

PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, FRANCES MANSFIELD, 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-10 zone to an R-1 zone; for the following reasons:

Property is located on heavily traveled York Road across Westbury Road from a gasoline service station and across York Road from a gasoline service station, shopping center, and an extensive R-1 zone.

Extensive changes have taken place in this area.

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.

Contract purchaser 1408 York Road
Address Lutherville, Maryland
Petitioner's Attorney Protestant's Attorney
Address

ORDERED By The Zoning Commissioner of Baltimore County, this 2nd day of February, 1964, 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 106, County Office Building in Towson, Baltimore County, on the 23rd day of January, 1964, at 11:00 o'clock A.M.



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
G. Mitchell Austin, Chairman
William S. Baldwin

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

MULLER, RAPHAEL & ASSOCIATES, INC.
10000 ROUTE 100, SUITE 100, TOWSON, MARYLAND
21204
ZONING DESCRIPTION

BEGINNING for the same at a point formed by the intersection of the southwest side of York Road and the southeast side of Westbury Road, said point of beginning being also at the end of the lot or N14°15'W 100.00' line of the land which by deed dated April 12, 1945 and recorded among the Land Records of Baltimore County in Liber R33 1383, Folio 267, was conveyed by The Ridgely Land Company to George T. Mansfield and wife, running thence and binding on the southeast side of Westbury Road and on the second line of the aforesaid deed, S75°45'W 250.00' thence leaving Westbury Road and binding on the 3rd and 4th lines of the aforesaid deed S14°15'E 100.00' and N75°45'E 250.00' to the southwest side of York Road and to the beginning of the 1st line of the aforesaid deed, running thence and binding on the southwest side of York Road and on the 1st line of the aforesaid deed N14°15'W 100.00' to the place of beginning.

CONTAINING 0.57 acres of land more or less.

BEING all of the land which by deed dated April 12, 1945 and recorded among the Land Records of Baltimore County in Liber R33 1383, Folio 267, was conveyed by The Ridgely Land Company to George T. Mansfield and wife.

A. J. Miller
#1391

LAND SURVEY - LOTS - PARKS - BOUNDARY - TOPOGRAPHICAL - LOCATION - SUBDIVISIONS - ROADS - UTILITIES
DRAINAGE - SEWER - WATER - HARBORS - SOUND CONSULTATION - CONTRACTORS SERVICE - TESTIMONY

RE: PETITION FOR RECLASSIFICATION
from an R-10 Zone to a B-L Zone
SW/S of York Road & SW/S of
Westbury Road - 9th District
Frances Mansfield-Petitioner

The petitioner has requested a reclassification of her property from an R-10 Zone to a B-L Zone. She testified that if the zoning were granted, there would be constructed a two story building used jointly for retail stores and offices.

However, the evidence presented did not conclusively show an error in the original zoning map or such substantial changes in the character of the immediate neighborhood justifying the rezoning sought.

For the foregoing reasons the above reclassification should be DENIED.

IT IS ORDERED by the Deputy Zoning Commissioner of Baltimore County, this 30 day of January, 1964, 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-10 Zone.

David O. Hickey
Deputy Zoning Commissioner

RE: PETITION FOR RECLASSIFICATION
from R-10 Zone to a B-L Zone,
SW/S of York Road and
SW/S of Westbury Road
9th District
Frances N. Mansfield,
Petitioner

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. 64-31-R

OPINION

This is a petition for reclassification of property at the southwest corner of York and Westbury Road in the Ninth District of Baltimore County, from an R-10 Zone to a Business-Local (B-L) Zone. The subject property fronts approximately 250 feet on the south side of Westbury Road, and has frontage along the west side of the York Road of approximately 100 feet. The property is presently improved by a very nice appearing brick dwellings. The petitioner proposes to use the property for retail stores on the first floor and offices on the second floor of the proposed structures. The petitioner has owned the property since 1945, and the existing dwelling was erected in 1950 which the petitioner has rented to others from 1952 to date.

