

RE: PETITION FOR SPECIAL HEARING : BEFORE THE
HEARING : DEPUTY ZONING COMMISSIONER
5/8 Old Court Road, relocated, :
38 feet E of Reisterstown Road :
3rd District : OF
Pikesville Plaza, Inc. : BALTIMORE COUNTY
NO. 67-38-SPH

The Petitioner has requested a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County to determine whether the Deputy Zoning Commissioner should approve a building permit for a gasoline station. The Petition was necessitated by County Council passing Bill No. 64 (legislative session, 1966) which is commonly known as the "gasoline station freeze".

Bill No. 64 states in part in Section 1 (b) "If a special exception for a filling station has been granted, but the special exception has not been utilized as in the Zoning Regulations provided, or no substantial part of the construction has been commenced, such special exception shall be suspended, and no action taken thereunder for a period of six months after this section is enacted. ***"

The Petitioner is taking the position that the Special Exception previously granted February, 1965 has in effect been utilized. In support of this claim, Mr. James Spanner, a registered engineer, testified that he prepared the original plans for the Special Hearing in 1965. He then prepared subdivision plans over a period running through 1965. Mr. Spanner held numerous meetings with the Public Works Department and with the Office of Zoning and Planning. Plans for a shopping center known as the Pikesville Plaza, Inc. were filed. In August, 1965, revised plans providing for the elimination of monumental entrances on Old Court Road (relocated) were submitted to the Office of Planning and Zoning. Grading plans were prepared in April of 1966. On November 15, 1965 the utility plans were submitted to the Department of Public Works. At least 350 feet of sewer line and 250 feet of water line was extended from Old Court Road to the subject property. A retaining wall separating the proposed station from another business has been built. Architectural plans have been completed.

It must be borne in mind that the word construction does not necessarily mean that one must dig with a spade or pour concrete foundations to begin work. A great deal of preparatory work must be completed before the ground is even touched. Engineering plans must be drawn, architectural plans must be prepared, contracts must be entered into and utilities made available. In the opinion of the Deputy Zoning Commissioner, all of these factors amount to a beginning of construction.

The Deputy Zoning Commissioner feels that on the basis of the facts as presented at the hearing, the Special Exception previously granted has been in effect utilized and that the Petitioner has a vested right to develop his property as the situs of a gasoline service station.

It is therefore ORDERED by the Deputy Zoning Commissioner of Baltimore County, this 21 day of October, 1966, that a building permit be issued in accordance with the Petition request.

PETITION FOR SPECIAL HEARING
5/8 Old Court Road, relocated,
38 feet E of Reisterstown Road
(continued)
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Edward D. Hardisty
Deputy Zoning Commissioner

PETITION FOR SPECIAL HEARING

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, or we, PIKESVILLE PLAZA, INC., 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 for a Special Hearing Under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve building permit for gasoline station in accord with special exception previously granted since the special exception has been utilized as in the Zoning Regulations provided and a substantial part of construction has been commenced.

See attached description

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Special Hearing 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 -----

Power and Mosner
Address -----
Townson, Maryland 21204

ORDERED by the Zoning Commissioner of Baltimore County, this 11th day of August, 1966, 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 had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 23rd day of August, 1966, at 10:00 o'clock A.M.

Edward D. Hardisty
DEPUTY Zoning Commissioner of Baltimore County

(over)

RE: PETITION FOR SPECIAL HEARING : BEFORE
on property located on the : COUNTY BOARD OF APPEALS
5/8 of Old Court Road (relocated) :
318' east of Reisterstown Road, : OF
3rd District : BALTIMORE COUNTY
Petitioner :
No. 67-38-SPH

ORDER OF DISMISSAL

Petition of Pikesville Plaza, Inc. for special hearing to determine whether or not the Zoning Commissioner or Deputy Zoning Commissioner should approve a building permit for a gas station in accord with special exception previously granted since the special exception has been utilized as in the Zoning Regulations provided and a substantial part of construction has been commenced, on property located on the south side of Old Court Road (relocated) 318 feet east of Reisterstown Road in the Third District of Baltimore County.

WHEREAS, the Board of Appeals is in receipt of a Letter of Dismissal of Appeal filed February 17, 1967 (a copy of which is attached hereto and made a part hereof) from the appellant in the above entitled matter.

WHEREAS, the said appellant requests that the appeal filed on behalf of said appellant, be dismissed and withdrawn as of February 17, 1967.

It is hereby ORDERED this 23rd day of February, 1967 that said appeal be and the same is DISMISSED.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William S. Baldwin, Chairman

W. C. Parker

John A. Slowik



PETITION FOR SPECIAL HEARING
PIKESVILLE PLAZA, INC.

