

PETITION FOR ZONING VARIANCE FROM AREA AND HEIGHT REGULATIONS

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

Rose Malinow
Isidore Malinow
I or we, Isidore Malinow, 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 Variance from Section 409.2 b (6). To permit 0 parking spaces instead of the required 32.

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (indicate hardship or practical difficulty)

Area of lot that will be used for expansion, is not of proper size or shape to meet requirements for off street parking spaces, as required by zoning regulations. The proposed expansion will make a better use of this area, and will not be out of character with other uses in the neighborhood.

See attached description

Property is to be posted and advertised as prescribed by Zoning Regulations. I or we agree to pay expenses of above Variance 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: Rose Malinow
Legal Owner: Isidore Malinow
Address: 1199 W. Northern Parkway
Baltimore, Maryland 21210
Petitioner's Attorney: _____
Protestant's Attorney: _____

ORDERED By The Zoning Commissioner of Baltimore County, this 15th day of December, 1974, 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 27th day of January, 1975, at 1:30 o'clock.

Zoning Commissioner of Baltimore County.

(over)

JOSEPH D. THOMPSON, P.E., L.S.
CIVIL ENGINEERS & LAND SURVEYORS

101 SHELL BUILDING • 200 EAST JOFFA ROAD
TOWSON, MARYLAND 21284 • Valley 3-8820

DESCRIPTION FOR ZONING VARIANCE, 1308-1312 REISTERSTOWN ROAD 3RD DISTRICT, BALTIMORE COUNTY, MARYLAND

BEGINNING for the same at a point on the Southwest side of Reisterstown Road, 66 feet wide, at the distance of 99.73 feet measured Northwesterly along the Southwest side of Reisterstown Road from the Northwest side of Church Lane and running thence and binding on the Southwest side of Reisterstown Road North 25 Degrees 11 Minutes 00 Seconds West 62.50 feet thence leaving the Southwest side of Reisterstown Road and running South 64 Degrees 49 Minutes 00 Seconds West 101.00 feet, South 18 Degrees 07 Minutes 43 Seconds East 60.10 feet, North 66 Degrees 45 Minutes 00 Seconds East 5.42 feet, North 65 Degrees 42 Minutes 00 Seconds East 19.75 feet, North 66 Degrees 09 Minutes 00 Seconds East 24.25 feet, North 66 Degrees 20 Minutes 00 Seconds East 52.25 feet, North 68 Degrees 24 Minutes 00 Seconds East 4.76 feet to the place of beginning.

CONTAINING 0.15 acres of land, more or less.

TOGETHER with the use of an alley 15 feet wide for ingress and egress from the above described property to Church Lane as described in a deed dated October 18, 1968 and recorded among the Land Records of Baltimore County in Liber OTG No. 4930, Folio 412.



October 25, 1972

PETITION FOR VARIANCE FROM Sec. 409.2b(6) of Baltimore County Zoning Regulations SW/S of Reisterstown Road 99.73' NW of Church Lane 3rd District Isidore Malinow, et ux

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY MISC. CASE: 5221 DOCKET : 9 FOLIO : 388 No. 73-162-A

OPINION AND ORDER

Protestants have brought this appeal from an Order of the County Board of Appeals of Baltimore County, dated January 22, 1974, which granted to the Petitioner a variance from Section 409.2b(6) of the Baltimore County Zoning Regulations to permit two (2) parking spaces in lieu of the required sixteen (16) parking spaces, subject to the approval of a site plan by the Department of Public Works, the State Highway Administration, and the Office of Planning and Zoning. The property involved is located on the southwest side of Reisterstown Road 99.73 feet northwest of Church Lane in the 3rd Election District of Baltimore County, also known as 1308 and 1310 Reisterstown Road. The original petitioner requested a variance for off-street parking to permit zero (0) parking spaces instead of the required thirty-two (32) spaces upon the land which contains 0.15 acres. The Board granted an amendment to the original petition which excluded 1312 Reisterstown Road, thus reducing the request for variance to that which was granted.

The appeal was filed with this Court on February 20, 1974. A hearing was held by the Court on May 3, 1974 and resumed May 28, 1974, at which time counsel for all concerned parties presented argument. Counsel have submitted

It is this Court's opinion that the purpose for the variance was erroneously held by the Board as sufficiently showing practical difficulty and/or unreasonable hardship, and was therefore arbitrary, unreasonable or capricious. The mere fact that a customer cannot view a large piece of carpet at the involved location can in no way be interpreted as a practical difficulty and/or unreasonable hardship in order to defeat the intentions and spirit of the Zoning Regulations. An existing difficulty of the nature that customers must travel two miles to view a large piece of carpeting is not equivalent to the existing difficulty in this locality of the lack of parking facilities for the entire general public. Mr. Cohen's desire to build the addition for the above purpose is merely to secure a greater return on his lease, which is not a basis for allowing a variance of this nature. Marino v. City of Baltimore, 215 Md. 206, 137 A.2d 198.

Mr. Cohen also testified that there was ample on-street parking with meters, a public parking lot and permitted public parking on Walker Avenue. Mr. Charles Pleury, Sr., on behalf of the Protestants, testified that customers of Mr. Cohen and other retail establishments use the parking facilities of Loyola Federal Savings and Loan Association of which he is Vice-President. The Board's weight given to this testimony is expressed in their Opinion where it is stated that "Loyola Federal can control, by some means, parking for their customers only."

In the record are communications from various County and State agencies to the Zoning Commissioner of Baltimore County concerning the requested variance. The two dealing with transportation, parking, and/or zoning, e.g.

memorandums of fact and law which have been reviewed by the Court. Having reviewed the transcript, memorandums, and the law, the Court is now in a position to make a decision.

