

WILLIAM B. EMMETT
EDWARD H. EMMETT
EDWARD H. EMMETT
LAND PALLS ASSOCIATION

IN THE CIRCUIT COURT

FOR

BALTIMORE COUNTY

Miscellaneous Incident No. 5, Folio 72,
Case No. 1176

This is an appeal from an order of the Board of Zoning Appeals affirming the reclassification by the Zoning Commission of a lot located at the intersection of Falls Road and Lake Avenue, in the Ninth Election District of Baltimore County, from "A" Residential to "E" Commercial, subject to certain requirements in regard to screening by shrubbery, planting and sodding, and erection of lights.

The lot, as measured, fronts 120.00 feet on the northerly side of Lake Avenue and 125 feet on the easterly side of Falls Road, extending back from Falls Road to the rear of the lots in a development known as Lake Falls. It is a portion of a larger tract acquired in 1907 by a company controlled by a certain Charles A. Milburn, at which time it was zoned "A" Residential. The owner proceeded to develop a large portion of the original tract for residential purposes and built approximately forty houses thereon. A few of these houses face on Lake Avenue, but the remainder face each other on a street or roadway to the west of an running for the most part parallel with Lake Avenue in what is known as the "closed court plan." This is the Lake Falls development above referred to.

After the completion of Lake Falls there remained a strip or parcel of land with a frontage of 270 feet on Falls Road and a frontage of 120.00 feet on Lake Avenue. At the time of the completion of Lake Falls this strip or parcel of land sloped in a westerly direction from the westerly end of said development to

- 1 -

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RE: PETITION FOR RECLASSIFICATION FROM AN
"A" RESIDENCE ZONE TO AN "E" COMMERCIAL
ZONE, 120.00 ft. Lake Ave., N. E. Falls Road,
9th District of Baltimore County -
Aurora Federal Savings & Loan Ass'n.,
Petitioner

The appeal in the above entitled matter coming on for hearing before the Board of Zoning Appeals of Baltimore County on July 10, 1952, granting the reclassification from an "A" Residence Zone to an "E" Commercial Zone, pertaining to a portion of the tract of land under the original petition, and denying the reclassification of the balance thereof; and it appearing from the facts and evidence adduced at the appeal that the granting of the reclassification would not be detrimental to the health, safety, and general welfare of the community, and it appearing that there is a need for such reclassification, the hereinafter described property is reclassified from "A" Residence Zone to "E" Commercial Zone:

Beginning at the Northeast corner of Falls Road and Lake Avenue, thence Northeasterly on the East side of Falls Road, 125 feet, thence Easterly and parallel to Lake Avenue, 120.00 feet, to the rear of lots on Plat No. 1 of "Lake Falls," thence Southeasterly, parallel to Falls Road, 125 feet, to the North side of Lake Avenue, and thence Westerly, on the North side of Lake Avenue, 120.00 feet to beginning.

And provided further, that the rear portion of this commercial area be screened by shrubbery and that the bank be planted and sodded, and that the top portion on the embankment should also provide for screening by shrubbery; and if any lights are erected, they shall be directed away from the dwellings

Falls Road, but some time thereafter the owner had this area associated in such a manner as to level it off and leave the houses in Lake Falls on a plateau-like elevation twenty feet or more above the lot in question.

The construction of Lake Falls was planned by the Aurora Federal Savings and Loan Association, the present owner of the lot under consideration, and the petitioner for the rescinding sought herein. Aurora acquired this property in 1920 through the foreclosure of a mortgage which it held against this property and other property owned by the Milburn interests. This mortgage was given in 1907 and was a lien against the lot in question at the time of the execution above referred to. For this reason the protestants contend that the alteration of said lot, which the petitioner claims makes it suitable for residential purposes, was made with the full knowledge and consent of said petitioner. The protestants insist, therefore, that the petitioner should not be allowed to claim a hardship from a failure to resume because said petitioner, in effect, created the condition which brought about this situation.

The protestants further contend that the reclassification of said lot will depreciate the value of the houses in Lake Falls, that it will create a traffic hazard at the intersection of Lake Avenue and Falls Road and will be detrimental to the health, safety and general welfare of the community. They also contend that there is no proof either that there was some mistake in the original zoning or that the character of the neighborhood had changed to such an extent as to justify the rescinding.

The question to be decided by the Court is whether or not there is evidence in the record to justify the action of the Board of Zoning Appeals and whether its action was arbitrary, discriminatory and illegal.

Offutt vs. Board of Zoning Appeals, 204 Md. 531.

