

DUNDALK SALES COMPANY

NO. 65-112-RXA

E/S New North Point Road 1112' North of New Battle Grove Road

15th District

Parcel 1 - Reclassification from M-L zone to B-R zone SE for a Used Car Lot (0.55 acres)

Parcel 2 - Reclassification from M-L zone to M-H zone SE for a Junk Yard Variance from section 408.2 (5.00 acres)

Sept. 2, 1964 Petition filed

Oct. 30 Reclassification and SE for Parcel 1 GRANTED by D.Z.C. Reclassification, SE and variance for Parcel 2 DENIED by D.Z.C. Also, ORDERED that all junk, debris, or waste on Parcel 2 be removed within 6 months

Nov. 18 Order of Appeal to County Board of Appeals

Oct. 29, 1965 Reclassification, Special Exceptions and Variance GRANTED by the Board, subject to restrictions (McHenry and Slowik - Mr. Baldwin abstained)

Nov. 12 Order for Appeal filed in Circuit Court

Dec. 16 Record of proceedings filed in Circuit Court

Mar. 21, 1966 Board AFFIRMED as to Parcel #1 - Judge Barrett REVERSED as to Parcel #2

Apr. 20 Order for Appeal to Court of Appeals

May 23 Time Ran Out (from entry on Court Docket)

Mr. Wylie Ritchey, attorney for the petitioner, advised that his client decided not to proceed with the appeal and it was, therefore, dropped. ETE

Parcel 1 - Reclassification from M-L to B-R and SE for Used Car Lot GRANTED

Parcel 2 - " " M-L to M-H and SE for Junk Yard, and variances DENIED

Handwritten notes: 15TH DIST. NORTH POINT ROAD, NEW BATTLE GROVE RD. SE 65-112-RXA

Vertical stamp: DUNDALK SALES COMPANY, 15511-2200, E/S of New North Point Road, 15th Dist. No. 65-112-RXA

Handwritten note: BRY-641-379

RE: PETITION FOR RECLASSIFICATION from an M-L zone to B-R and M-H zones, SPECIAL EXCEPTION for Parcel 1 to be used for a Used Car Lot, and Parcel 2 to be used for a Junk Yard, and VARIANCE from Section 408.2 of the Zoning Regulations E/S New North Point Road 1112' North of New Battle Grove Road, 15th District Dundalk Sales Company, Petitioner

OPINION

Petitioner seeks reclassification, special exceptions for use of the subject property as a used car lot and junk yard, with a variance from setback requirements for the junk yard. The property is situated in the Fifteenth Election District on the east side of North Point Road 1112 feet north of New Battle Grove Road. The subject property is a five acre tract shown on a plat, Petitioner's Exhibit #1, and the used car lot and junk yard are marked - Parcels #1 and #2.

As to Parcel #1, petitioner seeks reclassification from M-L to B-R with special exception for a used car lot. The used car lot fronts on the road for some 215 feet with a depth of 110 feet. Testimony is to the effect that the used car business has been going on since 1950. It does not appear that there is any serious opposition to the sale of used cars, and the uses of neighboring property are B-L across North Point Road and M-L on the east side of the road.

Since there appears to be no reason for reversal of the Deputy Zoning Commissioner with respect to Parcel #1, the Board has no difficulty in concluding that the reclassification and special exception for a used car lot ought to be granted.

The problem in this appeal seems to be with the remaining portion of the subject five acre tract. The property owner seems to have gradually gone into the junk yard business in the rear of the sales lot and eventually on the sides as well. The junk yard business brings about objection, and the testimony and exhibits show a yard full of junked automobiles some of which are piled on top of one another or stacked two and three high. An officer of Leary Manufacturing Co., who is the manager of the plant on the

BEFORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

Dundalk Sales Co. - 65-112-RXA

property adjoining to the north, testified with respect to smoke from burning, rats, and to blocking of the view of the Leary plant from North Point Road.

Real estate expert Hugh E. Gelston testified that the junk yard use would not harm property values or uses in North Point Village or elsewhere in the vicinity, and the existing operation has not done so to date.