The petition was filed pursuant to Section 307 of the Zoning Regulations which states in part:

"Section 307 - VARIANCES

The Zoning Commissioner of Baltimore County and the County Board of Appeals upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from off-street parking regulations and from sign regulations, only in cases where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. No increase in residential density beyond that otherwise allowable by the Zoning Regulations shall be permitted as a result of any such grant of a variance from height or area regulations. Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area, off-street parking or sign regulations, and only in such manner as to grant relief without substantial injury to public health, safety, and general welfare." (Emphasis added.)

The Board found that the Petitioner had "proven practical difficulty and/or unreasonable hardship." This finding was based on the testimony of Mr. Benjamin Cohen, the tenant of 1308 and 1310 Reisterstown Road. Mr. Cohen leases the involved property from the Petitioner, Mr. Isidore Malinow, who due to illness, did not testify before the Board, but is apparently merely the landlord of the property with no other interest in Mr. Cohen's business. The request for the variance arises out of Mr. Cohen's desire to build a one story addition of approximately 29 x 40 feet in dimension, to the involved property. The purpose for the addition is to allow for the storage of large pieces of carpeting allowing his customers to view same at that location, alleviating the necessity to

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Maryland Department of Transportation and the Office of Planning and Zoning of Baltimore County, each state that the request should be denied. Those communications not expressing an opinion are from agencies not related to the parking problem (Board of Education, Department of Public Works, Department of Health, Baltimore County Fire Department). The communication from the Maryland Department of Transportation, dated December 13, 1972, briefly but thoroughly sets forth the problem by stating:

"Parking in the subject area is critical. To grant the requested parking variance would compound existing problems."

This same feeling is continued in the memo from the Office of Planning and Zoning, dated January 15, 1973, where it is stated:

"The Revenue Authority is anticipating opening a public lot on Walker Avenue containing 41 spaces in 5 to 6 weeks.

"The purpose of that lot is to relieve an existing parking shortage. The granting of this variance will utilize nearly all of the public off-street spaces that will be provided by the Revenue Authority.

"This request should be denied."

The opinions expressed in these communications are clearly at odds with those expressed by Mr. Cohen concerning the availability of parking spaces. No mention is made of these communications in the Board's Opinion, showing a lack of evidentiary weight being given to them. This Court feels that the opinions contained in them, expressed by experts, clearly overshadow Mr. Cohen's testimony. The granting of this variance, especially in light of this evidence and on the basis which the Board found practical difficulty and/or unreasonable hardship, is not in keeping with the spirit and

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travel approximately two miles from the involved property to a rented warehouse. The Board concluded that this was a hardship and practical difficulty not only to Mr. Cohen but also to his customers. In its Opinion, the Board wrote that Mr. Cohen would "like to reduce the parking requirements and to build the addition so as to eliminate the existing difficulties." This is amplified in Mr. Cohen's testimony when he explained the purpose of the addition. T.11:

"Q So, in other words, the purpose of the additional space would be just to better serve your customers who will be coming to the front of the building?

A True." (Emphasis added.)

The Court must look at all the facts and circumstances of a zoning appeal in light of the principles set forth in Haldeman v. Board of County Commissioners of Howard County, 253 Md. 298 (1969), where the Court, concerning the scope of review, said:

"We have often repeated the principles here applicable: courts have no power to rezone and may not substitute their judgment for that of the expertise of the zoning authority. Kirkman v. Montgomery County Council, 251 Md. 273, 247 A. 2d 255 (1968); Boley v. Hospital for Consumptives, 246 Md. 197, 227 A. 2d 746 (1967); Board of County Commrs for Prince George's County v. Farr, 242 Md. 315, 218 A2d 923 (1966). It has long been settled that the zoning authority's determination is correct if there were such legally sufficient evidence as would make the question fairly debatable. Ark Read-Mix Concrete Corp. v. Smith, 251 Md. 1, 246 A. 2d 220 (1968); Mavor and City Council of Greenbelt v. Bd. of County Commrs for Prince George's County, 247 Md. 670, 234 A.2d 140 (1967); Ameslans, Inc. v. Lucas, 247 Md. 612, 233 A. 2d 757 (1967). Further, the one who attacks the determination made by the authority must show that it was arbitrary, unreasonable or capricious. Kirkman v. Montgomery County Council, supra; Ameslans, Inc. v. Lucas, supra; Boley v. Hospital for Consumptives, supra; Mavor & City Council of Balto. v. Sapero, 230 Md. 291, 186 A.2d 684 (1962)."

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intent of the off-street regulations, and creates substantial injury to the public health, safety and general welfare. For this reason the variance should be denied.

Other issues raised by Protestants and Baltimore County, Amicus Curiae, having been rendered moot by the above consideration, will not be discussed herein.

For the above reasons, it is this 15th day of July, 1974, by the Circuit Court for Baltimore County, ORDERED that the Order of the County Board of Appeals, dated January 22, 1974 (No. 73-162-A) be and the same is hereby REVERSED.

H. Kemp MacDaniel
H. KEMP MACDANIEL
JUDGE

Copy to:
William D. Wells, Esq.
Barry S. Frame, Esq.
Holman C. Schoenberger, Esq.
County Board of Appeals
John W. Hessian, III, Asst. County Solicitor

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AS: PETITION FOR VARIANCE
 from Sec. 409.2b(6) of
 Baltimore County Zoning
 Regulations
 SW/S of Reisterstown Road
 99.73' NW of Church Lane
 3rd District

IN THE CIRCUIT COURT
 FOR
 BALTIMORE COUNTY
 Case No. 73-162-A

ORDER FOR APPEAL

Please note an Appeal to The Circuit Court for Baltimore County on behalf of the Protestant, Pikeville Professional Building, Inc., from the Order of The County Board of Appeals dated January 22, 1974.

