

PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, William J. Lampier, 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-6 zone to an BL-X zone; for the following reasons:

RETAIL STORES

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 living quarters in a commercial building.

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
Address: 226 West Baltimore Road
Baltimore 29, Maryland
Petitioner's Attorney
Address: Jefferson Hotel
Baltimore 29, Maryland

ORDERED By The Zoning Commissioner of Baltimore County, this 15th day of February, 1964, at 10:00 o'clock A.M.



(10-2)

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(10-2)

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. John G. Rose, Zoning Commissioner Date: February 4, 1964

FROM: Mr. George E. Carville, Deputy Director

SUBJECT: #44-42-EX, R-6 to B-1 Zoning, Special Exception for Living Quarters in a Commercial Building, Northwest corner of Edmondson Avenue and North Bend Road, Being property of Milton Lampier.

1st District

REARING: Friday, February 14, 1964 (10:00 A.M.)

The staff of the Office of Planning and Zoning has reviewed the subject petition for reclassification from R-6 to B-1 zoning together with a Special Exception for living quarters in a commercial building. It has the following advisory comments to make with respect to pertinent planning factors:

- In its recommendations for comprehensive rezoning of the northern portion of the 1st District, the Planning Board proposed B-1 zoning for the frontage along the northwesterly side of Edmondson Avenue southerly to, but not including, the corner of Plymouth Road. This recommendation was based on the existence of the commercial zoning along the corresponding frontage of the southeasterly side of Edmondson Avenue, the existence of commercial zoning on the northwesterly side of Oryington Road, and the existence of several non-conforming commercial uses within the proposed B-1 area. In its review of the planning proposals, the County Council saw fit to retain the present residential status of the properties southerly from Oryington Road.
- The Planning staff believes that it clearly was the legislative intent not to extend commercial zoning potentials southerly along the northwesterly side of Edmondson Avenue. The Planning staff believes that the Council did not err by failing to establish commercial zoning here. The Planning staff further notes that the subject property is not contiguous to a commercially-zoned tract on its side of Edmondson Avenue and that creation of commercial zoning here would not be in conformity with the comprehensive plan.
- Since the adoption of the map no changes have occurred in the manner of land use which were not in accord with the zoning potentials established by the map.

CEC:ms

CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY Towson, Maryland

District: 1ST Date of Posting: May 27/1964

Posted for: OPEN

Petitioner: Milton J. Lampier, STAC

Location of property: N.W. Cor. Edmondson Ave. & NORTH BEND RD.

Location of Sign: N.W. Cor. Edmondson Ave. & NORTH BEND RD.

Remarks: John Lampier

Posted by: John Lampier Date of return: May 27, 1964

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

No. 21507

DATE: 12/24/60

REMITTANCE TO ACCOUNT NO.	DETAILS UPPER SECTION AND BOTTOM WITH YOUR REMITTANCE	TOTAL DEDUCTIONS
DATE		CITY
Petition for Reclassification & Special Exception		50.00
BALTIMORE COUNTY, INC. - Office of Finance		
12-1963 7484 : : : 111 =		2400
12-1963 7484 : : : 111 =		2400

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.