The Board is of the opinion that the real issues in this appeal involve conduct of the junk and salvage operations in such fashion that business neighbors will not be harmed or not suffer encroachment of one sort or another. It is assumed that rights in equity to abate a nuisance are available and this opinion is in no way intended to interfere with any public or private action that may be appropriate in the future.

However, from a zoning standpoint, used car sales and junk yard operations seem appropriate uses for the land and the Board is reluctant to deny the landowner and his tenant such uses. However, there are conditions which must be imposed:

- 1. The junk yard (Parcel #2) must be screened by a solid fence at least six (6) feet in height
2. There must be no stacking of junk vehicles or piling of parts above the screen
3. Burning must be in accordance with the regulations of the Baltimore County Fire Prevention Bureau and upon such permits as may from time to time be required
4. Burning of tires is prohibited
5. There must be vehicular access to all junk motor vehicles
6. The following setbacks are required:

150 feet from North Point Road, 100 feet from the north boundary, 100 feet from the east boundary, and 45 feet from the south boundary; all as shown on said plat. The entire junk storage and salvage operation is to be confined to area remaining after setback from the road and boundaries as shown on said plat of Parcel #2, and as described herein

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ORDER

For the reasons set forth in the foregoing Opinion, it is this 29th day of October, 1965 by the County Board of Appeals, ORDERED that the reclassification, special exceptions, and variance petitioned for, be and the same are 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

Paul T. McHenry, Jr.

John A. Slowik

Note: Mr. Baldwin abstained

Zoning File No. 65-112-RXA - Dundalk Sales Co. - Appealed 11/12/65

EDWARD G. LEARY vs. PAUL T. McHENRY, JR., JOHN A. SLOWIK constituting the COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

Misc. Docket No. 8, Folio No. 27, File No. 3401

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule 1101-B (4) of the Maryland Rules of Procedure; Paul T. McHenry, Jr. and John A. Slowik, constituting the County Board of Appeals of Baltimore County, has given notice by mail of the filing of the Appeal to the representative of every party to the proceeding before it; namely, Wylie L. Ritchey, Esq., 203 West Chesapeake Avenue, Towson, Maryland 21204, Attorney for the Petitioner, and John N. Maguire, Esq., 825 Eastern Boulevard, Baltimore, Maryland 21221, Attorney for the Protestants, a copy of which notice is attached hereto and prayed that it may be made a part hereof.

Edith T. Ebenhart, Secretary County Board of Appeals of Baltimore County, County Office Building, Towson, Md. 21204, Valley 3-3000, Ext. 570

I hereby certify that a copy of the foregoing Certificate of Notice has been mailed to Wylie L. Ritchey, Esq., 203 West Chesapeake Avenue, Towson, Maryland 21204, Attorney for the Petitioner, and John N. Maguire, Esq., 825 Eastern Boulevard, Baltimore, Maryland 21221, Attorney for the Protestants, on this 15th day of November, 1965.

Edith T. Ebenhart, Secretary County Board of Appeals of Baltimore County

EDWARD G. LEARY vs. PAUL T. McHENRY, JR., JOHN A. SLOWIK, constituting the County Board of Appeals of Baltimore County

MEMORANDUM OPINION AND ORDER

Dundalk Sales Company, a Corporation, filed a petition with the Zoning Commissioner of Baltimore County relating to two parcels of land, designated on a plat filed in these proceedings as Parcel No. 1 and Parcel No. 2. As set forth in the application, Parcel No. 1, consists of 0.55 acres of land and Parcel No. 2 approximately 5.00 acres of land more or less. The property is situated in the fifteenth election district of Baltimore County on the east side of North Point Road approximately 1112 feet north of New Battle Grove Road.

As to Parcel No. 1, the Petitioner seeks reclassification from M-L zoning to B-R zoning with a Special Exception for a used car lot. As to Parcel No. 2, the Petitioner requests a change in the classification from M-L to M-H zone and a Special Exception to use this parcel as a Junk Yard, and also seeks a variance to Section 408.2 of the Baltimore County Zoning Regulations. The Deputy Zoning Commissioner granted the petition as to Parcel No. 1 and denied the petition as to Parcel No. 2 by his Opinion and Order dated October 30, 1964.

