Court of Appeals of Maryland

METER W. MOBES ET UX. ST AL.

BALTIMORE COUNTY, MARYLAND AND CORNELIUS V. ROS ET UX.

Appeal from the Circuit Court for Hallimers to Raine, Jr., Judge.

Argued before HENDERSON, HAMMOND, PHIS.OFF

#635

to be concluded, should receive perhaps greater or sideration from the Court than from the other agency referred to. In the ency it's hardly ever a question of law. The question of fact are very nebulous and uncertain and they finally develop into mere questions of policy. Such is not the case with zoning. Zoning areas can be established with more precision, more legitimacy and with altogether greater standard, more certain standard than can standards be established, for example, by the Board of License Commissioners.

I will pass the point now at least of the necessity on the part of the Board of Loning Appeals to give supporting reasons for its conclusions. It may well be that my view on that is entirely erroneous when considered in connection with the opinion by Judge Grason. The wisdom, however, of such a requirement seems to me to be not debatable, and I will illustrate the reason for that statement in this manner: For example, if they had predicated in this case the reversal of the Zoning Commissioner's action on the ground that there was no need for the establish which would be erected on the reclassified property if it were reclassified, them as indicated to counsel that would be an illegal reason. It would require no more action on the part of the Court than merely so to declare. I have not had sufficient time to study Judge Grason's opinion, and while superficially it would indicate directly to the contrary, in my personal view nonetheless I think there should be a reconciliation between that opinion and those of the Supreme Court where, as here, the agency from which the appeal is taken is not required to make findings of fact. To say the least it's a very heavy burden on property owners, as in soning, to

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subject them to decisions of an administrative agency which is not required at all to make a single finding of fact in support of its conclusions, and as a result of its conclusions in many instances property may be, for the time being, rendered unsaleable. Whether legally required to do so or not, I think it would he not disputed that it nevertheless should be done, but if I follow that procedure in this case and hold that appeal good because of the failure of the Board to file supporting facts, then in justice of course I should remand it to the Board to permit them to make their findings of fact and then return it here which would certainly be a complete waste of time and merhaps unjustified so that I might as well now apart from the views I have of such sup-

norting reasons dispose of it as far as 1 am concerned.

I must dispose of it as a whole legal proposition, unaffected except to the extent that legal principles affect it, by meathetic sensiderations of any kind, symmathetic considerations of any kind. or any considerations than the legal principles applied to the facts established by the record. In that effort I am required, and especially in soning cases I gladly acquiesce in the requirement, because of their peculiar nature and again I repeat from the experience and their knowledge of the whole situation- the decision of the Board of Zoning Appeals must be affirmed if substantial evidence can be found in the record to support its conclusions. It is not sufficient that the evidence should not have the same effect on me as it had on the Board of Homing Appeals. It is sufficient if that exidence justifies or warrants the Board of Zoning Appeals to reach the conclusion which it did reach in this case. Even though on the facts I might disagree with them, that still does not justify me in

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PESCHO C. V. BOR, et al.

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BOARD OF ZONING APPRALS OF BALTIMORE COUNTY

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

CRAL OPINION OF THE COURT

except one, and that is the traffic hazard. I think there is not only no substantial evidence but no evidence at all in the record justifying the notion of the Board of Zoning Appeals in any other respect than the single solitary one of the traffic hazard. On that issue I think there was sufficient evidence in the record to justify the Board of Zoning Appeals in refusing the Zoning Conmissioner's previous approval. I will briefly indicate why. Not only do the exhibits show that Bellona Avenue is a generally wellknown highway, it is also well-known to me. From Charles Street to Jose Rood, it is probably as dancerous a highest as exists in Baltimore County. It is narrow, it is circuitous and it is somewhat of the racer-dip type, and from a point an appreciable distance south of this location involved in this case, to the railroad bridge, it probably is at its most dangerous. There are several curves approaching the property now in question which virtually blind and render invisible this property until you are virtually on it. It proceeds somewhat upgrade, as I remember it, from this property to the railroad bridge. So dangerous is it that on the north side towards Joppa Road on Bellons Avenue there is a stop sign for traffic coming over the bridge, and while I do not remember whether there is one on the south side, there can be no doubt from the testimony in this case, from the exhibits and from the Court's own personal knowledge of the location, that it is a terrifically desperous highway. To increase the burden of traffic on it as that development inevitably would do, it seems to be is a sufficiently substantial reason for the denial of the application by the Board of Zoning Appeals. Certainly this can be said: The question of traffic hazard is fairly debatable on this record, and if it is fairly debatable then as I understand the law the action of the Board

of Montag Anneals must be respected. If there is substantial

I have no trouble with any of the elements in the case

O. V. HOW. at al.

IN THE

BOARD OF SONING APPRAIS

CIRCUIT COURT FOR BALTIMORY COUNTY BEFORE MCREAY. J.