William D. Wells
 WILLIAM D. WELLS
 Pikeville Professional Building
 7 Church Lane
 Pikeville, Maryland 21208
 484-0300
 Attorney for Pikeville Professional Building, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, That on this 15th day of February, 1974, I mailed a copy of the foregoing Order for Appeal to the following named persons: Barry S. Frame, Esquire, Frame & Barnstein, 7th Floor, Tower Building, 222 East Baltimore Street, Baltimore, Maryland 21202, The County Board of Appeals, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland 21204, and to Holman C. Schoenberger, Esquire, 405 West Pennsylvania Avenue, Towson, Maryland 21204.

William D. Wells
 WILLIAM D. WELLS

RE: PETITION FOR VARIANCE
 from Section 409.2b(6) of the
 Baltimore County
 Zoning Regulations
 SW/S of Reisterstown Road
 99.73' NW of Church Lane
 3rd District

IN THE
 CIRCUIT COURT
 FOR
 BALTIMORE COUNTY

At Law
 Misc. Docket No. 9
 Folio No. 389
 File No. 5221

Isidore Mallinow, et ux
 Petitioners

Zoning File No. 73-162-A

Pikeville Professional Building, Inc.
 Protestant-Appellant

ANSWER TO ORDER OF APPEAL TO CIRCUIT COURT FOR BALTIMORE COUNTY AND CERTIFIED COPIES OF PROCEEDINGS BEFORE THE ZONING COMMISSIONER AND BOARD OF APPEALS OF BALTIMORE COUNTY

MR. CLERK:

Please file, &c.

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

cc: Barry S. Frame, Esquire
 William D. Wells, Esquire
 Holman C. Schoenberger, Esquire
 Stanford G. Gony, Esquire
 Zoning - B. Anderson

RE: PETITION FOR VARIANCE
 from Sec. 409.2b(6) of
 Baltimore County Zoning
 Regulations
 SW/S of Reisterstown Road
 99.73' NW of Church Lane
 3rd District

BEFORE
 COUNTY BOARD OF APPEALS
 OF
 BALTIMORE COUNTY

Isidore Mallinow, et ux
 Petitioners

No. 73-162-A

OPINION

The Petitioners request a variance from Section 409.2b(6) of the Baltimore County Zoning Regulations to permit two (2) parking spaces in lieu of the required sixteen (16), for a parcel of property located on the southwest side of Reisterstown Road 99.73 feet northwest of Church Lane, in the 3rd Election District of Baltimore County; also known as 1308 and 1310 Reisterstown Road. An amendment to the petition was granted by the Board for the variance pertaining to 1312 Reisterstown Road; thus 1312 Reisterstown Road is excluded from the petition.

Testimony before the Board by Mr. Benjamin Cohen, the tenant of 1308 and 1310 Reisterstown Road for five years, stated he wished to build a one story addition of approximately 29 x 40 feet for the storage of carpet and would not have sufficient lot space left to accommodate the required sixteen parking spaces. At the present time Mr. Cohen is renting an off-site warehouse which is approximately two miles from the subject property, which is a hardship and practical difficulty not only to him but also to his customers, because they cannot see a large piece of carpet on display. For this reason he would like to reduce the parking requirements and to build the addition so as to eliminate the existing difficulties. Mr. Cohen further testified that there is ample on-street parking with meters, a public parking lot, and also permitted public parking on Walker Avenue. The two spaces in the rear of the building will be used by Mr. Cohen. Deliveries will be made to the rear of the building by an existing fifteen foot alley.

Mr. Charles Fleury, Sr., Vice President of Loyola Federal Savings and Loan Association, testified in behalf of the protestants that if the variance is granted, the customers of this establishment (the carpet store) would use the Loyola Federal parking lot.

RE: PETITION FOR VARIANCE
 from Section 409.2b(6) of the
 Baltimore County
 Zoning Regulations
 SW/S of Reisterstown Road
 99.73' NW of Church Lane
 3rd District

IN THE
 CIRCUIT COURT
 FOR
 BALTIMORE COUNTY

At Law
 Misc. Docket No. 9
 Folio No. 388
 File No. 5221

Isidore Mallinow, et ux
 Petitioners

Zoning File No. 73-162-A

Pikeville Professional Building, Inc.
 Protestant-Appellant

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come John A. Slowik, John A. Miller and Robert L. Olland, constituting the County Board of Appeals of Baltimore County, and in answer to the Order for Appeal directed against them in this case, herewith return the record of proceedings had in the above entitled matter, consisting of the following certified copies or original papers on file in the Office of the Zoning Department of Baltimore County:

ZONING ENTRIES FROM DOCKET OF ZONING COMMISSIONER OF BALTIMORE COUNTY

- No. 73-162-A
- Jan. 5, 1972 Comments of Baltimore County Zoning Advisory Committee filed
 - Apr. 25 Comments of Baltimore County Fire Department filed
 - Dec. 13 Comments of Board of Education of Baltimore County filed
 - " 13 Comments of Baltimore County Department of Health filed
 - " 13 Comments of State Highway Administration filed
 - " 15 Petition of Isidore and Rose Mallinow for variance from Section 409.2b(6) of the Baltimore County Zoning Regulations, on property located on the southwest side of Reisterstown Road, 99.73' northwest of Church Lane, 3rd District - filed
 - " 15 Order of Zoning Commissioner directing advertisement and posting of property - date of hearing set for January 17, 1973 at 1:00 pm
 - " 26 Comments of Bureau of Engineering filed
 - Jan. 2, 1973 Certificate of Publication in newspaper - filed
 - " 5 Certificate of Posting of property - filed
 - " 2 Comments of Baltimore County Office of Planning and Zoning filed
 - " 15 Comments of Baltimore County Office of Planning and Zoning filed
 - " 17 At 1:00 pm hearing held on petition by Zoning Commissioner - case held sub curia

Isidore Mallinow, et ux - #73-162-A

He further testified that other retail establishment customers use their parking lot facilities. The Board feels that Loyola Federal can control, by some means, parking for their customers only. Mr. Robert Penn, Assistant Vice President of Loyola Federal, Pikesville office, testified as to the same problem cited by Mr. Charles Fleury.

