

PETITION FOR ZONING RECLASSIFICATION AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

Leroy F. Mullen
I, or we, Helen JoAnne Mullen, legal owners, of the property situated in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition (1) that the zoning status of the herein described property be reclassified, pursuant to the Zoning Law of Baltimore County, from an _____ to _____, and (2) for the following reasons:

See attached legal memorandum, made a part hereof.

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 _____ service, particularly and _____ in the alternative a special _____ for _____ sales & repairs, _____ for _____ repairs in a DR zone. Property is to be posted and advertised as prescribed by Zoning Regulations. I, or we, agree to pay expenses of above reclassification and/or Special Exception advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

Contract purchaser:
Thomas Bowie McCarty
Thomas Bowie McCarty
Petitioner's Attorney
401 Frederick Road
Catonsville, Md. 21228
788-3800

ORDERED BY The Zoning Commissioner of Baltimore County, this _____ day of _____, 1977, 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 held before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the _____ day of _____, 1977, at _____ o'clock P.M.



(over)

November 2, 1977

Thomas Bowie McCarty, Esquire
401 Frederick Road
Catonsville, Maryland 21228

RE: Petition for Reclassification
N/S of Frederick Road, 260' E of
Oella Avenue - 1st Election District
Leroy F. Mullen, et ux - Petitioners
NO. 78-23-R (Item No. 3)

Dear Mr. McCarty:

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

Very truly yours,
S. ERIC DINENNA
Zoning Commissioner

SED/sf
Attachment

cc: Thomas A. Henning, Esquire
Alex. Brown Building, Suite 605
102 West Pennsylvania Avenue
Towson, Maryland 21204
Dr. William F. Stephen, Jr.
Vice President, Community Planning
Association of Catonsville, Inc.
2404 Harbor Wood Road
Catonsville, Maryland 21228
Mr. Eugene L. Shaver
116 South Hilltop Road
Catonsville, Maryland 21228
John W. Hershan, III, Esquire
People's Counsel

RE: PETITION FOR RECLASSIFICATION:
N/S of Frederick Road, 250' E of
Oella Avenue - 1st Election District
Leroy F. Mullen, et ux - Petitioners
NO. 78-23-R (Item No. 3)

BEFORE THE
ZONING COMMISSIONER
OF
BALTIMORE COUNTY

This matter comes before the Zoning Commissioner as a result of a Petition for a Reclassification from a D.R. 3.5 Zone to a B.L. Zone. The subject property is located on the north side of Frederick Road, 260 feet east of Oella Avenue, in the First Election District of Baltimore County, and contains 1.40 acres of land, more or less.

Testimony on behalf of the Petitioners indicated that the subject property had previously been used as a lawn mower business and was the subject of a zoning violation hearing (Case No. 76-239-Y), emanating from complaints regarding the operation.

Testimony by the Petitioner, Mr. Leroy F. Mullen, indicated that he is a mechanic by trade, bought the property in 1962, and resides thereon. He further testified that what started out many years ago as a hobby grew into a full-fledged business. In the last several years, the Petitioner had entered the business full-time at this location.

To the credit of the Petitioners, compliance with the Order, dated June 18, 1975, to vacate the subject property, has been obtained, and they have since moved the business to another location.

Without reviewing the evidence further in detail but based on all of the evidence presented at the hearing, in the judgment of the Zoning Commissioner, error has not been proven by the Petitioners, and the property should not be reclassified. The Comprehensive Zoning Map, as adopted on October 7, 1976, is presumed to be correct, and the burden of proving error is borne by the Petitioners. In the instant case, this burden has not been met.

The Zoning Commissioner was not hearing a case in which to grant a zoning that would limit the use to a lawn mower business but would, in fact, be

granting a commercial zone that would permit numerous and sundry commercial uses other than lawn mower repairs and sales. The Zoning Commissioner is sympathetic with the Petitioner's dilemma, but, unfortunately, must decide the proper use of land and not necessarily who is using it.

Therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this _____ day of November, 1977, that the Reclassification be and the same is hereby DENIED.

H. R. M.
Zoning Commissioner of
Baltimore County

ORDER RECEIVED FOR FILING
DATE November 2, 1977
BY John R. Mullen
Administrative Assistant

- 2 -

RE: PETITION FOR RECLASSIFICATION
N/S OF FREDERICK ROAD, 260' E
OF OELLA AVE. 1st ELECTION
DISTRICT LEROY F. MULLEN, et ux
PETITIONERS
NO. 78-23-R (Item No. 3)

BEFORE THE
ZONING COMMISSIONER
OF
BALTIMORE COUNTY

ORDER FOR APPEAL

Mr. Clerk,

Please enter an appeal from the decision entered by the Zoning Commissioner of Baltimore County on November 2, 1977, in this case.

Thank you.

Thomas B. McCarty
Thomas B. McCarty
401 Frederick Road
Catonsville, Maryland 21228
788-3800
Attorney for Appellant

I hereby certify that on this 22nd day of November, 1977, that a copy of the foregoing Order for Appeal was mailed to the Zoning Commissioner of Baltimore County, Office of Planning and Zoning, Towson, Maryland 21204, as required by Maryland Rule B 2.

Thomas B. McCarty
Thomas B. McCarty



COLUMBIA OFFICE
WALTER PAER
Registered Surveyor
PHONE 730-0000

TOWSON OFFICE
HUDKINS ASSOCIATES, INC.
Engineers, Surveyors and
Landscape Architects
800 EAST JUMP ROAD
ROOM 101, BULL BUILDING
TOWSON, MARYLAND 21204
PHONE 528-0000

BEL AIR
L. GERALD WOLFF
Landscape Architect
PHONE 528-0055

February 25, 1977

DESCRIPTION - 2414 FREDERICK ROAD:

Beginning for the same at a point on the north side of Frederick Road (80 feet wide) said point being distant 260 feet easterly from the intersection of the north side of said Frederick Road with its intersection of the center of Oella Avenue (40 feet wide) thence leaving said Frederick Road (1) North 29 degrees 20 minutes 17 seconds West 135 feet more or less (2) North 38 degrees 23 minutes 24 seconds East 140 feet more or less (3) North 53 degrees 00 minutes 00 seconds East 140 feet more or less (4) South 82 degrees 50 minutes 00 seconds East 195 feet more or less to the west side of Stonewall Road (40 feet wide, unimproved) thence binding thereon South 46 degrees 40 minutes 00 seconds West 207.50 feet and South 24 degrees 45 minutes 00 seconds West 175.08 feet to the north side of said Frederick Road thence binding thereon North 83 degrees 45 minutes 13 seconds West 100 feet to the place of beginning.

Containing 1.40 Acres of land more or less.



Malcolm E. Hudkins
Registered Surveyor #2095

Thomas Bowie McCarty, Esquire
401 Frederick Road
Baltimore, Maryland 21228

Re: Case No. 78-23-R
Leroy F. Mullen

Dear Mr. McCarty:

Enclosed herewith is a copy of the Opinion and Order passed today by the County Board of Appeals in the above entitled case.

Very truly yours,

Edith Y. Elankurt, Adm. Secretary

Encl.

cc: John V. Murphy, Esquire
Mr. and Mrs. Annistead S. Leach
Dr. William F. Stephen, Jr.
Mr. Eugene L. Shaver
Mr. Alan J. De Se
John W. Haskin, III, Esquire
Mr. J. E. Dyer
Mr. W. E. Hammond
Mr. L. H. Gnaul
Mr. J. Howell
Board of Education

County Council of Baltimore County
Court House, Towson, Maryland 21204
(301) 494-3155

April 19, 1977

COUNCILMEN

John V. Murphy
Chairman

Gary Hadden
Deputy Chairman

Clarence E. Ritter
Deputy Chairman

Eugene J. Kibbe, Jr.
Deputy Chairman

Norman W. Lounsbury
Deputy Chairman

Eugene W. Gallagher
Deputy Chairman

John W. O'Rourke
Deputy Chairman

Thomas Toporovich
Deputy Chairman

Mr. Norman E. Gerber, Acting Director
Office of Planning and Zoning
Courts Building
Towson, Maryland 21204

Dear Mr. Gerber:

Reference is made to the Planning Board's certification that early action is manifestly required because of emergency on the petition of Leroy F. Mullen and Helen Joanne Mullen to change the zoning classification of their property located at 2414 Frederick Road from D.R. 3.5 to B.L.

Please be advised that this petition was considered by the Council at their meeting on Monday, April 18, 1977 and failed for lack of action.

By copy of this letter I am so advising the Zoning Commissioner of the Council's action.

Sincerely yours,

Thomas Toporovich
Secretary

TT:bl

CC: Mr. S. Eric DiNenna, Zoning Commissioner



PETITION FOR ZONING RE-CLASSIFICATION
(With Special Exception)

I. Mistake Committed in the Original Zoning.

- The outline of the present BL/DR zone in the area of subject property is irregular and inconsistent and arbitrarily disfavors Petitioner's subject property.
- Development of the subject property under its present zoning is not the most advantageous use to the community.
- The subject property is economically infeasible for development and use under its present zoning.
- The map failed to take into account projects or trends reasonably foreseeable of fruition in the future.
- The zoning regulations failed to provide for provision allowing a permitted use of lawnmower sales and repair within any zone of zoning.

II. The Character of the Neighborhood Has Changed to Such an Extent That a Reclassification Properly Ought to be Made.

Change in Conditions.

- Five Oaks Swimming Pool - South side of Frederick Road, approximately 8 blocks East of subject property. The cited property includes a community building, a swimming pool and other buildings devoted to civic, social and recreational activities. Requisite zoning: BM or ML or MH or MHR or Special Exception in DR 1, DR 2, DR 3.5, DR 5.5, DR 16 or BL.
- Candlelight Lodge Restaurant - South side of Frederick Road, approximately 7 1/2 blocks East of subject property. Requisite zoning: BL or greater.
- Lally-McClintock, Inc., Realtors, Frederick Road, opp. N. Rolling Road, South side of Frederick Road, approximately 3 blocks East of subject property. Requisite zoning: BL, BR, ML, MH, MHR, or Special Exception in RA.
- K of C Hall, South side of Frederick Road, approximately 2 1/2 blocks East of subject property. Requisite zoning: BM or greater; Special Exception in DR 1, DR 2, DR 3.5, DR 5.5, DR 16 BL.
- 2208 Frederick Road - North side of Frederick Road, approximately 2 blocks East of subject property.

Present use: Service Garage. Requisite zoning: BR, BR, ML, or Special Exception in BL.

- Dimitri's Eight Mile Home, South side of Frederick Road, approximately 2 blocks East of subject property. Present use: Restaurant. Requisite zoning: BL or greater.
- Country Roadside Store - North side of Frederick Road, approximately 1 block East of subject property. Present use: Retail store. Requisite zoning: BL or greater.
- Signs, outdoor advertising. 8 signs 3 blocks East and West of subject property. 10 signs 4 blocks East and West of subject property. 14 signs 9 blocks East and West of subject property. Requisite zoning: Special Exception in BL, BR, ML, MH, and MHR.
- Oella Avenue - Truth's Meat Process, approximately 2 blocks North of subject property. Present use: Commercial animal killing, wholesale, retail sale of poultry, meats, etc. Requisite zoning: ML or MH or Special Exception in DR 1, DR 2, DR 3.5, DR 5.5, DR 10.5 (on a farm with 3 acres or more).
- Oella and Westchester Avenues - Present use: Stores, Service Centers, Commercial offices and operations. Requisite zoning: BR CNS and BL-CNS.
- Thistle Road - Simpkins Industries, approximately 5 blocks South of subject property. Present use: Manufacturing paper products. Requisite zoning: ML.

III. Traffic Conditions Will Be Adequate for Any Traffic Associated With Petitioner Use Since Said Use Has Been in Existence for The Past 15 Years With No Traffic Hazard Resulting.

Authority: Askew v. County Board of Appeals of Baltimore County, 23 Md. App. 358, 328 A.2d 55 (1974)

- The zoning regulations failed to provide for provision allowing a permitted use of lawnmower repair and sale within any zone of zoning.

Under the present zoning regulations, Section 405 - Automotive - Service Stations, lawnmower sales and repairs is a permitted ancillary use. Nowhere else in said regulations is this type of zoning mentioned or provided.

However, under Article 1B - Density Residential (D.R.) zones limited acreage wholesale flower farms is a permitted use and boatyards, including marinas are uses permitted by Special Exception.

Reviewing zoning regulations which are presently being proposed by Howard County, Maryland, a Special Exception may be granted in Residential Districts for a greenhouse, garden shop or florist, together with the buildings incidental thereto, provided that: "... The sale of plants, trees, shrubs, seeds, fertilizers, plant food, hand tools, hand spraying and watering equipment, and other equipment directly related to residential gardening or lawn care, shall be permitted, as long as such tools and equipment are not displayed, stored or parked outdoors.

Hence, the Baltimore County Regulations, in providing for wholesale flower farms permit such use in a residential district. But by analogy to Howard County Regulations, Baltimore County Regulations do not clearly extend in the interpretation of greenhouses, garden shops or florists the sale of equipment directly related to residential gardening or lawn care by way of a special exception within a residential zone.

The theory is that Petitioner's proposed use is in harmony with a residential zone, and the requirements of being placed in an Automotive-Service Station zone is too intense for a lawnmower sales and repair classification.

II. The Character of the Neighborhood Has Changed to Such an Extent That a Reclassification Properly Ought to be Made.

The character of the area has changed so that property zoned as residential use is not suitable for that purpose.

The Petitioners have heretofore cited the use and requisite zoning of property in the immediate area of subject property. Also, refer to photographs of uses in immediate area of subject property.

III. Traffic Conditions Will Be Adequate for Any Traffic Associated With Petitioner Use Since Said Use Has Been in Existence for The Past 15 Years With No Traffic Hazard Resulting.

With approval of Petitioner's plan, roads will be adequate for any traffic generated, and the resulting flow cannot create a hazard.

PROPOSAL:

- That the zoning status of the herein described property be reclassified from a DR zone to a BL zone.
- That the zoning status of the herein described property be granted a special exception to permit a service garage operation for the sales and repairs of lawnmowers within a BL zone (or a DR zone, if permitted by law).

I. Reasoning is Justified Since There Was a Mistake in the Original Zoning.

- The outline of the present BL/DR zone in the area of subject property is irregular and inconsistent and arbitrarily disfavors Petitioner's subject property.
- Development of the subject property under its present zoning is not the most advantageous use to the community.
- The subject property is economically infeasible for development and use under its present zoning.
- The map failed to take into account projects or trends reasonably foreseeable of fruition in the future.
- The zoning regulations failed to provide for provision allowing a permitted use of lawnmower sales and repair within any zone of zoning.

Authority: Montgomery County Council v. Facor, 253 Md. 220, 252 A.2d 832 (1969)
Wallace v. Inter City Land Company, 239 Md. 549, 212 A.2d 262 (1965)

- Because of the character of surrounding uses (i.e. BL on the East, West, and North, and ML on the South), subject land has no value for residential purposes, thus Petitioners' present zoning amounts to a taking of said property without compensation and is arbitrary and capricious (even though Petitioners obtained subject land with knowledge of its zoning classification).

Authority: Frankel v. City of Baltimore, 223 Md. 97, 162 A.2d 447 (1960)

- The zoning regulations do not bear a substantial relation to the public health, safety, morals, or general welfare. Hence, the present zoning imposes unreasonable and unnecessary restrictions on the use of said property in pursuit of useful activities.

Authority: City of Baltimore v. Cohn, 105 A.2d 482 (1954)

MCDARTY & MCDARTY
ATTORNEYS & COUNSELLORS AT LAW
401 FREDERICK ROAD
CATONSVILLE, MARYLAND 21228

February 22, 1977

THOMAS HENRY MCDARTY
THOMAS BOWEN MCDARTY

Mr. Arnold Fleischmann, Chairman
Baltimore County Planning Board
102 W. Pennsylvania Avenue
Towson, Maryland 21204

Re: Petition for Zoning Reclassification and Special Exception
LeRoy F. Mullen
Helen Joanne Mullen
2414 Frederick Road
Catonville, Maryland 21228

Dear Mr. Fleischmann:

Please be advised that this office has been retained by Mr. and Mrs. LeRoy F. Mullen of 2414 Frederick Road. Mr. and Mrs. Mullen are presently Petitioning for Zoning Reclassification and Special Exception for their family business located at 2414 Frederick Road.

