December 8, 1947

RECEIVED of Paul P. Due, Esq., counsel for protestants, the sum of Twenty Two (\$22,00) Dollars, being cost of appeal to the Sourd of Zoning Appeals of Baltimore County from the decision of the Zoning Commissioner of Beltimore County granting the petition for reclassification in the matter of petition of Title Guarantee & Trust Company of property on the northernmost and southernmost sides of Edmondson Ave.

Zoning Commissioner

DEC - 8 1947

MICROFILMED CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY Towson, Maryland

Date of Posting Nov 7/47

Posted for: SHOPPING CENTER Putitioner: TITLE GUARANTEE AND TRUST CO

Location of property SOUTH SIDE OF EDMONDSON AVE EXT'D 300 FEET FAST OF STAGNES LANG

Location of Signs 3 SIGNS ON SOUTH SIDE EDMONDSON AVE X SIGN 400 - 2 SIGN 600 - 3 SIGN 800 FEET EAST OF STAGNES LAWE

Protect by Harry & Steature

MICROFILMED CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY

Date of Posting NOV 7/47

Posted for: GARDEN TYPE APARTMENT Petitioner: TITLE GUARANTEE "NO TRUST CO

Lecation of property NORTH SIDE OF EDMONDSON AVE EXT'O AND THE EAST AND WEST SIDE STEINES LANE

Legation of Signs ASIGN ON THE EAST AND SIGN ONWEST OF STAGNES LANE 250 FEET NORTH OF EDMONDSON AVE, " 2-4 SIGN ON NORTHEAST AND

Harry & Gartrielo

Nov 3/47



May 12, 1948.

RECEIVED of S. Relph sernken, counsel for Butaler Bros. Co., being cost of making certified copies of papers in the matter of appeal for reclassification of property on north and south sides of Edmondson Ave., 1st District of Beltimore County.

PAID MAY 181948 COUNTY COMMISSIONERS
OF BALTIMORE COUNTY
BY MICHOFILMED

Title Guarantee & Trust Co., \$ John Grason Turnbull, Eaq., Duncan Building, Towson - 4, Ed. to

County Commissioners of Beltimore Nounty # Zoning Department of Beltimore County, Reckord Building, Towson - 4, Md.

To making certified peoples of the motter of appeal for reelssification of the property on the north and sauth sides of Edmondson Avenue, Extd. 1st District of Batto. Co.

\$ 5.80

March 31, 1948

MOROFILMED

Nov. 5, 1947

\$50.00 V

RECEIVED of Asmel M. Pistorio, the sum of Fifty (\$50,00)Dollars, being cost of petition for reclassification, advertising and posting of property, Edmondson Ave. Ext'd, and St. Agres Lane, 1st District of Baltimore County.

Zoning Commissioner

Hearings Tuesday, Nov. 18, 1947 at 11:00 o'clock a.m.

MPetition for Zoning Re-Classification

To The Zonling Commissioner of Baltimere County :-

I. or we. Title Garantee & Trust Company legal owner ... of the pro-All those two paresis of land on Edmondson ave., Extid., at St. Agnes Lane, Catonaville, 1st District of Balto. Co., particularly described as follows:

PirstlParcel: (For change of zoning reclassification)

Situate on north side of Edmondson Ave., Extid., and the

Second Percel: (For Community Shopping Center)

Situate on south side of Edmonison Ave. Ext'd., beginning 300', nore or less, easterly of St. Agness Lane, as formerly located, said point or beginning being at the NS 00' 1 230,00 to McCheel J. Curley, deted dugmat 15, 1641, thence easterly, on said side of Admonison Ave. Ext'd., 1090; there S 30' 41' E 30'.00' 1 20 E 555' more or less, to beginning.

of this petition, and turther agree to and are to be bound by the zoning regulations and restrictions of

BY: The ALERAGE & THE ROMPANY Legal Owner

Address St. Paul and Lexington Streets Bultimore 2, Maryland

ORDERED By The Zoning Commissioner of Baltimore County, this 30thday of October 1947, that the subject matter of this petition be advertised, as required by the "Zoning Law of Baltimore County, in a newspaper of general circulation throughout Baltimore County, that property he posted, and that the public hearing hereon be had in the office of the Zoning ____18th

