Court of Appeals of Maryland

No. 138, October Term, 1954—Filed June 16, 1955

DARD OF ZONING APPEALS OF BALTIMORE COUNTY, ET AL.

Two appeals in one record from the to County, John R. Gentrem, Judge. Argued by Nathon Pr. 2, Rallimere, Mr. (Junes C. L. Au-ferson and Frank II. Nestell, III, both of Turson, Md., on the Argued by W. Lee Herrison, (Micheel Paul Smith on the rief); both of Toussen, Md. (No brief and an appearance for

Argued before BRUNE, C. J.; DELAPLAINE, COLLINS, ENDERSON and HAMMOND, J.I.

THE DAILY RECORD, BALTIMORE, SATURD

such as dual-isne boulevards capable of handling large volumes of traffic. Regional shopping centers draw large numbers of patrons who would be required to use limited highways both in this neighborhood and miles beyond; and it is doubtful that the proposed beliway, which may be built nearby, would be sufficient FETITION FOR REGLASSIFICATION FROM AN "A" RESIDENCE ZONE TO AN "S" COMMERCIAL ZONE -B. S. Seith Ave. between Green Spring Ave. and Old Fimite Read, Third District - William T. Biorman, Helvyn J. Goldman and Philip E. Klein, Fetitioners.

The appeal in the above entitled matter coming on for hearing before the Board of Zoning Appeals of Beltimore County on the 14th day of May, 1953, granting the reclassification from an "A" Residence Zone to an "E" Commercial Zone in regard to the property described therein; and it appearing from the facts and evidence adduced at the appeal and for reasons set forth in the Opinion attached hereto that the granting of the reclassification for the whole area should not be had as it would be detrimental to the safety and general welfare of the community; therefore,

It is this // day of October, 1953, Ordered by the Board of Zoning Appeals of Baltimore County that a part of the property described in these proceedings be reclassified from an "A" Residence Zone to an "E" Commercial Zone, and a part be granted a special permit for parking, end the balance of the property described in said petition shall remain in an "A" Residence Zone classification as follows:

1. All the property lying on the North side of Smith Avenue for a depth of 800 feet between Greenspring Avenue and Pimlico Road shall be subject to a Special Permit for parking in connection with the commercial area/hereinafter provided.

2. All that piece or parcel of land lying on the Westerly side of the Pimlico Road beginning at a point 400 feet Northerly from the intersection of the North side of Smith Avenue and the West side of Pimlico Road and continuing along the Westerly side of Pimlico Road for a distance of 400 feet with an even depth of 200 feet, shall not be reclassified or be subject to a Special Permit, but shall remain in an "A" Residence

3. An area of land not to exceed 5 acres is hereby reclassified from "A" Residence Zone to "E" Commercial Zone for the purpose of a shopping center, and no part thereof shall be closer to the North side of Smith Avenue, the East side of Greenspring Avenue, and the West side of Pimlico Road than

-2-

4. The remaining reporty in said petition shall remain in an "A" Residence Zone.

OPINION OF THE BOARD OF ZONING APPEALS BALATMORE COUNTY

This is an appeal by Osk View Realty Company, and others, from an Order of the Zoning Commissioner of Reltimore County dated Pebruary 27, 1953, granting a reclassification from an "A" Residence Zone to an "E" Commercial Zone for the purpose of establishing a regional shopping center in regard to the property described in the petition.

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

Harry Schiff, etal V8 bd. of Zoning Appeals

GEORGE L. BYERLY, Cork

Case No. Misc. 1335

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

The property which is the subject of this petition is a large tract of land of approximately 50 acres located on the North side of Smith Avenue butween Greenspring Avenue and Old Pimlico Road. The petitioners own additional land adjoining this property which they are not requesting a reclassification. and the same shall remain for residential purposes. There has been phenomenal growth in this section; and with still large open areas remaining to be developed, it is apparent that there will be great need for commercial enterprises in this region.

From the testimony in this case and from an observation and inspection of the subject property and the surrounding territory, the Board is of the opinion that this tract of land is not situated at a location having adequate arterial highways, in itself to change the Board's opinion as to the inadequacy of the highway system.

However, a smaller shopping center more of a community size and nature can serve a part of this aren and would not be

detrimental to the neighborhood. This size and type of a commercial enterprise does not draw on nearly so great an area for its patrons and, consequently, would not create a serious traffic hazard. There are numerous non-residential uses, such as the Sendix Radio Plant on the Curtiss-Wright Airport property, a large stone quarry in operation to the West scross Greenspring Avenue, an ice cream drive-in restaurant, and an anti-aircraft battery or installation across from Smith Ave., all of which are of a non-residential use; and while they may not bear a commercial zone classification, they, nevertheless, appear to be well established and could continue to operate indefinitely as though they were zoned as such.

