

27A

68-72-RX

CHARLES GREENMAN, et al
 vs.
 WILLIAM S. BILLYN, et al
 being and constituting the
 COUNTY BOARD OF APPEALS OF
 BALTIMORE COUNTY

ZONING FILE 68-72-RX
 IN THE CIRCUIT COURT
 FOR BALTIMORE COUNTY
 Misc. 6/357/4020

DEFINITION

On September 22, 1967, Ingleside Realty Corporation, as owner, and Sun Oil Company, as contract purchaser, (herein collectively called "Petitioner") filed a petition to redistrict certain property on Inglewood Avenue "from an undistricted street to a CNE District and for a special exception for a filling station". On the same day the zoning Commissioner signed an order denying the petition. On October 4, 1967, Petitioner filed an order for appeal to the County Board of Appeals of Baltimore County. Hearing on this appeal was held on April 23, 1968. On June 27, 1968, the Board filed its opinion and order under which (1) it recited that the property had been placed in a CNE District by County Council Bill No. 23 passed May 9, 1968, signed May 10, 1968, and effective June 20, 1968 and (2) it granted a special exception for the operation of an automotive-service station under Baltimore County Zoning Regulations Secs. 405.3 and 502.1 on July 23, 1968. Petitioner filed an appeal to this Court.

Under the view taken by this Court the controlling regulation is Sec. 405.3 which reads as follows:

"Findings necessary to grant special exceptions. In addition to the findings required under Sub-section 501.1, the zoning Commissioner shall make each of the findings set forth below before granting any special exception requested to permit an automotive-service station:

A. That the proposed use will not create a traffic hazard or excessive traffic congestion because of

within the area which had been closed or converted to other uses.

Continuity produced by Petitioner (and not contradicted by Petitioner) was that at least four, and possibly 5, filling stations within a one mile radius of the proposed site had been converted to other uses.

Under Baltimore County Zoning Regulations, Sec. 405.3, one of the "Findings necessary to grant special exceptions" is that "there is evidence of the probability of a reasonable public need for the proposed automotive-service station." This Section creates a rebuttable presumption that there is no evidence of such a probability if there are two abandoned service stations within a one mile radius of the proposed site. This Section concludes with the statement "The zoning Commissioner may find, however, that this rebuttable presumption is rebutted by market data or other evidence submitted by the petitioner." In my judgment, the evidence in this case clearly established the presumption, referred to in this Section, and there is no evidence of any substance to rebut such presumption. Petitioner did not produce any evidence of market data or anything else which would tend to demonstrate a need. The urban witness for Petitioner did not even know the number of persons who lived in the area and held credit cards issued by his company who would, of course, be the prime source of customers for any automotive-service station constructed on this site.

It is to be noted that in its opinion the County Board of Appeals of Baltimore County made no reference whatsoever to the presumption discussed above, nor to any evidence which it considered to be rebuttal of such presumption. The Court finds that the Board, in granting the special exception requested in this case, acted in an arbitrary and capricious manner and, accordingly, the

INGLESIDE REALTY CORP. 68-72-RX SE/5 of Inglewood Ave. 283' N. Johnnycake Road Baltimore Md. 21201

its location in relation to similar uses, or because of its location in relation to other buildings or proposed buildings on or near the site and the traffic pattern to and from such buildings, or by reason of its location on or near a vehicular way or pedestrian entrance or crossing to a school, park, playground, or hospital, or other place of public use or assembly.

B. That the use will not adversely affect the general welfare or orderly development of the general neighborhood or area in which the station is proposed, including nearby areas within adjacent political jurisdictions, considering the service required, availability of nearby land for other commercial uses, population, character, density, etc.

C. That the zoning Commissioner is satisfied that all requirements of this section and all other legal requirements of Baltimore County will be met in granting the proposed service station and that the plans for the use have been reviewed and commented upon by those agencies listed below, which are deemed by the zoning Commissioner to have an appropriate interest in the individual case under consideration, or any other agency deemed by him to have a specific interest therein:

1. Department of Public Works
2. Building Engineer's Office
3. Bureau of Traffic Engineering
4. Fire Bureau
5. State Roads Commission

D. That, at the time the Petition is heard, there is evidence of the probability of a reasonable public need for the proposed automotive-service station. The zoning Commissioner shall consider that the presence of one abandoned service station within a one-mile radius of the site of the proposed service station establishment, absent evidence to the contrary, is such a rebuttable presumption that there is no evidence of the probability of a reasonable public need for such proposed service station. The zoning Commissioner may find, however, that this rebuttable presumption is rebutted by market data or other evidence submitted by the petitioner."

It is to be noted that in addition to the requirement of this regulation that there be "evidence of the probability of a reasonable public need for the proposed automotive-service station",

order of the Board is reversed, with instructions that the petition for special exception for an automotive-service station should be denied. Counsel will prepare an order in accord with this opinion.

Kenneth C. Proctor /s/

Judge

December 9, 1968

there are several Maryland decisions which hold that need is a prerequisite to the granting of a special exception in such a case. Elliott v. James, 233 Md. 76, 80; Board of County Commissioners v. v. Mahan, Md. _____; D.R. 10-28-68. In the latter case, the Court of Appeals said:

"Indeed, in Howard & City Council of Baltimore vs. Higgins, 107 Md. 514, 527, 80 Md. 804, 808-09 (1907) we indicated that the number of filling stations in the vicinity was one of the factors to be considered in sustaining a denial of a special exception for a filling station (11 filling stations within four blocks of the proposed site). See Huffman vs. Mayor and City Council of Baltimore, 187 Md. 595, 51 A.2d 260 (1947). See also E. McQuillan, Municipal Corporations, Sec. 25.170 at 602 (2nd Ed. 1965)."