Zoning Commissioner of Baltimore County

tending to and fronting on Old Frederick Ford, containing 15.92 acres as

two shove described parcels of property be of the manufacture to the reclassified, pursuant to the

bereky priling that the suggestions of the JEENS-MONOCOMIC we related persons in the Posing they of Hillmann County Free and A. Mesilence sees that "O" Residence ...mee For the Posing County Free and A. Mesilence sees that "O" Residence ...mee TRANSMONOCOMIC SERVICE OF GREEK TO PROPER TO THE SERVICE AND ADMINISTRATION OF THE PROPERTY OF THE POSING THE Zone to permit of the erection of a Community Shapping County

Character of use for which above property is to be used ... Stor. At above

To be approved by Buildings Department Size and height of building; front. 7. feet depth, proyed by Zoning Dept.

BEXXX 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 roning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County,

> Pur Julit Bras -Legal Owner

Address St. Paul and Lexington Streets Baltimore 2, Maryland

October 1947., that the subject matter of this petition be advertised, as required by the "Zoning Law of Baltimore County, in a newspaper of general circulation throughout Baltimore County, that property be posted, and that the pathic hearing hereon be had in the office of the Zoning ____18tho'eloek A.M.

Zening Commissioner of Ballin

MICROFILMED

RE: PETITION OF TITLE CHANANTSE AND TRUST CASPART FOR A RECLASSIFICATION OF CRETAIN PROPERTY DESCRIBED MERGEN FROM AN NAME BASIDENCE ZORE TO A NOT RESTUDICE COME AND ANALYSIS PROPERTY RESOLUTED TRUST IN THE ANALYSIS PROPERTY RESOLUTED TRUST IN THE ANALYSIS PROPERTY OF THE TOTAL TO CASESCIAL ZORE.

1078

MAP

Arremant to advertisement, posting of property and pub-cific property and pub-ertiments and data substitute and it appearing from the evidence and data substitution that it is a property of the of the property firstly described in each potter are advantaged to granted by remain of the childreng feets.

That said property is not adjacent to existing cottage residences and is not in feet being now used as residential property,

and partition is continuous to properly secondly described in said partition is continuous on both the east not west sides thereof to a scitting conservation one and is bounded not seen to the continuous to my creation thereof by public highways and is not continuous to my resolute the state fractional and force has been, so far a tide fact on the state training, and force has created withing to which said property is subscribing in the continuous continuous and morals of the continuous to the health, safely continuous to the continuous to the health, safely continuous to the continuous to the health safely continuous to the continuous to the health safely continuous to the continuous to the health safely continuous to the continuous to the

THEMPORE, IY IS GENERAL by the Scning Commissioner of indifferent County Usis Synd day of Becauser, 1947, that the firstly described the synd of the county reclassified from an "A residence one to a rep-scning because in the the production of actived property, or area, be not the one and that the secondly actived property, or area, be not the one and that the secondly form an "A" residence most to an "Fe" conservation 1000.

County Cosmissioners of Baltimore County

President

MAP \$1-B HI SETTION FOR RECLASSIFICATION, FETM AND RECLASSIFICATION OF THE RESIDENCE SOME TO THE RESIDENCE AND AREA SETTIONS OF THE RESIDENCE AND AREA SETTION OF STREET, OR SOME SITUAL SOME OF THE RESIDENCE OF STREET, OR SOME SITUAL SOME OF THE RESIDENCE OF STREET, OR SOME SITUAL SOME OF THE RESIDENCE O

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The appeal in the abre entitled petition for reclassification coming on for heaving from the order of the Zoning Commissions of Commissions of the Commissions of the

addinged at the hearing further from the facts and evidence as the hearing that he settion for reclassification from an at a large transport of the same would be a first the hearing of the asse would arrive the health, safety and margin errors, streets about a first the health, safety and margin errors, streets about a highest of the same would be a set of the same would be same would be same would be same with the safety and transports on highest same to schools and churches and would inner vertical third of tors such that and church same would be same without the same would be same with the same that the same with the same that of the community.

by the Bord of Zening Appeals of Haltimore County that the Order of the County County

hould from William a Sapp Carle f. Pang of Reltimore Co

Approved: County Commissioners of Baltimore County

By Chustian What

Date: March, 1948

Zoning Department of Baltimore County sa are also the use district maps and your Meapondents 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 soning use district maps at the hearing on this netition or shenever diverted to do so by this Court.