For the past 15 years Mr. and Mrs. Mullen have operated a business of lawn mower service, sale and repair at the above location with wide neighborhood support. While the Mullens are following the administrative steps, there is special need here to hear this petition as early as possible.

The Mullens' business is seasonal. Within the very near future they would normally be ordering parts and generally preparing their business for Spring. Spring is the high point of the Mullens' repair business inasmuch as they repair lawn care equipment.

In the normal course, this Petition might not be heard until September or October of 1977. A delay of this magnitude

4. The present zoning causes Petitioners peculiar hardship not common to others.

5. The granting of the reclassification will not be contrary to the public interest and substantial justice will be done.

6. Since certain land uses in close proximity to subject land are of the proposed reclassification (i.e. BL) Petitioners argue as follows:

a. Existing uses which are inconsistent with those permitted in Petitioners' zone render their land less valuable, or even valueless for the permitted uses.

b. The rezoning use proposed by the Petitioners will not change the essential character of the neighborhood because a use similar to the one proposed already exists.

c. Development of the subject property under its present zoning is not the most advantageous use to the community.

There is a need for the service and use permitted by the petitioned zoning change by the residents of subject area (see attached Petition).

Authority: Alvey v. Hedin, 242 Md. 334, 221 A.2d 62 (1966)

c. The subject property is economically unfeasible for development and use under its present zoning.

Petitioners' evidence presented shows that it is impracticable and economically unsound to attempt to develop the subject property for residential purposes, and, therefore, Petitioners are placed under singular disadvantage and suffer peculiar hardship as related to the use of the property.

Authority: Frankel v. City of Baltimore, supra.

d. The map failed to take into account projects or trends reasonably foreseeable of fruition in the future.

The subject area is in the area of the planned Metropolitan Boulevard, or "the outer Baltimore Beltway" which will link a major interstate network of roads to the South of subject property to major interstate roads (Security Boulevard, Reisterstown & Liberty Roads, Route 40 West) to the North of subject property.

- 2 -

2/27/77

could financially ruin the Mullens. To avoid this hardship, I urge you, along with the other Baltimore County Officials involved, to hear this petition out of cycle.

Your consideration in this problem is appreciated.

Very truly yours,

Thomas B. MCDARTY
Thomas B. MCDARTY

cc

cc: John V. Murphy, Chairman, Baltimore County Council
Eric S. Dillman, Zoning Commissioner
Theodore G. Venetoulis, County Executive
Mr. and Mrs. LeRoy F. Mullen

MEMO IN SUPPORT OF PETITION

I. The proposed zoning for the subject property is a confiscatory taking.

A. Regulations restricting land to residential use have been held unconstitutional where the value of the land for such purpose has been destroyed or drastically reduced by surrounding commercial or industrial uses, by adjacent multiple family dwellings, by near by airports and major highways.

Supporting Cases:

People ex rel. Friedman v Weber, 110 Colo 161, 132 P2d 183 (1942); Tillitson v Urbana, 29 Ill 2d 22, 193 NE2d 1 (1963); Krom v Elmhurst, 8 Ill 2d 104, 133 NE2d 1 (1956); LaSalle Nat. Bank v Skokie, 62 Ill App 2d 82 210 NE2d 578 (1965); Maxwell v Rockville Centre, 84 NYS2d 544 (1948), Supl.

A zoning ordinance which limits to single-family use land surrounded by heavy commercial, and some industrial, uses is unreasonable and invalid. Schwartz v Lee, 50 Misc 2d 533, 270 NYS2d 855 (1966); Chausd Realty Corp. v Kensington, 40 Misc 2d 259, 243 NYS2d 149 (1963), affd 22 App Div 2d 895, 255 NYS2d 411.

An ordinance which limits essentially to single family use an irregularly shaped lot of about one half of an acre, located on a heavily traveled street among commercial uses, denies to the owner of such property all feasible use and is unconstitutional. Summers v Glen Cove, 17 NY2d 307, 217 NYS2d 611, 217 NE2d 663 (1966).

B. It is said that in determining whether a zoning restriction is confiscatory, consideration must be given to the character of the neighborhood, the classification and use of nearby property, and the extent to which property values are diminished by the zoning regulations in issue.

Supporting Cases:

Riddle v Waller, 127 GA App 399, 193 SE2d 895 (1972); Michigan-Lake Bldg. Corp. v Hamilton, 340 Ill 284.

Supporting Cases:

La Salle Nat. Bank v Lombard 64 Ill. App 2d 211, 212 NE 2d 321 (1965)

B. An ordinance is unreasonable which limits land use to residential where subject lot was surrounded by ancient and deteriorated houses.

Supporting Cases:

Little Rock v Andres, 237 Ark 658, 375 SW 2d 370 (1964).

C. Rezoning is justified when the character of the neighborhood has changed to such an extent that reclassification properly ought to be made.

Supporting Cases:

Serio v Mayor and City Council of Baltimore, 119 A 2d 387, 208 Md. 545.

D. A substantial change in character of neighborhood is not required to justify rezoning a small portion of land that is zoned in manner wholly inconsistent with surrounding area.

Supporting Cases:

Roberts v Grant 315 A2d 103, 20, Md. App 247

V. An error in the original zoning was made in regard to the subject property justifying reclassification.

A. The Planners failed to provide a proper classification for the service oriented businesses which predominate Frederick Road and are therefore unreasonable, arbitrary and capricious and as such invalid.

Supporting Cases:

Mulmar Associates v Board of County Com'rs for Prince Georges County, 272 A2d 6, 260 Md 292.

B. The designation of special exceptions and non-conforming

172 NE 710 (1930) noted; 25 Ill L Rev p 817 (1931); Moist v County of Du Page, 10 Ill App 3d 473, 294 NE2d 316 (1973); Citizens Nat. Bank v Downers Grove, 132 Ill App 2d 36, 265 NE2d 171 (1970); Mellett v County of Du Page, 89 Ill App 2d 437, 231 NE2d 706 (1967); Schere v. Freehold, 119 NJ Super 433, 292 A2d 35 (1972), cert den 410 US 931, 35 L Ed 2d 593, 93 S Ct 1374; Lubbock v Stauff, 278 NE2d 519 (1954, Tex Civ App), err ref n r; Buhler v Racine County, 33 Wis 2d 137, 146 NW2d 403 (1966).

C. Where a parcel is located near both commercial and residential uses, the courts have sometimes found that the parcel takes its character from the commercial rather than the residential uses and that the legislative classification is therefore arbitrary or unreasonable.

Supporting Cases:

A zoning ordinance is unreasonable and arbitrary which restricts to single-family residential use land which is situated on a heavily travelled highway in close proximity to developing commercial, religious, and school uses. Tuggle v Manning, 224 GA 29, 159 SE2d 703 (1968); Ward v Skokie, 26 Ill 2d 415, 186 NE2d 529 (1962); Regner v McHenry County, 9 Ill 2d 577, 138 NE2d 545 (1956); Gumbiner v Homewood, 130 Ill App 2d 1084, 266 NE2d 104 (1970); Odabash v Dumont, 65 NJ 115, 319 A2d 712 (1974); Standard Oil Co. v Hunter, 51 Ohio Ops 2d 375, 261 NE2d 685 (1969, CP); Taylor v Haverford, 299 Pa 402, 149 A 639 (1930).

D. In determining whether the zoning classification of particular land is reasonable, the court may consider the classification, as well as the development of neighboring property.

Supporting Cases:

Chicago Title & Trust Co. v Chicago, 130 Ill App 2d 45, 264 NE 2d 730 (1970); La Salle Nat. Bank v Palestine, 92 Ill App 2d 327, 236 NE2d 1 (1968); Sun Oil Co. v New Hope, 300 Minn 326, 220NW2d 256 (1974).

E. A landowner may challenge the constitutionality of a zoning ordinance as it applies to his property, even though he acquired such property after the effective date of the ordinance

use of property surrounding the subject property were so numerous for commercial use that the result was error in the original map. Where an error in a map is established, reclassification will be sustained.

Supporting Cases:

Montgomery v Bd. of County Com'rs for Prince Georges County, 261 A2d 447 256 Md. 597.

in issue where the basic validity of the regulations is in issue.

Supporting Cases:

Malman v Lincolnwood, 113 Ill App 2d 350, 252 NE2d 86 (1969); Lakeland Bluff, Inc. v County of Will, 114 Ill App 2d 267, 252 NE2d 765 (1969); Kropf v Starling Heights, 391 Mich 139, 215 NW2d 179 (1974); Kropf v Sterling Heights, 41 Mich App 21, 199 NW2d 567 (1972); Schere v Freehold, 119 NJ Super 433, 292 A2d 35, (1972) cert den 410 US 931, 35 L Ed 2d 593, 93 S Ct 1374.

F. Delay in attaching a zoning ordinance does not estoppel or otherwise deprive a landowner of the right to challenge its constitutionality.

Supporting Cases:

Forbes v Hubbard, 348 Ill 166, 180 NE 767 (1932).

II. Variant uses are permitted where surrounding neighborhood has commercial and non-conforming uses.

A. Variance sought due to loss or limitation of use value due to the presence in neighborhood of uses, non-conforming, variant or illegal which are incompatible with those permitted in the district.

Supporting Cases:

Jackson v San Mateo, 148 Cal App 2d 667, 307 P2d 451 (1957).

III. Governmental action in relation to the subject property acts as an estoppel against the government to enforce the proposed zoning.

A. Reliance upon official conduct will not establish a right to non-conforming use unless the landowner relies in good faith.

Supporting Cases:

Miller v Board of Trustees, 534 P2d 1232 (1975, Colo App); Naples v Crane, 292 So 2d 58 (1974) Fla App; Hollywood v

Hollywood Beach Hotel Co., 283 So 2d 867 (1973, Fla App), affd in part and rev'd in part 329 So 2d 10 (Fla); Thomasville of North Carolina, Ltd. v Thomasville, 17 NC App 493, 195 SE 2d 19 (1973).

B. Where a permit has been issued with full knowledge of the intended use where a permit holder has spent large sums of money on faith of the permit, where issuance of the permit has been followed by many years of acquiescence in the permitted use or where the landowner detrimentally relied upon the improper assurances of a city official, the municipality has been found guilty of laches and been estopped to revoke the permit or enjoin the uses. Landowners in these cases have vested rights to their use.

Supporting Cases:

The doctrine of equitable estoppel may be applied against a municipality but a showing of detrimental reliance must be made. Sheridan v Keen, 34 Colo App 228, 524 P2d 1390 (1974).

The doctrine of estoppel may be invoked where a party is induced to act relying on the conduct of municipal officials, and such party would suffer substantial loss, and the detriment to the public is negligible or the public welfare does not require restrictions. Evanston v Robbins, 117 Ill App 2d 218, 354 NE 2d 536 (1969).

See also O. P. Corp. v Lewis, 266 So 2d 676 (1971, Fla App); Naples v Crane, 292 So 2d 58 (1974, Fla App); People v Hacker, 76 Misc 2d 610, 350 NYS2d 67 (1973); Elmcrest Realty Co. v Zoning Board of Review, 78 RI 432, 82 A2d 866 (1951).

IV. The character of land use surrounding the property supports BL zoning.

A. Of paramount importance in determining the validity of a given zoning classification is the question as to whether or not it is in conformity with the surrounding existing uses.

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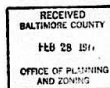
MCCARTY & MCCARTY
ATTORNEYS & COUNSELLORS
AT LAW
401 FREDERICK ROAD
CATONSVILLE, MD.
21038

- 2 -

MCCARTY & MCCARTY
ATTORNEYS AND COUNSELLORS AT LAW
401 FREDERICK ROAD
CATONSVILLE, MARYLAND 21038

February 21, 1977

TELEPHONE 786-9600



Mr. Norman E. Gerber
Chief, Community Planning
Division
Office of Planning and Zoning
County Office Building
Towson, Maryland 21204

Re: Petition for Zoning Reclassification and Special Exception
LeRoy F. Mullen
Helen Joanne Mullen
2414 Frederick Road
Catonville, Maryland 21228

Dear Mr. Gerber:

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For the past 15 years Mr. and Mrs. Mullen have operated a business of lawn mower service, sale and repair at the above location with wide neighborhood support. While the Mullens are following the administrative steps, there is special need here to hear this petition as early as possible.

The Mullens' business is seasonal. Within the very near future they would normally be ordering parts and generally preparing their business for Spring. Spring is the high point of the Mullens' repair business inasmuch as they repair lawn care equipment.

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LEGAL CENTRE
OF
MCCARTY & MCCARTY

- 2 -

2/21/77

could financially ruin the Mullens. To avoid this hardship, I urge you, along with the other Baltimore County Officials involved to hear this Petition out of cycle.

Your consideration in this problem is appreciated.

Very truly yours,

THOMAS D. MCCARTY

luc

CC: John V. Murphy, Chairman, Baltimore County Council
Eric S. DiNenna, Zoning Commissioner
Theodore G. Venetoulis, County Executive
Mr. and Mrs. LeRoy F. Mullen

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401 FREDERICK ROAD
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21038

- 5 -

- 6 -

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401 FREDERICK ROAD
CATONSVILLE, MD.
21038

AUG 28 1979

RE: PETITION FOR RECLASSIFICATION
from D.R. 3.5 to B.L.
N/5 Frederick Road
E. of Oella Avenue
1st District
LeRoy F. Mullen, Petitioner
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. 78-23-R

OPINION

This case comes before the Board on appeal from a decision of the Zoning Commissioner denying the requested change from a D.R. 3.5 zone to a B.L. zone for a parcel of land located on the north side of Frederick Road 260 feet east of Oella Avenue, in the First Election District of Baltimore County. The case was heard in its entirety "de novo" on May 23, 1979, and consumed some seven hours of testimony and cross-examination.

Petitioners presented their case for the requested change in zoning and, as stated by their counsel, predicated the propriety of this requested zoning on change of character of the neighborhood. It was also noted, at the outset of this hearing, that the original owners and petitioners were no longer the parties of record, the property having been sold to a Mr. and Mrs. Roland Lewis Jacobs, who are now the petitioners proper. Mrs. Jacobs testified as to her reasons for purchasing this property, the main one being the hope to use the property for a lawn mower repair business. She also described in detail the character of the neighborhood for considerable distances in all directions, and especially noted the commercial signs and businesses in this area. Without going into further detail, but reflected in the record, this was the basic thrust of the Petitioner's argument.

At this point in the hearing, the Protestants' counsel submitted a Motion for Dismissal based on the question of whether or not the Jacobs were in actuality the proper parties, and whether or not they have legal standing to pursue this hearing. Mr. Zimmerman, Deputy People's Counsel, also made a Motion at this point to dismiss, noting that Bill #58-79, the Plan in Progress legislation which replaced I.D.C.A. and is now in effect, states in general that under this legislation a reclassification cannot be granted

LeRoy F. Mullen - #78-23-R

2.

based on change in a neighborhood. Both Motions were held "sub curio" and the case continued on its merits.

Testimony from Mr. James Haswell, a planning expert, indicated that there was no major change in the neighborhood whatsoever. He went property by property through the neighborhood and noted its present zoning, any requested changes in zoning, and any results from these requests. His testimony, as reflected in the record, indicates many nonconforming uses in this area, of longstanding, a few property zoned commercial user, but no significant change of any kind of the land use in this area. Mr. William M. Greenwalt, Director of Environmental Support Services of the Baltimore County Health Department, testified that public water and sewers were not in the future planning for this area. He also testified that even if all proposed sewer systems were installed, no matter how far in the future they may be contemplated, this property, because of its topography, could not be serviced by any of them.