Towson, Maryland, June 30, 1947.

ORAL OPINION OF THE COURT:

THE COURT: It would be fruitless to defer a decision in this case beyond today's hearing. I have read the testimony and observed the exhibits with the greatest degree of care of which I am capable. I have heard the arguments on both sides and as was to be expected were both exceptionally and fully presented and excellently developed. The legal principles are clear and further study and reflection as to them would serve no useful purpose, so that in my mind at least I am as capable of rendering a decision now as I would be five or ten or twenty or thirty days hence. As previously expressed to counsel and paraphrasing another saying which I will not here repent, the next virtue to correctness on the wart of the Court is avoidition. Correctness is always to be striven for and attempted to be achieved, but at any rate expedition is always to be done.

An appeal from this type of administrative agency is on I think a somewhat different plane actually although perhaps not statutorily different on appeal from the Board of License Commissioners, and I think arreals from Janine Amendian, which medesanrily because of the experience by and large with which the problems are considered

evidence in the record that a traffic hazard would be created by the greating of this permit, then in my opinion there is sufficiently substantial evidence in the record to justify the action of the Board of Zoning Appeals. As counsel has shown while it would not be visible at all to the proposed development, the location of trees in front of the proposed stores would increase rather than diminish the traffic hazard because it would increase another hazard for motorists travelling Bellons Avenue.

On the ore isolated point of the increase in the traffic hazard by the granting of this permit, in my opinion there was sufficient evidence in the record to justify the action of the Board of Soning Appeals. Holding that belief, and for that reason the appeal will be dismissed and the action of the Board of Zoning Appeals will be affirmed.

CORNELIUS V, ROE, ELIZABETH E, ROE, his wife, WILLIAM F, BRANDAN and MADNORIE C, BRANDAN, his wife VS

IN THE CIRCUIT COURT

MARUEL H. HOOVER, MARLE L. DINGLE and WILLIAM A. SAPP Constituting the Board of FOR BALTIMORE COURTY

TO THE HONORABLE, THE JUDGES OF SAID COURT:

And now come Samuel H. Hoover, Earle L. Dingle and William A. Sapp, constituting the Board of Zpning Appeals of Beltimore County, and in answer to the writ of certiorari directed against them in this case, herewith submit the record of proceedings had in the above entitled matter, consisting of the following certified copies or original papers on file in the office of the Zoning Department of Beltimore

No. 605 DOCKET SHTRIES PROS. DOCKET OF ZONING DOMEST SIGNUR OF BALFINGRS COUNTY

Hay 1, 1948, Petition of Cornells V. Nos, et al. for seelessification of the very sets file Ballona Ave. See Ballona Ave. See Ballona Ave. See an Bauton Rosa, themes authers to see the lines Ave. on Ballona Ave., to north site of Malyers Ave., with perallel depth easterly of 2007, filed.

Order of Zoning Commissioner directing advertisement and posting of property - date of hearing set for May 21, 1945, at 9:00 o'clock s.m.

a 21, 1946, At 9:30 o'clock s.m. hearing held on petition by Zoning Commissioner and case held sub curia.

Jan. 2, 1947, Order of Zoning Commissioner granting petition for reclassification from "A" Residence Zone to "E" Commercial Zone.

Jan. 8, 1947, Order of Appeal to the Board of Zoning Appeals of Baltimore County from Order of Zoning Commissioner of Jamery, 2 1947, filed.

Feb. 6, 1947, Hearing on appeal before Board of Zoning Appeals of Baltheore County -- case held sub curie by Board.

Feb. 18, 1947, Order of Board of Zoning Appeals of Beltimore County reversing the Order of Zoning Commissioner for reclassification from an "a Heatience Zone to "%" Agmarctial Zone, filet.

March 11, 1947, writ of certiorari and appeal to Circuit Court for Baltimore County served on deard of Zoning Appeals for Baltimore County.

North 24, 1647, Transcript of testimony taken at hearing on a preal before the Board of Zoning Appeals by the atmosphaser who took and transcribed these, filed.

Original plot plan of area petitioned to be reclassified, photographs, letter and written protests, filed.

March 27, 1949, Transcript of docket entries and all papers file: in Circuit Court for Baltimore County.

The rules and regulations pursuant to which said Order was entered and said Board act d are permanent records of the moning Department of Baltimore County as are also the use district maps and your Respondents respectively suggest that it would be inconvenient and inappropriate to file the same in this proceeding, but your Respondents will produce any and all such rules and regulations together with its zoning ise district maps at the hearing on this petition pr whenever directed to do so

Respectfully submitted,

Burke

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Attorney for Board of Zoning Appeals of Baltimore Jounty.