In the present case, Petitioner produced two witnesses - David R. Horn, District Land Manager of the Sun Oil Company, and Augustine J. Muller, a registered engineer. Mr. Horn testified in direct examination that the granting of a special exception for this property would not be contrary to the provisions of the Baltimore County Zoning Regulations, Sec. 502.1; that there was a need for this filling station in the area; that there were three factors used by him to determine such need, viz., (1) the density of the area, (2) the location in the area of the Social Security buildings, where some 12,000 people are employed, and (3) the needs of the credit card customers of his company. He testified that "There is no closed station lying within one mile of the proposed site" (Tr. 7). He further testified concerning traffic counts made by him on four successive days between 6:00 a.m. and 12 midnight. The average daily count was 6,617 vehicles for an 10 hour day; that during peak traffic hours the average number of vehicles per hour travelling in front of the proposed site was 620 and on the opposite side of the street it was 613.

On cross examination, he testified that he did not know

INGLESIDE REALTY CORPORATION		No. 68-72-RX
SE/5 Inglewood Ave. 283' N. Johnnycake Road		1st District
C.N.S. District and SE for Automotive Service Station		0.7022 Acres
August 15, 1967	Petition filed	
Sept. 22	Redistricting and SE DENIED by Z.C.	
Oct. 4	Order of Appeal to C.B. of A.	
Jan. 27, 1968	Board granted SE (property placed in C.N.S. Dist. by Bill #23)	
July 23	Order for Appeal filed in the Circuit Court	
Sept. 25	Record of proceedings filed in the Circuit Court	
Dec. 9	Board REVERSED - Judge Proctor	

PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY
 Ingleside Realty Corporation

XXXX we, Ingleside Realty Corporation, 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 changed pursuant to the Zoning Law of Baltimore County, from an M9-districted tract to a CNE District zone, for the following reasons:

To establish a district as proposed by the Baltimore County planning Board for the construction of an automotive service station

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 Automotive service station

Property is to be posted and advertised in accordance with the Zoning Regulations. I, or we, agree to pay expenses of above 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 for Baltimore County.

DATE 9/27/68 BY W. J. Mahan

BY W. J. Mahan Petitioner's Attorney
John E. Doherty Contract purchaser
John E. Doherty Legal Owner

Address 1800 Russell St Baltimore, Md.
 Address 1800 Russell St Baltimore, Md.

ORDERED By The Zoning Commissioner of Baltimore County, this 15th day of August, 1968, 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 21st day of September, 1968, at 11:00 o'clock P.M.

John E. Doherty
 Zoning Commissioner of Baltimore County

68-72-RX
 2-B
 WEST-AREA
 SA-1-F
 "X"

Pursuant to the advertisement, posting of property, and public hearing on the above petition and it appearing that by reason of _____

the above Reclassification should be had, and it further appearing that by reason of _____

a Special Exception for a _____ should be granted

IT IS ORDERED by the Zoning Commissioner of Baltimore County this _____ day of _____, 1967, that the herein described property or area should be and the same is hereby reclassified from a _____ zone to a _____ zone, and/or a Special Exception for a _____ should be and the same is granted from and after the date of this order.

Zoning Commissioner of Baltimore County

Pursuant to the advertisement, posting of property and public hearing on the above petition _____ the petitioner gave no evidence to substantiate his request and for that reason the petition is denied both as to redistricting _____ to a C. N. S. District and the special exception for Automotive Service Station _____

redistricting _____ the above _____ should NOT BE HAD, and/or the Special Exception should NOT BE GRANTED

IT IS ORDERED by the Zoning Commissioner of Baltimore County, this _____ day of _____, 1967, that the above _____ be and the same is hereby DENIED and that the above described property or area be and the same is hereby continued as to remain _____ undistricted _____ the Special Exception for _____ Automotive Service Station _____ be and the same is hereby DENIED

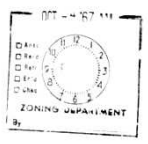
Zoning Commissioner of Baltimore County

RE: Petition for a CNS District and Special Exception for Automotive Service Station, for Ingleside Realty Corp., located S/E/S Ingleside Avenue, 108' E. of Johnny Cake Road 1st District Ingleside Realty Corporation Petitioner

BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY NO. 68-72-RX

ORDER OF APPEAL

MR. CLERK: Please enter an Appeal in the above-captioned case to the Board of Appeals for Baltimore County.



John Warfield Armiger Attorney for Petitioner 200 Padonia Road, East Cockeysville, Maryland 21030 666-0440

PET. ZONING DESCRIPTION SPECIAL EXCEPTION FOR FILLING STATION (gasoline) #68-72-RX

1st ELECTION DISTRICT BALTIMORE COUNTY, MARYLAND

SUN OIL COMPANY September 20, 1966 JOHNNY CAKE & INGLESIDE

BEGINNING for the same at a point on the southeast side of Ingleside Avenue (60' wide) at the distance of 283' more or less, measured northeasterly, from the intersection formed by the southeast side of Ingleside Avenue and the northeast side of Johnnycake Road, said point of beginning being in the division line between Lot #43 and Lot #42 of Block #1, Plot #4 of "Catoonsville Manor", a subdivision recorded among the plat records of Baltimore County in plat book WPC 6, Folio 160, thence leaving Ingleside Avenue and binding on the division line between Lot #43 and Lot #42 and continuing the same course binding on the division line between Lot #20 and Lot #21 of the aforesaid plot, S42°17'40" E 175.00', thence leaving the division line between Lot #20 and Lot #21 and running for lines of division the two following courses and distances, viz: 1) S47°42'20" W 174.79'; 2) N42°17'40" W 175.00' to the southeast side of Ingleside Avenue, thence binding on the southeast side of Ingleside Avenue N47°42'20" E 174.79' to the place of beginning.

CONTAINING 0.7022 acres of land more or less.