Testimony was also heard from neighbors regarding the character of the neighborhood and its history, the traffic conditions at the subject site and nearby intersections, and the reasons for their opposition to the proposed commercial zoning.

Without reviewing the evidence and testimony further in detail, but based upon all of the testimony and evidence produced in this case, the Board can find no indication whatsoever of any substantial change in the character of the neighborhood which would warrant the granting of the reclassification on that basis. No error in the zoning map was claimed by the Petitioner, and in reviewing the map the Board can see none. The burden of proof of change in character or error is upon the Petitioner and it is an onerous one, and the Board feels in this case this burden has not been met. For these reasons the Board will affirm the finding of the Zoning Commissioner and will so state in its Order.

The Board will also address itself to the two Motions submitted by counsel. The Motion to Dismiss by Mr. Murphy, Protestants' counsel, should be denied. This case comes before this Board "de novo" and all parties aggrieved by any decision of the Board are present and subject to cross-examination by both sides. The fact that Mr. and Mrs. Jacobs purchased the property from the original Petitioner before the Zoning Commissioner prior to the hearing before this Board, gives the Jacobs standing for the purpose

LeRoy F. Mullen - #78-23-R

3.

of this "de novo" hearing. This Motion is, therefore, denied.

The Motion to Dismiss by Deputy People's Counsel, Mr. Peter Zimmerman, presents a more difficult decision. This Motion is directed toward the merits of the case in accordance with the applicable law in effect at the time of the hearing. It is true that, at the time of the hearing, the I.D.C.A. legislation was replaced by Bill #58-79, Plan in Progress legislation. Counsel for the Petitioner in the very beginning of this seven hour hearing stated, and we quote:

"Mr. McCarty: The nature of the appeal, however, has brought forth the fact that under the new legislation announced by Baltimore County, that according to this legislation IDCA no longer is applicable, and there is the additional available ground of change in the character of the neighborhood, which quite frankly and practically is the thrust of the argument today, and that would be the nature of the case to be presented by the Appellants in this matter."

As People's Counsel points out, a change in the neighborhood is not a proper basis for reclassification under Bill #58-79, which was in effect at the time of this hearing. This Motion to Dismiss, though technically well taken, will be denied by the Board because of the decision of the Board on the merits of the Petitioner's case. The Board heard lengthy testimony and feels constrained to articulate its factual findings on the merits of the case, which will moot the practical consideration of the Motion to Dismiss by People's Counsel.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 21st day of June, 1979, by the County Board of Appeals, ORDERED that the reclassification petitioned for, be and the same is hereby DENIED, and the Order of the Zoning Commissioner, dated November 2, 1977, be and the same is hereby affirmed.

LeRoy F. Mullen - #78-23-R

4.

Any appeal from this decision must be in accordance with Rules 8-1 thru 8-12 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hockett
William T. Hockett, Acting Chairman

LeRoy F. Mullen
LeRoy F. Mullen

John A. Miller
John A. Miller

September 21, 1977

The Honorable Charles McC. Mathias, Jr.
United States Senate
Washington, D. C. 20510

Dear Senator Mathias:

I am writing in reference to your recent letter written on behalf of Mr. LeRoy Mullen.

As you indicated, Mr. Mullen's letter is self-explanatory. As I understand the situation, Mr. Mullen was operating his business illegally in an area zoned for residential use. The community complained and the Baltimore County Office of Zoning Enforcement issued a violation. As a result of the violation, I am told, Mr. Mullen petitioned for a zoning reclassification.

Mr. S. Eric DiNenna, Zoning Commissioner, heard the petition on September 7 and, to date, no decision has been granted.

I hope this explanation clarifies the situation for you. When I may be of future assistance, please do not hesitate to contact me.

Sincerely,

Theodore G. Venetoulis
County Executive

TGV/m
cc: R. DiNenna
Don A. Marshall



September 8, 1977

Honorable Theodore G. Venetoulis
Baltimore County Executive
County Office Building
Towson, Maryland 21204

Dear Ted:

I am enclosing a copy of a letter I recently received from Mr. LeRoy Mullen, a resident of 2414 Frederick Road, Catonsville, Maryland 21228. In my opinion, Mr. Mullen's letter is self-explanatory.

Many times, constituents are in touch with me regarding matters which do not fall within my direct jurisdiction as a United States Senator. However, I always try to be as responsive as possible. Therefore, may I please ask that you review this matter, and if any relief can be given to Mr. Mullen, I am certain he would be most appreciative.

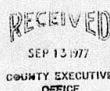
With best wishes,

Sincerely,

Charles McC. Mathias, Jr.
United States Senator

CM:dal

Enclosure



RECEIVED
SEP 13 1977

COUNTY EXECUTIVE
OFFICE

2414 Frederick Road
Catonsville, Maryland 21228
August 22, 1977

Senator Charles Mathias
1616 Federal Office Building
31 Hopkins Plaza
Baltimore, Maryland 21201

Dear Senator Mathias:

I am writing this letter in regards to a problem we are having. I was told that you might be able to help us, as you have helped others.

Approximately one year ago, we were told after 14 years of operating a lawn mower sales and service business in a building on our property behind our home at 2414 Frederick Road, Catonsville, Maryland, 21228, that we did not have the proper zoning. We were told that Baltimore County was re-zoning this area, and in order to stay as a business we would have to apply for re-zoning. This we did at a re-mapping hearing by Baltimore County, at which we were turned down.

We then applied for re-classification. Our petition went before the Planning Board for an out-of-cycle hearing. The Planning Board said that because of the nature of our reasonable business we should have an out-of-cycle hearing. Our petition was then to be brought before the County Councilmen, which they postponed for their first session. We then talked to our District Councilman, John Murphy, and his Secretary. In our conversation, we were told that the reason we were refused proper zoning during the re-mapping of Baltimore County was because adjoining property was requested for a roller rink that Murphy did not want, so they turned us down also. We feel that after operating our business for 14 years that this was very unfair.

At last, after two weeks, the Councilmen heard our case. Their duty is to vote yes or no, or to table it. In our case, however, they would not even discuss it. Therefore, we did not

Senator Charles Mathias
August 22, 1977
Page 2

get an out-of-cycle hearing. So, following normal procedure, our hearing date will now be September 7, 1977, at 7:00 p.m., at Towson, Maryland.

We feel we have been treated very unfairly and that this type of treatment will continue at our next hearing. If you could help us, we would greatly appreciate it. If you would like any additional information or clarification, please do not hesitate to call (766-3155).

Thank you for your time and consideration.

Sincerely,

LeRoy Mullen
LeRoy Mullen

P.S. This is a family-run business, and if we are not allowed to stay in business, three people in our family will be out of work and 14 years of hard work down the drain.

RE: PETITION FOR RECLASSIFICATION : BEFORE THE ZONING COMMISSIONER
N/S of Frederick Rd., 200' E of Cella Ave.,
1st District : OF BALTIMORE COUNTY
LEROY F. MULLEN, Petitioner : Case No. 76-23-R

ORDER TO ENTER APPEARANCE

Mr. Commissioner:
Pursuant to the authority contained in Section 524.1 of the Baltimore County Charter, I hereby enter my appearance in this proceeding. You are requested to notify me of any hearing date or dates which may be now or hereafter designated therefore, and of the passage of any preliminary or final Order in connection therewith.

Charles E. Kountz, Jr.
Charles E. Kountz, Jr.
Deputy People's Counsel
John W. Hession, III
John W. Hession, III
People's Counsel
County Office Building
Towson, Maryland 21204
494-2188

I HEREBY CERTIFY that on this 16th day of August, 1977, a copy of the foregoing Order was mailed to Thomas Bowie McCarty, Esquire, 401 Frederick Road, Catonsville, Maryland 21228, Attorney for Petitioner.

John W. Hession, III
John W. Hession, III



DATE *See copy*
BY *See copy*

RE: ALLEGED ZONING VIOLATION : BEFORE THE
2414 Frederick Road : DEPUTY ZONING
1st Election District : COMMISSIONER
Mr. Leroy F. Mullen : OF
2414 Frederick Road : BALTIMORE COUNTY
Catonsville, Maryland 21228 :
Defendant : 76-239-V, C-76-509

A complaint has been filed with the Zoning Office concerning an alleged violation of the Baltimore County Zoning Regulations on property at the above location. A hearing was held to determine whether a violation exists:

The following Baltimore County Zoning Regulations are involved:

Section 102.1 - "No land shall be used or occupied and no building or structure shall be erected, altered, located, or used except in conformity with these regulations and this shall include any extension of a lawful nonconforming use."

Section 1B01.1A - "Uses Permitted as of Right in D.R. Zones"

Section 413 - "SIGNS"

Testimony indicated that the Defendant is guilty of violating the above referenced Baltimore County Zoning Regulations in that he is operating a lawn mower sales and service facility on the subject property, and posting an illegal sign in a D.R. Zone.

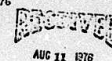
Therefore, IT IS ORDERED by the Deputy Zoning Commissioner of Baltimore County, this 16th day of June, 1976, that all lawn mower sales and services from the aforementioned property must cease, and the illegal sign must be removed, all within 60 days from the date of this Order.

Any appeal from this decision must be in accordance with Section 500.10 of the Baltimore County Zoning Regulations within 10 days.

Thomas B. McCarty
Deputy Zoning Commissioner of
Baltimore County

C. VICTOR MCFARLAND
ATTORNEY AT LAW
880 FREDERICK ROAD
CATONSVILLE, MARYLAND 21228
(301) 744-0831

August 10, 1976



OFFICE OF LAW

Peter Max Zimmerman, Assistant
County Solicitor
Office of Law
County Office Building
Towson, Maryland 21204

Re: Zoning Violation 1
Leroy F. Mullen et ux
2414 Frederick Road
Case No. 76-239V C-76-509
Pending Board of Appeals

Dear Mr. Zimmerman:

Subsequent to our telephone conversation of yesterday, I discussed the matter with my client, Mr. Leroy F. Mullen.

We would propose the following as a reasonable solution to this case:

1. That, in the event my client is not given a reclassification on the comprehensive zoning map in October, 1976, that would allow him to continue his lawn mower business, he will voluntarily dismantle the commercial facade to his out building and sign and discontinue his business within forty-five (45) days of the decision of the County Council. In addition, he will dismiss his appeal in this case.

2. That, in the event my client is granted a reclassification that would allow his continuance in his lawn mower business, the County will abandon their prosecution of the zoning violation.

I would greatly appreciate your consideration of the proposal and your advice as to the County's position.

Very truly yours,

C. Victor McFarland
C. Victor McFarland

CVMcF:d
cc: Mr. and Mrs. Leroy F. Mullen
Honorable John V. Murphy, Esquire,
County Councilman

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Peter Max Zimmerman, Esquire
TO: Assistant County Solicitor
Mr. James E. Dyer
FROM: Zoning Supervisor
SUBJECT: Leroy F. Mullen - Zoning Case
Date: August 25, 1976

Your memorandum of August 13, 1976, requests that this office review a proposal by C. Victor McFarland, Esquire, attorney for Mr. Mullen, and determine if said proposal is appropriate.

The proposal, as outlined in Mr. McFarland's letter of August 10, 1976, basically states that his client is requesting the County Council to modify the zoning classification of his property from residential to commercial, which would permit the lawn mower repair business that has been found in violation. He suggests that, in the event his client is granted a commercial reclassification, he be allowed to continue the lawn mower business and that the County abandon prosecution of the zoning violation. He further agrees that, if the commercial classification is not granted, his client will voluntarily dismantle the commercial facade of his building and sign and discontinue his business within 45 days.

I feel this is a fair solution since injunctive relief and accompanying appeals could take us far beyond the date of the adoption of the maps, however, any agreement formulated by you should clearly point out that, if such commercial, all aspects of the commercial operation, including a site plan, parking, setbacks, screening, etc., must be complied with. In other words, his operation could be in violation of the area requirements of the commercial zone.

The area planner, Ray Potter, informs me that the map request being considered by the County Council is D.P. 16 246 B.1.

If you have any further questions concerning this matter, please feel free to contact this office.

James E. Dyer
James E. Dyer
Zoning Supervisor

JED/scw

cc: Mr. S. Eric DiNenna, Zoning Commissioner
Mr. James B. Byrnes, III, Chief, Zoning Enforcement Section

Rec'd 10/18/76
9:15 am

MCCARTY & MCCARTY
ATTORNEYS AND COUNSELLORS AT LAW
401 FREDERICK ROAD
CATONSVILLE, MARYLAND 21228
February 18, 1977

Chairman John V. Murphy
Baltimore County Council
County Office Building
Towson, Maryland 21204

Re: Petition for Zoning Reclassification
and Special Exception
Leroy F. Mullen
Helen Joanne Mullen
2414 Frederick Road
Catonsville, Maryland 21228

Dear Chairman Murphy:

This office represents the above named Petitioners. Mr. and Mrs. Mullen own and operate their business known as Ridgeway Mower Service & Sales Co. at their residence which is near the intersection of Frederick Road and Cella Avenue, west of the Catonsville Business District. The Mullens have been operating this business for the past 15 years at this location.

However, currently, Mr. Mullen is subject to zoning violation charges (District Court of Maryland - Case No. 76-239-V) for operating this business at this location. Needless to say, this business is the Mullens' sole means of support. Also, with the approach of Spring, the needs of this business by the community are the greatest.

To date, Mr. Mullen has exercised all the administrative steps requisite to perfect legalization of his operation in reference to zoning ordinances. However, the request of this letter is to acquire grant by the Baltimore County Council to allow hearing of the Mullen Petition before the Baltimore County Zoning Commissioner out of cycle (and as soon as possible). Otherwise, the Mullen Petition would be heard sometime between

September 1 - October 15, 1977.

If this request is not granted, the Mullens shall suffer severe personal hardship.

Your attention to this matter will be greatly appreciated.

Very truly yours,

Thomas B. McCarty
Thomas B. McCarty

luc

CC: Theodore G. Vanetoulis, County Executive
Eric S. DiNenna, Zoning Commissioner
Mr. & Mrs. Leroy F. Mullen

THOMAS HENRY MCCARTY
THOMAS BOWIE MCCARTY

May 2, 1977

John V. Murphy, Chairman
County Council of Baltimore County
Court House
Towson, Maryland 21204

Re: Petition for Zoning Reclassification
and Special Exception
Leroy F. Mullen

Dear Mr. Murphy:

I am writing for a clarification of the Council's decision of April 18, 1977. On that day the Council heard Mr. Mullen's request to have his Petition for Reclassification heard out of cycle. This hearing was held after a finding of undue hardship and emergency, need by the Planning Board.

While both Mr. and Mrs. Mullen and I attended the Council meeting on April 18, 1977, the decision of the Council to either allow or not allow the request to have the Petition heard out of cycle was not clear.

Please forward a written statement relative to the Council's decision on Mr. Mullen's request to have his Petition heard out of cycle.

Very truly yours,

Thomas B. McCarty
Thomas B. McCarty

luc

CC: Eric S. DiNenna, Zoning Commissioner
Theodore G. Vanetoulis, County Executive
Mr. & Mrs. Leroy F. Mullen

MCCARTY & MCCARTY
ATTORNEYS AND COUNSELLORS AT LAW
401 FREDERICK ROAD
CATONSVILLE, MARYLAND 21228



Law Offices
Jerome B. Michaelson
6th Floor Tower Building
Baltimore, Maryland 21202

L. Mark Vincent
John V. Murphy

April 22, 1979

Board of Appeals of Baltimore County
Old Court House
W. Chesapeake Avenue
Towson, Maryland 21204

Attention: Mr. Walter Reiter
Gentlemen:

Please be informed that I will be representing Mrs. Virginia Leach, Mr. Armistead Leach and Mrs. Whiting of 2501 Frederick Road, Catonsville, Md. as protestant attorney in the appeal of case number 7623R, Mullen Lawn Mower Shop, from the Zoning Commissioner's ruling denying SU zoning to the property at 2414 Frederick Road.