SPORTSHIED LO

Hespectfully submitted

IN THE CIRCUIT COURT POR BALTIMORE CODRYY

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ARBERT TO WRIT OF CONTIGRARI AND ORIGINAL AND CONTINUED COPIES OF PICCOMMUNICATION OF COMMUNICATION AND BOARD OF CORNIG APPEALS OF BALTIM

Br. Clerks

Please file, Do.

Counsel to Found of Zoning

THE TITLE GUARANTEE COMPANY, : IN THE CIRCUIT COURT body corporate,

VS FOR BALTIMORE COUNTY

SAMUEL H. HOOVER, et al. IN EQUITY

This is an appeal from the refusal of the Board of Zoning Appeals to approve a change from residential to commercial use of a sixteen acre tract of land on Edmondson Avenue extended, in the first district.

Acutally two tracts are involved, both owned by Butzer Brothers, the sixteen acre tract lying to the sout of Edmondson Avenue and the forty acre tract to the North. Both are unimproved and were zoned as "A" residential under the comprehensive zoning plan of 1945. The application to change the soning of the forty acre tract from Ar residential to "C" residential was granted and is unopposed, but the application to re-zone the sixteen acre tract to commercial is the subject of this appeal. The two tracts, however, are involved in the undertaking. It is the Hutzler intention to well the larger tract for development as a garden type apartment project, but only if the re-zoning to commercial use of the sixteen acre tract is approved.

If that occurs then Hutzler proposes to erect a regional shopping center in gradual stages. First, a neighborhood center will be erected, second, a Hutzler Department Store and third, additional stores andother commercial ventures.

The re-zoning is protested by a large number of residents of the area and is favored by others.

It is conceded that the only question before the Court is whether or not the evidence produced before the Board of Zoning appeals and contained in the record, substantially supports the Board's refusal of the changing in classification.

CIRCUIT COURT FOR BALTIMORN COUNTY

TO THE HOPORABLE. THE JUDGE OF SAID COURTS

And now come Sermel H. Moover, Earle L. Dingle end William A. Sapp, constituting the Board of Zoning Appeals of Baltimore County, and in answer to the writ of certiopari directed ugainst them in this case, herewith 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 County:

No. 1078 Oct. 30, 1947,

Petition of Title Quarantee & Trust Co. for reclassification of two percels of land on north and south sides of Edmon-son Ave., the first for Carden Type ipertments and the second for Community Shopping Center, filed.

Order of Zoning Commissioner directing sover-tissment and posting of property - date of nearing set for November 18, 1947 at 11:00

Certificate of posting of property on November 7, 1947, filed. Nov. 7, "

Nov. 10. Certificate of publication of advertisment in newspaper, filed. Nov. 18, 1947, At 11:00 o'd cok s. m. hearing held on petition by Zenine Commissions; and case held sub cubis.

Order of Zoning Commissioner granting as tition for realwastification from "a Residence Zone to "0" holdence Zone of the firstly described parcel and from an "4" Residence lone to an "8" Commercial Zone of the secondly described parcels

Order of access to the Board of Zoning appeals of Baltimore County from Order of Zoning Com-missioner, filed.