The land on the northwest corner of Westbury and York Roads is presently zoned B-L and enjoys a special exception for a gasoline service station. In fact, all of the property on the west side of York Road, northerly to Seminary Avenue, is zoned B-L. All of the land fronting along York Road in a southerly direction from the subject property to the Beltway is zoned R-10 and R-6. Immediately to the west of this property is a small strip of R-10 and then a large area zoned R-6. On the east side of the York Road from Seminary Avenue to a point approximately opposite Westbury Road, the land is zoned B-L. Directly opposite the subject property the land is zoned R-6 with Business-Local (B-L) on both sides of this R-6 tract and to the rear in an easterly direction.

The petitioner presented evidence, through expert witnesses, that there have been numerous changes in the York Road area and that, in their opinion, the York Road has a long history of commercial frontage with residential uses to the rear, and that the commercial uses along the York Road frontage had not detrimentally affected the individual homes further removed from the road. They further expressed the opinion that the reclassification sought here would not adversely affect the use of the property to the rear for residential purposes.

Eugene Clifford, Traffic Engineer for Baltimore County, testified, without substantial contradiction, that a reclassification here would not have an adverse effect on York Road traffic. While the petitioner's witnesses testified as to numerous changes in the York Road area since the adoption of the land use map in 1955, the only substantial change

on York Road between the Beltway and Seminary Avenue was the Mandel tract (Petition No. 4959) which was a reclassification from an R-6 Zone to a B-L Zone and was granted by this Board in March, 1961. An examination of the zoning map discloses that the subject property is not opposite the B-L zoning granted by this Board in 1961, but is across from a church property which still remains in a residential zone.

The Director of Planning for Baltimore County, Mr. George E. Covellis, testified that the character of the York Road frontage, north of Seminary Avenue, has changed from residential to commercial since the adoption of the map. However, he stated that there were no changes in classifications on the west side of York Road from the Beltway to Seminary Avenue, the only change being the granting of a special exception on property that had already been zoned commercial which is north of this property between Westbury Road and Seminary Avenue and, further, that this section of the York Road, on its west side, has developed in accordance with the zoning on the 1955 map.

The protestors, being residents of nearby neighborhoods and two of them officers in local improvement associations, testified that they felt that the granting of this reclassification would lead to further reclassifications on the west side of York Road southerly to the Beltway.

The Board takes into consideration that this same property was the subject of Petition No. 4987-RX which was a request for reclassification from an R-10 Zone to an R-A Zone, with special exception for office use, said petition having been denied by this Board (as differently constituted) on December 15, 1960. The Board is well aware that this property is not the most desirable R-10 property due to its location on a major, heavily traveled, highway and its proximity to commercial uses. However, a line separating residential from commercial zoning must be drawn somewhere and we feel that it is proper in this case to draw this line at Westbury Road giving substantial weight to the previous Board's decision regarding this property. This line may appear to the petitioner in this case to be harsh. However, the Board feels that the fears of the protestors in that the granting of this petition would require the rezoning of other similarly situated properties to the south are somewhat justified.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 5th day of March, 1965 by the County Board of Appeals, ORDERED that the reclassification petitioned for, be and the same is hereby denied.

The Circuit Court for Baltimore County

THIRD JUDICIAL CIRCUIT OF MARYLAND
LESTER L. BARRETT
JUDGE
TOWSON 4, MARYLAND

October 21, 1965

County Board of Appeals,
County Office Building,
Towson, Maryland 21204

Re: Frances N. Mansfield
vs
County Board of Appeals
of Baltimore County

Gentlemen:

I enclose herewith copy of Memorandum Opinion which I have filed this date in the above entitled case, which affirms the Order of the Board.

Very truly yours,
Lester L. Barrett
Lester L. Barrett

LLB:ec
enc

FRANCES MANSFIELD
1408 YORK ROAD
LUTHERVILLE, MD.

February 26, 1964

John G. Rose, Esq.
Zoning Commissioner
Baltimore County, Maryland
County Office Building
Towson, Maryland 21204

Re: Petition for Reclassification
from an R-10 Zone to a B-L Zone
SW/S of York Road and SW/S of
Westbury Road - 9th District
Frances Mansfield - Petitioner
No. 64-31-R

Dear Mr. Rose:

Please enter an appeal to the Board of Appeals of Baltimore County in the above entitled matter.