I would appreciate calling me at 599-6585 for any change to the April 25th hearing now scheduled for the Board of Appeals.

Yours truly,
John V. Murphy
John V. Murphy

JVM/jam

Rec'd 4/24/79
11:30 am

August 30, 1976

C. Victor McFarland, Esquire
920 Frederick Road
Catonsville, Maryland 21228

RE: Leroy F. Mullen, et ux
2414 Frederick Road
Case No. 76-239V C76-509

Dear Mr. McFarland:

Having received your letter of August 10, 1976, I have reviewed the matter with the Office of the Zoning Commissioner. We accept your proposal, subject to your client's recognizing the following condition. Should the property belonging to your client be re-zoned to a commercial zone, your client would have to comply with zoning requirements pertaining to a commercial operation, including a site plan, parking, set backs, screening requirements, and other prerequisites to operation in a commercial zone.

If your client agrees to abide by the proposal stated in your letter of August 10, 1976, with the additional condition indicated herein above, please indicate so by return letter promptly. If your client so concurs, we would then have an agreement on this matter.

Thank you for your continuing cooperation in this matter.

Very truly yours,

Peter Max Zimmerman
Peter Max Zimmerman
Assistant County Solicitor

PMZ:af

cc: S. Eric DiNenna
James Dyer
James B. Byrnes, III

C. VICTOR MCFARLAND
ATTORNEY AT LAW
920 FREDERICK ROAD
CATONSVILLE, MARYLAND 21228
(800) 741-0031

September 16, 1976

Peter Max Zimmerman, Esquire,
Assistant County Solicitor
Baltimore County Office of Law
Towson, Maryland 21204

Re: Leroy F. Mullen, et ux
2414 Frederick Road
Case No. 76-239V C76-509

Dear Mr. Zimmerman:

I have discussed the contents of your letter of August 30, 1976, and my client is agreed that should his property be re-zoned to a commercial zone, he would comply with the zoning requirements pertaining to a commercial operation, including a site plan, parking, set backs, screening requirements, and any other prerequisites to the operation in a commercial zone.

I would greatly appreciate your letting me know that the contents of my letter of August 10, 1976 and my current letter meet with the County's approval so that I can dismiss the appeal.

Very truly yours,

C. Victor McFarland
C. Victor McFarland

CVH:Fjm
cc: Mr. & Mrs. Leroy F. Mullen

RECEIVED
SEP 17 1976
OFFICE OF LAW

September 20, 1976

C. Victor McFarland, Esquire
920 Frederick Road
Catonsville, Maryland 21228

RE: Leroy F. Mullen, et ux
2414 Frederick Road
Case No. 76-239V, C76-509

Dear Mr. McFarland,

In reference to your letters of September 16, 1976 and August 10, 1976, and also my letter of August 30, 1976, this is to confirm that the arrangements set forth in those letters, taken together, meet with the approval of Baltimore County. It would therefore be appropriate for you to dismiss your appeal on behalf of Mr. Leroy F. Mullen.

Very truly yours,

Peter Max Zimmerman
Assistant County Solicitor

PMZ:af

cc: S. Eric DiNenna
James Byrnes
cc: Edward Seibert

RE: ALLEGED ZONING VIOLATION
2414 Frederick Road
1st Election District
OF
Mr. Leroy F. Mullen
2414 Frederick Road
Catonsville, Maryland 21228
Defendant
BALTIMORE COUNTY
76-239V, C-76-509

Dear Mr. Clerk:

Please dismiss the above entitled zoning violation appeal from the Order of the Deputy Zoning Commissioner, pursuant to an agreement between the Appellant and Baltimore County, Maryland.

C. Victor McFarland
C. Victor McFarland
920 Frederick Road
Catonsville, Maryland 21228
744-0931
Attorney for Appellant

I HEREBY CERTIFY that on this 21st day of October, 1976, a copy of the foregoing Order of Dismissal was mailed to Peter Max Zimmerman, Assistant County Solicitor, Baltimore County, Maryland, County Office Building, Towson, Maryland 21204 and S. Eric DiNenna, Zoning Commissioner, Office of Planning and Zoning, County Office Building, Towson, Maryland 21204.

C. Victor McFarland
C. Victor McFarland

RE: ALLEGED ZONING VIOLATION
on property located at
2414 Frederick Road
1st District
Leroy F. Mullen
Defendant
BALTIMORE COUNTY
NO. 76-239-V
(C-76-509)

ORDER OF DISMISSAL

Appeal of Leroy F. Mullen for alleged zoning violation on property located at 2414 Frederick Road, in the First Election District of Baltimore County.

WHEREAS, the Board of Appeals is in receipt of an order, filed October 8, 1976, (a copy of which is attached hereto and made a part hereof) from the attorney representing the Defendant-Appellant in the above entitled matter.

WHEREAS, the said attorney for the said Defendant-Appellant requests that the appeal filed on behalf of said Defendant be withdrawn.

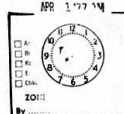
IT IS HEREBY ORDERED, this 14th day of October, 1976 that said appeal be and the same is DISMISSED.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Walter A. Seifer, Jr.
Walter A. Seifer, Jr., Chairman
Robert L. Gilland
Robert L. Gilland
John A. Miller
John A. Miller

Baltimore County
Office of Planning and Zoning
TOWSON, MARYLAND 21204
(301) 494-2211

March 29, 1977



The Honorable John V. Murphy
Chairman, Baltimore County Council
Towson, Maryland 21204

Dear Mr. Murphy:

At its special meeting on Thursday, March 24, 1977, the Baltimore County Planning Board, under the provisions of Subsection 22-22(1) of the Baltimore County Code 1966, as amended, approved a motion to certify to the County Council that early action is manifestly required because of emergency on the petition of Leroy F. Mullen and Helen Joanne Mullen to change the zoning classification of their property located at 2414 Frederick Road from D.R. 3.5 to B.L.

After reviewing the letter submitted by the petitioner's attorney and the facts in the case, the Board concluded that the petition should be heard by the Zoning Commissioner as soon as possible to reduce the hardships presently being suffered by the petitioner.

Copies of the petition and of the letter addressed to the Acting Secretary of the Planning Board, plus related correspondence, are attached. Assessment information is included in a staff memorandum to me. I will provide additional information upon request. Notification to the Zoning Commission of the Council's action on this matter is necessary so that he may take timely action.

Sincerely,

Norman E. Gerber
Norman E. Gerber, Acting Secretary
Baltimore County Planning Board

NEG:FS:dne

Attachments

cy. (w/attachments)

The Honorable Gary Huddles, Councilman, Second District
The Honorable Clarence E. Bitter, Councilman, Third District
The Honorable Eugene L. Kibbe, Jr., Councilman, Fourth District
The Honorable Norman W. Lauenstein, Councilman, Fifth District
The Honorable Eugene W. Gallagher, Councilman, Sixth District
The Honorable John W. O'Rourke, Councilman, Seventh District
Mr. Thomas Toporovich, Secretary to the County Council
Mr. S. Eric DiNenna, Zoning Commissioner
Mr. & Mrs. Leroy F. Mullen
Thomas B. McCarty, Esq.

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Norman E. Gerber
Acting Director of Planning
Date: March 29, 1977
FROM: Ray R. Potter, Jr.
Southwest Area Planner
SUBJECT: Assessment of Property of
Leroy F. Mullen and Helen Joanne Mullen

The current assessment of the property of Leroy F. Mullen at 2414 Frederick Road, Property No. 01-13-856260, and Helen Joanne Mullen is Land, \$3,610, and Improvements, \$9,750, for a total of \$13,360.

This property is assessed as residential property, and the assessment records do not indicate a commercial operation on this tract.

Ray R. Potter, Jr.
Ray R. Potter, Jr.
Southwest Area Planner

RRP:dne

Dear Zoning Commissioner,
Re: Re-zoning of Frederick Rd (at
Bella Ave.)
From D.R. 3.5 to B.L.
for use as a lawn-mower repair
shop and sales.

I live approximately 700 ft.
from the property in question and
I would like you to know that my
family & I are very much opposed
to any zoning change in our
neighborhood.

Thank you
Madeline Potter
Madeline Potter

111 Bella Ave.
Catonsville, Md. 21228

For reclassification from DR 3.5 to B.L.

N/S Frederick Rd. 260' E. of Cella Ave.

1st District

MOTION FOR POSTPONEMENT

Now comes, LEROY F. MULLEN, by his attorney, Thomas B. McCarty, and requests postponement of Hearing set for April 25, 1979 at 10 A.M., and for cause states: (a) trial in District Court of Howard Co. (Spinola v. Pine Construction) at 9:15 on same date and (b) Jury trial in Baltimore City Court of Common Pleas set for April 24, 1979 which may cause conflict of scheduling.

Wherefore, it is requested that this case be postponed and that a new hearing date be set.

THOMAS B. MC CARTY
401 Frederick Road
Catonville, Maryland 21228
788-3800

I hereby certify that a copy of this request for Postponement has been mailed to Thomas A. Henning, Esquire; Dr. William F.

Stephen, Jr.; Mr. Eugene L. Shaver; and John W. Hessian, III, Esq. this 11th day of April 1979.

THOMAS B. MC CARTY
Thomas B. McCarty

ERIC S. DI NENNA Re: Property Owner: LeRoy F. Mullen
Hearing: September 7, 1977
Subject: Item #3
County Office Building
Towson, Maryland 21204
Existing Zoning: D.R. 3.5
Requested Zoning: B.L.

SUMMONS DUCE TECUM

Please issue summons duce tecum for the individual named below to appear as a witness at the Hearing scheduled for September 7, 1977, and bring all reports to support the letters.

9-2-77 SUB ON MS PAH HOWARD
THOMAS H. Devlin, Director
Bureau of Environmental Services
Baltimore County
Department of Health
Towson, Maryland 21204

COST \$ 5.00
SUMMONED 9-2-77
NON EST 19
NON SUIT 19
CCPY LEFT 19

Mr. Sheriff: CHARLES H. HOCKEY, JR.
OF BALTIMORE COUNTY
Please issue summons in accordance with the above.

ERIC DI NENNA
Zoning Commissioner for
Baltimore County

COMPAC
Community Planning Association of Catonsville, Inc.
Baltimore County Board of Appeals

Dear Sirs:

May 18, 1979

This is to inform you that it has been resolved at the May 10, 1979 Board meeting of this organization that the following be authorized to speak on behalf of COMPAC (Community Planning Association of Catonsville, Inc.) in all hearings regarding Case No: 7823R (request for reclassification from DR 3.5 to B.L. Zone, N/S Frederick Road, 260' E of Cella Ave., 1st District):

William Stephen
Recording Secretary
2408 Harbordwood Rd.
Catonville, Md. 21228

Eugene Shaver
Past President
116 S. Hilltop Rd.
Catonville, Md. 21228

Barbara Gostinger
Vice President
2 Thistle Rd.
Catonville, Md. 21228

The above persons have accurate knowledge of the number of members and geographic locations of this association.
Enclosed is a copy of the resolution at the May 10, 1979 meeting stating the position adopted by the Board of Directors.

David P. Beck

David Beck - President
1405 Midvale Ave.
Catonville, Md. 21228

Attested by:
Karen Tuero
Keren Tuero
Corresponding Secretary
1907 Logwind Rd.
Catonville, Md. 21228

Enclosure

COMPAC
Community Planning Association of Catonsville, Inc.

May 10, 1979

It is hereby resolved that COMPAC (Community Planning Association of Catonsville, Inc.) opposes reclassification from DR 3.5 to B.L. zoning the property N/S Frederick Road, 260' E of Cella Avenue, 1st District, known by this association as the Mullen Property.

David P. Beck

David Beck
President
COMPAC
1405 Midvale Avenue
Catonville, Md. 21228

Attested by:
Karen Tuero
Keren Tuero
Corresponding Secretary
1907 Logwind Road
Catonville, Md. 21228

Full Gospel Pentecostal Church

Box 133

Westchester Avenue

Ellicott City, Maryland 21043



To Whom It May Concern:

The members of The Full Gospel Pentecostal Church, located on Westchester Avenue, are very concerned about Ridgeway Movers.

We are located about two miles from the business, and the people of the Church would suffer if this business had to close, because of the service to our Church.

The Mullen's are fine Christian people and run a well organized business.

We are praying you will show concern and act accordingly.

Sincerely,

Pastor L. G. Smith

P. L. Smith

September 6, 1977

116 South Hilltop Road
Catonville, Maryland 21228

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

Re: Hearing #78-23-R It: LeRoy Mullen, September 7, 1977

Dear Mr. DiNenna:

The concerned residents of the communities known as Hollingwoods I, II, and III, Keper Hill, Woodwind, and the contiguous areas are unequivocally opposed to the rezoning of the Reference case from D.R.3.5 to B.L.

This would be a flagrant example of spot zoning in this low density residential area (D.R.3.5). Were this to occur, we fear that Frederick Road would become commercialized and affect greatly the people in our neighborhood, some of whom live directly on Frederick Road. Hollingwood II is only one half mile East of the Mullen property. Our other neighborhoods are within three quarters of a mile.

Many of us have lived here over 10 years and there has been little change in the area. There have been no increased density changes on Frederick Road in this time, and there were three decreased changes in the 1976 Comprehensive Zoning Map. They were:

Item 1-28 L. Sapers E/S Hilltop Rd. 200' S of Frederick Rd. 9.64 acres reduced from M.R. to D.R.3.5.

Item 1-31 J. Penner S/S Frederick Rd. E/S Thistle Rd. 6.75 acres reduced from D.R.16 to D.R.3.5.

Item 1-32 F. L. Lemon N/S Frederick Rd. E of Thistle Rd. 7.88 acres reduced from B.L.-CHS to D.R.3.5/6.5/16.

All three are less than 0.5 mile from the Mullen property.

In addition, eight cases for increased zoning were not approved.

There were six non-conforming usages along Frederick Road. This is down to three.

1. Snyder's West restaurant - in existence as the Ridgeway Inn since before World War II.
2. Candlelight Inn restaurant in existence prior to World War II.
3. Kreh's Corners grocery store in existence since 1889.

The Eight Mile House restaurant at the intersection of Frederick and Thistle Roads is on land zoned B.L. and has been located there since World War II. The same situation exists at the small fruit stand at the intersection of Frederick and Hillside Roads. Further West along Frederick toward Hilltop City are two gas stations on B.R. These have been there for many many years.

Thus you can see that we live in a residential neighborhood that is and has been stable for many years, and has been recognized as such through the zoning processes - maps and hearings - which, in fact, have resulted in some downgrading of zoning intensity from business to residential. Further, there are enough commercial properties and businesses within two miles of our homes to sustain us far into the future. These are the above mentioned stores, gas stations, and restaurants, plus the Catonsville Business District on Frederick Road, the junction at Edmondson and Dutton Avenues, and the Route 40 West and Montgomery Ward Shopping Plaza on North Rolling Road and Route 40.

We concur with the Planning Board's recommendation that the existing D.R.3.5 be retained.

We would appreciate your assistance in maintaining our community as a lovely residential area.

Sincerely,

Eugene L. Shaver
Eugene L. Shaver
Spokesman

Gentlemen:

Will you please keep me informed as to the status of Case 7823R (request of LeRoy Mullen for zoning change). I am interested because I live directly opposite the property in question, and will appreciate notification of new trial date when it is met.