Pirat hearing on appeal before the Board of Zoning Appeals, case continued to Jan. 22, 1948, 8, 1948,

Bearing on appeal continued before Board of Zoning Appeals. * 28. * March 1, "

Order of Boxed of Zoning Appeals or Bot times Courty materiality the Cross of the Zoning Courty materiality Boxed of the Zoning Courty materiality Boxed of the Follows Eme to To Residence Eme of the Friends Eme to To Residence Eme of the Total Courty of the Courty of

March 30. " brit of ertioreri and appeal to Circuit for Paltimore County served on Board of Zoning

Transcript of Cestisony taken at bearing on appeal byfore the Board of Zoning Appeals by the atmosphere who took and transcribed the ause, filed. 51 .

Macellaneous papers, reps, etc., filed es follows: No. 1, Flet showing layout of property for proposed garden type sportments and Shopping Center.

2, Plot plan showing proposed Shopping Center. " 3, Zoning Map of Deltimore City.

4. Use District Map - First District Zoning Map of Baltimore County.

" E, Flats and pictures of Edmondson Village,

6, Pictures showing property in the adjacent area.

Letters of protest, telegram, signed petitions of protest and other papers filed at appeal hearing.

The rules and regulations pursuent to which said Order I said Board sated are nermanent renords of the

-2-

The Board has given the Court little assistance in determining

It merely passed a blanket order asserting (but failing to point out in what manner.) that the granting of the application would (a) adversely affect the health, safety and morals of the community; [b) would tend to create congestion in the roads, streets and highways; (c) would interfere with the safety and transportation of children to schools and churches; (d) would interfere with other public requirements and conveniences and (e) the proposed stores may attract rats, vermine and other pests and may lead to unhealthful and unsanitary conditions affecting the health of the community.

It should be noted that this enumeration of the Board's view on the result which would occur if the re-classification is granted, merely copies the language of the Act upon which zoning is based. It affords the Court no help whatever in determining how the public health, safety, morals and welfare would be adversely affected. The Board does not attempt in its order or in any memorandum supporting it, to indicate the manner in which the testimony, in its judgment, shows those elements of moning requirements are violated in

The Court is therefore left without the benefit of any finding of fact by the Board supporting its conclusion.

No citation of authority is needed for the proposition that the finding of an administrative board is presumptively correct, that if there are reasonable grounds to support such a finding it must be sustained, even though the Court on appeal might view the testimony in a different light from that given to it by the administrative board. However, when the board itself fails to show, even indirectly, the relationship of the testimony to the principles upon which zoning is based, it becomes difficult to determine whether or not the board acted reasonably in reaching its conclusion. Zoning is a difficult, complicated and technical proceeding. It is

antagonistic to the generally accepted view that a person may use his property for all lawful purposes, freely and without restriction. It required much litigation before zoning laws were up-held as legal and valid legislative enactments. While Zoning is today recognized everywhere as a public necessity, because of the large concentration of population in small areas and the realization that the public welfare transcended the right of an individual to use his property without regard to the effect which that use might have on the property of his neighbors and the community as a whole, nevertheless restricting the use of a particular property, can still be justified only when it is found that such use does violence to the legal principles which justify the restriction. It would therefore seem desirable, if not necessary, that a Zoning Board when refusing an application to permit a person to use his property for legal purposes, should point out the facts presented to it which it finds proves the proposed use is violative of the soning principles. The failure of the Bo rd to do so imposes on the Court the task of making those findings frequently itself, without any sid from the expert body established by the law for that purpose. Here the Board has stated its conclusions only. It is conceded that if those conclusions are supported by substantial evidence the Board must be affirmed. It is likewise submitted, however, that when the Board fails to state the reasons for the conclusion, the Court's review of the case is less likely to be correct than if it had the benefits of the Board's views of the facts. I this occurs the Board itself is responsible.

In spite of rather voluminaus testimony the case is rather simple

As has been pointed out, the district involved was zoned residential when the comprehensive coming plan now in effect was adopted in 1945. There is a school and church adjoining this tract to the west and there is also a substantial residential

unity in the vicinity. To the east there is a shopping center Fromm as Edmondson Village.

While soning is not static, but must retain some degree of fluidity; in order to prevent a complete stagnation of property use, nevertheless it is true that there is a presumption that zones are well planned and arranged and are to be more or less permanent, subject to a change only to meet genuine change in cond-

(N.W. MERCHANTS TERMINAL INC. V. O'ROURKE 60 Atl.

