FOR

BALFTWINE COUNTY

meens locket No. 5, Folio 72, No. 1176

This is an appeal from an order of the Board of Zoning Appeals affirming the reck ssification by the Zoning Commission of a lot located at the intersection of Valls Read and Lake Avenue, in the Binth Election District of Haltimore County, from "A" Residential to "E" Convercial, subject to certain requirements in regard to screening by shrubbery, planting and sodding, and erection of lights.

The lot, as resoned, fronts 120.28 feet on the northerly side of Lake avenue and 125 feet on the easterly side of Falls Road, extending back from Falls Hoad to the rear of the lots in a development known as Lake Falls. It is a portion of a larger tract acquired in 19h7 by a company controlled by a certain Garles A. Milburn, at which time it was somed "A" Residential. The owner proceeded to develop a large portion of the original tract for residential purposes and built approximately forty homes thereon. A few of these houses face on Lake Avenue, but the ressinder face each other on a street or roadwa 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 Fills development above referred to.

After the completion of Lake Falls there remained a strip or parcel of land with a frontage of 278 feet on 74 is Hoad and a frontage of 120.28 feet on Lake Avenue. At the time of the completion of Lake Falls this strip or carcel of land sloped in a westerly direction from the westerly end of said development to

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RE: PETITION FOR REGLASSIFICATION FROM AN "A" HESTURNAE ZONE TO AN "B" COMMARCIAL ZONE - N. S. Lake Ave., E. S. Falls Road, 9th District of Emittence County - Patryle Pederal Savings & Lona Ass'n.,

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, 120.28 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, 120.28 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 Valls Road, but some time thereafter the owner had this area excevated in such a manner as to level if 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 financed by the Aurora Federal Savings and Loan Association, the present owner of the lot under considerat mer for the resoning sought herein. Aurora acquired this property in 1950 through the foreclosure of a mortgage which it held against this property and other property owned by the Milburn interests. This nortcare was given in 1919 and was a lien against the lot in question at the time of the excevation above referred to. For this reason the protestants contend that the alteration of said lot, which the petitioner claims makes it unsuitable for residential purposes, was sade with the full knowledge and consent of said petitioner. The protestants inelst, therefore, that the petitioner should not be allowed to claim a hardship from a failure to resone because said patitioner, in effect, created the condition which brought about that situation.

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

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

Offatt ws. Board of Zoning Appeals, 20h Md. 551. Wakefield vs. Kraft. 202 161. 134.

In order to justify the reclassification there must be proof that there was some mistake in the original soming or that the character of the neighborhhod has changed to such an extent that the reclassification ought properly

Tenstick vs. Board of Zoning Appeals, 205 Hd. h89. The Court is of the opinion that the testimony clearly shows that MICROFILE, Wilson an airtake in the original soning of this lot on Falls Road. Souther F.

All the remaining portion of the property described in petition shall remain as an "A" Residence Zone; this Order being effective as of the 17th day of October, 1952.

Board of Zoning Appeals of

from Belvedere Avenue on the south to the City line on the north, which is only a block from the lot in question, is somed convercial. 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 Food 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 Northern Control Reilroad right of way, both of which are a short distance morth of said property, render the lot undesirable for residential use. In his opinion, as an expert, there is need for a convercial development at the location under and no traffic hazard would be created by the erection of a filling

Mr. Miles' testimony was supported by Mr. Brassell Kelly, a qualified real estate may, who also testified that the bouses 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 consercial and industrial uses on both sides of Falls Hond in the immediate vicinity of the lot in question and that the buildings across Falls good are old and in bad state of repair. Under such conditions the lot under consideration would certainly not be desirable for

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 Scard's. This would be contrary to the well established principles governing the Court in such cases. See Offutt vs. Board of Zoning Appeals, 20h, Md. 551, at page 562, in which our Court of Appeals stated:

"we cannot disregard the general rule that in an appeal from a decision of a soning board, the ocurt will not substitute its own judgment as to the Misson or soundness of action taken the board, but will decide only whether owner action was arritary or discription. the board, set will reconstructory and in action was articarry or discriminatory and it is not the function of the court either to to rescue, but only to desick whether the row to rescue spatial the applicable law to the first property of the court of the court of the purpose of the property of the pr