Wardfield vs. Kritt, 202 Md. 116.

In order to justify the reclassification there must be proof that there was some mistake in the original zoning or that the character of the neighborhood had changed to such an extent that the reclassification might properly be made.

Tremick vs. Board of Zoning Appeals, 205 Md. 489.

The Court is of the opinion that the testimony clearly shows that there was a mistake in the original zoning of this lot on Falls Road. Southern F. Milburn, a recognized zoning expert, testified that both sides of Falls Road

- 2 -

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from Belvidere Avenue on the south to the City Line on the north, which is only a block from the lot in question, is almost commercial. He testified that the lot in question is not suitable for residential development because of the character and condition of the buildings on the westerly side of Falls Road and the various commercial and industrial activities in the immediate vicinity. He also testified that the proximity of the overpass on Falls Road and the Southern Central Railroad right of way, both of which are a short distance north of said property, render the lot unsuitable for residential use. In his opinion, as an expert, there is need for a commercial development at the location under discussion and no traffic hazard would be created by the erection of a filling station or a commercial enterprise.

Mr. Milburn's testimony was supported by Mr. Russell Kelly, a qualified real estate man, who also testified that the houses in the Lake Falls development were protected from a commercial use of said lot by reason of their elevation and the fact that the houses, due to the "closed court" plan, do not overlook the site.

From the testimony presented and the photographs introduced in evidence it is clear that there are commercial and industrial uses on both sides of Falls Road in the immediate vicinity of the lot in question and that the buildings across Falls Road are old and in bad state of repair. Under such conditions the lot under consideration would certainly not be desirable for residential purposes.

The Court, in order to find the record devoid of facts to support the action of the Board of Zoning Appeals would have to ignore completely the evidence above referred to and substitute its own judgment for that of the Board's. This would be contrary to the well established principle governing the Court in such cases. See Offutt vs. Board of Zoning Appeals, 204 Md. 531, at page 560, in which our Court of Appeals stated:

"We cannot disregard the general rule that in an appeal from a decision of a zoning board, the court will not substitute its own judgment as to the wisdom or soundness of action taken by the board, but will decide only whether or not such action was arbitrary or discriminatory and illegal. It is not the function of the court either to come in to rescind, but only to decide whether the board properly applied the applicable law to the facts. The court should not substitute its own judgment for the judgment of the board if the question as decided is clearly doubtful. If there is room for reasonable debate as to whether the facts justify the

OPINION OF THE BOARD OF ZONING APPEALS
OF
BALTIMORE COUNTY

This is an appeal by Lake Falls Association and also by Aurora Federal Savings and Loan Association from an order of the Zoning Commissioner of Baltimore County dated May 26, 1952, granting a reclassification from an "A" Residence Zone to an "E" Commercial Zone, pertaining to a portion of the tract of land under the original petition and denying the reclassification of the balance thereof.

The case came on for hearing before the Board, testimony was taken, and counsel for both sides heard.

The property which is the subject of this petition is located on the Northeast corner of Falls Road and Lake Avenue in the Ninth Election District of Baltimore County, having a frontage of 270 feet on Falls Road and 120.00 feet on Lake Avenue with an irregular depth surrounding a portion of the development known as Lake Falls and with the Northeasternmost part binding on the property of the Mayor and City Council of Baltimore City.

Lake Avenue, which borders the petitioners' property on the South, is a medium width/road ending at Falls Road after a steep down grade. There was testimony that Falls Road is a heavily traveled highway and with Lake Avenue intersecting at the place indicated above, it would appear that every effort should be made to provide adequate setback of any buildings that may be erected on Falls Road and Lake Avenue to provide clearance and unobstructed vision as to traffic entering and leaving Falls Road by Lake Avenue; and for these reasons and the reasons stated by the Zoning Commissioner, it is the opinion of the Zoning Board that the corner of Falls Road and Lake Avenue should be reclassified as hereinafter described.

As to the balance of the property, there is no need shown for reclassification sufficient for this Board to act

board in deciding the need for its action, the decision must be upheld. It is only where there is no room for reasonable debate, or where the record is devoid of supporting facts, that the court is justified in declaring the legislative action of the board arbitrary or discriminatory."

The appellate court in the case of Offutt vs. Board of Zoning Appeals and Kritt vs. Board of Zoning Appeals, recently decided by the Court of Appeals, affirming this in many but in these cases the Court was dealing with two competing property owners who desired to erect shopping centers in a newly developed area, whereas in the present case we have under consideration a small lot in an area which has been developed for many years. The Court feels, therefore, that the rule laid down in the Offutt case applies in the present case.