Enclosed please find check in the amount of \$75.00 payable to Baltimore County, Maryland to cover the cost of same.

Very truly yours,

Frances Mansfield

(Mrs.) Frances Mansfield

Enclosure

FRANCES N. MANFIELD : IN THE CIRCUIT COURT
VS : FOR BALTIMORE COUNTY
WILLIAM S. BALDWIN, W. GILES PARKER
AND BRUCE ALDERMAN, constituting the
COUNTY BOARD OF APPEALS OF BALTIMORE
COUNTY

MEMORANDUM OPINION

Frances N. Manfield, owner, filed a petition for reclassification of the subject property from an R-10 Zone to a Business-Local (B-1) zone, on December 2, 1963, with the Zoning Commissioner of Baltimore County. By a written opinion dated January 30, 1964, the Deputy Zoning Commissioner denied the petition. The Petitioner appealed the denial of the reclassification by the Deputy Zoning Commissioner to the County Board of Appeals and the Board, by written opinion dated March 5, 1965, ordered that the reclassification, as petitioned, be denied.

The subject property is located on the southwest corner of York Road and Westbury Road, fronting approximately 250 feet on the south side of Westbury Road and with a frontage along the west side of York Road of approximately 100 feet. The property is presently improved by a brick dwelling. The Petitioner intends to use the property for retail stores on the first floor and offices on the second floor of proposed structures.

The Petitioner has produced little, if any, evidence to show that there was error in the original zoning established by the adoption of the comprehensive zoning map.

The law is well settled that the zoning classification established by the comprehensive zoning map, adopted by the legislative authority, is presumed to be correct, well planned and intended to be permanent and a heavy burden rests upon the owners of property to show that such classification was

erroneous. *Paul v. County Board of Appeals*, 237 Md. 294; *Shady Nook Inn, Assn. v. Mayor*, 232 Md. 265; *Greenblatt v. Town of Schloers*, 235 Md. 9; *Montgomery County v. Fetter*, 233 Md. 434.

As it is clear from the record that the petitioner has not offered any substantial evidence to overcome the presumption of the correctness of the comprehensive zoning map, the contention of substantial change in the neighborhood since the adoption of the map will be considered.

The Petitioner produced evidence to show numerous changes in classification to B-1 on York Road, but principally north of Seminary Avenue, so that it may be concluded that the character of York Road in this area (north of Seminary Avenue) is a combination of commercial and office uses. The record seems clear, however, that with respect to the area from Seminary Avenue, south, to the beltway, there have been no actual changes in classification on the westerly side of York Road. There have been two special exceptions granted, one for a service station and another for a dry cleaning establishment, which has not been exercised, both of which are north of Westbury Road. More importantly, as the Court views the evidence, there have been no changes whatsoever on the west side of York Road, by way of reclassification or special exception, from the southwest corner of York Road and Westbury Avenue (the location of the subject property), southerly to the beltway. All of the land in this area is residentially zoned (R-10 or R-8) on the west side of York Road from Westbury Avenue south to the beltway and west to the Harrisburg Expressway. The residential development adjoining the subject property is known as Orchard Hills.

Mr. George E. Gavellis, the Director of Planning and Zoning for Baltimore County, testified in effect that the opinion of the planning staff is that Westbury Road is the logical separation between commercial and residential land and that the land to the south of Westbury Road should at this time continue to remain in an individual home classification that to grant reclassification of

this property would be the opening wedge to unjustified zoning in a very fine residential area; and in addition, that York Road, at this location, is a natural division between residential and commercial zoning.

The Board of Appeals in its opinion stated, "However, a line separating residential from commercial zoning must be drawn somewhere and we feel that it is proper in this case to draw this line at Westbury Road."