Sincerely yours,

Virginia C. Leach
Virginia C. Leach
(Mrs. Aristand H. Leach)
2607 Frederick Rd.
Catonville, Md. 21228

Oct. 12, 1978

Rec'd 1-16-79
B. Zeger

TELEPHONE
DNO. 838-5825
FAX 838-5827
John V. Murphy
L. Mark Vincent

Jerome E. Michaelson
Jerome E. Michaelson

2ND FLOOR
THE TOWER BUILDING
222 N. BALTIMORE STREET
BALTIMORE, MARYLAND 21204

June 3, 1979

Baltimore County Board of Appeals
Old Court House
West Chesapeake Avenue
Towson, Maryland 21204

Reference: Board Hearing of Case 78-23R heard May 23, 1979,
Mullen Property at 2404 Frederick Road, Catonsville

Dear Mr. Chairman and Members of the Board:

As agreed at the May 23rd hearing, the Protestant's summary is hereby submitted in writing for the Board's consideration:

MULLEN PROPERTY CASE PROTESTANT'S SUMMARY

Petitioner's Attorney in submitting his "Memo in Support of Petition" has incorrectly stated both the facts and some instances the law regarding this case. Using his memo as a guide we submit the following arguments:

Petitioner's issue IA - "Regulations restricting land to residential use have been held unconstitutional where the value of the land for such purpose has been destroyed or drastically reduced by surrounding commercial or industrial uses, by adjacent multiple family dwellings, by nearby airports and major highways."

Protestant's Response - No evidence has been submitted to the Board which in any way shows a diminution of the sub-jacent property by the existing uses along Frederick Road or

Jerome E. Michaelson
Jerome E. Michaelson

- 2 -

surrounding area. The only evidence submitted by the Petitioner was that the new owners had recently paid \$56,000 for a modest residence on 1.4 acres of ground not served by public water or public sewerage. The Board admitted into evidence over our objection a real estate appraisal attempting to show some harm done but in fact showed the Petitioners had paid almost exactly what the unsupported appraisal said the value would be at the commercial rate. Petitioners own case clearly disproves his claim.

Petitioner's issue IB - Essentially the same as above in IA.

Petitioner's issue IC - "Where a parcel is located near both commercial and residential uses, the courts sometimes found that the parcel takes its character from commercial rather than residential uses and that the legislative classification is therefore arbitrary or unreasonable."

Protestant's Response - The County's expert witness, Mr. Hauswell showed that the property is completely surrounded by residential zoning. Four neighbors and civic leaders who would be directly affected by granting this spot some, testified that the uses surrounding the property were residential or agricultural. The Health Department expert witness testified that they would not approve a commercial permit because of a failing septic system and that neither public water or sewerage would be available in the foreseeable future.

Petitioner's issue ID - Essentially the same as above.

Petitioner's issue IE - "A landowner may challenge the constitutionality of a zoning ordinance as it applies to his property even though he acquired such property after the effective date of the ordinance in issue where the basic validity of the regulations is in issue."

Protestant's Response - We believe that the constitutionality of zoning in Baltimore County is not at issue in this case but rather the application of the zoning to this specific property. Regardless of the cases cited from other states, Maryland's rule clearly forbids new and renewed appeals from appealing zoning cases. In this case the original owners, the Mullens, who were the only petitioner parties at the zoning Commissioner level, and who signed the application for appeal to the Board, have completely severed all interest in the property and have moved to New York State.

Jerome E. Michaelson
Jerome E. Michaelson

- 3 -

The Mullens neither appeared nor attempted in any way to submit testimony to the Board at the May 23rd hearing. Since the Board hears cases de novo no testimony by the Mullens at the zoning Commissioner level is transferable to the Board hearing. On the other hand, the new owners, the Jacobs, were by their own admission not parties nor participants at the zoning Commissioner hearing and have no right to appeal the Commissioner's decision.

The Maryland rule is clearly stated in *Dubay v. Crane* 213Md487,489. The Court states at page 489. "While it is not necessary that a protestant testify before the administrative agency, it is incumbent on him, if he contemplates appealing an adverse decision to at least have the record show that he was a party to the proceeding." Failing that he cannot maintain an appeal such as that in Baltimore County. See Baltimore County Charter Art. VI §64. "Thus the new owner in this case, the Jacobs, have no standing to appeal. The Rules of Procedure of the Board also prohibit the Jacobs appeal. Rule 3 states that: "No appeal shall be entertained by the Board of Appeals unless the notice of appeal shall state the names and addresses of the persons taking such appeal." The Jacobs name is not on the application to appeal and they cannot be appellants.

In regards to the Mullens, the original owners, the *Dubay* case applies equally. Again at page 489 the Court states: "In zoning cases the rule in this State is that for a person to be aggrieved by an adverse decision of the administrative agency, and thus entitled to appeal to the Courts, the decision must not only affect a matter in which the protestant has a specific interest or property right but the protestant must be such as that he is personally and specifically affected in a way different from that suffered by the public generally." The Court went on to deny standing to an appellant 1500 feet away across the Baltimore Beltway. Surely the Mullens who have moved to New York State after selling all their interest in the property cannot be aggrieved parties. They neither took part in the hearing nor in any way sought to continue their case. Also see the exception which proves the rule in *Wright v. McCubbin*, 260MD11(1970), 271Md2nd365.

Jerome E. Michaelson
Jerome E. Michaelson

- 4 -

Petitioner's issue IF - Delay in attaching a zoning ordinance does not estoppel or otherwise deprive a landowner of the right to challenge its constitutionality.

Protestant's Response - This is an admission by the petitioners that the original owners knew they were in a residential zone and failed to seek commercial zoning during the years petitioners hear testimony says they operated a business. Because the original owners, the Mullens, failed to participate in the Board hearing, protestants were unable to show the Mullen delay was intentional. However, Mr. Hauswell of the County Planning office did establish that the tax assessment on the property was at all relevant times the lower residential rate.

Petitioner's issue II - Variant Uses.

Protestant's Response - No request for a variance was made to the Board. This is irrelevant.

Petitioner's issue III - County issued a permit and therefore is estopped to revoke the permit or enjoin the uses.

Protestant's Response - To testimony whatsoever was submitted by petitioners about any permit. This assumes facts not in evidence and is wholly irrelevant to a rezoning petition.

Petitioner's issue IVA - Of paramount importance in determining the validity of a given zoning classification is the question as to whether or not it is conformity with the surrounding existing uses.

Protestant's Response - Protestants' witnesses established that the character of the surrounding area is rural and residential. What little commercial uses exist in the area have been there for many years, most before the start of zoning in 1945. Protestant witnesses have also shown that all new buildings in the vicinity in the last five years have been residential.

Jerome E. Michaelson
Jerome E. Michaelson

- 5 -

Petitioner's issue IVB - Lot is surrounded by ancient and deteriorating houses.

Protestant's Response - Protestant witnesses showed that although many residences nearby are historic they are far from deteriorating with very substantial sums being spent in the past five years to maintain and improve these fine residential properties.

Petitioner's issue IVC - Rezoning is justified when the character of the neighborhood has changed to such an extent that reclassification properly ought to be made.

Protestant's Response - Petitioners sought to establish every commercial use along Frederick Road between Catonsville and Ellicott City business areas. As such he has failed to establish the "neighborhood" surrounding the property. As required in *Clayman v. Prince Georges County* 266d,409(1972), the neighborhood must be shown to comprise an area reasonably within its immediate environs - not some area miles away. The burden is on the appellant to delineate the neighborhood and as in *Prince Georges County Council v. Frostwick, Inc.*, 263Md.217,226(1971), where applicant failed to delineate the neighborhood, the Court of Appeals characterized appellee's case as: "seriously flawed in that it fails to meet the burden of proof which it has to delineate the neighborhood." The petitioner also has failed to establish even to present testimony of the neighborhood changing any way such less toward commercial. Petitioner's list of purported commercial uses along Frederick Road were in most cases residentially zoned and in all cases have been established at whatever they are for many years. There is no change toward commercial but if anything a serious attempt by the County Council to maintain the residential character of the neighborhood by denying all requests in 1976 for increase commercial zoning and in fact downshifting nearby vacant commercially zoned land to its proper residential use. Protestant witnesses established clearly that the only new building in the area was new residences.

Jerome E. Michaelson
Jerome E. Michaelson

- 6 -

Petitioner's issue IVD - "A substantial change in character of neighborhood is not required to justify rezoning a small portion of land that is zoned in a manner wholly inconsistent with surrounding area." *Wright v. Grant* 315Md2d103, 20Md. App.247.

Protestant's Response - That phrase is taken completely out of context from the Grant case. In Grant the issue was whether the County Council could downshift property without finding a substantial change in the neighborhood. The Court held the Council did not have to find a substantial change in the neighborhood as above. The power of the Council to downshift is not at issue in this case but rather the burden is on the petitioners to overturn the specific refusal of the Council in issue I-50 to upgrade this property to commercial. The true rule is - where the property which is the subject of the reclassification request was previously denied rezoning at the time of the last comprehensive zoning, the burden on the petitioner becomes even heavier than establishing change in the neighborhood. The applicant must now demonstrate substantial change in the character of the neighborhood from the time of prior denial of rezoning. See *Brown v. Westwood*, 250Md.200(1968) and *Montgomery County v. National Capital Realty Corp.*, 297Md2nd675(1972). Also see *Wright v. McCubbin*, 260Md.11(1970), 271Md2nd365 that even if no reasonable use can be made of the property in its current zoning classification. The new owners recent purchase of the property belies this in the subject case.

Petitioner's issue V - Service oriented businesses pre-dominate Frederick Road and special exceptions and non-conforming uses were so numerous that reclassification is justified.

Protestant's Response - Neither of the petitioner cases cited have any relevancy to this issue. However the Court in *Wright v. McCubbin*, 260Md.11(1970) did in a remarkably similar case on this same Frederick Road, talking about many of the same uses, that legal non-conforming uses are not evidence of a change in the character of a neighborhood since the philosophy of zoning supports the theory that such uses are temporary. In *Creswell v. Baltimore Aviation*

Jerome E. Michaelson
Jerome E. Michaelson

- 7 -

Service, Inc., 257Md.712(1970) the Court held that the presence of special exception uses is not substantial evidence of change in the character of a neighborhood since these uses are legislatively predetermined to be conditionally compatible with uses permitted as of right in the zone.

The petitioners have clearly failed to establish any change in the neighborhood toward commercial much less a substantial change and by their own purchase of the property for \$56,000 have shown the present residential zone is a reasonable use.

With these arguments the protestants, neighbors and civic association members opposed to this petition new our case. We respectfully request the Board to deny this petition. We have the Health Department, the Planning Board, the Planning Staff, the Zoning Commissioner and the County Council in the 1976 zoning map.

Very truly yours,

John V. Murphy
John V. Murphy

JVM/jan

2404 Frederick Road
Catonsville Md. 21228
January 31, 1979

Baltimore County
Board of Zoning Appeals
Room 219 Court House
Towson, Md. 21204

Sirs:

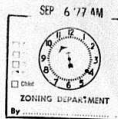
Could you please put me on the list of protestants in the Zoning appeal case # 78-23R, which is scheduled to be heard sometime in the next few months.

Sincerely,

Alan J. Murphy
Alan J. Murphy

Rec'd 2/5/79
1:15 PM

September 1, 1977



Mr. Eric DiNenna
Zoning Commissioner, Baltimore County
111 West Chesapeake Avenue
Towson, Md. 21204

Re: #78-23-R, Item #3
Petition for Reclassification from
D.R. 3.5 to B.L.
North side of Frederick Road
260 feet east of Oella Avenue
1st District - 1st Councilmanic District

Dear Mr. DiNenna:

COMPAC, the Community Planning Association of Catonsville, strongly opposes this petition.

The present zoning on this tract of land was arrived at after full consideration of all relevant facts. The planning staff, Planning Board, and County Council considered present and future uses of this land, present and future values of this land, and the public health and welfare in arriving at the present zoning. Many public hearings were held as a part of this process and the petitioner had ample opportunity to present his position during this process. It may be noted that he did present his position.

COMPAC strongly supports the stated policy of the Planning Board and County Council against strip zoning. The zoning maps on Frederick Road in West Catonsville are a specific example of the implementation of that consistent, deliberate policy. To grant the petitioners' requests can only be regarded as either spot zoning or as a deliberate, administrative abrogation of zoning policy as expressed by the County Council in the zoning maps legislated by the Council.

We also point out that improper use of land cannot be used as a justification for a zoning change. Furthermore, the value of a tract of land may be divided into two parts. One is the intrinsic value of the land. The other is a speculative value based on the possibility that the intrinsic value of the land will be increased by administrative, legislative, judicial, or other actions and circumstances. This speculative value is not germane in evaluating whether a tract of land has been properly zoned. The loss of the speculative value through rational zoning decisions, economic changes, etc., is simply a normal business risk involved in holding such land.

Mr. Eric DiNenna
September 1, 1977
Page 2

In summary, COMPAC firmly believes that the present zoning on this tract of land is correct, that it was arrived at after full public discussion, that it reflects reasonable and proper zoning policies, and that the petitioner's request is without justification and would do violence to the policies on land use and zoning that the County Council has implemented in fulfillment of its responsibilities.

Sincerely yours,

William F. Stephen, Jr.
William F. Stephen, Jr., Ph.D.
Vice-President

WFS:j

NILES, BARTON & WILMER

300 N. HOWARD STREET
BALTIMORE, MARYLAND 21201
CABLE ADDRESS: NILWFO
TELEX: 87-448 NILESLEW

COUNCIL OFFICE
300 N. HOWARD STREET
P.O. BOX 400
BALTIMORE, MD. 21201
TELEPHONE: 333-2000

January 17, 1979

County Board of Appeals
Room 219, Court House
Towson, Maryland 21204

Attention: Walter A. Reiter, Jr., Chairman

Re: Reclassification Petition
78-23-R - Leroy F. Mullen

Dear Mr. Reiter:

Please enter my appearance on your records on behalf of Miss Betty W. Whiting, a protestant in the above entitled matter. It is my understanding that the hearing previously scheduled for January 16, 1979, has been postponed and that all parties on record will be advised of a new hearing date when same has been set.

Sincerely yours,

Thomas A. Henning
Thomas A. Henning

TAH/sib

cc: Thomas B. McCarty, Esquire
John W. Hession, III, Esquire
Miss Betty Whiting

*Rec'd 1-17-79
P/M*

Thomas Bowie McCarty
401 Frederick Road
Catonsville, Maryland 21228

Item No. 3

BALTIMORE COUNTY OFFICE OF PLANNING & ZONING

County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Your Petition has been received and accepted for filing
this 09th day of April, 1977

Eric DiNenna
Eric DiNenna
Zoning Commissioner

Petitioner: *Leroy F. Mullen*

Petitioner's Attorney

cc: Hudkins Associates, Inc.
200 E. Joppa Road
Towson, Maryland 21204

Reviewed by *Nicholas B. Comodari*
Nicholas B. Comodari
Planning & Zoning
Associate III

BALTIMORE COUNTY ZONING ADVISORY COMMITTEE

COUNTY OFFICE BLDG.
111 W. Chesapeake Ave.
Towson, Maryland 21204
Nicholas B. Comodari
Acting Chairman

MEMBERS
BUREAU OF ENGINEERING
DEPARTMENT OF
TRAFFIC ENGINEERING
BUREAU OF
FIRE PREVENTION
HEALTH DEPARTMENT
PROJECT PLANNING
BUILDING DEPARTMENT
BOARD OF EDUCATION
ZONING ADMINISTRATION
INDUSTRIAL
DEVELOPMENT

May 2, 1977

Thomas Bowie McCarty
401 Frederick Road
Catonsville, Maryland 21228

RE: Reclassification and
Special Exception
Item No. 3 - 1st Cycle
Petitioner - Leroy F. Mullen

Dear Mr. McCarty:

The Zoning Plans 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 of Planning may file a written report with the Zoning Commissioner with recommendations as to the appropriateness of the requested zoning.

The subject property, located on the north side of Frederick Road 260 feet east of Oella Avenue, is currently improved with a dwelling, and at the time of field inspection, a vacant building, which was formerly utilized for lawn mower sales and service. Surrounding property to the northeast is improved with a dwelling with the remainder of the site surrounded by vacant wooded land.

This combination Reclassification and Special Exception is being requested by your client in order to legalize the use that apparently had existed on this site.