In view of the Court's finding that there was error in the original zoning the protection of the protestants in regard to the alteration of the lot became immaterial.

For the reasons above assigned the action of the Board in granting the reclassification will be affirmed.

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-2-

favorably thereon; and in fact, we are of the opinion that the balance of the property is not suitable for residential use. Part of the remaining land is more suitable and desirable for residential development than other portions; and likewise the surrounding neighborhood has been developed accordingly, namely, some residences are of substantial nature, others much less desirable, and some in bad state of repair. Whatever development under an "A" classification may be made of this area will no doubt vary with the types of homes adjoining or in the immediate neighborhood.

The Board will, therefore, pass its order denying the reclassification from an "A" Residence Zone to an "E" Commercial Zone for all petitioners' property described in said petition, with exception of the property described as follows:

Beginning at the Northeast corner of Falls Road and Lake Avenue, thence Northeasterly on the East side of Falls Road, 125 feet, thence Easterly and parallel to Lake Avenue, 120.00 feet, to the rear of lots on Plat No. 1 of "Lake Falls," thence Southeasterly, parallel to Falls Road, 125 feet, to the North side of Lake Avenue, and thence Westerly, on the North side of Lake Avenue, 120.00 feet to beginning.

And provided further, that the rear portion of this commercial area be screened by shrubbery and that the bank be planted and sodded, and that the top portion on the embankment should also provide for screening by shrubbery; and if any lights shall be erected, they shall be directed away from the dwellings on the East.

Chairman
Board of Zoning Appeals of
Baltimore County

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PAID
JUN 12 1952
COUNTY COMMISSIONER
OF BALTIMORE COUNTY

Devised	9th	Date of Filing	2-7-52
Tested for	Ans. 7. Number 1 gone to an O'Connor and gone		
Potitioner	Quinn, Arthur James of Iowa Gas		
Location of property	No. 10000, Falls Rd. and 1st St. on section 10 on south of		
	1st St. and 1st St. on 1st St.		
Location of High	One acre at the intersection of 1st St. and 1st St. on south of		
	1st St. and 1st St. on 1st St. on south of 1st St.		
Remarks:			
Noted by	George J. H. H. H.		
		Date of return	2-7-52

June 12, 1957

922.00

HEINRICH of Sigel W. Heintz, Attorney for professional,
the son of Twenty Two (HEINZ) Heintz, being sent of appeal to
the Board of State Appeals of Multnomah County from the
decision of the State Equalizers establishing a portion
of the property at the southeast corner of Wells Road and
the Avenue, from an "A" Residence Zone to an "R" Commercial
Zone, Bureau Federal Savings & Loan Association, plaintiff.

Verlag C. Bertelsmann

PAID
JUN 12 1962
COUNTY COMMISSIONER
BALTIMORE COUNTY

February 4, 1958

\$28.00

RECORD of Smith & Smith, Attorneys for the petitioner
Annes National Springs & Loan Association, the sum of Twenty Eight
(\$28.00) Dollars, being cost of petition for reclassification,
advertising and posting of property, north side of Lake Avenue
and east side of Falls Road, 9th District of Baltimore County.

Index

Hearings: Monday, Feb. 16, 1953
at 2:00 p. m.

Board Room, basement of
Rockford Building,
Troy, N.Y.

PAID
FEB 6 1952
COUNTY COMMISSIONER
OF BALTIMORE COUNTY
BY *E. W. Hall*

June 23, 1952

522.00

SHIRLEY of Michael Paul Smith, Attorney for Aurora
Federal Savings & Loan Association the sum of Twenty Two (\$22.00)
Dollars being cost of appeal to the Board of Pending Appeals of
Illinois County from decision of the Saving Commissioner during
rehabilitation of property at the northwest corner of Ellis Street
and Lake Avenue, 9th District.

PAID
JUN 23 1962
COUNTY COMMISSIONER
OF BALTIMORE COUNTY

December 15, 1952

50.20

RECEIVED of Lake Falls Association the sum of \$10.00
being cost of certified copies of petition and other papers
filed in the matter of rededication of property, northeast
corner of Park Road and Lake Avenue, 9th District, Aurora Federal
Savings & Loan Association, petitioner.

1992

PAID
DEC 15 1952
COUNTY COMMISSIONERS
OF BATHURST COUNTY
BY *James L. ...*

NO PLAT
IN
THIS FOLDER