It is equally true that a change from one classification to another cannot be granted merely as a favor or convenience or because the proposed use would be more profitable to the owner than the existing permitted use.

(RILTCOTT W. BALTIMORE, 160 Md., 182.)

Likewise even though the Board's refusal to grant a given application is based on a reason (as noted, the Board here gave no reasons) deemed insufficient on appeal, nevertheless if its conclusion is correct, it will not be set aside even if the reason given

(HOFFMAN V. MAYOR & CITY COUNCIL OF BALTIHORE

It is certainly fair to say that while there is evidence in this record to superficially show that the granting of this permit might affect or cause depreciation to adjoining property, cause congestion in the roads and streets and the creation of a traffic hazard, such testimony is at best nighly speculative, nebulous and unconvincing, and by no reasonable analysis meets the test of sub-

Most residents of a community in which it is proposed to erect a shopping center or commercial enterprise, would naturally initially fear a depreciation in the value of their property. There is such testimony in this record. Understandably also, they probably prefer no change in their neighborhood. However, before a given property can be denied the use sought for, testimony of this

or not this application is approved is certain for some type of residential development. The plan here submitted takes all of these elements into consideration. So far as possible, nothing is left to chance, the planning is for the future, but based on logical and intelligent considerations. The normal haphagard scheme of flooding a particular territory with all the homes and apartments which can be crowded into it and then wildly searching for locations for the services they will need is avoided

Zoning, unaccompanied by prior planning, is at best only a substitute, and frequently is a subterfuge. Generally this is unavoidable, because zoning was adopted only Efter, and because of, concentration of population due to the full and complete development of communities. Zoning with imposed only after the conditions it was inteded to avoid had already arisen and in existing areas does lattle more than pres quo. In such communities it was not possible to plan and zone simultaneously, in fact no planning as such was feasible. The plan, good or bad, was made and zoning merely confirmed it. Here is an opportunity to plan and then some, both within the framework of legal standards. To deny approval to such a project when there is no evidence of any kind to show it will have a detrimental effect in any manner, (but will in fact premote the general welfare and sid the purposes for which zoning was created) on either the community directly involved or the county as a whole, would be a backward step.

this case is unusual for, as has been stated, it is the first to proceed in this manner. It is no ever, more desirable, not less so for this reason alone, provided it is not shown to be within any of the prohibitions contained in the soning act.

As has been demonstrated, this record not only fails to show that it does so but on the controry shows, not only debatably, but conclusively, that it promotes, rather than detracts from the very purpose of the act itself.

character certainly should be based on a tangible showing or likely depreciation, based on other similar situations, rather than a showing of fear and apprehension that such would be the result. On the contrary this record shows that Edmondson Village caused no such property depreciation as is suggested this project might cause. In fact this record discloses that new residences are being built in the Edmorison Village territory and the only substantial testimony as to the effect which that center had on property values was that it probably would not increase the value of such properties. That is not the test. A person need not show his use of property will enhance the value of his neighbor's. The testimony on this phase cannot in any aspect from which it is viewed, be regarded as substantial.

The same may be said of the contention that a traffic hazard may be created. Edmonison Avenue is a dual highway of substantial width. While it is a high-speed boulevard, it is straight and broad, and while of course this shopping center and the proposed apartment development would increase the flow of traffic and nergons of from one lide of the road to the other, nevertheless this testimony falls far short of showing that a traffic hazard and congestion will occur if this application is granted. Edmondson Avenue now carries far less traffic than it was designed to handle. All developments, to say nothing of commercial establishments, necessarily increase traffic. It is not the increase in traffic which zoning was designed to safe-guard, it is the hazard and congestion which the proposed development creates, that zoning is intended to protect against. The record here shows conclusively that no traffic hazard will be created by the proposed improvements on the tracts of land involved. Even if the sixteen acre tract were residentially developed, traffic would be increased and perhaps even to a greater degree than would be caused by the proposed commercial development. In any event, the development of the forty acre tract as garden-type apartments and any residential development of the sixteen afre tract would inwolve a shopping center of some size and the necessity of

As the Board's finding to the contrary is unsupported by any substantial evidence, and basically by any evidence at all, its action in refusing approval to the application was arbitrary in the legal sense and will be reversed.