PETITION FOR RECLASSIFICATION AND SPECIAL EXCEPTION
 ZONING: From R-4 to B.L. Zone.
 Petition for Special Exception for Living Quarters in a Commercial Building.
 LOCATION: Northeast corner of Edmondson Avenue and North Bend Road.
 DATE & TIME: FRIDAY, FEBRUARY 14, 1964 at 10:00 A.M.
 PUBLIC HEARING: Room 108, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland.
 The Zoning Commission of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the petition for special exception for the use of the intersection of the Westernmost side of Edmondson Avenue and North Bend Road at 50' wide to being shown as a corner of Lot No. 87, shown on the Plat of Meridale Farm, Plan No. 2 recorded in Plat Book No. 87 Folio 76 or there running along North Bend Road and ending at Lot No. 87 by True Meridian; 2 1/2 degrees 27' 20" W 100' to corner of a 10' wide alley shown running along and after 31 degrees 20' 00" E 60' to the intersection of 74' of lot No. 88 making a total distance along said alley and crossing Lot No. 88 with a line parallel to North Bend Road 2 1/2 degrees 27' 20" W 100' to a point in the Westernmost side of Edmondson Avenue, thence bearing thenceon 2 1/2 degrees 20' 00" W 10' along lot No. 88, and 65' along lot No. 87 making a total distance along Edmondson Avenue of 74.5' in the place of beginning, Containing 15,400 sq. ft.
 Being the property of Milton J. Lampieri and Catherine M. Lampieri, as shown on plat plan filed with the zoning department.
 BY ORDER OF
 JOHN C. ROSE,
 ZONING COMMISSIONER OF BALTIMORE COUNTY
 Jan. 23

OFFICE OF
THE BALTIMORE COUNTEAN
 THE COMMUNITY NEWS
 Baltimore, Md.
 THE HERALD-ARGUS
 Catonsville, Md.
 No. 1 Newburg Avenue
 CATONSVILLE, MD.
 Jan. 27, 1964

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

was inserted in THE BALTIMORE COUNTEAN, a group of three weekly newspapers published in Baltimore County, Maryland, once a week for One Week, ~~xxxxxxxxxxxxxx~~ before the 27th day of January, 1964, that is to say the same was inserted in the issues of

Jan. 27, 1964.

THE BALTIMORE COUNTEAN
 By Paul J. Morgan
 Editor and Manager
 RM

INVOICE
 BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE
 Division of Collection and Receipts
 COURT HOUSE
 TOWSON 4, MARYLAND
 No. 23343
 DATE 1/27/64

TO: Shaw's Clothes
 5316 Edmondson Ave.
 Baltimore, Md. 21207

RECEIVED
 Zoning Department of
 Baltimore County

DEBIT TO ACCOUNT NO. 01.622

QUANTITY	DETAILS UPPER SECTION AND RETURN WITH YOUR REMITTANCE	TOTAL AMOUNT COST
Advertising and posting of property		\$4.00
		\$4.00

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

INVOICE
 BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE
 Division of Collection and Receipts
 COURT HOUSE
 TOWSON, MARYLAND 21204
 No. 34528
 DATE 1/24/64

TO: James J. Doherty, Esq.
 944 Building
 300 E. Fayette Street
 Baltimore, Md. 21202

RECEIVED
 County Board of Appeals
 (Zoning)

DEBIT TO ACCOUNT NO. 01.712

QUANTITY	DETAILS UPPER SECTION AND RETURN WITH YOUR REMITTANCE	TOTAL AMOUNT COST
Cost of Certified Documents -	No. 64-42-EX <u>Milton J. Lampieri</u> <u>NW corner of Edmondson Ave.</u> <u>& North Bend Road</u> <u>for 10' wide</u>	\$14.00
		\$14.00

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.

#64-42-EX
CERTIFICATE OF POSTING
 ZONING DEPARTMENT OF BALTIMORE COUNTY
 Towson, Maryland
 Date of Posting... JAN. 29, 1964

District... 388

Posted for: Petition for Reclassification from R-4 to B.L.

Petitioner: Milton Lampieri

Location of property: NE corner of Edmondson Ave. & North Bend Rd.

Location of Sign: On trees on lawn of 5404 Edmondson Ave. (S. of 1964)

Remarks: By J. Shaw

Posted by: J. Shaw

Date of return: JAN. 30, 1964

MR. AND MRS. THOMAS J. LAMBERT
 605 North Bend Road
 Baltimore, Maryland 21220

LANE M. SPRINGER
 616 North Bend Road
 Baltimore, Maryland 21220

Appellants

vs.