Particular attention should be afforded the comments of the Bureau of Engineering, concerning the possible future improvement of Stonewall Road as a 30 foot closed section roadway on a 50 foot

Thomas Bowie McCarty
Page 2
Item No. 3
May 2, 1977

right-of-way. In addition revised plans reflecting the comments of the State Highway Administration must be submitted.

This petition for Reclassification is accepted for filing on the date of the enclosed filing certificate. However, any revisions or corrections to petitions, descriptions, or plans, as may have been requested by this Committee, shall be submitted to this office prior to May 27, 1977 in order to allow time for final Committee review and advertising. Failure to comply may result in this petition not being scheduled for a hearing. Notice of the hearing date and time, which will be between September 1, 1977 and October 15, 1977 will be forwarded to you well in advance.

Very truly yours,

Nicholas B. Comodari
NICHOLAS B. COMODARI
Acting Chairman
Zoning Plans Advisory Committee

MC:rf

cc: Hudkins Associates, Inc.
200 E. Joppa Road
Towson, Maryland 21204



Maryland Department of Transportation
State Highway Administration

Mary R. Hughes
Secretary
Baltimore City Events

April 20, 1977

Mr. S. Eric DiNenna
Zoning Commissioner
County Office Bldg.
Towson, Md. 21204

Attention: Mr. N. Comodari

(Rte. 144) 260 ft. east of
Oella Ave.
Present Zoning: B.L. 3.5
Proposed Zoning: B.L. with Special
Exception for garage,
service.
District: 1st
No. acres: 1.40

Dear Mr. DiNenna:

The plan indicates a right of way for what is noted as "Stonewall Road", adjacent to the east side of the site. The road does not exist and at present, it would be virtually impossible to negotiate the back portion of the right of way with a standard vehicle. The right of way only serves the subject site, and as the plan indicates, this is where the entrance is at present.

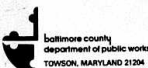
The writer met the petitioner at the site and discussed the matter of access. The petitioner expressed the opinion that the access should remain at the present location since he has legal rights to the right of way. Taking all aspects of the situation into consideration, the writer agrees with the petitioner and can see no purpose in creating an additional point of access.

The entrance must be channelized with curb and gutter. The curb is to be in line with the existing bituminous road fronting the site, and shall extend to the east side of the right of way and shall tie into the road on the west side.

The plan must be revised prior to the hearing.

CL:JEN:dj

Very truly yours,
Charles Lee, Chief
Bureau of Engineering
Access Permits
By: John E. Meyers



THORNTON M. MAQUING, P.E.
DIRECTOR

April 28, 1977

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

Re: Item #3 (Cycle I April-October 1977)
Property Owner: LeRoy F. Mullen
N/S of Frederick Rd. 260' E. of Oella Ave.
Existing Zoning: D.R. 3.5
Proposed Zoning: B.L., with Special Exception for garage, service.
District: 1st No. of Acres: 1.40

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

Frederick Road (Md. 144) is a State Road; therefore, all improvements, intersections, entrances and drainage requirements as they affect the road come under the jurisdiction of the Maryland State Highway Administration. Any utility construction within the State Road right-of-way will be subject to the standards, specifications and approval of the State in addition to those of Baltimore County.

Stonewall Road, as indicated, is an unimproved 40-foot right-of-way shown on the recorded plat of Stonewall Park (M.P.C. 7, Folio 13). If improved in the future as a public road, it would be as a 30-foot closed section roadway on a 50-foot right-of-way. The intersection of this road with Frederick Road must be realigned to provide a more normal or 90 degree intersection.

Sediment Control

Development of this property through striping, grading and stabilization could result in a sediment pollution problem, damaging private and public holdings downstream of the property. A grading permit is, therefore, necessary for all grading, including the striping of top soil.

Storm Drains

Provisions for accommodating storm water or drainage or the stream along the westerly outline of this Lot 22, have not been indicated on the submitted plan.

Item #3 (Cycle I April-October 1977)
Property Owner: LeRoy F. Mullen
Page 2
April 28, 1977

Storm Drains (cont'd)

In accordance with the drainage policy, the Petitioner is responsible for the total actual cost of drainage facilities required to carry the storm water run-off through the property to be developed to a suitable outfall.

Open stream drainage requires a drainage reservation or easement of sufficient width to cover the flood plain of a 100-year design storm. However, a minimum width of 50 feet is required.

The Petitioner must provide necessary drainage facilities (temporary or permanent) to prevent creating any nuisances or damages to adjacent properties, 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 Sewer

Public water supply and sanitary sewerage are not available to serve this property, which is utilizing private onsite facilities. The Baltimore County Comprehensive Water and Sewerage Plan, adopted January 1976, indicates Planned Water Service in the area in 3 to 5 years, and Planned Sewerage in 6 to 10 years. This property is within the Patapsco River drainage area.

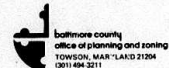
Very truly yours,

Donald M. Tucker
DONALD M. TUCKER, P.E.
Acting Chief
Bureau of Engineering

DWT:KAM:PMW:s

cc: J. Trenner

B-SE Key Sheet
12 SW 30 Pos. Sheet
SW 3 B Top
100 Tax Map



April 20, 1977

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

Dear Mr. DiNenna:

Comments on Item #3, Zoning Cycle I, April, 1977, are as follows:

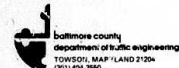
Property Owner: LeRoy F. Mullen
Location: North side of Frederick Road 260 ft. E. of Oella Avenue
Present Zoning: D.R. 3.5
Proposed Zoning: B.L., with Special Exception for garage, service
District: 1st
No. Acres: 1.40

This office has reviewed the subject petition and offers the following comments. These comments are not intended to indicate the appropriateness of the zoning in question, but are to assure that all parties are made aware of plans or problems with regard to development plans that may have a bearing on this petition.

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

Very truly yours,

John L. Wimbley
John L. Wimbley
Planner III
Project and Development Planning



STEPHEN E. COLLINS
DIRECTOR

April 18, 1977

Mr. Eric S. DiNenna
Zoning Commissioner
2nd Floor, Courthouse
Towson, Maryland 21204

Re: Cycle zoning Item No. 3 - ZAC - April 1977
Property Owner: LeRoy F. Mullen
Location: North Side of Frederick Rd. 260 ft. E. of Oella Ave.
Present Zoning: D.R. 3.5
Proposed Zoning: B.L., with Special Exception for Garage, Service.
District: 1st
No. Acres: 1.40

Dear Mr. DiNenna:

The existing DR 3.5 zoning can be expected to generate approximately 60 trips per day and the proposed BL zoning could generate up to 700 trips per day.

Very truly yours,

Michael S. Flanagan
Michael S. Flanagan
Traffic Engineer Associate

MSF/JSO



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

April 18, 1977

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

Dear Mr. DiNenna:

Comments on Item #3, Zoning Cycle I Meeting, April 5, 1977, are as follows:

Property Owner: LeRoy F. Mullen
Location: North Side of Frederick Rd. 260 ft. E. of Oella Ave.
Present Zoning: D.R. 3.5
Proposed Zoning: B.L., with Special Exception for Garage, Service.
District: 1st
No. Acres: 1.40

The Health Department will not approve this Special Exception until public sewer is available.

Very truly yours,

Thomas H. Devlin
Thomas H. Devlin, Director
BUREAU OF ENVIRONMENTAL SERVICES

KS:msh



Paul H. Belacke
CHIEF

Office of Planning and Zoning
Baltimore County Office Building
Towson, Maryland 21204

Attention: Mr. Nicholas B. Comodari, Chairman
Zoning Advisory Committee

Re: Property Owner: LeRoy F. Mullen

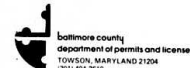
Location: North Side of Frederick Rd. 260 ft. E. of Oella Ave.
Item No. 3 Zoning Agenda Zoning Cycle I

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 or 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.
- () 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operations.
- () 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 "Life Safety Code", 1970 Edition prior to occupancy.
- (x) 6. Site plans are approved as drawn. Building to comply to applicable codes.
- () 7. The Fire Prevention Bureau has no comment at this time.

Approved: *Paul H. Belacke* Noted and Approved: *George M. McGehee*
Planning Group Battalion Chief
Special Inspection Division Fire Prevention Bureau



JOHN D. SEYFERT
DIRECTOR

April 18, 1977

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

Zoning Cycle #1

Dear Mr. DiNenna:

Comments on Item #3 Zoning Advisory Committee Meeting, are as follows:

Property Owner: LeRoy F. Mullen
Location: North Side of Frederick Rd. 260 ft. E. of Oella Ave.
Existing Zoning: D.R. 3.5
Proposed Zoning: B.L. with Special Exception for Garage, Service.
Acres: 1.40
District: 1st

The items checked below are applicable:

- ☐ A. Structure shall conform to Baltimore County Building Code (B.C.B.C.) 1970 Edition and the 1971 Supplement and other applicable codes.
- ☐ B. A building permit shall be required before construction can begin.
- ☐ C. Three sets of construction drawings will be required to file an application for a building permit.
- ☐ D. Three sets of construction drawings with a registered Maryland Architect or Engineer's original seal will be required to file an application for a building permit.
- ☐ E. Wood frame walls are not permitted within 3'0" of a property line. Contact Building Department if distance is between 3'0" and 6'0" of property line.
- ☒ F. No comment.
- ☐ G. Requested setback variance conflicts with the Baltimore County Building Code. See Section .

Very truly yours,

Mark E. Sunkin
Charles E. Sunkin
Plans Review Chief
CSB:rrj

BOARD OF EDUCATION OF BALTIMORE COUNTY

TOWSON, MARYLAND 21204

Date: April 7, 1977

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

Z.A.C. Meeting of: Zoning Cycle I

Re: Item No. 3
Property Owner: LeRoy F. Mullen
Location: North Side of Frederick Rd. 260 ft. E. of Oella Avenue
Present Zoning: D.R. 3.5
Proposed Zoning: B.L. with Special Exception for Garage, Service

District: 1st
No. Acres: 1.40

Dear Mr. DiNenna:

No effect on student population.

Very truly yours,

W. Nick Petrovich
W. Nick Petrovich,
Field Representative

MSF/JP

JOSEPH M. MCLEOD, PRESIDENT
T. BARBARO WILLIAMS, JR., VICE-PRESIDENT
MARCOUS M. BUCHANAN
THOMAS H. BOWEN
N. LORRAINE F. CHURCH
NIGEL B. HAYDEN
ALVIN GOREK
WES WILSON
RICHARD W. PRILLER
ROBERT V. BUELL, ADMINISTRATOR



Baltimore County
Department of Health
TOWSON, MARYLAND 21204

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

September 7, 1977

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

Dear Mr. DiNenna:
Annotated comments on Item #3, Zoning Cycle 1 Meeting
are as follows:

Property Owner: Leroy F. Mullen
Location: North Side of Frederick Road 260 ft. E.
of Oella Avenue
Present Zoning: R.S. 3-5
Proposed Zoning: S.L., with Special Exception
for Garage, Service.
District: 1st.
No. Acres: 1.40

This property was scheduled to be severed by the
Thistle Road Project. However, we recently learned from the
Department of Public Works that the Federal funds were not
approved by the EPA; therefore, the project has been inactivated.
The property cannot be severed by the Oella Sewer Project due
to the topography.

The private sewage disposal system is failing, allowing
sewage to be discharged onto the ground surface, causing a
health hazard and water pollution problems. This was confirmed
by a field inspection on this date.

The Health Department will not approve this property
for a commercial use unless the failing system can be corrected
and it can be demonstrated that there would be room for expan-
sion or by the availability of public sewer. In order to de-
termine the suitability of the soil for correction, it will be
necessary to conduct soil percolation tests. It is very unlikely
that satisfactory tests will be obtained, based on the results

Revised January 2, 1982

ACCESSORY
STRUCTURE PERMIT
BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF PERMITS AND LICENSES
County Office Building, Towson 4, Md.

No. 1644
District
Date: April 7, 1965

STATION
STONEWALL BL.
Leroy F. Mullen & Helen Joanne
24th Frederick Rd.
Baltimore, Md. 21208

To erect the following structure:
Location: 24th Frederick Rd. 260 ft. E. of Palmetto Lane
Use of Structure: GARAGE
Size of Structure: Front 22' ft. Depth 25' ft. Height 13' ft.
Setback of Structure: Front 12' ft. Side Setback 150' ft. and 50' ft. Corner lot... ft. from side street.
Character of Construction: CONCRETE, BRICK, ASPH.

Fee Paid \$ 12.00

This Permit shall be kept on the premises open to public inspection during the prosecution of the work and until com-
pletion of same. LIMITATION: After a valid building permit is issued, if the operation or work authorized and approved
hereunder is not commenced within six (6) months after the issue, or if, after commencement of the operation or work,
the operation or work is suspended or discontinued for a period of one year, then, in either case, the said permit shall be
void and no operation or work shall be again commenced unless and until another proper permit shall have been
issued for each work.

Frank - copy top sheet
only - Thanks

MICROFILM TOP SHEET ONLY.

Mr. S. Eric DiNenna, Zoning Commissioner

Page 2 September 7, 1977

of our most recent sanitary sewer survey of Oella which re-
vealed most of the private systems were failing including many
systems in the immediate vicinity of the property in question.

Very truly yours,

Thomas R. Devlin, Director
BUREAU OF ENVIRONMENTAL SERVICES

WNG:pb

PETITIONER'S SUPPORT RECLASSIFICATION PETITION

We, the undersigned, hereby record our support of the
Petition for Reclassification by Mr. Leroy F. Mullen, from the
R-6-239V (C-76-509) to enable Mr. Leroy F. Mullen to continue the
operation of his lawn mower sale and servicing business located
at 2414 Frederick Road, Baltimore, Maryland.

NAME	ADDRESS
Mrs. K. Blum	2600 Jonathan Rd. 21243
R. L. Shigen	7... 21218
J. L. Hagen	1019 Marling Rd. 21204
M. Agostino	1859 11th St. 21204
D. H. H. H.	130 New... 21204
H. C. H. H.	5345 High Tow... 21204
Charles G. H. H.	4534... 21204
Charles T. H. H.	1393 Park Rd. 21204
B. H. H.	4741... 21204
M. S. H.	1668 Woodlawn Dr. 21204
A. H. H.	3324... 21204
M. H. H.	4954... 21204
E. H. H.	464... 21204
J. C. H.	1026... 21204
J. H. H.	315... 21204
J. H. H.	9... 21204
M. H. H.	5155... 21204

SEE SIMPLIFIED

Thia Bead. Made this
In the year one thousand nine hundred and twenty-two
B. Potts, his wife
of Baltimore, Maryland
and Leroy F. Mullen and Helen Joanne Mullen, his wife, of the County and State aforesaid,
of the second part.

Witnesseth, That in consideration of the sum of Five Dollars, and other good and valuable
considerations, the receipt whereof is hereby acknowledged, the said parties of the first part
do grant and convey unto the said parties of the second part, as tenants by the
entireties, their assigns, the survivor of them, his or her

heirs and assigns, in fee simple, all that lot of ground situated, lying and being in
Baltimore County, State of Maryland, and described as follows, that is to say:

BEING known and designated as Lot Numbered Twenty-two (22), on the Plat of
"Stonewall Park", which plat is recorded among the Plat Records of Baltimore County
in Plat Book W.P.C. No. 7, folio 18.

BEING the same lot of ground which, by deed dated March 7, 1939, and recorded
among the Land Records of Baltimore County in Liber L.M.L. No. 839, folio 408,
was granted and conveyed by John R. Sullivan, unmarried, to Daisy V. Potts. The
said Daisy V. Potts by a deed dated June 16, 1955, and recorded among the Land Records
aforesaid in Liber L.M.L. No. 2718, folio 140, conveyed the said property to Charles
Leroy Potts, reserving, however, a life estate with complete power of disposition.
The said Daisy V. Potts departed this life on November 1, 1960 without having exercised
said power, thereby vesting said title in the said Charles Leroy Potts.