The Board feels that the Petitioners have proven practical difficulty and/or unreasonable hardship, and is hereby granting the requested variance.

ORDER

For the reasons set forth in the foregoing Opinion, the Board feels that the Petitioners have proven practical difficulty and/or unreasonable hardship, and affirms the Order of the Zoning Commissioner dated May 7, 1973. Therefore, it is this 22nd day of January, 1974, by the County Board of Appeals ORDERED, that the petition for variance from Section 409.2b(6) of the Baltimore County Zoning Regulations to permit two (2) parking spaces in lieu of the required sixteen (16) parking spaces, be and the same is hereby GRANTED, subject to approval of a site plan by the Department of Public Works, the State Highway Administration, and the Office of Planning and Zoning. The variance pertaining to 1312 Reisterstown Road is excluded from the petition.

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

COUNTY BOARD OF APPEALS
 OF BALTIMORE COUNTY

John A. Slowik
 John A. Slowik, Chairman
John A. Miller
 John A. Miller
Robert L. Olland
 Robert L. Olland

Isidore Mallinow - 9/288/5221

2.

- May 7, 1973 Order of Zoning Commissioner granting variance to permit two parking spaces in lieu of the required sixteen parking spaces for the properties known as 1308 and 1310 Reisterstown Road, and dismissing the variance requested for the property known as 1312 Reisterstown Road
- May 30 Order of Appeal to County Board of Appeals from Order of Zoning Commissioner
- Oct. 17 Hearing on appeal before County Board of Appeals - case held sub curia
- Jan. 22, 1974 Order of County Board of Appeals granting variance to permit two parking spaces in lieu of the required sixteen parking spaces. The variance pertaining to 1312 Reisterstown Road is excluded from the petition
- Feb. 20 Order for Appeal filed in the Circuit Court for Baltimore County
- " 25 Petition to Annul Order for Appeal filed in the Circuit Court for Baltimore County
- " 25 Certificate of Notice sent to all interested parties
- Mar. 15 Transcript of testimony filed - 1 volume
- " Petitioner's Exhibit No. 1 - Plot of subject property
- " " " 2 - Zoning File No. 73-162-A
- " " " 3 - Official Zoning Map, 3/24/71, Pikeville 2-C
- " 22 Record of proceedings filed in the Circuit Court for Baltimore County

Record of proceedings pursuant to which said Order was entered and said Board acted are permanent records of the Zoning Department of Baltimore County, as are also the use district maps, and your Respondents respectively suggest that it would be inconvenient and inappropriate to file the same in this proceeding, but your Respondents will produce any and all such rules and regulations, together with the zoning use district maps, at the hearing on this petition or whenever directed to do so by this Court.

Respectfully submitted

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

RE: PETITION FOR VARIANCE
 SW/S of Reisterstown Road,
 99.73' NW of Church Lane -
 3rd District
 Isidore Mallinow, et ux -
 Petitioners
 NO. 73-162-A (Item No. 101)

BEFORE THE
 ZONING COMMISSIONER
 OF
 BALTIMORE COUNTY

The Petitioners request a Variance from Section 409.2b (6) of the Baltimore County Zoning Regulation, to permit zero (0) parking spaces in lieu of the required thirty-two (32), for a parcel of property located on the southwest side of Reisterstown Road, 99.73 feet northwest of Church Lane, in the Third District of Baltimore County and also known as 1308, 1310 and 1312 Reisterstown Road.

The Petitioners, having withdrawn their request for a Variance from the parking Regulations, pertaining to 1312 Reisterstown Road, said request as to this specific location, is hereby DISMISSED.

The Petitioners, having shown to the Zoning Commissioner of Baltimore County that by reason of strict enforcement of the Baltimore County Zoning Regulations would create an unreasonable hardship and practical difficulty and that said Variance, not being detrimental to the health, safety and general welfare of the community, the Variance for those properties known as 1308 and 1310 Reisterstown Road should be had.

Therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 7th day of May, 1973, that the herein petition for Variance to permit two (2) parking spaces in lieu of the required sixteen (16) parking spaces for the properties known as 1308 and 1310 Reisterstown Road, should be and the same is GRANTED from and after the date of this Order, subject to the approval of a site plan by the Department of Public Works, the State Highway Administration and the Office of Planning and Zoning. The request for a Variance for the property known as 1312 Reisterstown Road is DISMISSED.

Phillip J. ...
 Zoning Commissioner of
 Baltimore County

ORDER RECEIVED FOR FILING
 DATE Jan 22 1974
 BY [Signature]

June 4, 1973

Barry S. Frame, Esquire
 Seventh Floor, Tower Building
 222 East Baltimore Street
 Baltimore, Maryland 21202

RE: Petition for Variance
 SW/S of Reisterstown Road,
 99.73' NW of Church Lane -
 3rd District
 Isidore Mallinow, et ux -
 Petitioners
 NO. 73-162-A (Item No. 101)

Dear Mr. Frame:

Please be advised that an appeal has been filed from the decision rendered by the Zoning Commissioner of Baltimore County in the above captioned matter.

You will be notified of the date and time of the appeal hearing when it is scheduled by the Baltimore County Board of Appeals.