COUNTY BOARD OF APPEALS
 OF BALTIMORE COUNTY

and

MILTON J. LAMPIERI, ET AL

IN THE CIRCUIT COURT FOR
 BALTIMORE COUNTY

8/9/3357

I HEREBY CERTIFY THAT on this 27th day of May, 1964, a copy of the foregoing Order for Appeal was mailed to Eugene G. Richs, Esquire, Masonic Building, Towson 4, Maryland and George W. White, Jr., Esquire, Buckmaster, White, Hindel & Clarke, 10 Light Street, Baltimore, Maryland 21202, attorneys for the Appellants.

James J. Doherty

MILTON J. LAMPIERI, ET AL
 NO. 64-42-EX
 NW corner Edmondson Ave. & North Bend Road, 1st District
 R-4 to B-L, SE for Living Quarters in a Commercial Building

Dec. 18, 1963 Petition filed
 Apr. 9, 1964 Rec. & SE DENIED by Zoning Commissioner
 May 5 Order of Appeal to County Board of Appeals
 Sept. 9, 1965 Board GRANTED reclassification, DENIED SE
 Oct. 7 Order for Appeal filed in Circuit Court
 May 5, 1966 Board AFFIRMED - Judge Proctor
 " 31 Order for Appeal to Court of Appeals filed
 " 4, 1967 Board REVERSED by the Court of Appeals

See Summary of 1st of Appeals
in 64-42-EX

DENIED

ORDER FOR APPEAL

MR. CLERK:

Please enter an Appeal to the Court of Appeals of Maryland on behalf of Mr. and Mrs. Thomas J. Lambert and Mr. Lane M. Springer, Appellants, from the opinion and Order of the Circuit Court of Baltimore County entered on the 5th day of May, 1964.

FRIEDMAN & GOODMAN
 12A Building, 8th Floor
 303 East Fayette Street
 Baltimore, Maryland 21202
 685-1763

James J. Doherty

Harvey W. Himmelman
 Attorneys for Appellants

INVOICE
 BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE
 Division of Collection and Receipts
 COURT HOUSE
 TOWSON 4, MARYLAND
 No. 23260
 DATE 5/21/64

TO: Milton J. Lampieri
 2118 Fernside Way
 Baltimore 20, Md.

RECEIVED
 Office of Planning & Zoning
 119 County Office Bldg.,
 Baltimore 19, Md.

DEBIT TO ACCOUNT NO. 01.622

QUANTITY	DETAILS UPPER SECTION AND RETURN WITH YOUR REMITTANCE	TOTAL AMOUNT COST
Appeal Costs - Milton J. Lampieri		\$70.00
No. 64-42-EX	1 sign	\$5.00
		\$75.00
		\$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.

No. 230

September Term, 1966

THOMAS J. LAURENT et al.

v.

WILLIAM H. SEABOLD, et al.

Hammond, C. J.
Mayor
Oppenheimer
McMillan
Finan

J.J.

Opinion by Finan, J.

Filed: May 4, 1967

The Circuit Court for Baltimore County affirmed the action of the County Board of Appeals, hereinafter referred to as the Board, on September 9, 1965, which reclassified the properties known as 5400, 5402 and 5404 Edmondson Avenue, Baltimore County, from R-6, residence, one and two-family, to B-1, business, local. The three properties comprise the entire block or the northeast side of Edmondson Avenue between Orpington Road and North Bond Road in the Catonsville area. The properties in question had been subject to comprehensive rezoning, which took place in 1960 when the County Council adopted the land use map for the Catonsville area. The properties here involved were zoned R-6 which was contrary to the Planning Board's recommendations, which had approved B-1 classification for the properties in question.