Baltimore County
Office of Planning and Zoning
TOWSON, MARYLAND 21204
(301) 454-3311
**PETITIONER'S
EXHIBIT #6**
March 29, 1977

The Honorable John V. Murphy
Chairman, Baltimore County Council
Towson, Maryland 21204

Dear Mr. Murphy:
At its special meeting on Thursday, March 24, 1977, the Baltimore
County Planning Board, under the provisions of Subsection 22-22(i) of the
Baltimore County Code 1969, as amended, approved a motion to certify to
the County Council that early action is manifestly required because of emergency
on the petition of Leroy F. Mullen and Helen Joanne Mullen to change the zoning
classification of their property located at 2414 Frederick Road from R-6 to S-1.

After reviewing the letter submitted by the petitioner's attorney
and the facts in the case, the Board concluded that the petition should be
heard by the Zoning Commissioner as soon as possible to reduce the hardships
presently being suffered by the petitioner.

Copies of the petition and of the letter addressed to the Acting
Secretary of the Planning Board, plus related correspondence, are attached.
Assessment information is included in a staff memorandum to me. I will provide
additional information upon request. Notification to the Zoning Commission
of the Council's action on this matter is necessary so that he may take timely
action.

Sincerely,
Thomas E. Barber, Acting Secretary
Baltimore County Planning Board

NEG:FS:dm
Attachments
cy. (w/attachments)
The Honorable Gary Huddles, Councilman, Second District
The Honorable Clarence E. Pitter, Councilman, Third District
The Honorable Eugene L. Kibbe, Jr., Councilman, Fourth District
The Honorable Norman W. Lauenstein, Councilman, Fifth District
The Honorable Eugene B. Gallagher, Councilman, Sixth District
The Honorable John J. O'Rourke, Councilman, Seventh District
Mr. Thomas Todorovich, Secretary to the County Council
Mr. S. Eric DiNenna, Zoning Commissioner
Mr. & Mrs. Leroy F. Mullen
Thomas B. McCarty, Esq.
I hereby certify that this is a true copy.
Frank Shearer, Jr.,
Assistant to Director of Planning
9/7/77
Date

LIBER 3852 PAGE 107

Together, with the buildings and improvements thereon erected, made or being; and all
and every the rights, alleys, ways, waters, privileges, appurtenances, and advantages, to the same belong-
ing, or in anywise appertaining.

Us here and to hold, the lot of ground and premises, above described and mentioned, and
hereby intended to be conveyed; together with the rights, privileges, appurtenances and advantages
thereof belonging or appertaining unto and to the proper use and benefit of the said parties of the
second part, as tenants by the entireties, their assigns, the survivor of them, his or
her heirs and assigns, forever, in fee simple.

And the said grantor so hereby covenant that they have not done or suffered to be
done any such matter or thing whatsoever, to encumber the property hereby conveyed; that they
will warrant specially the property hereby granted; and that they will execute such further
assurances of the same as may be requisite.

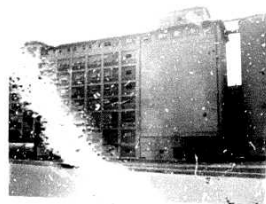
Witness the hands and seals of said grantors.
WITNESSES:
Antoinette M. Grimes
Charles Leroy Potts
Elinor P. Potts

State of Maryland, Baltimore City, in and
I hereby certify, that on this 29th day of January
in the year one thousand nine hundred and sixty-two, before me, the subscriber,
a Notary Public of the State of Maryland, in and for Baltimore City aforesaid, personally appeared
Charles Leroy Potts and Elinor P. Potts, his wife, the herein named Grantors,

and they acknowledged the foregoing deed to be their act
As witness my hand and Notarial Seal.
Antoinette M. Grimes
Notary Public
My commission expires May 6, 1965.

AUG 28 1979

100 N. Main Street
100 N. Main Street 53



PETITIONER'S EXHIBIT #7

APPRAISAL
FOR
FAIR MARKET VALUE
OF
REAL PROPERTY
OF
LEROY F. AND HELEN J. MULLEN

August 30th, 1977

Thomas B. McCarty, Esquire
401 Frederick Road
Baltimore, Maryland 21228

Re: Property of Leroy F. & Helen J. Mullen
2414 Frederick Road
Baltimore, Maryland 21228

Dear Mr. McCarty:

Pursuant to your request, I have examined the noted property for the purpose of forming an opinion of its Fair Market Value as of August, 1977.

For the same purpose, I have inspected the subject neighborhood, and have investigated and studied real estate transactions in the area concerned.

2414 Frederick Road
Value \$39,000

Very truly yours,

ALFRED F. GRUBB, APPRAISER

APG/bh

PREPARED FOR: Thomas B. McCarty, Attorney
401 Frederick Road
Baltimore, Maryland 21228

PREPARED BY: Alfred F. Grubb, Appraiser
3623 Elstetter Road
Baltimore, Maryland 21207

ALFRED F. GRUBB
REAL ESTATE, RENTALS
AND APPRAISALS

AFFIDAVIT OF APPRAISER - Property of Leroy F. & Helen J. Mullen
2414 Frederick Road
Baltimore, Maryland 21228

STATE OF MARYLAND
BALTIMORE COUNTY) ss:

Alfred F. Grubb, hereby duly sworn deposes and says:

That he, being a Court appointed appraiser with the Register of Wills office of Baltimore County, Maryland was retained by Thomas B. McCarty, Attorney, 401 Frederick Avenue, Baltimore, Maryland, 21228 to appraise real property of Leroy F. and Helen J. Mullen in order to form an opinion of its Fair Market Value as of August, 1977.

IN WITNESS WHEREOF, the said Alfred F. Grubb has hereunto set his hand and seal, this 30th day of August, 1977.

ALFRED F. GRUBB, APPRAISER

Subscribed and sworn to before me, this 30th day of August, 1977.

NOTARY PUBLIC

ALFRED F. GRUBB
REAL ESTATE, RENTALS
AND APPRAISALS

AFFIDAVIT OF APPRAISER - Property of Leroy F. & Helen J. Mullen
2414 Frederick Road
Baltimore, Maryland 21228

STATE OF MARYLAND) ss:
BALTIMORE COUNTY)

Alfred F. Grubb, hereby duly sworn, deposes and says:

That he was retained by Thomas B. McCarty, Attorney, 401 Frederick Road, Baltimore, Maryland, 21228 to appraise real property of Leroy F. & Helen J. Mullen in order to form an opinion of its Fair Market Value as of August, 1977.

That he has no interest in the said property, in any manner. That he has personally examined the property, and that his fee for appraisal is not contingent upon the amount of the value reported.

That, by reason of his investigation, and by virtue of his experience, he has formed the opinion that the Fair Market Value of said property as of August, 1977 was:

2414 Frederick Road
Value \$39,000

IN WITNESS WHEREOF, the said Alfred F. Grubb has hereunto set his hand and seal, this 30th day of August, 1977.

ALFRED F. GRUBB, APPRAISER

Subscribed and sworn to before me, this 30th day of August, 1977.

NOTARY PUBLIC

APPRAISAL FOR FAIR MARKET VALUE
OF
REAL PROPERTY OF
LEROY F. AND HELEN J. MULLEN

PURPOSE:

The purpose of this appraisal is to estimate the indicated Fair Market Value of the property at 2414 Frederick Road, Baltimore, Maryland, 21228.

DEFINITION OF
FAIR MARKET
VALUE:

Fair Market Value is defined as the highest price estimated in terms of money a willing buyer will pay and a willing seller will accept, neither buyer nor seller acting under compulsion, both parties having full knowledge of all the uses and purposes to which the property is adapted, or for which it is capable of being used provided the property was exposed to the open market for a reasonable time.

ZONING:

According to the official Baltimore County zoning map, the subject property is zoned DENSITY RESIDENTIAL, 3.5 dwellings units per acre.

UTILITIES:

Public utilities of water, gas and electric are understood and assumed to be installed in the subject property.

TAX ASSESSMENT:

Baltimore County tax account number 01-13-856260, Use 04, Map 100, Block 10, Parcel 00648, Liber 3952, Folio 0186 shows an assessment on the land of \$3,610 and \$9,750 on the improvements, for a total of \$13,360.

HIGHEST AND
BEST USE:

The highest and best use of the subject property would be residential due to the present zoning. However, it is this appraiser's opinion that the best use of this property should be "B-1" zoning, since a business has operated on the premises for the last fifteen (15) years. This business has prospered and grown in these years, due to the demand of the community. I feel a B-1 zoning would be mandatory on said property because of its past reputation and the presence of approximately ten (10) or more commercial businesses in the immediate area. An example of some of these properties are:

- (1) Five Oaks Swimming Pool - South side of Frederick Road, approximately four blocks East of subject property
- (2) Candlelight Lodge Restaurant, South side of Frederick Road, approximately 3 1/2 blocks East of subject property
- (3) Lilly-McClintock, Inc., Realtors, Frederick Road opposite N. Rolling Road, South side of Frederick Road, approximately three blocks East of subject property
- (4) I.O.O.F. Hall, South side of Frederick Road, approximately 2 1/2 blocks East of subject property

APPRAISAL FOR FAIR MARKET VALUE
OF
REAL PROPERTY OF
LEROY F. AND HELEN J. MULLEN

HIGHEST AND
BEST USE: (continued)

- (5) 2008 Frederick Road, North side of Frederick Road, approximately two blocks East of subject property. Present use - Service Garage
- (6) Distrit's Eight Mile House, South side of Frederick Road, approximately two blocks East of subject property.
- (7) Country Roadside Store, North side of Frederick Road, approximately one block East of subject property.
- (8) Signs, outdoor advertising: 8 signs 3 blocks East and West of property 10 signs 4 blocks East and West " " 14 signs 9 blocks East and West " "
- (9) Oella Avenue, Truth Meat Process, approximately two blocks North of subject property. Present use: Commercial animal killing, wholesale, retail sale of poultry, meats, etc.
- (10) Oella & Westchester Avenues, present use: Stores, Service Centers, Commercial offices and operations.
- (11) Thistle Road, Simpkins Industries, approximately five blocks South of subject property. Present use: Manufacturing paper products.

NEIGHBORHOOD:

APPRAISAL FOR FAIR MARKET VALUE
OF
REAL PROPERTY OF
LEROY F. AND HELEN J. MULLEN

DESCRIPTION OF
THE LAND:

The subject property is located in the First Election District of Baltimore County, in an area that has both residential and commercial growth. As mentioned before in this report, some of the surrounding businesses include restaurants, automotive garage, community swimming pool, and meat processing plant. There is a good outlook for future development of this area which could cause the community to prosper both commercially and residential.

DESCRIPTION OF
THE IMPROVEMENTS:

The site, commonly known as 2414 Frederick Road, Baltimore, Maryland, 21228 is irregular in shape, measuring approximately - border measurement, 100' X 382' X 180' X 415' and is improved with 14 buildings. The residential home (Building #1) and the lawnmower service and sales center (Building #2). The site is reasonably flat and has a large driveway that would satisfy a lawnmower business to be operated on the property with average parking. Building #1 (see Exhibit 1A) is a one and a half story frame with aluminum siding, asphalt roof, brick foundation, aluminum gutters and downspouts, and storm doors and windows. The first floor consists of livingroom, diningroom, kitchen full bath and two bedrooms; one bedroom on the second floor; full basement - hot water gas fired heat; thirty gallon automatic

APPRAISAL FOR FAIR MARKET VALUE

DESCRIPTION OF THE IMPROVEMENTS: (continued)

hot water heater, and a covered small front porch. The building is in good maintenance condition inside and out.

EXHIBIT 1A



Building #2 (See Exhibit 1B), the structure is a concrete block and frame building with concrete floor, aluminum gutters and down-spouts; central gas stove, and has no burglar alarm or fire alarm system. That portion which is block construction measures approximately 36' X 25' and has a tar paper roof - this section is used for repair and sales office.

APPRAISAL FOR FAIR MARKET VALUE

DESCRIPTION OF IMPROVEMENTS: (continued)

In front of the block building is an addition of frame area measuring approximately 15' X 36'. This area is primarily used for sales area. To the West side of building is a covered area used for outside storage - this area measures approximately 16' X 25'.

EXHIBIT 1B



INDICATION OF VALUE BY MARKET DATA APPROACH

DEFINITION OF MARKET DATA APPROACH:

A comparison between the subject property with comparable or somewhat similar properties in regard to fairly recent sales transactions in the area. Investigation of the sales records reveal that three (3) transactions have occurred in the past year. Briefly, they are as follows:

- Sale No. 1 - 2394 Frederick Road, sold to Wm. K. Holte, in September, 1976 for \$58,000
Comparable property is somewhat larger than subject property. However, the ground is close to the same size.
- Sale No. 2 - 2718 Frederick Road, sold to Charles H. Roqueta in December, 1976, for \$19,500
Comparable property is again unlike in construction but is comparable to subject property in size. The ground is much smaller than subject property.
- Sale No. 3 - 2731 Frederick Road, sold to James A. Miller in December, 1976, for \$27,000
Comparable to subject property but in poor maintenance condition.

OPINION OF VALUE:

Having carefully analyzed all of the data obtained from "Market Data" studies, and with an accounting for such factors as zoning and age, also condition of the improvements, the value of the subject property is estimated to be:

THIRTY-NINE THOUSAND DOLLARS
(\$39,000)

UNDERLYING ASSUMPTIONS AND LIMITING CONDITIONS

This appraisal is subject to the following underlying assumptions and qualifying and limiting conditions.

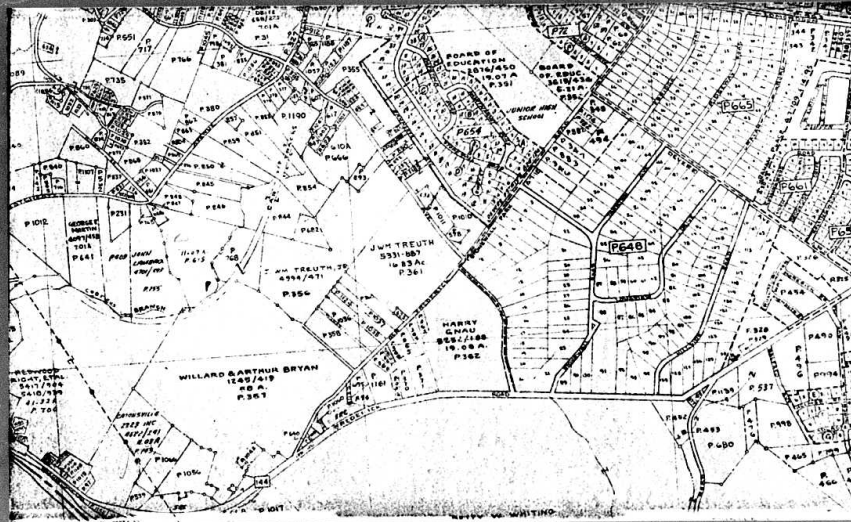
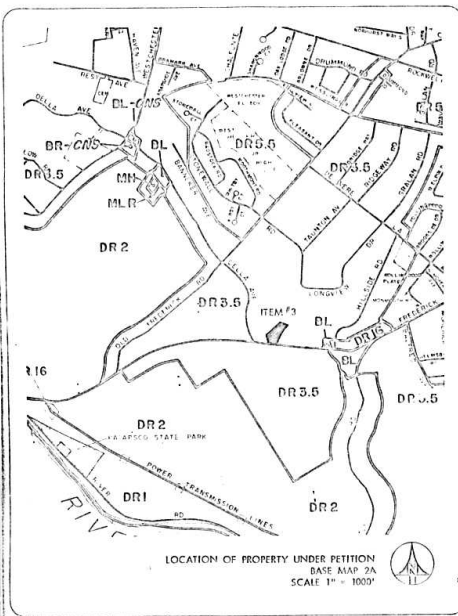
This appraisal covers the property as described in this report, and the area and dimensions as shown herein are assumed to be correct.