OPINION OF THE BOARD OF ZONING AFPEALS BALTIMORE COUNTY

This is an appeal by Lake Falls Association and also by Aurora Federal Saving 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 278 feet on Palls Hoad and 120.28 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/ dead 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 Palls 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

of Zoning Appeals and Zinn vs. Sourt of Zoning Appeals, recently decided by the Court of Appeals, are controlling in this case, but in those cases the Court was dealing with two competing property owners who desired to erect shopping centers in a newly developed area, whereas in the presconsideration a small lot in an area which has been developed for many years. The Court feels, therefore, that the rule laid down in the Offitt man applies in the present came,

In view of the Court's finding that there was error in the original soning the contention of the protestants in regard to the alteration of the lot become immierial.

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

neighborhood.

favorably thereon; and in fact, we are of the opinion that the balance of the property is not unsuitable 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 wary with the types of homes adjoining or in the immediate

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 Pells Road and Lake Avenue, thence Northeasterly on the East side of Falls Road, 125 feet, thence Easterly and parallel to Lake Avenue, 120.28 feet, to the rear of lots on Flat 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, 120.28 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. Chalman phill

Approxime. Auroro. Rederal. Savings & Loan. Ass'n. . legal owner... of the property situate

FILED JUN 4- 1952

NEA PATITION FOR MODIAL SIFTCATION FACE AN PAR ENSITEMED ZONE TO AN "EN COMMENCIAL ZONE - N. S. Like Are. Z. S. Falls Read, 7th Instruct of Bultaners Contry Aurora Rederal Sevings & Lean Actin., Re: Petition for Reclassification from m "A" Residence Zone to an "E" Convercial Zone - M. S. Lake Avenue, E. S. Falls Road, 9th District Aurora Federal Savings and Lean Ass's. Petitioner

Zoning Commissioner Towson, Baltimore County, Merviand

to the Board of Zoning Armeals of Baltimore County.

FILER JUN 5- 1952

Setal this oth day of June 1965.

Michael Paul Smith

IN THE MATTER OF THE PETITION PROBABIL "A" RESIDENCE ZONE TO AN "E" COMMENCIAL ZONE TO AN "E" COMMENCIAL ZONE TO AN "E" ATE, E.S. FALLS ROAD, 9th DISTRICT

Mr. commissioner:

please enter an appeal to the Board or Zoning Appeals of Ealtimore County from the Order of Augustine J. Muller, Zonies Commissioner for Beltisore County, dated May 26, 1952, in the scove captioned mitter.

LAKE PALLS DEPRESENT ASSOCIATION

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William B. Kungter Samples 1230 take Falls Road Howard H Concerny 1220 W. Fate Care

BEFORE THE

ZONING COMMISSIONER 07

BALTIMORE COUNTY

John E. Ram & Dot

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.... 19.52, at 2:00, clock P.M.

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Jume 18, 1952

RECEIVED of John B. Raine, Jr., Attorney, the sum of Thenty Two (\$22,00) Dollars, being cost of appeal to the Board of Zening Appeals of Baltimore County from the decision of the Lening Cossissioner reclassifying a parties of the property of the Aurera Building & Loan Association at the northeast corner of Falls Send and Lake Avenue.

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BOTTOM OF LOSING PATITION FOR MECHASSIFICATION Minth District

On Monday, Feb. 18, 1952

at 2100 pale

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June 12, 1952

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To The Zoning Commissioner of Baltimore County:-

Size and height of building: front ________feet; depth _______feet; height ____ Pront and side set backs of building from street lines: from _______ feet; side_____ Property to be posted as prescribed by Zoning Regulations.

I, or 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 soning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County. Aurora Polical grange god 1999 Angeogration to Chapter , Frances

B. Brille

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Address 5 W. Saratoga Street, Baltimore 1, Md. ORDERED By The Zoning Commissioner of Baltimore County, this 2256 day of

January 19. 52 that the subject matter of this petition be advertised, as required by the "Zoning Law of Baltimore County," in a new spaper of general circulation throughout Baltimore County, that property be posted, and that the public hearing hereon be had in the office of the Zoning Commissioner of Baltimore County, in the Reckord Bildg., in Towson, Baltimore County, on the ... 18th

Zoning Commissioner of Haltimore County

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COUNTY COMMISSIONES
OF SELTMONE COUNTY
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December 15, 1952

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