J. Howard Murray, Judge.

In accordance with the aforegoing, it is this..... day of June, 1949, O R D E R E D that the action of the Board of Zoning Appeals refusing the application for re-classification of the property herein involved, be hereby reversed.

J. Howard Murray, Judge

crossing Edmondson Avenue from one development to the other. The argument that there is substantial testimony in this record to show that the proposed improvement of this lot will exerte a traffic hazard and cause congestion in the roads and streets is not supported by the facts. Such testimony as there is to this effect is highly speculative and without probative force.

It goes without saying that this application should not be approved because of the size of the contemplated project or the admitted responsibility of its sponsors. Fowever, it is equally true that size alone does not justify its rejection. In this connection it should be observed that the Zoning Commissioner, who deals daily with the many problems incident to proper and lawful soning and who by experience alone, eliminating in this

The other grounds stated in the Board's order denying the application are completely funciful, lacking not only substantial evidence to support them, but actually lacking any exidence at all. It is neither unfair nor improper to dispose of them in that summary manner. There is absolutely no testimony that the proposed project by attracting rats, vermine and other pests will lead to unbesithful and unsanitory conditions. The same may be said of the finding by the Board that the proposed re-zoning will adversely affect the health, safety and the morals of the community or that there will be any impairment or interference with other public requirements and conveniences. These findings, to the extent that they may be so described, are phrase taken from the statute itself, unsupported by even a suggestion in the testimony, and may properly be described as a "catch-all" to be used only when all else fails.

Without intending any reflection upon the good faith of those protestants who are concerned with the effect this re-zoning may have on their attractive and substantial residences, it is

discussion his known ability and integrity, is an expert in these matters, approved the application under consideration.

RECD MAR 30 1948 V

THE TITLE GUARANTER COMPANY, a body comporate, in its own behalf and for and on behalf of HUTZLER EROTHERS COMPANY, a body corporate

IN THE CIRCUIT COURT

SAMUEL H. HOOVER, EARLE L. DINGLE and WILLIAM A. SAPP, being and con-stituting the Boord of Zoning Appeals for Esltimore County.

FOR BALTIMORE COUNTY.

TO THE HONORABLE, THE JUDGE OF SAID COURT:

The petition and appeal of The Title Guarantee Compeny (its name, until recently changed, being Title Guarantee & Trust Company), a body corporate, in its own behalf and for and on behalf of Hutzler Brothers Company, a body corporate, respectfully represents unto your Honor:

FIRST: That The Title Guarantee Company, petitioner.inthe title owner of certain property sought to be rezoned is this appeal; that Hutzler Brothers Company, a body corporate, is the equitable owner of the property sought to be rezoned in this appeal. That the said The Title Guarantee Company, a body corporate, in its former name, Title Guarantee & Trust Company, was the petitioner in this metter before the Buildings and Zoning Commissioner for Beltimore County, which petition prayed for a reclassification of certain property lying on the north side of Edmondson Avenue extended from "A" Residence | Zone to "C" Residence Zone, and of certain property lying on the south side of Edmondson Avenue extended from "A" Residence Zone to "E" Connernevertheless apparent that the real agitation against the rezoning wtems from the ownership of Edmondson Village, with which the proposed shopping center will directly compete. Of course this fact does not itself prevent those persons from presenting their views, but it is a factor to be considered in weighing the value of their testimony.

It is suggested that this record falls to show any need in the community for the proposed change. It can hardly be asserted that an immediate pressing used is shown, in fact is is not. Meed undoubtedly is an element to be considered and there is authority for holding that there must be a need to justify an exception to a general soning plan.

However, proper soming is in my judgment broader than the narrow statement just referred to would indicate.