The Petitioner thereupon entered an Appeal to the Board of Appeals which granted the petition as to both Parcels No. 1 and No. 2, thereby reversing the Order of the Deputy Zoning Commissioner as to Parcel No. 2. The Opinion of the Board is dated October 29, 1965.

Thereupon, Edward G. Leary, one of the protestants, filed an

Appeal to this Court. The petition for appeal makes it clear that the appeal is being taken from the action of the Board only as to Parcel No. 2 and not as to Parcel No. 1. In addition, at the hearing before the Court on the Appeal, counsel for the Appellant stated that the hearing that the Appeal did not apply to the Order of the Board granting reclassification and a Special Exception for a used car lot as to Parcel No. 1. Therefore the Order of the Board as to Parcel No. 1 is final and not subject to review by this Court.

As to whether the Appellant qualifies as an approved party to file an Appeal to this Court, the petition for appeal states that he was present at the hearing before the Board of Appeals; that he is the owner of property 4010 North Point Road, known as Leary Manufacturing Company, (the property immediately adjacent and contiguous to Parcels 1 and 2 of the application); and that Richard Thompson, as his agent, testified on his behalf at the hearing before the Board. The Applicant, Dundalk Sales Company, in its answer to the Petition for Appeal, admits that these facts are true. Richard Thompson, in his testimony before the Board, protesting the reclassification of Parcel No. 2, and a special exception for its use as a Junk Yard, offered material and substantial testimony to the effect that the operation of Parcel No. 2 as a Junk Yard seriously affects the enjoyment and value of the property of Leary Manufacturing Company, owned by the Appellant, Edward G. Leary. (R.139-146)

Under the provisions of the zoning regulations of Baltimore County, a Junk Yard can be operated in an M-H zoning classification, with a Special Exception; and as Parcel No. 2, at the time of the filing of the petition, was zoned M-L, a reclassification to M-H zoning was required before the request for a Special Exception could be considered and granted. The Board in granting the reclassification, the Special Exception and the

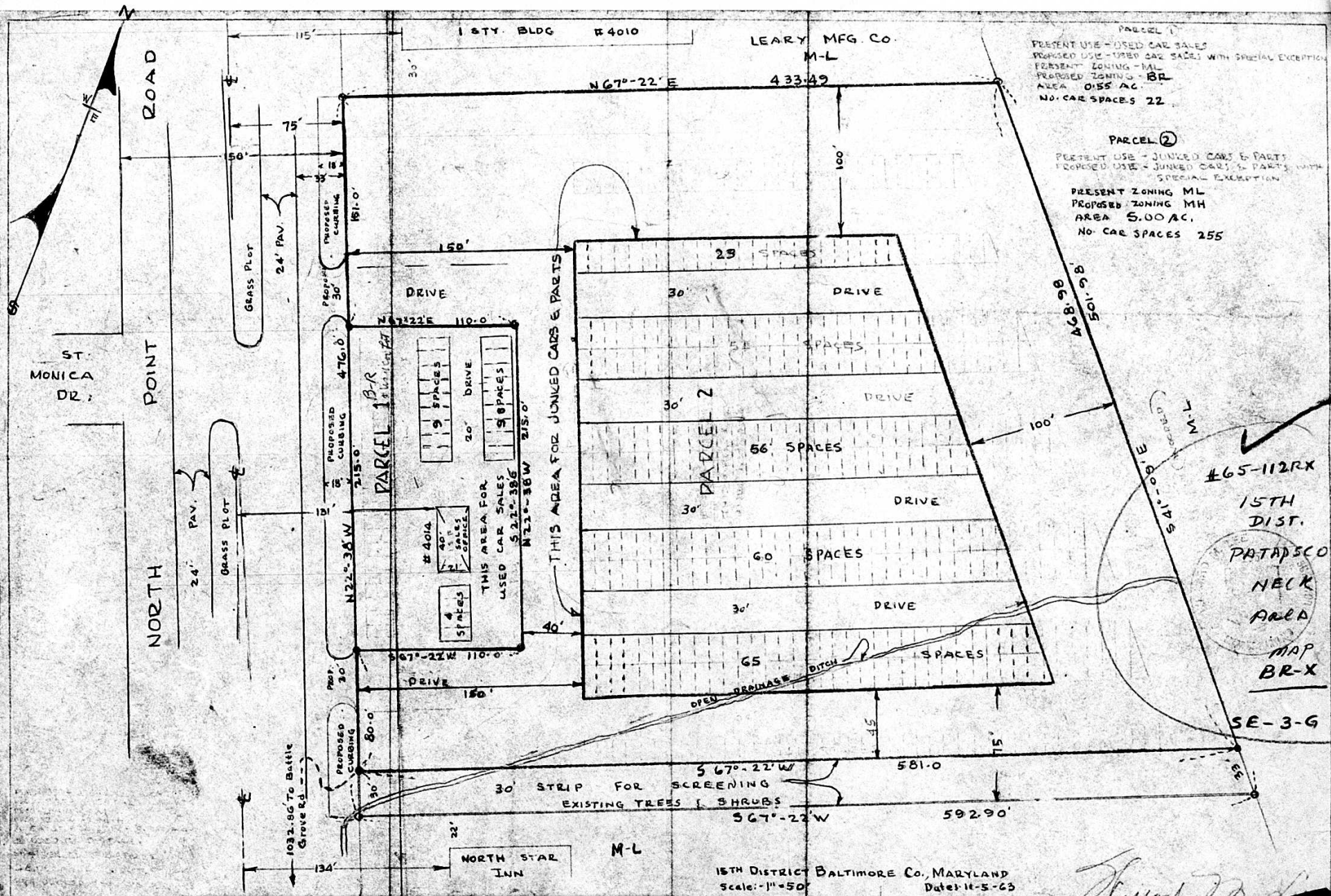
variance, stated as its reasons therefor: "However, from a zoning standpoint, used car sales and junk yard operations seem appropriate uses for the lots and the Board is reluctant to deny the land owner and his tenant such uses. However, there are conditions which must be imposed." This reasoning is not sufficient under the well established law to grant reclassification of zoning.