Very truly yours,
[Signature]
 S. ERIC DI NENNA
 Zoning Commissioner

SED/erl

cc: Holman C. Schoenberger, Esquire
 405 West Pennsylvania Avenue
 Towson, Maryland 21204

RE: PETITION FOR VARIANCE
From Section 10-303 of
Baltimore County Zoning
Regulations
SW/S of Reisterstown Road
99.73' NW of Church Lane
3rd District

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW

Misc. Docket No. 9
File No. 388
File No. 5221

CERTIFICATE OF NOTICE

Mr. Clerk
Pursuant to the provisions of Rule 1101-04(4) of the Maryland Rules of
Procedure, John A. Stowell, John A. Miller and Robert L. Gifford, 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 its meeting,
Barry S. Frame, Esq., 7th floor, Tower Building, 222 E. Baltimore Street, Baltimore,
Maryland, 21202, Attorney for the Petitioner; William D. Wells, Esq., 7 Church Lane,
Pikesville, Maryland, 21208, Attorney for Protestants; Holman C. Schoenberger,
Esq., 405 W. Pennsylvania Avenue, Towson, Maryland, 21284, Attorney for Protestants;
and Stanford G. Goss, Esq., 1616 Maryland National Bank Building, Baltimore and
Light Streets, Baltimore, Maryland, 21202, a copy of which Notice is attached hereto
and prayed that it may be made a part thereof.

Muriel E. Boddemor
County Board of Appeals of Baltimore County
County Office Building, Towson, Md. 21284
Telephone - 494-0100

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice
was mailed to Barry S. Frame, Esq., 7th floor, Tower Building, 222 E. Baltimore Street,
Baltimore, Maryland, 21202, Attorney for the Petitioner; William D. Wells, Esq., 7
Church Lane, Pikesville, Maryland, 21208, Attorney for the Protestants;

ZONING CASE NO. 73-12-A

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 558

September Term, 1974

ISIDORE MALINOW, ET UX

v.

PIKEVILLE PROFESSIONAL
BUILDING, INC., et al.

Thompson,
Powers,
Gilbert, JJ.

Per Curiam

Filed: February 25, 1975

Rec'd 2/27/75
9:35am

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The Baltimore County Zoning Code with respect to
variances is stated in § 307 thereof. It provides:

"The Zoning Commissioner of Baltimore
County and the County Board of Appeals,
upon appeal, shall have and they are here-
upon given the power to grant variances from
height and area regulations, from off-street
parking regulations and from sign regula-
tions, only in cases where strict compliance
with the Zoning Regulations for Baltimore
County would result in practical difficulty
or unreasonable hardship. No increase in
residential density beyond that otherwise
allowable by the Zoning Regulations shall
be permitted as a result of any such grant
of a variance from height or area regula-
tions. Furthermore, any such variance shall
be granted only if in strict harmony with
the spirit and intent of said height, area,
off-street parking, or sign regulations,
and only in such manner as to grant relief
without substantial injury to public health,
safety, and general welfare."

Pursuant to § 307, Isidore Malinow and his wife, appel-
lants, the owners of property known as 1308, 1310 and 1312
Reisterstown Road, Baltimore County, Maryland, petitioned
the Zoning Commissioner for the right to reduce the number
of off-street parking spaces for the property known as 1308,
1310 and 1312 Reisterstown Road from thirty-two to zero. At
the hearing before the Commissioner the appellee, Pikeville
Professional Building, Inc., and others appeared in protest.
The request for variance insofar as it pertained to 1312
Reisterstown Road was deleted. The Zoning Commissioner de-
termined that the "strict enforcement of the Baltimore County
Zoning regulations would create an unreasonable hardship and
practical difficulty", and that the variance was not "detrimental
to the health, safety and general welfare of the com-

WELLS, DURKEE & ALBERT

ATTORNEYS AT LAW
PIKEVILLE PROFESSIONAL BUILDING
7 CHURCH LANE
PIKEVILLE, MARYLAND 21208

TELEPHONE
494-0300

May 29, 1973

S. Eric DiNenna
Zoning Commissioner
Office of Planning and Zoning
County Office Building
Towson, Maryland 21284

Re: Petition for Variance
SW/S of Reisterstown Road
99.73' NW of Church Lane
3rd District
Isidore Malinow, et ux - Petitioners
No. 73-162-A (Item No. 101)

Dear Mr. DiNenna:

Please note an Appeal to the Board of Appeals of Baltimore
County from the decision of the zoning commissioner dated May 7,
1973, in the above case.

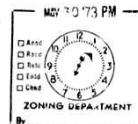
Enclosed is check in the amount of \$40.00 made payable to
Baltimore County, Maryland to cover the appeal costs and the posting
of one (1) sign.

Very truly yours,

William D. Wells

WILLIAM D. WELLS
Attorney for Loyola Federal
Savings and Loan Association and
Pikeville Professional Building, Inc.

WDM/lde
Enclosure



May 7, 1973

Barry S. Frame, Esquire
7th Floor, Tower Building
222 East Baltimore Street
Baltimore, Maryland 21202

RE: Petition for Variance
SW/S of Reisterstown Road,
99.73' NW of Church Lane -
3rd District
Isidore Malinow, et ux - Petitioners
NO. 73-162-A (Item No. 101)

Dear Mr. Frame:

I have this date passed my Order in the above captioned matter in
accordance with the attached.