BEING part of Lots #1 to #6, part of Lots #12 to #20, and part of Lots #43 to #50 of Block #1, Plot #4 of "Catoonsville Manor" a subdivision recorded among the plat records of Baltimore County in plat book WPC 6, Folio 160, and being part of the land acquired by the Ingleside Realty Corporation under the three following deeds: (1) Deed dated December 1, 1953 and recorded among the land records of Baltimore County in Liber CLD 2501, Folio 312, from John E. Ruth to Ingleside Realty Corporation. (2) Deed dated April 10, 1956 and recorded among the land records of Baltimore County in Liber CLD 3227, Folio 186, from John E. Ruth, unmarried, to Ingleside Realty Corporation. (3) Deed dated September 29, 1959 and recorded among the land records of Baltimore County in Liber WJR 3004, Folio 418, from Regan M. Doub and Dorothy A. Doub, his wife, to Ingleside Realty Corporation.

May 4, 1967 DATE [Signature] AUGUSTINE J. WULSK, P.E. & L.S. #1391

LAW OFFICES JOHN WARFIELD ARMIGER 200 PADONIA ROAD, EAST COCKEYSVILLE, MARYLAND 21030

May 23, 1968

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

Re: Case No. 68-72-RX Ingleside Realty Corporation

Gentlemen: I would like to take this opportunity to officially inform you of the passage of Bill No. 23, Baltimore County Council, enacted May 8, 1968, adopting a CNS zone which embraces the property which is the subject of the above-entitled case.

It is requested that this information be placed in the file on this matter.

Sincerely yours, [Signature] John W. Armiger

JWA:ag cc: Harry S. Swartzwelder, Jr., Esquire 1709 Munsey Building Baltimore, Maryland 21202

Mr. David Horne c/o Sun Oil Company 1910 Russell Street Baltimore, Md. 21230

Rec'd 5-24-68 9:00 am

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING COUNTY OFFICE BUILDING TOWSON, MARYLAND 21286

SUBJECT: Petition for a CNS district and Special Exception for Automotive Service Station, for Ingleside Realty Corporation, located S/E/S Ingleside Avenue, 108' E. of Johnny Cake Rd. 1st District (Item 9, August 22nd, 1967)

Dear Mr. Armiger: The Zoning Advisory Committee has reviewed the subject petition and has the following comments to offer:

BUREAU OF ENGINEERING: Water - Existing 12" water in Ingleside Avenue. Sewer - Existing 8" sanitary sewer in Ingleside Avenue. Adequacy of existing utilities to be determined by developer or his engineer.

BUREAU OF TRAFFIC ENGINEERING: The entrances must be revised to indicate a 10' tangent distance at the interior property lines.

ZONING ADMINISTRATION DIVISION: If the petition is granted, no company may be made until such time as plans have been submitted and approved and the property inspected for compliance to the approved plan.

The above comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems that may have a bearing on this case. The Director and/or the Deputy Director of the Office of Planning and Zoning will submit recommendations on the appropriateness of the requested zoning 10 days before the Zoning Commissioner's hearing.

- The following members had no comment to offer: Project Planning Division, Health Department, Bureau of Fire Prevention, State Roads Commission, Building Engineer, Board of Education, Industrial Development.

Very truly yours,

[Signature] MRS. E. DREN, Principal Zoning Technician

cc: Carlyle Brown-Bureau of Engr.; C. Richard Moore, Bureau of Traffic Engr.

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. John G. Rue, Zoning Commissioner Date: September 8, 1967 FROM: George E. Gsvelli, Director

SUBJECT: Petition #68-72-RX. Redistricting from Undistricted to C.N.S. District. Special Exception for Automotive Service Station. Southeast side of Ingleside Avenue 283 feet North of Johnnycake Road. Being the property of Ingleside Realty Corp.

RE: District HEARING: Thursday, September 21, 1967 (1:00 P.M.)

The staff of the Office of Planning and Zoning has reviewed the subject petition for creation of a C.N.S. District together with a Special Exception for an automotive service station. It has the following advisory comments to make with respect to pertinent planning factors:

- 1. In connection with its making of comprehensive recommendations for application of districts, the Planning Board has designated the area vital to the intersection of Ingleside Avenue and Johnnycake Road as a neighborhood shopping district (C.N.S.). The Planning Board is expected to adopt a final report on its district recommendations in September and transmit those recommendations to the County Council for legislative action. 2. From a planning viewpoint, the C.N.S. designation indicates that the site is generally suited for automotive service station purposes subject to the tests required for Special Exception. The staff makes no comment as to whether or not additional automotive service station facilities are needed here; it notes that the petitioner must show evidence of the probability of a reasonable public need for a service station. Our land use records as of June indicate that there were no abandoned stations within a one-half mile radius and there is one abandoned station within a mile radius. There are 3 automotive service stations along the portion of Ingleside Avenue extending westerly to Route 40. 3. The subject site exceeds the minimum requirements of the regulation for automotive service stations. Ancillary uses could be accommodated on the site, but are not indicated.

GEG:bms

RE: PETITION FOR REDISTRICTING - UNDISTRICTED TO C.N.S. DISTRICT and SPECIAL EXCEPTION FOR AUTOMOTIVE SERVICE STATION SE/S Ingleside Avenue 283' N. of Johnnycake Road 1st District Ingleside Realty Corporation (Sun Oil Corporation, Contr. Pur.) Petitioner

BEFORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY No. 68-72-RX

OPINION

The petitioner in this case, Ingleside Realty Corporation, requests the granting of a C.N.S. District on the subject lot, and a special exception for a gasoline service station. The property is .7 acres, and is situated on the south side of Ingleside Avenue approximately 280 feet northeast of Johnnycake Road, in the First Election District of Baltimore County.