On March 13, 1961, the Baltimore County Zoning Commissioner, hereinafter referred to as the Commissioner, denied an application for reclassification from R-6 to B-1 filed by appellates Seabold and Hanf, the then and present owners of the 5400 and 5402 Edmondson Avenue. On appeal to the Board, the Commissioner's action was affirmed. In its opinion of December 14, 1961, the Board stated:

"It is the unanimous opinion of the Board of Appeals that there has been a change in the character of the neighborhood. Further, as the Board has held in other instances the Land Use Map of Baltimore County adopted by the County Council must be shown to be in error in original zoning. The Board is unable to find no such error in the testimony presented by the petitioners in the instant case."

of the adoption by the Council of the comprehensive rezoning map and who is now Director of Planning, testified as follows:

Q. Didn't you say you thought the Planning Board was correct?—Answer: "A. However, those recommendations, which are advisory, were rejected by the Council. The case issue was then tested, and the map that the Council, which happened since the Planning Board made its recommendations, have shown to me that the map was correct, as adopted by Council, with respect to its not having commercial zoning here."

Mr. Bernard Willemain, a land developer, who testified at the 1961 hearing again appeared for the appellates, as an expert witness, and gave similar testimony to that given by him in 1961 to the effect, that in his opinion, the comprehensive rezoning map of 1961 was in error.

However, we think that it is significant that appellates Hanf and Seabold, who in 1961 sought a reclassification of their properties from R-6 to B-1 on the basis that there was a mistake or error in the comprehensive rezoning plan, were not sufficiently persuaded by their own convictions to appeal the Commissioner's decision which upheld the comprehensive rezoning map.

We are also mindful that this Court has on other occasions stated the principle that there is a strong presumption favoring the validity of a comprehensive zoning map adopted by the proper authority, *City of Co. Comm'rs v. Edwards*, 240 Md. 600, 215 A. 2d 809 (1966); cf. *County Commissioners of Queen Anne's County, et al. v. Clarence W. Miles, et al.*, Md. A. 2d (No. 136, Sept. Term 1966, filed April 12, 1967).

It is true that at the time of the 1961 hearing the Imperial property (5404 Edmondson Avenue) was not included in the application, but if a mistake had been made in the adoption of the original comprehensive zoning map of 1960, the omission of the Imperial property from the 1961 application would have had no bearing on any consideration of the question of a mistake or error in the original comprehensive zoning map—had in fact such mistake or error existed. As no mistake or error was found at that time and since it is admitted by all parties that there has been no change in the character of the neighborhood, we are constrained to find that the action of the Board, and its affirmance by the Circuit Court, in reclassifying the properties from R-6 to B-1, to quote Chief Judge Hammond in *Pollner v. Briefs*, 244 Md. 538, 541, 224 A. 2d 460, 461 (1966), "can amount to no more than the mere impermissible change of mind or heart which was condemned in *Nov Const. Co. v. County Council*, 127 Md. 479, and *Schulze v. Montgomery County Planning Bd.*, 230 Md. 76. . . ."

We do not think that we could sustain the lower court without doing violence to our recent decisions in *Woodlawn Ass'n v. Board*, 241 Md. 187, 216 A. 2d 149 (1966) and *Pollner v. Briefs*, *supra*.

In *Woodlawn*, a case arising in Prince George's County, the question of error or mistake in the classification of a specific area in a comprehensive zoning plan had been adjudicated in 1962 by the District Council and the Circuit Court, which had found that there was no mistake or error in the comprehensive zoning plan or any change in the character of the neighborhood since its adoption. The property owners, in the spring of 1963, renewed their application and the District

The applicants did not appeal from the Board's decision.

In 1964 two petitions, seeking reclassification from R-6 to B-1, were filed with the Commissioner with respect to the three properties here involved. The Commissioner denied the reclassification requested and separate appeals to the Board were taken. Although the Board held independent hearings, it is apparent that the applications were considered as companion cases and in separate opinions, filed September 9, 1965, the Board reversed the Commissioner and granted rezoning from R-6 to B-1 with respect to the properties here involved. In its opinions the Board did not cite any subsequent change in the nature of the area since the comprehensive rezoning of 1960, but found that:

"the original zoning on the 1960 map was in error because of the complete failure of the Council to place within the zoning map any logical recommendation entailing some of the subject property, but was immediately vicinity upon the map, as adopted, was certainly not. . . ."