Very truly yours,

S. ERIC DI NENNA
Zoning Commissioner

SEDSge
Attachments
cc: William D. Wells, Esquire
7 Church Lane
Pikesville, Maryland 21208

Holman C. Schoenberger, Esquire
405 W. Pennsylvania Avenue
Towson, Maryland 21284

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parking facilities include a public parking lot, non-motored
street parking, metered street parking, and that there was
under consideration an additional proposed parking facility.
The record reveals that the only access to the rear of the
building, where off-street parking could be accomplished,
is by an existing 15' alley which dead-ends at the property
line of 1312 Reisterstown Road. The tenant told the Board
that it would be extremely rare, in view of the nature of
his business, to have more than five or six customers
a day. The tenant proposed to use the two off-street
parking spaces that would remain in the rear of the building
as employee parking with space available for deliveries. The
protestants presented testimony that some customers of the
tenant use some of the fifteen parking spaces of the nearby
Loyola Federal Savings & Loan Association, that the parking
facilities in the area are inadequate to serve the mercantile
businesses already there existent, that traffic in the area
is congested and that the proposed variance would add to the
existing parking problems. The Board held that the appellants
had "proven practical difficulty and/or unreasonable hardship"
and granted "the requested variance." The protestants appealed
to the Circuit Court for Baltimore County.

The Staff of the Office of Planning and Zoning proposed
a variance on the ground that the new facility would be
completely used by customers of the carpeting store.

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"... [T]he purpose for the variance
was erroneously held by the Board as suffi-
ciently showing practical difficulty and/
or unreasonable hardship, and was therefore
arbitrary, unreasonable or capricious. The
mere fact that a customer cannot view a
large piece of carpet at the involved loca-
tion can in no way be interpreted as a prac-
tical difficulty and/or unreasonable hard-
ship in order to defeat the intentions and
spirit of the Zoning Regulations. An ex-
isting difficulty of the nature that cus-
tomers must travel two miles to view a
large piece of carpeting is not equivalent
to the existing difficulty in this locality
of the lack of parking facilities for the
entire general public."

It is apparent from the record that the tenant is en-
gaged in selling carpeting, and apparently the wall-to-wall
type. It appears that the subject premises are used for show
and sales rooms, but that if more than small pieces of car-
peting are to be viewed by the customers, the customers must be
transported to the warehouse where large pieces of carpeting may
be displayed. The question in this case, as we see it, is one
of fact as to whether there exists a practical difficulty or
hardship. While hardship, as it is generally interpreted,
may not have been established by the appellants, it appears
to us that the tenant (who testified because the appellant,
Isidore Malinow, had suffered a heart attack and was unable
to be present) clearly showed the practical difficulty of the
current situation under which he labors. Although we recognize
that the Maryland State Department of Transportation recommended
against the variance because of the congested area, the Board
was not bound by that recommendation. We think the evidence

BRUCE R. FRANK
28-0170
LEE N. BARNETT
688-1199

LAW OFFICES
FRAME & BARNSTEIN
7TH FLOOR
TOWER BUILDING
232 E. BALTIMORE STREET
BALTIMORE, MARYLAND 21202
782-6644



January 30, 1973

Honorable S. Eric DiNenna
Zoning Commissioner
Baltimore County Office of
Planning and Zoning
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21284

Re: Petition For Zoning Variance from Section 409.2 b (6) to permit 0 parking spaces instead of the required 32, for property, and improvements located at 1308-1312 Reisterstown Road.
Petitioner: Rose Isadore Mallinow
Petition For Variance No. 73-102-A
Date of Hearing: 1/17/73 at 1:30 p.m.

Dear Mr. DiNenna:

Kindly be advised that due to an error in the formulation of the engineering plat relative to the above referenced property, the Petition for Variance mistakenly refers to 1308 through 1312 Reisterstown Road in the above matter. Therefore, kindly regard this communication as a withdrawal of the Petition for Zoning Variance for property located at 1312 Reisterstown Road and consider the Petition filed as pertaining to a request for variance for the building located at 1308-10 only. I apologize for any confusion caused by the submitted plat and description and I sincerely hope this letter will rectify the matter.

Thank you very much for your cooperation in this matter.

Very truly yours,

Harry S. Frank
Harry S. Frank

BSF:hik

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. S. Eric DiNenna, Zoning Commissioner Date: January 15, 1973
FROM: Norman E. Gerber, Office of Planning and Zoning
SUBJECT: Petition # 73-162-A. Southwest side of Reisterstown Road 99.73 feet Northwest of Church Lane.

Petition for Variance for Off-Street Parking
Petitioners - Rose and Isidore Mallinow

3rd District

HEARING: Wednesday, January 17, 1973 (1:30 P.M.)

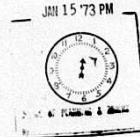
The staff of the Office of Planning and Zoning has reviewed the subject petition and has the following comments to offer.

The Revenue Authority is anticipating opening a public parking lot on Welker Avenue containing 41 spaces in 5 to 6 weeks.

The purpose of that lot is to relieve an existing parking shortage. The granting of this variance will utilize nearly all of the public off-street spaces that will be provided by the Revenue Authority.

This request should be denied.

NEG:rw



Mr. Isidore Mallinow, BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING
1308 W. Northern Parkway
Baltimore, Maryland 21210
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21284
Item 101
Your Petition has been received and accepted for filing
this 15th day of January 1973.
S. Eric DiNenna
S. Eric DiNenna, Zoning Commissioner
Petitioner: Rose and Isidore Mallinow
Petitioner's Attorney: _____
Reviewed by: *John J. Dillon*
Zoning Advisory Committee

BALTIMORE COUNTY ZONING ADVISORY COMMITTEE

January 5, 1972

JOHN J. DILLON, JR.
Chairman

Mr. Isidore Mallinow
1308 W. Northern Parkway
Baltimore, Maryland 21210

MEMBERS

RE: Variance Petition
Item 101
Rose and Isidore Mallinow - Petitioners

Dear Mr. Mallinow:

The Zoning Advisory Committee has reviewed the plans submitted with the above referenced petition and has made an on site field inspection of the property. The following comments are a result of this review and inspection.