We have here a situation which the testimony conclusively demonstrates will not violate any other zoning principles and in fact shows that zoning will be subserved by the proposed reclassification. While an immediate need does not exist for the services which this project will provide it is abundantly clear that such a need will presently arise. In what manner then will the public velfare, safety, health and morals be best served? By permitting the perhaps disorderly growth of a large residential and enartment development on these tracts, inadequately served by the necessary public facilities such as stores, to be later erected without regard to the original residential planning, or planned in advance of such developments, as is here contemplated? The answer is obvious. This application furnishes almost the first type of intelligent future planning and soning which has been proposed in this county. Generally dozens and even hundreds of homes and spartments ' a constructed, to be followed by badly planned, improperly loc and inadequate stores and other service establishments. He, the normal procedure is reversed. The population increase is assured. The use of the forty acre tract whether

cial Zone.

SECOND: That under date of December 2, 1947, the Buildings and Zoning Commissioner for Beltimore County passed an order in which he granted the aforeseid reclassifications requested in said petition filed with said Buildings and Zoning Commissioner.

THIRD: That subsequent to said decision of the Buil 1ings and Zoning Commissioner for Baltimore County, passed as aforeseid, en eppeal was entered by certain protestants to the Board of Zoning Appeals for Beltimore County; that upon said appeal said Board of Zoning Appeals for Baltimore County on the 1st day of March, 1948, passed on order sustaining the decision of said Buildings and Zoning Commissioner for Baltimore County in so far as the decision of said Commissioner related to the change of classification of the property located on the north side of Edmondson Avenue from "A" Residence Zone to "C" Residence Zone; and said order sustained the appeal and reversed the decision of said Commissioner in so far as said decision effected a reclassification of the preperty lying on the south side of Edmondson Avenue extended from an "A" Residence Lone to an "E" Commercial Zone, the grounds of said latter portion of said decision of said Board of Zoning Appeals being stated in said order as follows:

> "To uppearing further from the feets and orience seduced at the hearing that the potition for realessification, from an "A" heafenee Zone to an "A" Commercial Zone should be desired since the great of the commercial Zone should be desired since the commercial content of the community and would tend to create congestion in the roads, streets and highways would interfer with the safety and range-portation of militarn to subsolate and churches and would interfere with other public requirements and conveniences and sizes verious time or stores may attract rate, vermin and other peats and may lead to unheelthful and insenitary conditions affecting the health of the community;

FOURTH: That petitioner is aggrieved by said decision

and order of the Board of Zoning Appeals for Baltimore County.

FIFTH: That the aforesaid order of the Board of Zoning Appeals for Beltimore County dated the let day of North, 1948, should be reversed, set aside and annulled by this Honorable Court on the ground that said order is illegal, in that:

- (1) Said order of the Board of Zoning Appeals for Beltimore County constitutes an arbitrary and espricious set and a gross abuse of administrative discretion in that there was a total lack of evidence before seid Board of Zoning Appeals upon which the seid Board could base its finding as hereinabove sat forth in Porsgraph Three hereof; and
- (2) That evidence adduced by your petitioner at said bearing by fore said Found of Zoning Appeals for Baltimore County showed, without substantial contradiction, that if said property were reclassified from en "A" Residence Zone to "E" Commercial Zone there would be no adverse effect upon the health, sefety and morals of the community, that it would not tend to create congostion in the roads, streets and highways, would not interfere with the safety and transportation of children to schools and churches, would not interfere with other public requirements and conveniences, and would not attract rats, vermin and other pests and leed to unhealthful and insanitary conditions affecting the health of the community.
- (3) That the order of said Board was based on protests, by way of telephone, letters and telegrams not conteined in the testimony or record of the proceeding; that as to such matters considered by said Board in reaching its decision, your petitioner was deprived of

-3-

its right to be confronted by the witnesses and the opportunity to cross-examine such witnesses.