The zoning on the subject property is Business Major; the lot is presently unimproved and is used for the storage of contractors' equipment, as indicated on Petitioner's Exhibit No. 4. The zoning and land uses immediately surrounding the property are as follows: On the south side of Ingleside Avenue on both sides of the subject tract the zoning is Business Major; across Ingleside Avenue the zoning is Business Local; along the south side of Ingleside Avenue going northeasterly from Johnnycake Road there are a number of stores, offices and restaurants. Then the proposed gas station site, and a High's milk store and a dry cleaning store. On the north side of Ingleside going northeasterly from Johnnycake Road is a Mobil gas station, a tavern directly across from the subject property, a Sinclair gas station and a 7-11 food store.

Since the hearing of this case before the Board on April 23, 1968 the County Council enacted Bill No. 23 on May 9, 1968, which was signed by the County Executive on May 10, 1968 and will become effective on June 29, 1968. The passage of this Bill places the subject property in a C.N.S. District. By reason of this action by the County Council, it is unnecessary for the Board to rule on the petitioner's request for a C.N.S. District, and the only question before the Board is the request for a special exception for a gasoline service station.

Ingleside Realty Corp. - 2 - No. 68-72-RX

Without going into detail as to the testimony of each witness, the Board finds as a fact that the special exception is in accordance with the requirements of Sections 405.3 and 502.1 of the Baltimore County Zoning Regulations.

A witness for the Sun Oil Company, the contract purchaser, testified that there was a definite need for a gas station in this location because of the high population density of the area, the nearby Social Security complex, which now employs approximately 13,000 persons, the need to service Sun Oil's credit card holders in the area, and the heavy traffic passing by the site.

The protesters primarily felt that there are enough gas stations in the area and do not want to see any new stations constructed. One of the protesters lives directly behind the tavern across the street and is mainly concerned with traffic congestion. It is his feeling that persons using the station might cross the tavern parking lot to reach Johnnycake Road without passing through the traffic light at Ingleside Avenue. Two of the other three witnesses for the protesters were filling station operators themselves, whose primary reason for opposing the petition appears to be the elimination of competition.

From oil testimony, the Board finds as a fact that the petitioner has complied with Section 405.3 of the Zoning Regulations, and further, that a gasoline service station here would not in any way violate Section 502.1 of the Zoning Regulations.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 27th day of June, 1968, by the County Board of Appeals ORDERED, that the special exception for an automotive service station petitioned for is hereby GRANTED, subject to site plan approval by the Office of Planning and Zoning, Bureau of Public Services, and the State Roads Commission.

Any appeal from this decision must be in accordance with Chapter 1100,

subtitle B of the Maryland Rules of Procedure, 1961 edition.

COUNTY BOARD OF APPEALS

OF BALTIMORE COUNTY

William S. Baldwin, Chairman

W. Giles Parker

John A. Slowik

Appealed 7/23/68

RE: PETITION FOR REDISTRICTING : IN THE
from Undistricted to C.N.S. : CIRCUIT COURT
District and SPECIAL EXCEPTION :
for Automotive Service Station :
5515 Ingleside Avenue 283' N. of : FOR
Johnnycake Road : BALTIMORE COUNTY
1st District :
Ingleside Realty Corporation, : AT LAW
Petitioner :
Sun Oil Corporation, :
Contract Purchaser : Misc. Docket No. 8
Zoning File #68-72-RX : Folio No. 337
: File No. 4020

CERTIFICATE OF NOTICE

Mr. Clerks:

Pursuant to the provisions of Rule 1101-B (4) of the Maryland Rules of Procedure; William S. Baldwin, John A. Slowik and W. Giles Parker, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the Appeal to the representative of every party to the proceeding before it; namely, John Warfield Armiger, Esq., 200 Padonia Road, East, Cockeysville, Maryland 21093, Attorney for the Petitioners, and Harry S. Swartzwelder, Jr., Esq., 341 St. Paul Place, Baltimore, Maryland 21202, Attorney for the Protestants, and Mr. P. T. Lemmon, 1029 St. Paul Street, Baltimore, Maryland 21218, and Mrs. Richard A. Trautle, 8714 Jenifer Road, Baltimore, Maryland 21204, and Mr. Ragan Daub, 6400 Johnnycake Road, Baltimore, Maryland 21207, and Mrs. Mary Mangelli, Secretary, First District Community Council, Inc., 515 Valcour Road, Baltimore, Maryland 21228, Protestants, a copy of which notice is attached hereto and prayed that it may be made a part thereof.

Edith T. Eisenhart, Secretary
County Board of Appeals of Baltimore County
County Office Building, Towson, Md. 21284
Valley 3-3000, Ext. 570

I hereby certify that a copy of the foregoing Certificate of Notice has been mailed to John Warfield Armiger, Esq., 200 Padonia Road, East, Cockeysville, Maryland 21093, Attorney for the Petitioners, and Harry S. Swartzwelder, Jr., Esq., 341 St. Paul Place, Baltimore, Maryland 21202, Attorney for the Protestants, and Mr. P. T. Lemmon, 1029 St. Paul Street, Baltimore, Maryland 21218, and Mrs. Richard A. Trautle, 8714 Jenifer Road, Baltimore, Maryland 21204, and Mr. Ragan Daub, 6400 Johnnycake Road,

cc: Zoning
Solicitor

- 2 -

Baltimore, Maryland 21207, and Mrs. Mary Mangelli, Secretary, First District Community Council, Inc., 515 Valcour Road, Baltimore, Maryland 21228, Protestants, on this 30th day of July, 1968.