These 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 with regard to the development plans that may have a bearing on this case. The Director and/or Deputy Director of the Office of Planning and Zoning will submit recommendations on the appropriateness of the requested zoning.

The subject property is located on the southwest side of Reisterstown Road, 99 feet northwest of Church Lane, in the 3rd District of Baltimore County. This commercial (B.L.) zoned property is presently improved with a two story retail building. The properties on both sides of this site are also improved with retail buildings. The property to the rear is presently used as a parking area for the existing retail stores in the area. Adjacent to this parking area is another parking lot which is controlled by a gate.

This petition is accepted for filing on the date of the enclosed filing certificate. Notice of the hearing date and time, which will be held not less than 15, nor more than 30 days after the date on the filing certificate, will be forwarded to you in the near future.

Very truly yours,
John J. Dillon, Jr.
John J. Dillon, Jr.
Chairman
Enclosure

Baltimore County, Maryland
Department of Public Works
COUNTY OFFICE BUILDING
TOWSON, MARYLAND 21284

P-C-E Key Sheet
29 NW 21 Position Sheet
NW 8F Topo
76 Tax Map

Division of Engineering
ELLSWORTH N. DIVER, P. E. CHIEF

December 26, 1972

Mr. S. Eric DiNenna
Zoning Commissioner
County Office Building
Towson, Maryland 21284

Re: Item #101 (1972-1973)
Property Owner: Rose and Isidore Mallinow
S/W Reisterstown Road, 99' N/W of Church Lane
Present Zoning: B.L.
Proposed Zoning: Variance from Section 409.2b (6) to permit 0 parking spaces instead of required 32 spaces
District: 3rd No. Acres: 0.15 acres

Dear Mr. DiNenna:

The following comments are furnished in regard to the plat submitted to this office for review by the Zoning Advisory Committee in connection with the subject item.

Highways:
Reisterstown Road (Md. 140) is a State Road; therefore, all improvements, intersections and entrances on this road will be subject to State Highway Administration requirements.

Storm Drains:
Provisions for accommodating storm water or drainage have not been indicated in the submitted plan.

Reisterstown Road (Md. 140) is a State Road. Therefore, drainage requirements as they affect the road come under the jurisdiction of the State Highway Administration.

The Petitioner must provide necessary drainage facilities (temporary or permanent) to prevent creating any nuisance or damage to adjacent property, especially by the concentration of surface waters. Correction of any problem which may result, due to improper grading or improper installation of drainage facilities, would be the full responsibility of the Petitioner.

Water and Sanitary Sewers:
Public water supply and sanitary sewerage are available and serving this site.

Very truly yours,
Ellsworth N. Diver, P.E.
Ellsworth N. Diver, P.E.
Chief, Bureau of Engineering

END:EAM:PW:iss



Maryland Department of Transportation
State Highway Administration

Harry R. Hughes
Secretary
David M. Fisher
Administrator

Baltimore County Fire Department

J. Austin Deniz
Chief



Towson, Maryland 21284
812-7316

Office of Planning and Zoning
Baltimore County Office Building
Towson, Maryland 21284

Attention: Mr. Jack Dillon, Acting
Zoning Advisory Committee

Re: Property Owner: Rose and Isidore Mallinow

Location: S/W/S Reisterstown Road, 99' N/W of Church Lane
Item No. 101 Zoning Agenda Tuesday, December 12, 1972

Gentlemen:
Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "x" are applicable and required to be corrected or incorporated into the final plans for the property.

- () 1. Fire hydrants for the referenced property are required and shall be located at intervals of _____ feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.
- () 2. A second means of vehicle access is required for the site.
- () 3. The vehicle dead-end condition shown at _____ EXCEEDS the maximum allowed by the Fire Department.
- (x) 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operations.
- (x) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "The Life Safety Code", 1970 Edition prior to occupancy.
- () 6. Site plans are approved as drawn.
- () 7. The Fire Prevention Bureau has no comments at this time.

Reviewer: *H. J. Zolty* Noted and Approved: *Paul F. Reincke*
Planning Group Deputy Chief
Special Inspection Division Fire Prevention Bureau

mis
4/23/72

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF HEALTH

JEFFERSON BUILDING
TOWSON, MARYLAND 21284

December 13, 1972

DONALD J. ROOP, M.D., M.P.H.
DEPUTY STATE AND COUNTY HEALTH OFFICER

Mr. S. Eric DiNenna, Zoning Commissioner
Office of Planning and Zoning
County Office Building
Towson, Maryland 21284

Dear Mr. DiNenna:

Comments on Item 1, Zoning Advisory Committee meeting December 12, 1972, are as follows:

Property Owner: Rose and Isidore Mallinow
Location: S/W/S Reisterstown Road, 99' N/W of Church Lane
Present Zoning: B.L.
Proposed Zoning: Variance from Section 409.2b(6) to permit 0 parking spaces instead of required 32.
District: 3
No. Acres: 0.15

Metropolitan water and sewer are available.
Since this is a variance for parking, no health hazard is anticipated.

Very truly yours,
Thomas H. Devlin
Thomas H. Devlin, Director
BUREAU OF ENVIRONMENTAL SERVICES

HVB:mnd

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

A. V. Quimby
Acting Director
111 W. Chesapeake Avenue
Towson, Md. 21284
494-2311

J. ERIC DI NENNA
Zoning Commissioner
County Office Building
111 W. Chesapeake Avenue
Towson, Md. 21284
494-2311

Mr. S. Eric DiNenna, Zoning Commissioner
Zoning Advisory Committee
Office of Planning and Zoning
Baltimore County Office Building
Towson, Maryland 21204

Dear Mr. DiNenna:

Comments on Item #101, Zoning Advisory Committee Meeting, December 12, 1973 are as follows:

Property Owner: Rose and Isidore Malinow
Location: S/W/S Reisterstown Road, 99' N/W of Church Lane
Present Zoning: B.L.
Proposed Zoning: Variance from Section 409.2b (6) to permit 0 parking spaces instead of required 32 spaces.