This case is not unlike the case of Robert G. Stockdale, et al v. Francis H. Bernard, decided by the Court of Appeals and filed on July 29, 1965. The Court of Appeals at Page 8 stated:

"We have held in past cases that a street or road may be a natural boundary line between two zones. *Shady Nook Inn, Assn. v. Mayor*, 232 Md. 265, 192 A. 2d 502; *Greenblatt v. Town of Schloers*, 235 Md. 9, 200 A. 2d 74. In *Stockdale v. Bernard*, supra, 232 Md. 265, 192 A. 2d 502, we held that the existence of apartment uses on one side of the street does not alter the use of the land on the opposite side, and therefore the street is an appropriate line of demarcation."

Mrs. Manfield testified that due to the location of the subject property on the York Road, and that a filling station is in close proximity thereto, she is not able to have a tenant sign a lease but must rent the property on a month to month tenancy. She further stated that the property has been vacant for as long as a month or two months between tenants. This situation certainly does not amount to a loss of all beneficial use and there is no evidence in this case that the subject property cannot be reasonably used under existing zoning. *Franklin v. City of Baltimore*, 223 Md. 97.

The Court of Appeals has stated many times the scope of appellate review in an appeal from the Board of Appeals. In *Stockdale v. Bernard*, supra, one of the most recent cases, the Court stated at Page 6:

"The function of the reviewing court is limited and it may not sit aside as not in accordance with law an action of the Board which is arbitrary, illegal or discriminatory. It is not the function of the reviewing court to zone or rezone but only to decide whether the Board properly applied the applicable law to the facts. The Court cannot substitute its own judgment for that of the Board if the question is fairly debatable. If there is room for reasonable debate

as to whether the facts justify the Board in its decision, it must be upheld. It is only where there is no room for reasonable debate, or where the record is devoid of supporting facts, that the Court is justified in declaring the legislative action of the Board arbitrary or discriminatory. *Franklin v. Board*, 237 Md. 221, 205 A. 2d 605; *Levy v. Brown Shale, Inc.*, 234 Md. 145, 198 A. 2d 267; *Alacort Realty, Inc. v. Mayor*, 216 Md. 442, 140 A. 2d 635; *Chatt. v. Bd. of Zoning Appeals*, 204 Md. 551, 105 A. 2d 219."

This Court is of the opinion that the decision of the Board is supported by substantial evidence, that a reasonably debatable question is presented by the evidence and that the Board has not acted arbitrarily in denying the application for reclassification of zoning in this case.

The Order of the Board of Appeals, dated March 5, 1965, must therefore be affirmed.

LESTER I. BARRETT
Judge

October 21, 1965

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. John G. Rose, Zoning Commissioner Date: January 10, 1964
FROM: Mr. George E. Gavellis, Deputy Director
SUBJECT: 60-011-1, B-10 to B-1, Southwest side of Westbury Road, being property of Frances Manfield.
2nd District
HEARING: Thursday, January 23, 1964 (11:00 A.M.)

The staff of the Office of Planning and Zoning has reviewed the subject petition for reclassification from B-10 to B-1 zoning and has the following advisory comment to make with respect to pertinent planning factors:

1. The petitioner's property has been the subject of two prior zoning applications. The first, 60-011-1, sought B-1 zoning and was withdrawn. The second, 60-011-2, sought B-1 zoning with Special Exception for offices. This request was denied by the Board of Appeals and their order was affirmed by the Circuit Court. In light of these actions the planning staff can only reiterate the opinion of the Board of Appeals concerning this property -

"The Board does not feel that an error was made by the County Commissioners of Baltimore County in placing this property in an 'B-10' classification at the time the map was adopted on November 14, 1957. Westbury Road is the logical separation between commercial and residential land, and if we are to follow this through one step further, it is the opinion of the Board that the land to the south of Westbury Road should at this time continue to remain in an individual home classification. To grant a reclassification of this property would be the opening wedge to unjustified zoning changes in a very fine residential area."

It is further felt by the Board that York Road is a natural division between residential and commercial zoning and it certainly feels that shopping centers on one side of a major thoroughfare do not necessarily relocate property on the opposite side of the thoroughfare to like zoning."

CERTIFICATE OF PUBLICATION

TOWSON, MD. JANUARY 11, 1964
THIS IS TO CERTIFY that the annexed advertisement was published in the JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md. 600-20-2000, on January 11, 1964, before the Board of Appeals of Baltimore County, at its first publication appearing on the 11th day of January, 1964.