Appellants, "aggrieved" property owners, filed appeals in both cases to the Circuit Court, where they were heard as one. The lower court affirmed the Board's action, solely on the basis of a mistake, stating:

"All parties to these appeals agree that there has been no significant change in the area since April, 1960, when the comprehensive zoning map was adopted by the County Council of Baltimore County. Accordingly, reclassification can be justified only, if at all, on the grounds of error or mistake in the map."

The court further stated that the Board's decision on December 14, 1961, in which it denied reclassification from R-6 to B-1 of the Seabold and Hanf properties, did not constitute *res judicata* and was not therefore binding upon the Board's present action. The Judge

Council refused to consider the matter "*res judicata*" and conducted a hearing *de novo* on the matter which resulted in a reversal of its former decision and a reclassification of the area. This action was affirmed by the Circuit Court, however on appeal, this Court, in reversing the Circuit Court, speaking through Judge Hammond (present Chief Judge), said at p. 150:

"We find it unnecessary to discuss or decide the various contentions because we conclude that the principles of *res judicata* were controlling and find in the record no evidence of significant change in the neighborhood or the property between 1960 and 1964, which means that the action of the Council in rezoning in 1960 on essentially the same facts and conditions it found insufficient to permit rezoning in 1964 was arbitrary, capricious and illegal."

Even more in point with the case at bar is *Pollner v. Briefs*, *supra*, and we feel that it is controlling. In *Pollner*, just as in the instant case, the matter had never previously been heard by the Circuit Court as it had been in *Woodlawn*. *Pollner* presented this Court with a situation wherein the Montgomery County Council, on December 15, 1964, rezoned 1 1/2 acres in the Cabin John area from R-90 to R-30, allowing four times greater density. The area had been comprehensively rezoned in 1957 by the adoption of a master plan. Thereafter, in 1961 the owners of the property endeavored to secure rezoning to R-30 but withdrew the application after the technical staff and planning board recommended disapproval. In 1962 new owners filed an application for rezoning to a classification permitting high-rise apartments. The District Council denied the application, making the specific finding "that there had been no error in the promulgation of the comprehensive rezoning of 1957" as to this property, In 1964 another ap-

pealed this result because in 1961 the Board did not have before it applications to rezone all the properties here involved, but only the Seabold and Hanf properties and "reclassification of those properties alone would have had the ridiculous result of establishing as a dividing line between the B-1 land and R-6 land a property line in the middle of a block." He thus concluded:

"Accordingly, if the Board had reclassified Seabold and Hanf in 1961, such action would have been arbitrary and capricious. The case presented to this Court at this time for consideration is quite different therefore, from that presented to the Board in 1961. . . ."

The issue before this Court is whether the lower court erred in not finding the Board's reclassification of the properties to be arbitrary, capricious or illegal in view of the absence of change in the character of the neighborhood and the Board's previous decision that the 1960 zoning map was not in error.

The record reveals that when the County Council of Baltimore County adopted the comprehensive zoning map in April 1960, the Council made a personal inspection of the properties in question prior to classifying them as R-6. It is true that the Planning Board in its recommendations had designated the block, in which these properties are situated, as B-1, but its recommendations were only advisory and the ultimate classification was the prerogative of the County Council, which chose not to follow the Board's recommendation.

