

R-86-344	SW/S of Reisterstown Rd. opposite Rosewood La.	4th Elec. Dist.
2/26/86	Petition for Zoning Reclassification -filing fee \$100.00 - Baltimore Gas and Electric Co.	
2/26/86	Hearing set for 5/6/86, at 10:00 a.m.	
4/25/86	Advertising and posting - \$450.28	
12/3/86	Ordered by the County Board of Appeals that the Petition for Reclassification from a B.R.-I.M. and M.L.-I.M. Zone to a B.M.-C.C.C. Zone is DENIED and any appeal from this decision must be in accordance with Rules B-1 through B-13 of the Maryland Rules of Procedure.	
12/3/86	Dissenting Opinion of County Board of Appeals Member Keith S. Franz, for the reasons stated therein.	
1/5/87	Case appealed by Petitioner, Baltimore Gas and Electric Co., to Circuit Court for Baltimore County	
8/17/87	ORDERED by the Circuit Court for Baltimore County that the 12/3/86 Order of the Board of Appeals is AFFIRMED.	

IN THE MATTER OF
THE APPLICATION OF
BALTIMORE GAS AND ELECTRIC CO.
FOR RECLASSIFICATION FROM B.R.-I.M.
and M.L.-I.M. to B.M.-C.C.C.
ON PROPERTY LOCATED ON THE SOUTH-
WEST SIDE OF REISTERSTOWN ROAD,
OPPOSITE ROSEWOOD LANE
4th DISTRICT

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. R-86-344
Item #10, Cycle II, 1985

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O P I N I O N

The issues presented in this case raise a dilemma that the Board has been required to address in a number of cases; namely, whether a reclassification that can be shown to be highly desirable and in fact an improvement over the existing zoning should be permitted where the existing zoning does provide for a reasonable use of the property. The testimony that the Board received on this petition was highly probative and persuasive that a change to B.M.-C.C.C. zoning would permit a flexible approach to developing an attractive commercial mixed-use facility on this 10-acre parcel. Though the Board was not benefited by the presentation of a specific plat in this petition request, we can fully appreciate the benefits of the recommended zoning for such a highly visible access point near the gateway to the Owings Mills Town Center. Nevertheless, this Board cannot state that the existing zoning does not provide for a reasonable use of the property and would therefore be in error. The Board is often faced with differing visions of property use from reclassification petitioners which are quite appealing and which are from a planning perspective most desirable. In our review of these requests, the law requires that we be satisfied that sufficient change in the neighborhood has taken place since the last Comprehensive Zoning Process so as to warrant the zoning requested or that an error exists in the present zoning so as to require the change. As unfortunate as the Petitioners who come before this Board believe it may be, our role is not to set policy for zoning change, as that is

the exclusive domain of the County Council. The standard for this Board to overturn existing zoning requires that the change/error test be satisfied. In this case, we cannot say that there has been sufficient change in the neighborhood or that an error in the present zoning exists.

Petitioner presented G. Wendall Heinneman, President of Constellation Properties, an associated corporation of Baltimore Gas and Electric Company, who explained the Petitioner's desire to provide an alternate method of developing this 10 acre site. It was stated that presently on Reisterstown Road, B.R. zoned uses are predominant in this area. It was further stated that especially in view of the proximity of this parcel to the Owings Mills Town Center, a better planned mixed-use development would be aesthetically more pleasant, reasonable in its size and as readily marketable as the existing zoning uses would be. He described that his corporation has received numerous requests for development that is consistent with the existing zoning but that such development as fast food restaurants, etc., were not, in his opinion, the best and highest use of the property.

Petitioner further provided Fred Walker, an expert Planner, who testified as to the general character of the parcel if the proposed zoning were permitted. Presently in this area of Reisterstown Road, the road frontage is primarily high use business development along the order of fast food restaurants and shopping centers with the properties to the rear of these commercial endeavors on the southeast side of Reisterstown Road being used primarily for manufacturing. Mr. Walker stated that changing the zoning would enhance the Owings Mills corridor through a higher and more intensive use that was more in keeping with the planning concept for Owings Mills than the existing zoning provides.

Petitioner next provided John W. Guckert, an expert traffic engineer and traffic planner, who confirmed that satisfactory levels of service

would be achieved with the proposed rezoning and that such use as could be provided with this rezoning would provide for a better mix of traffic than the existing zoning so that the volume of traffic would not be as large during normal peak times. He further testified that the proposed zoning would more likely than not minimize the number of driveway cuts on Reisterstown Road relative to those which would be most likely required after development of the property as the zoning presently exists.

The final witness for the Petitioner was Ronald Lippman, an expert real estate appraiser, who provided an opinion that the proposed zoning would not significantly appreciate the value of the property. From this, it could be inferred that the Petitioner is not motivated merely by economic benefits that reclassification would provide but rather by a desire to see the most appropriate use of this property in view of all of the physical circumstances in the general neighborhood.