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

MARGERY GEHEGAN, et al * ZONING FILE #68-72-RX
vs. * IN THE CIRCUIT COURT
* FOR BALTIMORE COUNTY
WILLIAM S. BALDWIN, et al * Misc. #237/4020
COUNTY BOARD OF APPEALS OF
BALTIMORE COUNTY *

OPINION

On September 22, 1967, Ingleside Realty Corporation as owner, and Sun Oil Company, as contract purchaser (herein collectively called "Petitioner") filed a petition to redistrict certain property on Ingleside Avenue "from an un-districted tract to a CNS district and for a special exception for a filling station". On the same day the Zoning Commissioner signed an order denying the petition. On October 4, 1967, Petitioner filed an order for appeal to the County Board of Appeals of Baltimore County. Hearing on this appeal was held on April 23, 1968. On June 27, 1968, the Board filed its opinion and order under which (1) it recited that the property had been placed in a CNS District by County Council Bill No. 23 passed May 9, 1968, signed May 10, 1968, and effective June 29, 1968 and (2) it granted a special exception for the operation of an automotive-service station under Baltimore County Zoning Regulations Secs. 405.3 and 502.1. On July 23, 1968, Protestants filed an appeal to this Court.

Under the view taken by this Court the controlling regulation is Sec. 405.3 which reads as follows:

"Findings necessary to grant special exceptions. In addition to the findings required under Subsection 502.1, the Zoning Commissioner shall make each of the findings set forth below before granting any special exception required to permit an automotive-service station:

A. That the proposed use will not create a traffic hazard or excessive traffic congestion because of

Rec'd 12-10-68
9 AM

its location in relation to similar uses, or because of its location in relation to other buildings or proposed buildings on or near the site and the traffic pattern to and from such buildings, or by reason of its location on or near a vehicular way or pedestrian entrance or crossing to a school, park, playground, or hospital, or other place of public use or assembly.

D. That the use will not adversely affect the general welfare or orderly development of the general neighborhood or area in which the station is proposed, including nearby areas within adjacent political jurisdictions, considering the service required, availability or scarcity of land for other commercial uses, population, character, density, etc.

C. That the Zoning Commissioner is satisfied that all requirements of this section and all other legal requirements of Baltimore County will be met in operating the proposed service station and that the plans for the use have been reviewed and commented upon by those agencies listed below, which are deemed by the Zoning Commissioner to have an appropriate interest in the individual case under consideration, or any other agency deemed by him to have a specific interest therein:

1. Department of Public Works
2. Building Engineer's Office
3. Bureau of Traffic Engineering
4. Fire Bureau
5. State Roads Commission

D. That, at the time the Petition is heard, there is evidence of the probability of a reasonable public need for the proposed automotive-service station. The Zoning Commissioner shall consider that the presence of one abandoned service station within a one-half mile radius or two such stations within a one mile radius of the site of the proposed service station establishes, absent evidence to the contrary, a prima facie presumption that there is no evidence of the probability of a reasonable public need for such proposed service station. The Zoning Commissioner may find, however, that this prima facie presumption is rebutted by market data or other evidence submitted by the petitioner."

It is to be noted that in addition to the requirement of this regulation that there be "evidence of the probability of a reasonable public need for the proposed automotive-service station",

there are several Maryland decisions which hold that need is a prerequisite to the granting of a special exception in such a case. Elliot v. Javes, 233 Md. 76, 80; Board of County Commissioners, etc. v. Bluhman, Md. _____; D.R. 10-28-68. In the latter case, the Court of Appeals said:

"Indeed, in Hayes & City Council of Baltimore vs. Biemann, 187 Md. 514, 523, 50 Md. 808-95 (1947) we indicated that the number of filling stations in the vicinity was one of the factors to be considered in sustaining a denial of a special exception for filling station (11 filling stations within four blocks of the proposed site). See Hoffman vs. Hayes and City Council of Baltimore, 187 Md. 523, 51 A.2d 768 (1947). See also S. S. McGuillin, Municipal Corporations, Sec. 25, 178 at 602 (3rd Ed. 1965)."

In the present case, Petitioner produced two witnesses - David R. Horn, District Lead Manager of the Sun Oil Company, and Augustine J. Muller, a registered engineer. Mr. Horn testified in direct examination that the granting of a special exception for this property would not be contrary to the provisions of the Baltimore County Zoning Regulations, Sec. 502.1; that there was a need for this filling station in the area; that there were three factors used by him to determine such need, viz., (1) the density of the area, (2) the location in the area of the Social Security buildings, where some 13,000 people are employed, and (3) the needs of the credit card customers of his company. He testified that "There is no closed station lying within one mile of the proposed site" (Tr. 7). He further testified concerning traffic counts made by him on four successive days between 6:00 a.m. and 12 midnight. The average daily count was 6,617 vehicles for an 18 hour day; that during peak traffic hours the average number of vehicles per hour travelling in front of the proposed site was 629 and on the opposite side of the street it was 613.

On cross examination, he testified that he did not know

the population within a mile radius of the site (Tr. 23); that he had no idea of the number of people living in that area but "would say probably we are talking about 5,000" (Tr. 23); that this was "an educated guess" (Tr. 36); that he did not know how many of the social security employees lived in Baltimore city (Tr. 36); that there were three or four alternate routes from and to the Social Security buildings to and from Baltimore city, in addition to that which passed the proposed site (Tr. 37); that he could not state the number of persons holding credit cards of his company in the area within a one mile radius of the site (Tr. 38). When asked how many service stations there were within a one mile radius of the site, his answer was "I would say approximately six stations" (Tr. 24). Other testimony in the case was to the effect that there were seventeen stations within that area and Mr. Horn said he did not disagree with such evidence (Tr. 27). He admitted that there was "one service station that was converted to a bread and milk dairy type of facility", located approximately 550 feet from the site (Tr. 28); that there was another artwhale filling station located approximately 8/10ths of a mile from the site which had undergone two conversions, one to a motorcycle shop and subsequently to a steak house (Tr. 29-30).

