I HEREBY CERTIFY that on this day of September, 1965  
a copy of the foregoing was mailed to Marvin I. Singer, Esq., Clerk  
of the Circuit Court, Baltimore, Maryland 21202 and John H. Heesay, IV,  
Esq., 1311 Fidelity Building, Baltimore, Maryland 21201.

J. FRANCIS FORD

JOSEPH H. A. ROGAN  
LAW OFFICES  
NEW ADDRESS  
ROGAN & FORD  
406 ONE NORTH CHARLES  
BALTIMORE 1, MARYLAND  
December 2, 1963



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

Dear Mr. Rose:

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  
erection of a gasoline filling station at her property located at the  
N.E. side Maiden Choice Lane in Baltimore County.

Yours very truly,

J. Francis Ford

cc

P.S. I am enclosing herewith check in the amount of \$70.00 to cover  
the cost of taking the appeal.

Enclosure

NORMAN T. CRANDELL, et al  
VS  
COUNTY BOARD OF APPEALS  
IN THE CIRCUIT COURT  
FOR BALTIMORE COUNTY  
7/486/321

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 Lane 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 100'.  
Its western border is 25' east of Highway Avenue. Shellbourn Road enters the  
south side of Maiden Choice Lane (but does not extend through the north side),  
at a point opposite the approximate 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 zoned "BL" in part and "BA" in part.

The subject property itself bears somewhat bizarre zoning. The western-  
most 5' or 12' of the property is zoned "BL". The easternmost 20' is zoned R-6.  
The property lying between the two and comprising about 65% of its total area,  
is zoned "BA".

The subject Petitioner 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 112'. Both the reclassification  
and the Special Exception were granted by the Board.

The decision of the Board implies and this Court finds that the application  
to this property of three separate zoning classifications, two of which because

of their size and shape, would be incapable of utility in such classifications,  
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 reclassification, the Board stated that commercial use  
seemed to the Board to be previously called for and made the further finding that  
there was obviously an error in the original zoning, and that there have been  
many changes in the neighborhood. The Court will consider these findings in  
reverse order.

As to changes in the neighborhood

The Court has carefully searched for any evidence to support this statement  
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 heretofore stated, this Court has no difficulty whatever agreeing 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 George Gervais  
said at page 94 of the Record:

"I would like to simply reiterate the comments made previously,  
that with the history of zoning and land use and planning factors as  
previously stated, the opinion of the Planning staff simply is this:  
that the 15th District Zoning Map was based on maps at a scale of  
1,600 feet to the inch, and at that scale it is extremely difficult to  
draw descriptions that are accurate, that are meaningful, within  
the reference of 10 to 12 feet, and from a planning viewpoint my  
opinion with respect to the validity, the correctness, the function  
of apartment zoning for the black property, remains unchanged."

From a planning viewpoint I feel that there was error in this  
map, but the error is exclusively that in terms of not having in the  
precise zoning descriptions that resulted from the legislative action  
of having precisely made apartment zoning coincide with the

boundaries of the Mack ownership as they actually exist on the  
ground.

It is only in that vein that the Planning staff feels that there  
is error, but notwithstanding that, even within the context of the  
zoning that had been applied to this property, as a result of those  
descriptions, there is, as I understand it, about 12 feet that is  
zoned for Business-Local, the substance of the property, the most  
substantial portion of it is zoned R-6, with an edge of R-6 on the  
east."

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.

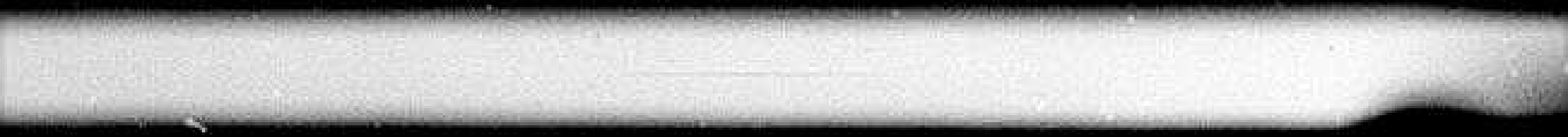
The same witness had at page 69 of the Record clearly explained that the  
Planning Department had sought to provide a transition—the Mack property—  
between commercial zoning on the west and R-6 zoning on the east; that it had  
recommended that its reclassification from R-6 to "BA". He went on at page 90  
to point out that the County Council was aware of the Planning Department's  
views; was aware of the desires of Miss Mack that her property be accorded a  
commercial classification; that it did, after consideration and judgment, adopt  
Planning's recommendation and rejected Miss Mack's requested commercialization.  
(See Levy v. Screen Slide, 234 Md. 145, 154)

The Record also shows that an application by the same Petitioner for a re-  
classification 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 Witnesses Gervais and Cribbs are sufficient to strike down  
the "BA" zoning applied to the largest portion of the subject property. It is  
suggested that such testimony meets the "heavy burden" of showing that this  
mistake or error in zoning required the reclassification upon the ground that no  
reasonable use of the property is possible.

I shall simply state that this Court believes that the evidence of these  
three witnesses is legally insufficient to strike down the presumptive validity of  
this comprehensive zoning ordinance.







be detrimental to the health, safety or general welfare of the locality involved, would not tend to create congestion in the roads, streets or alleys in the locality, would not create any potential hazard from fire, panic or other dangers and would not tend to overcrowd land, cause undue concentration of population, interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements or interfere with adequate light and air.<sup>2</sup>

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,<sup>3</sup> the Board did not act arbitrarily, unreasonably or capriciously.

There was, of course, testimony offered before the Board which might have led it to a different conclusion if it had accepted that testimony,<sup>4</sup> 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,

2. 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.

3. 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.