A number of witnesses testified in the lower court adducing testimony on both sides of the question as to whether the original classification of the properties as R-6 was erroneous. Mr. Garvelis, who was Deputy Director of Planning for Baltimore County at the time

petition was filed. The applicants introduced the testimony of an expert witness, in the person of a land planner, to the effect that a mistake had been made in the 1957 comprehensive zoning plan because of the alleged omission of the consideration of scattered commercial uses and the existence of one apartment house in the area. The District Council found no mistake or error in the comprehensive plan, but did find that there had been changes in the character of the neighborhood. On appeal to the Circuit Court, the District Council was reversed. In the appeal to this Court, the property owner again argued that there had been a mistake or error made in the 1957 comprehensive master plan. This Court, in affirming the lower court, found that there was no mistake or error in the master plan or change in the character of the neighborhood, and that the action of the District Council was arbitrary and capricious. *cf. White v. Bd. of Zoning Appeals*, 211 Md. 36, 125 A. 2d 41 (1956), in which last mentioned case Chief Judge Byrne, speaking for the Court, aptly stated at p. 45: "The rule seems to rest not strictly on the doctrine of *res judicata*, but upon the proposition that it would be arbitrary for the board to arrive at opposite conclusions on substantially the same state of facts and the same law."

ORDER REVERSED, APPEALS TO PAY THE COSTS.

RE: PETITION FOR RECLASSIFICATION
from an R-6 Zone to a B-L Zone,
and SPECIAL EXCEPTION for
LIVING QUARTERS IN A
COMMERCIAL BUILDING
NW corner Edmondson Avenue and
North Bend Road,
1st District
Millon J. Lampieri, et al,
Petitioners

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. 64-42-RX

OPINION

This case involves an application for rezoning from R-6 (Residential) zone to B-L (Business-Local) zone of a piece of property on the northwest side of Edmondson Avenue at the corner of North Bend Road in the First District of Baltimore County. It is, in reality, a companion case with the case of William M. Seabold, File No. 65-104-RX, which concerns property on the northwest corner of Edmondson and Orlington Avenues, the two properties between them constituting the entire northwestern side of Edmondson Avenue in the 5400 block; the Lampieri property being 5404 and the Seabold application concerning 5400 and 5402, there being only three properties in the block.

The Board feels very strongly, for reasons to be stated hereafter and in the Seabold opinion, that these two cases should be determined simultaneously and that either the zoning requested should be granted in both cases or refused in both cases. In the Seabold case there was a further application for a special exception for a gasoline filling station at the property on the corner of Edmondson and Orlington. For the reasons stated in this opinion and in the Seabold opinion to be filed simultaneously, the Board has determined to grant the application for change from R-6 to B-L zoning on both properties, and to deny the special exception for a gas station in the Seabold case.

The Lampieri property (and the two Seabold properties) extend from Edmondson Avenue to an alley in the rear. The 5400 block of Edmondson Avenue is within a long block of the Baltimore City Line and from Orlington Road easterly both sides of Edmondson Avenue, for some distance into the City, have been occupied and used for commercial purposes for many years before April 5, 1960 which was the date of the adoption of the zoning map in question.

Mr. Millon J. Lampieri, the applicant in this case, has lived in the neighborhood for well over twenty years, and from 1954 to 1960 conducted his business, that of a clothing store and haberdashery, at the subject property - 5404 Edmondson Avenue. In 1960 he moved to 5316 Edmondson Avenue which is approximately a block away on the same side of the street where he has conducted his business up to the present. He is well thought of in the community as a public spirited citizen, an honorable business man and, as a fact, most of the protestants in his case testified that they had dealt with him for a long time and

LAMPIERI - No. 64-42-RX

- 2 -

one of them, the Rev. Bernard J. Barnes, Pastor of the West Baltimore Methodist Church, testified that at the time of the hearing he was wearing a suit he had purchased from Mr. Lampieri. Mr. Lampieri's present quarters have grown too small for his business and he desires to move back to his own property which he occupied for the same purpose prior to the adoption of the zoning map, but wishes to construct a modern and attractive and more useful building for the operation of his business.

The property at 5404 has been for years, and still is, used for commercial purposes, apparently as a nonconforming use since the adoption of the map in 1960. The pictures among the exhibits, as well as a personal inspection of the property by the Board, shows that there is at present a T.V. repair shop, a barber, and a tailor occupying the premises. Previously, up until last year, there was a Building and Loan Association in the basement having occupied the same location for more than twenty years but who have moved out since they became engaged in a controversy with Mr. Lampieri in this particular zoning application. In fact, one of the Directors of the Association appeared as one of the witnesses for the protestants and opposed the rezoning although he confirmed from his own personal knowledge the commercial use of the property, past and present.