Mr. Muller's testimony was limited to the following: he prepared the plat filed with the petition; the layout on the plat conforms in all respects to Council Bill No. 40 regarding CNS Districts; the site has access to all public utilities; the site distances in each direction from the site are adequate so far as traffic is concerned; the plot plan had been approved by the Building Engineer, the Bureau of Traffic Engineering and the Fire Bureau. However, he had nothing whatsoever to say about need for an automotive-service station at this site, or about filling stations

within the area which had been closed or converted to other uses.

Testimony produced by Protestants (and not contradicted by Petitioner) was that at least four, and possibly 5, filling stations within a one mile radius of the proposed site had been converted to other uses.

Under Baltimore County Zoning Regulations, Sec. 405.3, one of the "Findings necessary to grant special exceptions" is that "there is evidence of the probability of a reasonable public need for the proposed automotive-service station." This Section creates a rebuttable presumption that there is no evidence of such a probability if there are two abandoned service stations within a one mile radius of the proposed site. This Section concludes with the statement "The Zoning Commissioner may find, however, that this prima facie presumption is rebutted by market data or other evidence submitted by the petitioner." In my judgment, the evidence in this case clearly established the presumption, referred to in this Section, and there is no evidence of any substance to rebut such presumption. Petitioner did not produce any evidence of market data or anything else which would tend to demonstrate a need. The prime witness for Petitioner did not even know the number of persons who lived in the area and hold credit cards issued by his company who would, of course, be the prime source of customers for any automotive-service station constructed on this site.

It is to be noted that in its opinion the County Board of Appeals of Baltimore County made no reference whatsoever to the presumption discussed above, nor to any evidence which it considered to be rebuttal of such presumption. The Court finds that the Board, in granting the special exception requested in this case, acted in an arbitrary and capricious manner and, accordingly, the

order of the Board is reversed, with instructions that the petition for special exception for an automotive-service station should be denied. Counsel will prepare an order in accord with this opinion.

Kenneth C. Proctor /s/

Judge

December 9, 1968

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
TOWSON, MARYLAND

District: 1st
Posted for: *Ingleside Realty Corp*
Petitioner: *Ingleside Realty Corp*
Location of property: *3 1/2 S of Ingleside Ave. 200' west of Chesapeake Rd*
Location of Signs: *300' west of Ingleside Ave. 1st E. of Ingleside Blvd*
Remarks: *see plat*
Posted by: *John C. Rose*

Date of return: *10/2/68*

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

J.M. Arnsperger, Esq.,
200 Fodor's Road, East
Towson, Md. 21286

County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21284

Your petition has been received and accepted for filing this
15th day of August 1967

John C. Rose,
Zoning Commissioner

Petitioner: *Automotive Service Station*

Petitioner's Attorney: *J. M. Arnsperger, Esq.* Reviewed by *James E. Shaw*
Chairman of Advisory Com.

PETITION FOR
REZONING AND
SPECIAL EXCEPTION
IN DISTRICT
ZONING: From Undistricted
to C.S.S. District/Petition for
Special Exception for Automotive
Service Station.

LOCATION: Southeast side of
Ingleside Avenue 285 feet north
of Chesapeake Road.

DATE & TIME: THURSDAY,
SEPTEMBER 21, 1967 at 1:00
P.M.

PUBLIC HEARING: Room 108,
County Office Building, 111 W.
Chesapeake Avenue, Towson,
Maryland.

The Zoning Commissioner of
Baltimore County, by authority
of the Zoning Act and Regulations
of Baltimore County, will
hold a public hearing
From Undistricted
To C.S.S. District
Petition for Special Ex-
ception for Automotive
Service Station.

All that parcel of land in
the First District of Baltimore
County.

BEGINS at a point on the southeast
side of Ingleside Avenue (60' side)
the distance of 285 feet more
or less, measured north-south-
erly, from the intersection
formed by the southeast side
of Ingleside Avenue and the
northeast side of Chesapeake
Road, said point of beginning
being in the division line be-
tween Lot #185 and Lot #182 of
Block #1, Plat #1 of "Catonville
Masses", a subdivision
recorded among the plat
records of Baltimore County

to plat book WTC #, Folio
160, thence leaving Ingleside
Avenue and heading on the
division line between Lot #185
and Lot #182 and continuing the
same course heading on the
division line between Lot #185
and Lot #182 of the aforesaid
plat, S 42 degrees 17' 10" W
E 172.00', thence leaving the
division line between Lot #185
and Lot #182 running for
11.00' of division the on fol-
lowing courses and distances,
viz: D) S 47 degrees 47' 20" W
171.79'; 2) S 42 degrees
17' 10" W 112.00' to the south-
east side of Ingleside Avenue,
N 47 degrees 17' 20" W 171.79'
to the place of beginning.

CONTAINING 0.7022 acres
of land more or less.

BEING part of Lots #1 to
#6, part of Lots #12 to #20,
and part of Lots #43 to #50
of Block #1, Plat #1 of "Catonville
Masses", a subdivi-
sion recorded among the plat
records of Baltimore County
in plat book WTC #, Folio 160,
and being part of the land ac-
quired by the Ingleside Realty
Corporation under three
deeds: (1) deed dated
December 1, 1953 and recorded
among the land records of Bal-
timore County in Liber GLB
2581, Folio 302, from John E.
Hoah to Ingleside Realty Cor-
poration; (2) deed dated April
10, 1958 and recorded among
the land records of Baltimore
County in Liber GLB 2537,
Folio 196, from John E. Hoah,
successor, to Ingleside Realty
Corporation; (3) deed dated
September 29, 1955 and recorded
among the land records of
Baltimore County in Liber WTB
2068, Folio 115, from Roger M.
Doak and Dorothy A. Doak, his
wife, to Ingleside Realty Cor-
poration.

Being the property of Ingleside
Realty Corporation, as shown on
plat plan filed with the
Zoning Department.

Hearing Date: Thursday, Sep-
tember 21, 1967 at 1:00 P.M.
Public Hearing: Room 108,
County Office Building, 111 W.
Chesapeake Avenue, Towson,
Maryland.