The comprehensive zoning map for the fifteenth district was adopted by the legislative authority in Baltimore County (the County Council) in 1962. The repeated decisions of the Court of Appeals has clearly established that for the Board of Appeals to reclassify zoning of property in deviation from comprehensive zoning established by the adoption of the comprehensive zoning map, such action must be supported by competent, material and substantial evidence of either error in original zoning or a substantial change in the character of the neighborhood. The evidence in this case discloses that the subject property of this case is zoned M-L. The abutting property on the north is the Leary Manufacturing Company building, also zoned M-L. The abutting property to the south is North Star Inn. Directly across North Point Road from the subject property is the North Point Shopping Center and directly behind the Shopping Center is North Point Village, a housing development. Directly across the proposed Junk Yard (apparently part of the Shopping Center) are two restaurants, Harley's and Gino's. Mr. Hugh Gelston, a competent real estate appraiser, testifying for the Petitioner, stated that properties to the south, north and east of the subject property are zoned M-L. Across North Point Road it is zoned B-L or B-R. In the general neighborhood, within a mile radius, there are different types of businesses, manufacturing, second hand car lots, garages, taverns and eating places, a number of them being non-conforming uses.

Handwritten note: Rec'd 3-22-66 9:00am







PARCEL 1  
 PRESENT USE - USED CAR SALES  
 PROPOSED USE - USED CAR SALES WITH SPECIAL EXCEPTION  
 PRESENT ZONING - M-L  
 PROPOSED ZONING - BR  
 AREA 0.55 AC.  
 NO. CAR SPACES 22

PARCEL 2  
 PRESENT USE - JUNKED CARS & PARTS  
 PROPOSED USE - JUNKED CARS & PARTS WITH SPECIAL EXCEPTION  
 PRESENT ZONING ML  
 PROPOSED ZONING MH  
 AREA 5.00 AC.  
 NO. CAR SPACES 255

#65-112RX  
 15TH DIST.  
 PATAPSCO NECK AREA  
 MAP BR-X

15TH DISTRICT BALTIMORE CO., MARYLAND  
 Scale: 1"=50'  
 Date: 11-5-63

Note - Revised 6-26-64

*Handwritten signature*  
 V.P.C. CIVIL