The properties across the street from the subject property, for the entire 5400 block and for the southeast side of the 5500 block, were zoned B-L by the map and also were, and are, the subject of long continued commercial use as may clearly be seen from the pictures filed as exhibits and also from the Board's inspection. There are a number of commercial or quasi-commercial uses on the other side of the alley in the rear of the subject property, and on the side streets in the immediate vicinity which are operating either as nonconforming uses or as unincorporated zoning violations at the present time. For example, at 600 Orlington Road there is a beauty shop in the basement of a residence, at 601 there is a garage which is apparently being used for the storage of title. The pictures filed as exhibits indicate the use of the property in the two blocks on the other side of Edmondson Avenue. There was testimony in at least one of the two cases that the entire commercially zoned area, both in Baltimore City and Baltimore County, is and has been since before 1960 fully occupied with commercial uses, and there is a great demand for further such uses as the result of the increase of population in the area and the complete lack of any additional commercial facilities usable for the public service, necessity, and convenience with the single exception that almost all of the neighbors feel there are too many gasoline service stations in the vicinity. The properties involved in the Seabold case separate the Lampieri property from the present commercially zoned property northeast of Orlington Road, namely, the 5300 block of Edmondson Avenue between Alderbrook Road and Orlington Road, and these two properties have also for some years past been the subject of various, possibly nonconforming, commercial uses.

LAMPIERI - No. 64-42-RX

- 3 -

The testimony indicates, and it is obvious from inspection, that the present structure on the Lampieri property would not be suitable for any decent residential use or development. For example, Mr. Albert K. Wood, a qualified real estate broker and appraiser, testified that the property would have an extremely small value as residential property and in its present condition would have none whatever for that purpose. Mr. Bernard Willemain testified, among other things, that he felt that R-6 zoning of this property was inequitable, confiscatory, and not in accordance with any reasonable use in the immediate vicinity.

From the testimony of Mr. George E. Gouvelis we take it that the Planning staff would have been in favor of commercial zoning for the Lampieri property if the properties the subject of the Seabold case were also zoned B-L, but they would be opposed to the granting of the Lampieri petition in the absence of a favorable decision to the petitioner in the Seabold case because they feel that it would be jumping over a residential zone to grant a business-local zone which would not be in accordance with the comprehensive plan. However, the Planning staff apparently was in 1960, and still is, in agreement with the recommendations that the Planning Board made at that time concerning which we will have something to say later in this opinion. Mr. Gouvelis was very definite in his testimony that he and his staff were in agreement with the original Planning Board's recommendation assuming that the entire block (this includes both Lampieri and Seabold properties) were to be reclassified for business use. He definitely expressed the opinion that the best planning and zoning recommendations in this case were not followed at the time of the adoption of the map.

The minutes of the Baltimore County Planning Board's meeting of Thursday, November 19, 1959 (petitioners' exhibit #2) have the following to say (at page 2):

"B. Properties on the Northwest Side of Edmondson between Orlington and North Bend Roads - from I.A. to B-L."

Both the Seabold and Lampieri properties at 5400 and 5402 Edmondson Ave. are sandwiched between properties used commercially and across the street from existing business uses. In order to permit the additional commercial expansion of his "center" the committee recommended that not only the 2 properties in question but all those fronting on Edmondson Avenue from Orlington Road southwesterly to a point "one property" short of Plymouth Rd. be zoned for B-L. This action brings B-L zoning on the northwest side of Edmondson Ave. southerly to a point directly across from the southerly B-L zoning line on the southeasterly opposite side of Edmondson."

This was after serious study and an inspection trip by the Planning Board, and was in line with the recommendations of the Planning staff.