THE JEFFERSONIAN,
Manager

Cost of Advertisement, \$

THE BALTIMORE COUNTIAN

THE COMMUNITY NEWS
PUBLISHED DAILY
THE HERALD - ARGUS
Catonville, Md.

No. 1 Newburg Avenue CATONVILLE, MD.

January 9, 1964

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 the 6th day of January, 1964, that is to say the same was inserted in the issue of

THE BALTIMORE COUNTIAN

By Paul J. Morgan
Editor and Manager

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 027 Date of Posting: Jan. 4, 1964

Posted for: Petition for reclassification from B-10 to B-1

Petitioner: Frances Manfield

Location of property: 60-011-1, B-10 to B-1, Southwest side of Westbury Road

Location of Sign: 60-011-1, B-10 to B-1, Southwest side of Westbury Road

Remarks: 60-011-1, B-10 to B-1, Southwest side of Westbury Road

Posted by: [Signature] Date of return: Jan. 12, 1964

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 027 Date of Posting: Jan. 4, 1964

Posted for: Petition for reclassification from B-10 to B-1

Petitioner: Frances Manfield

Location of property: 60-011-1, B-10 to B-1, Southwest side of Westbury Rd.

Location of Sign: 60-011-1, B-10 to B-1, Southwest side of Westbury Rd.

Remarks: 60-011-1, B-10 to B-1, Southwest side of Westbury Rd.

Posted by: [Signature] Date of return: Jan. 9, 1964

TELEPHONE
823-3000

INVOICE
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE

No. 22091

DATE 2/26/64

Division of Collection and Receipts
COURT HOUSE
TOWSON 4, MARYLAND

TO: Mrs. Frances Mansfield,
1408 York Road,
Lutherville, Md.

BILLED BY: Office of Planning & Zoning
119 County Office Building
Towson 4, Md.

DEPOSIT TO ACCOUNT NO. 01.622		TOTAL AMOUNT
QUANTITY	DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE	COST
	Cost of appeal - Property of Frances Mansfield	\$70.00
	No. 64-31- Paying	5.00
		\$75.00
	6-27-64 682 * 22091 TRM-	75.00
	6-27-64 682 * 22091 TRM-	75.00

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.

TELEPHONE
VALLEY 3-3000

INVOICE
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE

No. 20281

DATE 2/3/63

Division of Collection and Receipts
COURT HOUSE
TOWSON 4, MARYLAND

TO: Frances Mansfield
1408 York Road
Lutherville, 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
	Petition for reclassification	50.00
	12-3-63 7371 * * * TIL-	50.00

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.

TELEPHONE
823-3000

INVOICE
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE

No. 29913

DATE 6/9/65

Division of Collection and Receipts
COURT HOUSE
TOWSON 4, MARYLAND

TO: Maurice W. Baldwin, Esq.
Masonic Building
Towson, Md. 21204

BILLED BY: County Board of Appeals
(Zoning)

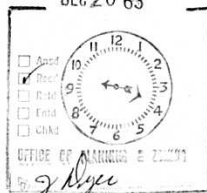
DEPOSIT TO ACCOUNT NO. 01.712		TOTAL AMOUNT
QUANTITY	DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE	COST
	Cost of Certified Documents - No. 64-31-2 Frances Mansfield SW/S York Road & SE/S Westbury Road 9th District	\$9.00
	6-9-65 6923 * 29913 TRM-	9.00

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.

R10

AREA OF PROP. - 0.57Ac±
 EXIST. USE OF PROP. - DWELLING
 PROP. USE OF PROP. - STORES & OFFICES
 EXIST. ZONING OF PROP. - R10
 PROP. ZONING OF PROP. - BL

DEC 20 '63



MULLER, RAPHEL & ASSOCIATES, INC.
 REG. ENGINEERS & SURVEYORS
 201 COURTLAND AVE.
 TOWSON 4, MARYLAND



DWG.

R10

PLAT TO ACCOMPANY ZONING PETITION
 9TH ELECT. DIST. BALTO. CO., MD.
 SCALE: 1"=30' NOV. 29, 1963