BEFORE THE
ZONING
COMMISSIONER OF
BALTIMORE COUNTY
Case 65-204-X

MEMORANDUM

The petitioner respectfully submits the following authorities to substantiate its claim that the special exception previously granted to construct a filling station on the subject premises should not be suspended since a substantial part of the construction has been commenced.

Definitions from Webster's New International Dictionary Second Edition -

Commence - to have or make a beginning; to originate;
start; begin
Construction - act of building; erection; act of devising and forming; fabrication, composition.
Substantial - that is of moment; important; essential; material

A case almost directly on point was decided in Connecticut, City of New Britain v. Milbourne, 147 A 124. There a permit had been granted for the construction of a gas station, and the owner filled in a ravine on the lot, graded it, and began preparing for excavation. The city then sought an injunction from the Courts to stop further construction on the grounds that a new zoning ordinance forbade gas stations in the particular area, and that the owner did not come within the exception provided by law for those "who began construction within three months." The Court refused the injunction and permitted the station to be built, holding that the filling of

the lot, grading and beginning preparation for excavation, all of which cost the owner some \$4,500.00, that he did come within the exception for those who "began construction". The court pointed out that the expenditures were made on the strength of the permit granted by the city, and that it would be inequitable for the city to later try to revoke the permit after the owner had invested substantial sums of money in the project.

Similarly in M. P. Rose Builder's Supply Co., 163 SE 412 (N.C.) the issue was whether a person holding a permit for a filling station could retain the permit under an exception applying to "construction which has been started". All that the owner of an existing building had done was place in it a grease dispenser and goods that would normally be sold out of a filling station, and the court held that this was a sufficient commencement to come within the exception. Further, in this opinion, the court stated, "Zoning ordinances are in derogation of the right of private property, and where exemptions appear in favor of the property owner, they should be liberally construed in favor of such owner."

The petitioner in the present case likewise maintains that the exception should be liberally construed in his favor.

Further cases of interest are as follows:

Piping Specialties Co. v. Kentile, Inc. (Cal.), 229 C.A. 2d 586 held that materials which amounted to six percent of the base contract and which were substantial on a functional basis constituted a "substantial part of the work" for mechanics lien purposes. In the present case expenditures approximated \$12,000.00, and this should certainly be considered "substantial".

State v. Harpham (Ariz.), 410 P2d 100 considered a statute which provided that no new wells could be dug in a certain area, but those "substantially commenced" could be completed. It

was held that the trier of fact may consider grading of road for ingress and egress, purchase of material, construction of slush-pits, and actual excavation preparatory to drilling in order to determine if wells were commenced. The court did not find it necessary to actually have a drilling rig on the site before the critical date, but held that preparatory efforts, if made at considerable expense, would satisfy the term "substantially commenced." See also McCallister v. Texas Co., 223 S.W. 859.
Williams v. Wofford, 140 S.E. 2d 190 (Ga.) involved an exemption from building regulations for those "who began construction within six months". The owner had demolished an existing house, graded the lot, and poured new footings, and this was held sufficient to satisfy the exemption even though the footings were later abandoned and covered over.

In view of the above authorities, and in view of the liberal construction of the law to which the petitioner is entitled, it is respectfully urged that the bringing of utilities to the site, the grading of the lot, the building of a retaining wall, all done at considerable expense and all done in reliance on the special exception granted by Baltimore County, do certainly require a finding that the petitioner has satisfied the exemption spelled out in the statute, and that an appropriate order should be entered that will enable petitioner to file his application for a zoning permit and to have said application duly processed.

Respectfully submitted,
William F. Mosner
34 West Chesapeake Avenue
Towson, Maryland 21204
Valley 3-1250
Attorney for Petitioner

I HEREBY CERTIFY that on this 27th day of September, 1966, a copy of the foregoing Memorandum was mailed to Johnson Bowie, Esquire, 22 W. Pennsylvania Avenue, Towson, Md. 21204, Attorney for Protestants.

William F. Mosner
WILLIAM F. MOSNER

County Board of Appeals
Room 301 - County Office Bldg.
111 W. Chesapeake Ave.
Baltimore, Md. 21204

Re: Petition of Pikesville Plaza, Inc. 67-38-SPH

Respectfully:
I wish to withdraw my appeal of the above mentioned case.
I would like the record to show that this appeal was filed in good faith in accordance with the moratorium law, which was then in effect.

The appeal of Section 23-23a (b) of Bill 604 has left me with no basis for an appeal.

Very truly yours,

William F. Mosner
(Mrs.) Mildred L. Trostle
Correspondence, NAFR, Inc.

mt

cc: Johnson Bowie, Esq.

Rec'd 2/17/67
9.30 am