These witnesses provide a compelling argument why zoning as is being requested would be very appropriate and highly compatible with the efforts that Baltimore County is making in the Owings Mills Town Center. If this alone were the standard by which the Board determined reclassifications we would have no problem granting the request. The Board, however, does not have such carte-blanche to accept for reclassification any project which we believe would be an improvement to an area simply because it would be a betterment alone.

In this case, testimony of James Hoswell, expert planner for Baltimore County, satisfied the Board that all of the adjoining and surrounding properties along this area of Reisterstown Road are zoned consistently with the existing zoning on this parcel and that they are providing a viable and reasonable use. The Petitioner's own testimony indicated that numerous

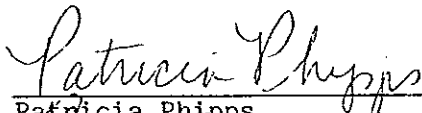
requests for use of the property with its existing zoning have been received and that the value of the property would not be significantly altered by the zoning change. Under the circumstances, it is manifest to the Board that the present zoning does provide a reasonable use of this property, that it can be developed for a tremendous variety of purposes consistent with existing zoning and consistent with the Master Plan. We believe that as desirable as B.M.-C.C.C. zoning may be for this site, that the existing B.R.-I.M. and M.L.-I.M. zoning is not in error. We further believe that the general development of Owings Mills was well understood by the Council in 1984, that no additional circumstances have altered the general neighborhood surrounding the subject site and that as such no change has been sufficiently shown by Petitioner. We therefore have no choice but to deny the reclassification and will so order.

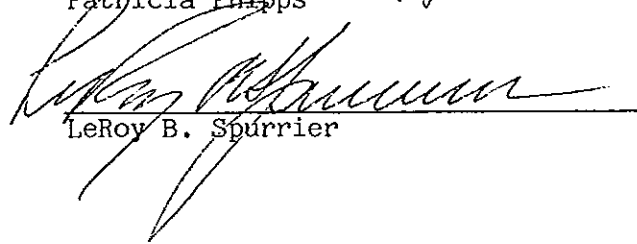
O R D E R

For the reasons set forth in the foregoing Opinion, it is this 3rd day of December, 1986, by the County Board of Appeals, ORDERED that the Petition for Reclassification from B.R.-I.M. and M.L.-I.M. to B.M.-C.C.C. be and the same is hereby DENIED.

Any appeal from this decision must be in accordance with Rules B-1 thru B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY


Patricia Phipps


LeRoy B. Spurrier

IN THE MATTER OF	:	BEFORE
THE APPLICATION OF	:	
BALTIMORE GAS AND ELECTRIC CO.	:	COUNTY BOARD OF APPEALS
FOR RECLASSIFICATION FROM B.R.-I.M.	:	
and M.L.-I.M. to B.M.-C.C.C.	:	OF
ON PROPERTY LOCATED ON THE SOUTH-	:	
WEST SIDE OF REISTERSTOWN ROAD,	:	BALTIMORE COUNTY
OPPOSITE ROSEWOOD LANE	:	
4th DISTRICT	:	No. R-86-344
	:	Item #10, Cycle II, 1985

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D I S S E N T I N G O P I N I O N

I dissent. The evidence in this case was overwhelming that the proposed zoning would be a substantial improvement over the existing zoning and that the uses that would be afforded by the proposed zoning are severely lacking under the present zoning configuration for the Owings Mills Town Center. We have the opportunity to provide a highly visible 10 acre site with an appropriate and needed use that will be lost if the requested zoning is not permitted.

Error does exist in this case as was pointed out by Petitioner in view of the Master Plan for Owings Mills new development area which was adopted by the Baltimore County Council in 1984. The plan specifically states that the goal, objectives and policies are to encourage clustered mixed-use development patterns and create a high-density town area focused on the Mall, the Expressway Interchange and the Transit Station.

This Board should not be so restricted in its application of the change/error standard so as to deny a reasonable, appropriate and more desirable use than that which is mandated by existing zoning. How easy it is for this Board to state that existing zoning could provide a "reasonable" use. Where we have a more desirable use, as is the case here, that opportunity should be seized.

The arguments in favor of the rezoning were compelling in this case. They demonstrated in this member's opinion that a comparison of the

uses between that which would be permitted by existing zoning and that which would be permitted by the requested zoning, leaves no doubt that the present zoning is in error.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Keith S. Franz

Date: December 3, 1986



County Board of Appeals of Baltimore County

Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

December 3, 1986

RECEIVED

DEC 5 1986

ZONING OFFICE

John B. Howard, Esq.
210 Allegheny Avenue
Towson, Md. 21204

Dear Mr. Howard:

Re: Case No. R-86-344
Baltimore Gas & Electric Co.

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

Very truly yours,

June Holmen
June Holmen, Secretary

Encl.

cc: Norman J. Bowmaker
Phyllis C. Friedman
James E. Kraft
Norman E. Gerber
James G. Hoswell
Arnold Jablon
Jean M. H. Jung
James E. Dyer