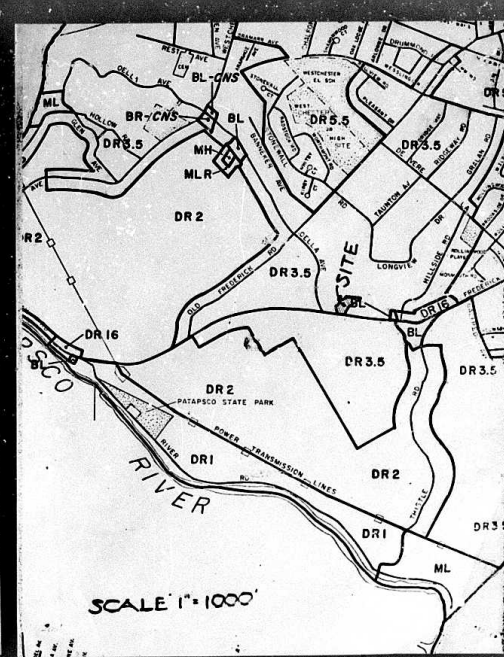
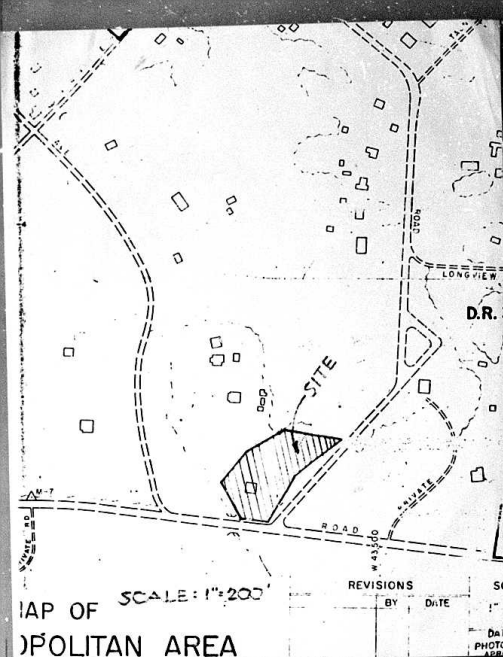
The appraiser has made no survey of the property and assumes no responsibility in connection with such matters. Any sketch or identified survey of the property included in this report is only for the purpose of assisting the reader to visualize the property.

No responsibility is assumed for matters involving legal or title considerations.

The information identified in this report as being furnished by others is believed to be reliable, but no responsibility for its accuracy is assumed.

Possession of this report, or a copy thereof, does not carry with it the right of publication, nor may it be used for any purpose by any but the client for whom it was made, without the consent of the appraiser or the client.





OFFICE
THE TIMES
 NEWSPAPERS
 TOWSON, MD. 21204 August 19 1977

THIS IS TO CERTIFY, that the annexed advertisement of
 PETITION FOR RECLASSIFICATION - LeRoy Mullen
 250' E. of Frederick Road
 was inserted in the following:

☒ Catonsville Times ☐ Towson Times
☐ Dundalk Times ☐ Arbutus Times
☐ Essex Times ☐ Community Times
☐ Suburban Times East ☐ Suburban Times West

weekly newspapers published in Baltimore County, Maryland,
 once a week for ann successive weeks before the
 15th day of August 1977, that is to say, the same
 was inserted in the issues of August 15, 1977

STROMBERG PUBLICATIONS, INC.
 BY *Edith Burger*

CERTIFICATE OF PUBLICATION

TOWSON, MD. August 28, 1977

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 each
for one time successive weeks before the 15th
 day of September 1977, the last publication
 appearing on the 15th day of August
 1977.

THE JEFFERSONIAN
Richard H. H. H.
 Manager

Cost of Advertisement \$ _____

1-SIGN 78-23-R

CERTIFICATE OF POSTING
 ZONING DEPARTMENT OF BALTIMORE COUNTY
 Towson, Maryland

District: 1st Date of Posting: August 28, 1977

Posted for: PETITION FOR RECLASSIFICATION

Petitioner: LeRoy F. Mullen

Location of property: N/S. Frederick Rd. 260' E. of Oella Ave.

Location of Sign: FRONT 2414. FREDERICK RD.

Remarks: LeRoy F. Mullen Date of return: August 30, 1977

Posted by: LeRoy F. Mullen Signature

1-SIGN 78-23-R

CERTIFICATE OF POSTING
 ZONING DEPARTMENT OF BALTIMORE COUNTY
 Towson, Maryland

District: 1st Date of Posting: Dec. 12, 1977

Posted for: Appeal

Petitioner: LeRoy F. Mullen, et ux

Location of property: N/S. Frederick Rd. 260' E. of Oella Ave.

Location of Sign: FRONT 2414. FREDERICK RD.

Remarks: LeRoy F. Mullen Date of return: Dec. 16, 1977

Posted by: LeRoy F. Mullen Signature

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

15431

DATE: 4/19/79 ACCOUNT: 01.712

John V. Murphy, Esq.
 222 E. Baltimore St.
 Baltimore, Md. 21202

AMOUNT: \$3.00

WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

Copy of document from Case No. 78-23-R
 LeRoy F. Mullen
 N/S. Frederick Rd. 260' E. of Oella Ave.
 1st District

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

15424

DATE: 1/16/79 ACCOUNT: 01.712

Thomas A. Hensley, Esq.
 929 N. Howard St.
 Baltimore, Md. 21201

AMOUNT: \$4.50

WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

Case No. 78-23-R LeRoy F. Mullen
 N/S. Frederick Rd. 260' E. of Oella Ave.
 1st District

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

51886

DATE: May 3, 1977 ACCOUNT: 01-662

RECEIVED FROM: Heenan, Roberts and McNulty, 401 Frederick
Md., Balto., Md. 21205

FOR: Petition for Reclassification and Special Exception
For LeRoy F. Mullen

AMOUNT: \$50.00

4572100 3 500000

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

51332

DATE: Mar. 28, 1977 ACCOUNT: 01-662

RECEIVED FROM: LeRoy F. Mullen, Edgewood House Service, 2138
Frederick Road, Balto., Md. 21226

FOR: Cost of Appeal
For LeRoy F. Mullen

AMOUNT: \$75.00

4572100 28 750000

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

57286

DATE: Sept. 20, 1977 ACCOUNT: 01-662

RECEIVED FROM: Edgewood House Service, 2138 Frederick Rd.
Baltimore, Md. 21226

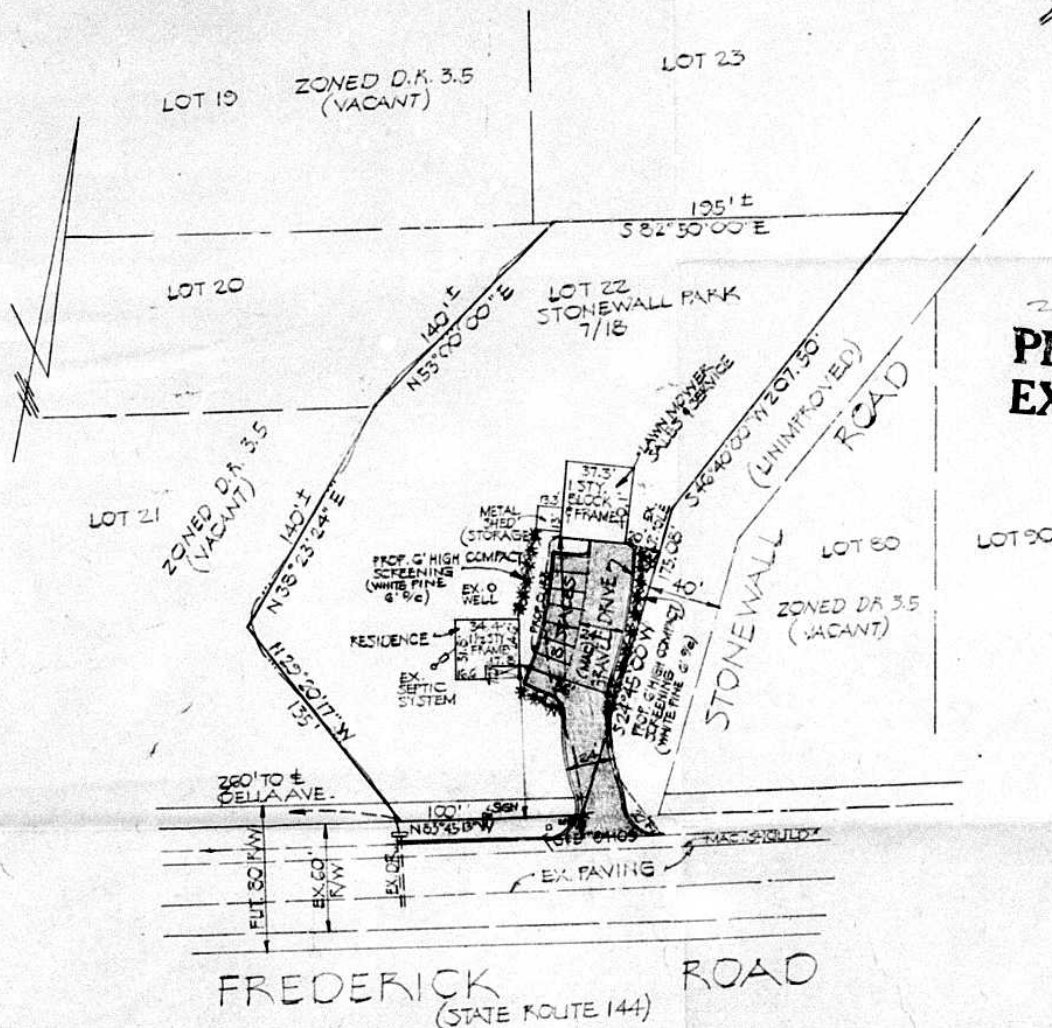
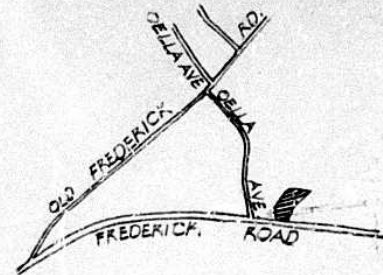
FOR: Advertising and Posting of property
for LeRoy F. Mullen

AMOUNT: \$158.00

4572100 21 158000

NOTES:

1. EX. ZONING: DR. 3.5; PROP. ZONING: BL
2. EX. USE: RESIDENCE & LAWN MOWER SALES & SERVICE (NO CHANGE PROPOSED)
3. AREA: 1.40 AC
4. OFFSTREET PARKING REQUIRED:
 LAWN MOWER SALES & STORAGE - 363 S.F./1 SP. PER 200[#] = 2
 LAWN MOWER REPAIR - 1132 S.F./1 SP. PER 300[#] = 4
 RESIDENCE - 2 SPACES
 TOTAL REQ. 8 SPACES
 TOTAL PROVIDED 8 SPACES
 ALL SPACES 9'x20'
5. PRIVATE WATER & SEWER

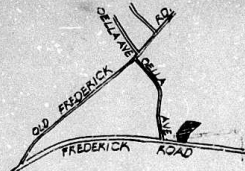


PETITIONER'S EXHIBIT #3

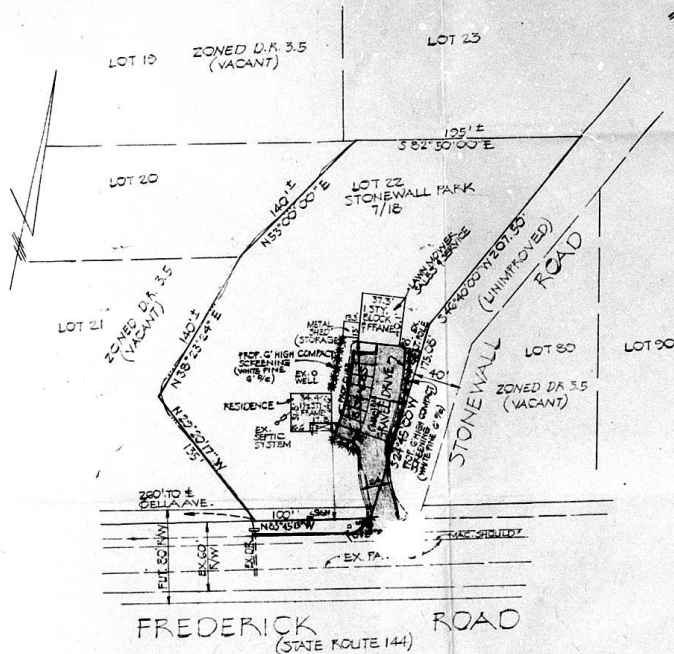
SITE PLAN
 2414 FREDERICK ROAD
 ELECTION DISTRICT 1
 BALTIMORE CO., MD
 SCALE: 1"=50'
 JAN. 24, 1977
 REV: 2-25-77
 REV: 9-7-77



- NOTES:
1. EX. ZONING - DR 3.5; 1. PROP. ZONING - BL
 2. EX. USE - RESIDENCE + LAWN MOWER SALES + SERVICE (NO CHANGE PROPOSED)
 3. AREA - 1.40 AC
 4. OFFSTREET PARKING REQUIRED:
LAWN MOWER SALES + STORAGE - 363 S.F./1ST FLOOR 200' ± 2
LAWN MOWER REPAIR - 1132 S.F./1ST FLOOR 300' ± 4
RESIDENCE - 2 SPACES
TOTAL REQ. - 8 SPACES
TOTAL PROVIDED - 8 SPACES
ALL SPACES 9' x 20'
 5. PRIVATE WATER + SEWER



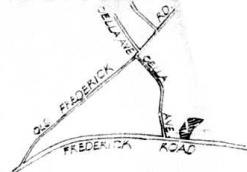
VICINITY MAP
SCALE 1"=500'



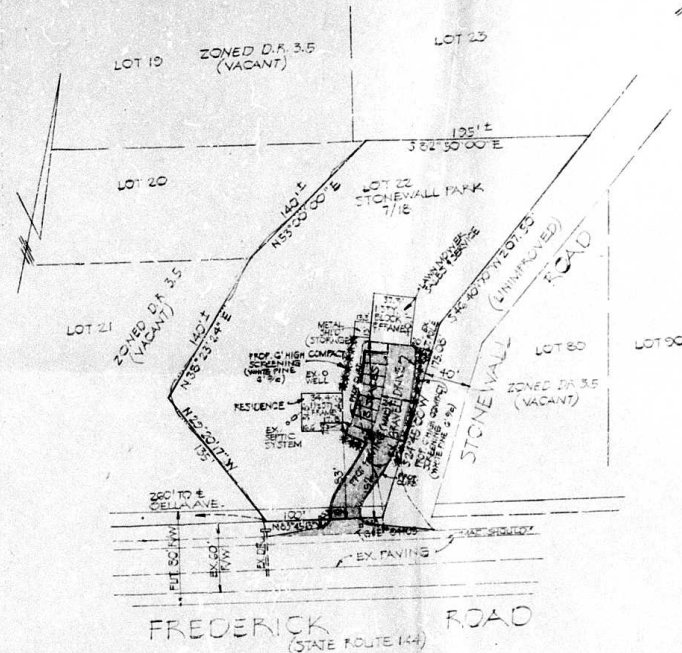
ZONED DR 3.5
(RESIDENTIAL)

SITE PLAN
2414 FREDERICK ROAD
ELECTION DISTRICT 1
BALTIMORE CO., MD
SCALE: 1"=50'
JAN. 24, 1977
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VICINITY MAP
SCALE 1"=500'



ZONED DR 3.5
(RESIDENTIAL)

SITE PLAN
2414 FREDERICK ROAD
ELECTION DISTRICT 1
BALTIMORE CO., MD
SCALE: 1"=50'
JAN. 24, 1977
REV: 2-25-77

DATE	1-24-77
REVISION	
BY	J. S. J.
CHK	J. S. J.
DATE	1-24-77
BY	J. S. J.
CHK	J. S. J.
DATE	1-24-77
BY	J. S. J.
CHK	J. S. J.