IN WITNESS OF
JOHN C. ROSE,
ZONING COMMISSIONER
OF BALTIMORE COUNTY,
August 30

OFFICE OF
THE BALTIMORE COUNTY

THE COMMUNITY NEWS
Kensington, Md

THE HERALD - ARGUS
Catonville, Md

No. 1 Newburg Avenue CATONVILLE, MD.

September 4, 1967

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

was inserted in THE BALTIMORE COUNTYMAN, a group of weekly news-
papers published in Baltimore County, Maryland, once a week for One
successive weeks before the 4th day of Sept., 1967, that is to
say the same was inserted in the issues of

August 30, 1967

THE BALTIMORE COUNTY

By *Paul J. Morgan*
Editor and Manager

PETITION FOR REZONING AND
SPECIAL EXCEPTION
IN DISTRICT
ZONING: From Undistricted to C.S.S. District/Petition for Special Ex-
ception for Automotive Service Station.

LOCATION: Southeast side of Ingleside
Avenue 285 feet north of
Chesapeake Road.

DATE & TIME: THURSDAY,
SEPTEMBER 21, 1967 at 1:00
P.M.

PUBLIC HEARING: Room 108,
County Office Building, 111 W.
Chesapeake Avenue, Towson,
Maryland.

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Zoning Act and Regulations of Baltimore
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From Undistricted to C.S.S. District
Petition for Special Ex-
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Being the property of Ingleside
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plat plan filed with the
Zoning Department.

Hearing Date: Thursday, Sep-
tember 21, 1967 at 1:00 P.M.
Public Hearing: Room 108,
County Office Building, 111 W.
Chesapeake Avenue, Towson,
Maryland.

IN WITNESS OF
JOHN C. ROSE,
ZONING COMMISSIONER
OF BALTIMORE COUNTY,
August 30

CERTIFICATE OF PUBLICATION

TOWSON, MD. August 31st 1967

THIS IS TO CERTIFY, that the annexed advertisement was
published in THE JEFFERSONIAN, a weekly newspaper printed
and published in Towson, Baltimore County, Md. once in each
of one (1) week before the 31st
day of September 1967, the first publication
appearing on the 31st day of August
1967.

THE JEFFERSONIAN

DeLank Director
Manager

Cost of Advertisement, \$

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
TOWSON, MARYLAND

District: 1st Date of Posting: *Sept 2, 1967*

Posted for: *Ingleside Realty Corp*

Petitioner: *Ingleside Realty Corp*

Location of property: *3 1/2 S of Ingleside Ave. 285' N of Chesapeake Rd*

Location of Signs: *3 1/2 S of Ingleside Ave. opposite road end of Howard*

Remarks: *see plat*

Posted by: *John C. Rose* Date of return: *Sept 1, 1967*

INVOICE
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE
No. 49271
DATE: 9/25/68
Division of Collection and Receipts
COURT HOUSE
TOWSON, MARYLAND 21284
To: *Herry S. Swartzwelder, Jr., Esq.*
301 St. Paul Place
Baltimore, Md. 21202
Zoning Dept. of Balto. Co.
REPORT TO ACCOUNT NO. 01-712
QUANTITY: 1
TOTAL AMOUNT: \$8.00
COST: \$8.00
Cost of Certified documents - Case No. 68-72-RE
Ingleside Realty Corp.
3 1/2 S of Ingleside Avenue 283'
N. of Chesapeake Road
1st District
IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND
MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON, MARYLAND 21284

INVOICE
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE
No. 49623
DATE: Oct. 10, 1967
Division of Collection and Receipts
COURT HOUSE
TOWSON, MARYLAND 21284
Zoning Dept. of Balto. Co.
To: *John Warfield Arnsperger, Esq.*
200 Fodor's Road, East
Catonsville, Md. 21030
REPORT TO ACCOUNT NO. 01-622
QUANTITY: 1
TOTAL AMOUNT: \$72.00
COST: \$72.00
Cost of appeal -- Ingleside Realty Corp
#68-72-RX
IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND
MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON, MARYLAND 21284

INVOICE
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE
No. 48450
DATE: Aug. 29, 1967
Division of Collection and Receipts
COURT HOUSE
TOWSON, MARYLAND 21284
Zoning Dept. of Balto. Co.
To: *David E. Horn*
1910 Russell Street
Baltimore, Md. 21230
REPORT TO ACCOUNT NO. 01-622
QUANTITY: 1
TOTAL AMOUNT: \$50.00
COST: \$50.00
Petition for Undistricting and Special Exception
for Ingleside Realty Corp.
#68-72-RX
IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND
MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON, MARYLAND 21284

INVOICE
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE
No. 49605
DATE: Oct. 3, 1967
Division of Collection and Receipts
COURT HOUSE
TOWSON, MARYLAND 21284
Zoning Dept. of Balto. Co.
To: *Sam J. J. Company*
1910 Russell Street
Baltimore, Md. 21230
REPORT TO ACCOUNT NO. 01-622
QUANTITY: 1
TOTAL AMOUNT: \$76.00
COST: \$76.00
Advertising and posting of property for Ingleside Realty Corp.
#68-72-RX
IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND
MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON, MARYLAND 21284

GENERAL NOTES:

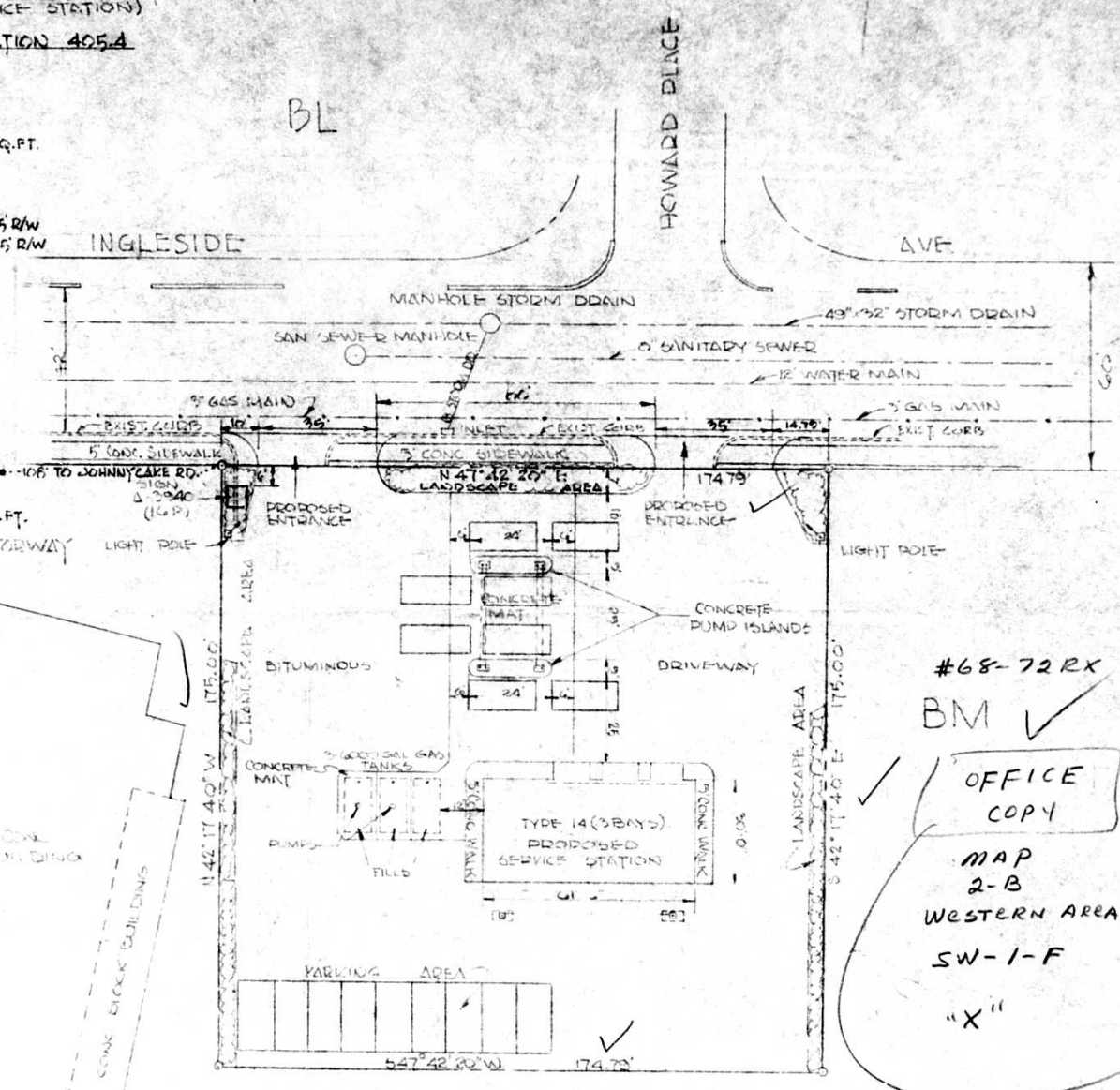
AREA OF PROPERTY - 30,588 SQ. FT.
 PRESENT USE OF PROPERTY - VACANT
 PROPOSED USE OF PROPERTY - SERVICE STATION
 PRESENT ZONING OF PROPERTY - BM
 PROPOSED ZONING OF PROPERTY - BM SPECIAL EXCEPTION (C.N.S. DISTRICT (SERVICE STATION))

GENERAL NOTES RELATIVE TO BILL #40 SECTION 405.4

A) SITE LAYOUT AND STREET IMPROVEMENTS

1) SITE DIMENSIONS	REQUIRED	PROVIDED
AREA *		
(1) 4 FUEL SER. BAYS		
SER. T = 1500'	10,500 SQ. FT.	30,588 SQ. FT.
WIDTH - 2 ACCESS DRIVES = 65	130'	174.75'
2) SETBACKS	PERMITTED	PROVIDED
a) MAIN STRUCTURE	60' & RD. 35' R/W	115' & RD. 85' R/W
RUMPS ISLAND SIGN	40' & RD. 15' R/W	55' & RD. 25' R/W
	6' R/W	6' R/W
3) ACCESS & STREET IMP.	PERMITTED	PROVIDED
a) ACCESS DRIVES	2	2
CORB TANG.	10'	10' & 14.75'
b) ENTR. WIDTH	45'	35'
4) INTER-CURB VEH. RES. CAP.	REQUIRED	PROVIDED
b) STORAGE SPACE FOR FUEL SERVICE	4	4
5) PARKING SPACES	REQUIRED	PROVIDED
3 SERVICE BAYS = 3	9	9
6) APPEARANCE		
2) LANDSCAPING	REQUIRED	PROVIDED
5% OF 30588	1524 SQ. FT.	1745 SQ. FT.

INGLESIDE AVE - CLASS 2 - COMM. MOTORWAY



#68-72 RX
 BM ✓
 OFFICE COPY
 MAP 2-B
 WESTERN AREA
 SW-1-F
 "X"

MULLIS, RAPHAEL & ASSOCIATES, INC.
 REG. ENGINEERS & SURVEYORS
 701 COURTLAND AVE.
 BALTIMORE, MARYLAND



PLAT TO ACCOMPANY ZONING PETITION
 PROPERTY AT 1102 INGLESIDE AVE.
 1ST ELECT. DIST. BALTO CO. MD.
 SCALE: 1"=30'
 MAY 4, 1967
 REVISED JULY 14, 1967