4. The County Board of Appeals was not bound to accept the recommendations of the Planning Board but could adopt the recommendations of the owner's expert. See *Bujno v. Montgomery County Council*, 243 Md. 110, 118, 220 A.2d 126, 130 (1966).

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. Gohn*, 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 character of the use of his land is not unlimited, and such restriction cannot be imposed if it does not bear a substantial relation to the public health, safety, morals, or general welfare. Legislative bodies have no authority, under the guise of the police power, to impose unreasonable and unnecessary restrictions on the use of private property in pursuit of useful activities. *Hestow v. City of Cambridge*, 277 U. S. 183, 48 S.Ct. 447, 72 L.Ed. 842; *State of Washington ex rel. Seattle Title Trust Co. v. Robb*, 278 U. S. 116, 49 S.Ct. 50, 73 L.Ed. 210, 86 A.L.R. 654."

See also *Feldman v. Star Homes*, 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 <sup>was also</sup> 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 seeks to preserve an existing advantage created by the zoning laws; 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.

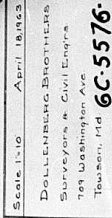
I would reverse the order of the Circuit Court and affirm the order of the Board of March 6, 1965.



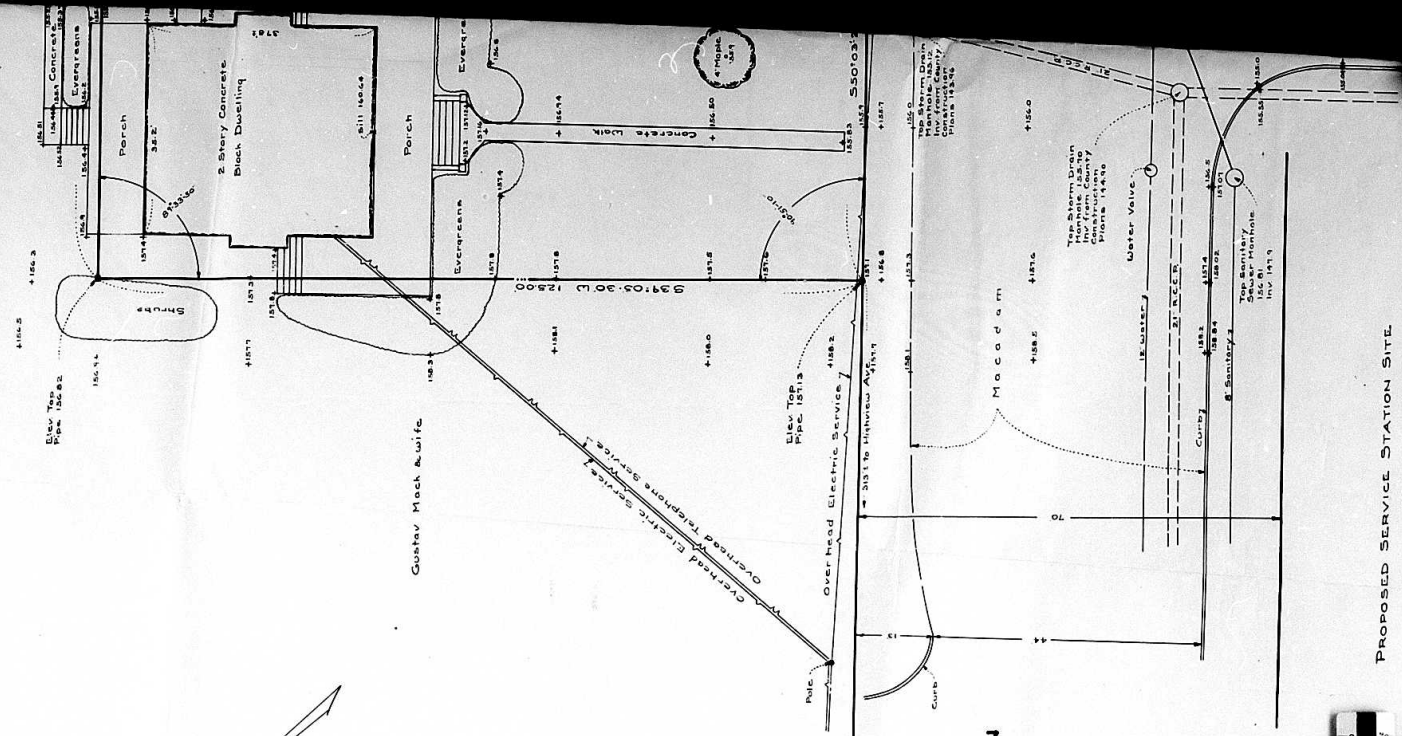
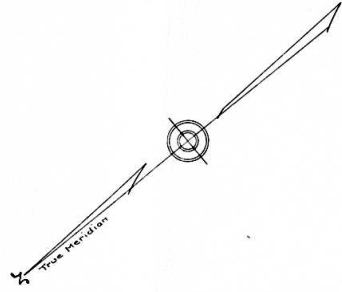
PROPOSED SERVICE STATION SITE.  
OF  
**SHELL OIL COMPANY**  
LOCATED AT  
ARBUTUS  
13th District - Baltimore City, Md.

Scale 1"=10' April 1964  
Do not reproduce without permission of the Engineer

13th District - Baltimore Co. - Md



LEEDS FEDERAL SAVING & LOAN ASSO.  
Elevation Top of Building 19101



PROPOSED SERVICE STATION SITE  
OF  
**SHELL OIL COMPANY**

Note: Elevations shown hereon are based on the Baltimore County Metropolitan District Datum. Bench Mark: A 2010 Elev 174.20

Utilities shown hereon are taken from Baltimore County Metropolitan District Utility Plans.

13th District - Baltimore Co - Md