- (4) That the said decision of said Board of Zoning Appeals and the order passed by said Board is arbitrary and capricious and a gross abuse of administrative discretion in that it deprives your petitioner of its constitutional rights to use its property in any lawful manner, subject to the zoning laws of Beltimore County and the act of seid Board in passing said order without evidence, or substantial evidence, to support its findings, is unconstitutional, null and void.
- (5) That this patition and appeal is filed pursuant to the provisions of Chapter 502 of the Laws of Maryland, 1945.

WHERTFORE YOUR PRITTIONER PRAYE:

- 1. That a writ of certiorari be issued by this Honorable Court directed to the Board of Zoning Appeals for Beltimore County and prescribing the time within which a return thereto must be made and served upon re etor's attorney.
- 9. That this Honorable Court reverse, set aside and annul and dealers void and of no effect the order of the Board of Zoning Appeals for Bultimore County dated the 1st day of Murch, 1948. in so for as said order reverses the order of the Zoning Commissioner of Baltimore County dated the 2nd day of December. 1947, and refuses to grant reclassification of the property located on the south side of Edwondson Avenue extended from an "A" Residence Zone to "E" Comme oisl Zone.
- 3. That the Board of Zoning Appeals for Beltimore County be required to return to this Honorable Court the original papers seted upon by it, or certified or sworn copies thereof, and that such return shall concisely set forth such other feets as may be

pertinent and material to show the grounds of the decision and the order appealed from, together with a transcript of the testimony at the heering in this matter before said Board, and copies of exhibits filed therewith.

4. And for such other and further relief as your petitioner's cause say require.

THE TITLE GUARANTEE COMPANY

By J. Milton Brandt

HUTZLER EROTHERS COMPANY

By Albert L. Hutzler Albert D. Hutzler, President

S. Relph Wernken S. Ralph Warnken

John Grason Turnbull Attorneys for Petitioner. STATE OF MARYLAND CITY OF BALT BIOUR

88:

I REREBY CERTIFY that on this 24th day of March, 1948, before me, the subscriber, a Motory Public of the State of Maryland, in and for the City of Baltimore aforesaid, personally appeared J. Milton Brandt, Vice-President

of The Title Currentee Company, a body corporate, and made oath in due form of lew that the matters and facts set forth in the eforegoing petition ere true and correct to the best of his knowledge, information and beli-f.

AS WITHESS My hend end noteriel seel.

[SEAL]

Alex. Kinneted Notary Public.

STATE OF MARYLAND CITY OF BALTIMORE

I HEREBY CERTIFY that on this 24th day of Merch, 1948, before me, the subscriber, a Notary Public of the State of Maryland, in and for the City of Beltimore aforeseid, personally appeared ALBERT D. HUTZLER, President of Hungler Brothers Company, and made outh in due form of less that the matters and facts set forth in the sforegoing petition are true end correct to the best of his knowledge, information and belief.

AS WITNESS my hand and noterial seal.

[SEAL] Louis Gershen

Notary Public.

-6-

THE TITLE GUARANTEE COMPANY. a body corporate, in its own behalf and for and on behalf of HUEZLER BROTHERS COMPANY, a body corporate, both corporations of the State of

CINCUIT COURT

vs. SAMUEL H. HOOVER, EARLE L. DINGLE and WILLIAM A. SAPP, being and con-stituting the Beard of Zoning Appeals for Beltimore County.

FOR BALTIMORE COUNTY.

IN THE

ORDER

Upon the foregoing petition and appeal and affidavits, it is this 29 day of March, 1948, by the Circuit Court for Beltimore County:

ORDERED that a writ of certiorari be issued, directed to the Board of Zoning Appeals for Beltimore County to reverse the decision and order of said Board of Zoning Appeals for Baltimore County dated March 1, 1948, and that a return thereto must be made and served upon relator's attorney within /5 days from the date of this order; and

It is FURTHER ORDERED that the Board of Zoning Appeals for Baltimore County be and it is hereby required to return to this Court the original papers acted upon by it, or certified or sworn copies thereof, and the return shall concisely set forth such facts as may be pertinent and material to show the grounds of the decision and order appealed from, together with a transcript of testimony taken at the hearing in this matter before said Board and copies of exhibits filed therewith.

True Copy Test 7. Braden Silcott