District: 3
No. Acres: 0.15 acres

This plan has been reviewed and there are no on-site planning factors requiring comment.

Very truly yours,

Richard B. Williams
Richard B. Williams
Planner I
Project Planning Division
Office of Planning and Zoning

**BOARD OF EDUCATION
OF BALTIMORE COUNTY**

TOWSON, MARYLAND - 21204

Date: December 13, 1972

Mr. S. Eric DiNenna
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Re: Item #101 ZAC meeting on December 12, 1972
Property Owner: Rose and Isidore Malinow
Location: S/W/S Reisterstown Road, 99' N/W of Church Lane
Present Zoning: B.L.
Proposed Zoning: Variance from Section 409.2b (6) to permit 0 parking spaces instead of required 32 spaces.

District: 3
No. Acres: 0.15 acres

Dear Mr. DiNenna:

to hearing on student population.

Very truly yours,

W. Nick Petrovich
W. Nick Petrovich
Field Representative

MEP:pld

J. ERIC DI NENNA, ZONING COMMISSIONER
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21284

J. ERIC DI NENNA, ZONING COMMISSIONER
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21284

W. NICK PETROVICH, FIELD REPRESENTATIVE
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21284

Z.C.



15160 73-162-A

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 3rd Date of Posting: JUNE 23, 1973
Posted for: APPEAL
Petitioner: ISIDORE MALINOW
Location of property: S.W/S OF REISTERSTOWN RD. 99.73' NW
S.E. CHURCH LANE
Location of Sign: RT. 411 END OF PARKING LOT 100 EET. N. OF
CHURCH LANE
Remarks:
Posted by: Charles H. Mack Date of return: JUNE 22, 1973
Signature

PETITION MAPPING PROGRESS SHEET

FUNCTION	Wall Map		Original		Duplicate		Tracing		200 Sheet	
	date	by	date	by	date	by	date	by	date	by
Descriptions checked and outline plotted on map										
Petition number added to outline										
Denied										
Granted by ZC, BA, CC, CA										
Reviewed by: <u>J.P.H.</u>			Revised Plans:				Change in outline or description		Yes	No
Previous case:			Map #							

PETITION FOR A VARIANCE AND DISTRICT

THE COMMUNITY TIMES

OFFICE OF
RANDALLSTOWN, MD. 21133 January 2 - 19 73

THIS IS TO CERTIFY, that the annexed advertisement of S. Eric DiNenna, Zoning Commissioner of Baltimore County was inserted in THE COMMUNITY TIMES, a weekly newspaper published in Baltimore County, Maryland, on a week for one XXXXXXXX week before the 2 day of January 19 73 that is to say, the same was inserted in the issue of December 28, 1972.

SCROMBERG PUBLICATIONS, Inc.
By *Jeanette Alleva*

CERTIFICATE OF PUBLICATION

TOWSON, MD., December 20, 1972

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., on a certain day of January, 1972, the first publication appearing on the 25th day of December, 1972.

THE JEFFERSONIAN,
Manager.

Cost of Advertisement, \$ _____

INVOICE
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE

No. 74088
DATE 3/7/74

TO: William D. Wells, Esquire
7 Church Lane
Pikesville, Md. 21208

County Board of Appeals (Zoning)

DEPOSIT TO ACCOUNT NO. 01-712

Cost of certified documents filed in Case 73-162-A \$ 15.00

Isidore Malinow, et ux
SW/S Reisterstown Road,
99.73' NW Church Lane
3rd District

IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND
MAIL TO OFFICE OF FINANCE, REVENUE DIVISION
COURTHOUSE, TOWSON, MARYLAND 21204

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 3rd Date of Posting: Dec 30, 1972
Posted for: Advance
Petitioner: Rose Malinow
Location of property: S.W/S of Reisterstown Rd. 99.73' NW of Church Lane
Location of Sign: 1302 4 1310 Reisterstown Rd.
Remarks:
Posted by: Charles H. Mack Date of return: MAY 5, 1973
Signature

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

No. 5859

DATE Dec. 26, 1972 ACCOUNT 01-662

AMOUNT \$25.00

BY ORDER
J. ERIC DI NENNA
ZONING COMMISSIONER OF BALTIMORE COUNTY

WHITE - CASHIER
DISTRIBUTION
PWR - AGENCY
YELLOW - CUSTOMER

London Lounge
1300 W. Northern Parkway
Baltimore, Md. 21201
Petition for Variance
#73-162-A
162

25.00 CASH
567.50

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

No. 5897

DATE Jan. 15, 1973 ACCOUNT 01-662

AMOUNT \$56.75

WHITE - CASHIER
DISTRIBUTION
PWR - AGENCY
YELLOW - CUSTOMER

London Lounge
1300 W. Northern Parkway
Baltimore, Md. 21201
Advertising and posting of property
#73-162-A
567.50

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

No. 10825

DATE JUN 4, 1973 ACCOUNT 01-662

AMOUNT \$40.00

William D. Wells, Esquire
WHITE - CASHIER
DISTRIBUTION
PWR - AGENCY
YELLOW - CUSTOMER

County Board of Appeals and Posting of Property for Case No. 73-162-A
SW/S of Reisterstown Road, 99.73' NW of Church Lane - 3rd District
Isidore Malinow, et ux - Petitioners 40.00 CASH