NBs PETITION FOR RECLASSIFICATION PROM "A" INSTITUTED SOUR TO "RE PROM" IN THE PROM TO THE PROME AT SOUTHERS AT COURSE OF BRILDIN AVENUE AND BUXTON ROAD - 9th District "COURS. IUS Y ROE, DT ALP PRITITIONES

Upon hearing on a weal from the order of the Erning Commissioner of Bellimore County granting the petition for mercial Zone, in the large from the Art County from the ericle Zone, in the air Art Residence Sone to an 2° Getter from the eriches that to grant a reclassification we make yoccuts will average affect the health, safety and general welfare of the community and fur her, that there is no immediate meet for auch reclassification:

It is this 18th day of February, 1947, ORDERED by th Board of Zoning Appeals of Baltimore County, that the aforesai order of the Zoning Commissioner, of January 2, 1947, granting the reclassification petitioned for, be and the same in hereby reversed, said property to remain in an "A" Heatdene Logae.

Earle L. Dingle William A. Sapp __ Sammel H. Hoover Board of Zoning Appeals of Baltimore County.

True Copy, Test:

March 27, 1947.

RECRIVED of C. Malter Cole, One of the Attorneys for Appellants, the sum of \$22.00, being most of appeal to the Beard of Zoning Appeals of Baltimore County from the decision of the Zoning Commissioner in granting the petition for reclassification, from Pas Residence Mone to "E" Commercial Zone of the property on northeast corner of Joppa and Dulany Valley Roads, 9th District of Balti-

Zoning Commissioner .

GRUNTY COMMISSIONERS OF BALTIMORE COUNTY

AUL PLAYERSHAW

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RECD MAR 11 1947

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SECT.

State of Maryland, Baltimore County, Srt:

Samuel H. Hoover, Earle L. Dangle and William A. capp, constituting the Board of Zoning appeald for Baltimore County

Cornelius V. Ros. Elizabeth R. Ros. his wife

William F. Brannen and Marjorie C. Brannen, his wife

the CIRCUIT COURT FOR BALTIMORE COUNTY, before the Honorable J. Howard Marray Associate Judge of the Circuit Court for Baltimore County, presiding, together with this writ, immedia

WITNESS, the Honorable 2 ScOun Gronge Chief Judge of the Circuit Court for Baltimo ...day of March, 1947 3rd

10th

Truc Copy Test

SEAL

Luce. Bishop.

.....day of March, 1947,

STATE OF MARYLAND, BALTIMORE COUNTY, to wit:

I HEREBY CERTIFY, That on this day of October, 1947, before me, the subscriber, a notary public of the State of Maryland, in and for the County aforesaid, personally appeared CHARLES H. DOING and did depose and say as follows: That he is the Zoning Conmissioner for Baltimore

County having been appointed to said position on or about January 6th, 1947 and has continued to act in said capacity since the date of his appointment; that he was instructed by the Board of Zoning Appeals for Baltimore County to prepare the Order dated February 18, 1947, and his instructions were to prepare an Order reversing the Order dated January 2, 1947, passed by John J. Timanus, the then Zoning Commissioner for Baltimore County, on the basis that there was no "immediate needs for re-classification of the property mentioned and described in these proceedings; that the language as set forth in said Order dated February 18, 1947, of the Board of Zoning Appeals for Baltimore County to the effect "that to grant a re-classification of said property will adversely affect the health, mafety and general welfare of the community. was included in said Order on his own volition, without any authorization from the Board of Zoning Appeals for Baltimore County, and was not contained in the instructions given to him by the Board of Zoning Appeals for Baltimore County; that the sole basis upon which the Board of Zoning Appeals for Baltimore County passed its Order dated February 18, 1947, reversing

AFFIDAVIT

SUBSCRIBED AND SWORN TO before me day of October, 1947.

Mone to "E" Conmercial Zone.

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the Order of January 2, 1947, passed by the Zoning Commissioner

for Baltimore County, as communicated to this affiant by the

Board of Zoning Appeals for Baltimore County, was the lack of "immediate need" for a re-classification of the property

mentioned and described in these proceedings from "A" Residence

NOTARY PUBLIC

IN THE MATTER OF THE PETITION FOR EXCLASSIFICATION FROM "A" RESURENT ZOHE TO ES" COMMERCIAL ZONE, E.S. BELLONA AVE., 571', NEAR MALVERN AVENUE.
CONNELIUS V. ROB, ET AL, Petitioners.