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Mr. Bernard Willemain, whose qualifications are well known, testified that he agreed with the recommendation of the Planning Board for B-L zoning because it afforded recognition of the existing use of the property prior to 1960 and existing uses of other property in the area at that time. In his opinion, the County Council made an error in zoning this property for residential purposes not only because it completely ignored existing business uses of the property at that time which have continued up until the present, but ignored business uses across the street and on the same side extending across the City line. He further felt that the zoning was in error because it was inequitable, not confiscatory, and not in accordance with any reasonable use of land in the immediate vicinity. During the course of his testimony the minutes of the Planning Board and the Planning Board's map were introduced into evidence as exhibits #2 and #3. His opinion was based on a personal study in connection with both this case and the Seabold case, a study of the complete records of the Planning Board, and attendance at public hearings at the time of the adoption of the map.

It seems clear to the Board that there is a substantial public demand for continued commercial uses of this property and if there has been no change in the specific property other than physical deterioration since 1960 it is only because such has been prevented by the improper zoning which occurred at the time of the adoption of the map. There have been, of course, substantial changes in population and in the business activity in this "shopping center".

The protestants who testified did not present any evidence sufficient to rebut the petitioner's case but based their objections in general terms as opposing any further commercialization and especially the establishment of any more gasoline stations. One gentleman in opposition testified that there had been a beauty shop operating in his basement for thirty-four years which is located across the alley from the subject property in what is strictly a residential zone. Another witness was the gentleman whose garage has been used for the commercial storage of merchandise also across the alley from the subject property. Both of these witnesses, as well as another houseowner, confirmed the fact that there had been commercial uses on the Lampieri property for at least fifteen years continued to the present, one of these being a Director of the Building and Loan Association who had used the property for business purposes themselves for many years. It seems to the Board that the zoning of this property for commercial use would not amount to an encroachment on a residential area but simply would confirm the present and long continued use of the property. Furthermore, such zoning at the present time would enable the owner of the property to improve it with a modern, attractive and useful building which could hardly fail to be an improvement to the neighborhood when compared with the run-down condition of the present commercially used property which because it is a nonconforming use, is effectively prohibited from being modernized or improved for the same uses to which it has been put for many years.

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The Board finds that the original zoning on the 1960 map was in error because of the complete failure of the Council to consider existing uses at that time, and its complete failure to follow the logical recommendation of the Planning Board which did not only recognize existing uses of the subject property, but was completely in accord with reasonable uses in the immediate vicinity which the map, as adopted, was certainly not. This conclusion of the Board is reached with full realization of the recent Court of Appeals reiteration of the principle that there is a strong presumption of the correctness of the original zoning. However, we feel that this presumption should not be so strong or so binding upon this Board as to fly in the face of common sense and to perpetuate a situation which is actually detrimental to a neighborhood, and which in the original adoption completely ignored the logical and cogent recommendations of the Baltimore County Planning Board. For the foregoing reasons, the application for rezoning from R-6 to B-L will be granted in this case.

It is noted that the application for rezoning also included a request for a special exception for living quarters on the second floor of the proposed new commercial building. There was no testimony in opposition to this proposed use as such but only to the general rezoning, however, the petitioner presented no testimony to support the burden imposed on him by Section 502 of the Zoning Regulations and did not indicate any particular interest in this phase of the application at this time, nor were any specific plans presented to the Board showing the construction or layout of the proposed living quarters. The special exception will, therefore, be denied.

As stated at the outset of this opinion, the Board feels that this case must be considered in connection with its case No. 65-104-RX involving the Seabold properties in the same block, and it is the intention of the Board to file an opinion in that case simultaneously with the above.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 9th day of September, 1965 by the County Board of Appeals, ORDERED that the reclassification petitioned for, be and the same is hereby granted; and the special exception petitioned for, be and the same is hereby denied.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William S. Baldwin, Chairman

W. Allen Parker

R. Bruce Alderman