BEFORE THE ZONING COMMISSIONER

BALTIMORE COUNTY

ORDER FOR APPEAL

TO THE ZONING COUNTSSIONER OF BALTIMORE COUNTY:

Please enter appeals to the Board of Zoning Appeals of Baltimore County from the order of the Zoning Commissioner of Baltimore County in this case, dated January 2, 1947, on behalf of the following residents and property owners in Ruxton, Maryland, who are parties to this proceeding:

A. Murray Fisher Lucretin Fisher, his wife John Henry Lewin Janet G. Lewin, his wife.

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Petition for Zoning Re-Classification

To The Zoning Commissioner of Baltimore County :-

kox we ... Cornellus V. Roe, and others legal owners of the property situate

0635

on east side of Belloms Ave., at Ruston, in the 9th District of Balto. Co., beginning at the southeast corner of Belloms Avenue and Ruston Road, thence counterly, on said side of Belloms Ave., 677, more or less, to north side of Malvern Ave., with a parallel depth eatterly of 2001, and blinding on both Ave., with a parallel depth eatterly of 2001, and blinding on both Ruston Road and Malvern Ave.

screby petition that the zoning status of the above described property be re-classified, pursuant to the Zening Law of Baltimore County, from an A. Residence rone to an "E" Commercial rone Reasons for Re-Classification :.

Character of use for which above property is to be used: __Approved Gommercial Use

#208 we, agree to pay expenses of above re-classification, advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of

May 19.46, that the subject matter of this petition be advertised, as required by the "Zening Law of Baltimore County, in a newspaper of general circulation throughout Baltimore County, that property be posted, and that the public hearing hereon he had in the office of the Zening 21st day of May

Hard marine

Pursuant to the advertisement, posting of property, and public hearing on the above petition

This Order is based on the strict compliance with the requirement that and over is eased on the struct compliance with the requirement that all setback distances of building or structures from abuting reads and property likes, shall be approved by the Zoning Department and that the layout we plan of buildings, to be constructed, shall, in the main, conform with plot plan filed with petition.

it appearing that by reason ofday of above described property or area be and the same is hereby continued as and to remain a.

Upon hearing on appeal from the order of the Zoning Gen-missioner of Baithore County granting the petition for reclassi-fication from an "a Mesissone Zone to an "B Commercial Zone, in the above entitled matter, and it spearing from the evidence in the spearing from the religious control of the community and affect the health, safety and general welfare of the community and, further, that there is no immediate med for such reclassification:

Board of Zoning Appeals of Baltimore County that the sforesaid order of the Zoning Commissioner granting the reclassification pattioned for be and the same is hereby reversed, said property to remain in an "A" Residence Zone.

Walliam a Sapt Mohm

ZONING DEPARTMENT-BALTIMORE COUNTY, MD. Certificate of Posting of Re-Classification of Special Permit Notice

may 3/4/ Leading of son on Property Little on a Broke That Street or Beach. Leading of property State and of Bellona how between Markers and Router Rd.
Markers are England Ruston Rd. Comelius of Roc

Roman 2 Sugars one 108 feet north of Malvan Come my the other sugar 100 feet south of Anston Rd Ingenter making roun. Harry & Handsole

BECD MAY 1 1 1946

CERTIFICATE OF PUBLICATION

NOTICE OF TOXING

THIS IS TO CERTIFY, That the anneled advertisement was and published in Tousan, Baltimore County, Md., once in each

day of May 1946 the first publication appearing on the 3 Miny of May

THE JEFFERSONIAN,

Cost of Advertisement. 8.

April 1, 1947.

\$1.75

RECEIVED of Kenneth C. Prostor, et al, the sum of One Dollar (01,78) and Seventy Pive Cents, cost of surmoning witness to oppear before the Board of Zoning Appeals in the matter of Cornelius V. Roe, et al, and for copy of Order of Moning Commissioner granting the petition for ruclessification from an "A" R sidence Zone to ant an "S" Commercial Zone, property east side of Bellons Avenue, Buxton, 8th District of Baltimore

Zoning Commissioner

APR - 11947 OUNTY COMMISSIONERS OF BALTIMORE COUNTY

NO PLAT IN THIS FOLDER

March 27, 1947

BECKTYED of Cornelius V. Roe, et al, the sum of Seven (\$7.00) Dollars, being cost of certified copies of letters, etc., in the matter of your appeal to the Circuit Court for Beltimore Con ty.

Zoning Commissioner.

May 1, 1946

ERCHIVED of Cornelius V. Roe, and others, the sum of Twenty one (\$M.00) Dollars, being cost of petition for reclassification, advertising and posting of property, East side of Bellona Ave., 9th District of Baltimore County.

Hearings Tuesday, May 21, 1946, at 9:30 o'clock s.m.