-2-

The Board is of the opinion that these miscellaneous non-residential uses do not adequately provide for commercial needs in this area. The original petitioners produce no definite plens to use all the property requested, and the Board can find no justification for reclassifying or using such a large tract of land for a commercial use.

An Order will be passed reclassifying from "A" Residential to "E" Commercial a part of this subject property, and granting a special permit for an additional area to provide off-street parking space for the shopping center.

PETITION FOR RECLASSIFICATION FROM
"A" RESIDENTIAL ZONE TO AN "2"
COMMENCIAL ZONE ROPTH SIDE OF SMITH
AVENUE, RETWEEN GREENSPRING AVENUE
AND OLD FINLICO AVENUE.

WILLIAM T. BIERMAN, MELVIN J. GOLDMAN AND PHILLIP E. KLEIN, OKDINAL APPLIE FOR ZONING RECLASSIFICATION.

WAITMAN B. ZINN, GEORGE R. REDGEL, WILLIS E. OVERTON, ET AL, PROTESTAMUS AND PETTICORES OR APPELLAMENT IS THE APPEAL FROM THE GREEK OF THE ZONGES CORCUSSIONER OF BALTHOME COUNTY DATED FERMANY 27, 1953.

REPORT THE BOARD OF ZONING APT ALS OF

BALTIMOTE COUNTY

GEDER TO ENTER APPEARANCE

TO THE CIACK OF THE BOARD OF ECHING APPRAIS OF BALTIMORE COUNTY:

Please enter my appearance as associated counsel for the above named protestants and petitioners in the appeal pening before the Board in the above captioned matter taken from the Order of the Zoning Commissioner of Baltimore County bearing date of February 27, 1953 reclassifying the above described property from an "A" residential zone to an "E" commercial T000

I hereby certify that on this 6th of May, 1953, a copy of the duly mailed to Michael Paul Smith, Esquire, Attorney for th original applicants and to John E. Raine, Jr., Esquire, Attorney for the



Petition for Reclassification from an "A" Residence Jone to an "E" Commercial Tome - E.S. Smith Are., Det. Jrees Spring Are. and Dis Pinlico Ross, Wo. T. Bierman. Melyon J. Osliman and Philip E. Elein, Petitioners.

BEFORE THE

TONTHO CHIGHT SATONERS

2445.5

THE SELECTIONS COURSE

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We Commissioner please erter an auneal from an order passed Pebruary 27, 1953 granting the reclassification in the above matter from an "A" residence some to an "E" commercial none to the Board of Zoning Appenis for Bultinore County and transmit all records to said Board for the nursage of a hearing on this appeal.



Actually only a market analysis could avocal definitely whether or this general locality has a present and premint introduced propulation sufficient to justify a regional shaped and a manysis used to the control of t

The sparsity of present residential development within the immediate withinty is such that it can hardly be said that a region contract of the type represend shaded not be proposed. The possible depresentation of the proposed by the possible depresentation of the proposed proposed

It can be seen from the report of Mr. Dill that this appears to be the logical place for a shopping center of this type from a planning standpoint. As pointed out further in the report of the Planning Commission it is important that the tract of land as somed for a regional elepping center be preserved for that type of center only, and not used for any other commercial uses.

In view of the aforegoing, it is the opinion of the Zoning Commissioner of Baltimore County that the reclassification of the property to allow the commtruction of a regional shopping contor, with setbacks as proposed by the petitioners, would not be detrimental to the general solfare of the community and the reclassification should

It is this 277 day of February, 1953, OFFERED by the Zoning Consissioner of Baltimore County, that the above described property or area, should be the same is hereby reclassified, from and after the date of this Order, from an "A" Residence Zone to an sum Commorcial Zone, subject to the following provisions:

DR. PRITTION FOR PROLASSIFICATION FROM AN PAR PETTHIN YOR REGLASSIFICATION FROM AN AN-RESIDENCE ZORE TO AN "SET CHEMICAL ZOME-N. S. Smith Ave. Bet. Green Spring Ave. and Old Finlince Road, Third District -MEJliam T. Bierman, Melvyn J. Goldman and Fallip E. Klein, Petitioners

The property which is the subject of this potition is located on the north side of Smith Avenue, between Green Spring Avenue and Old Pinlico Read, Third District. The property comprises approximately 50 acres of land. The consercial use for which the petitioners wish to utilize the land is for a regional shopping center.

even though
The pecitioners testified that/fit was not their intention

to construct this shopping center immediately, but possible in two to five years, it was their feeling that this was on appropriate place for such a center and that the land should be set aside at the present time before the area begins to intensively build up. The petitioners contend that the character of the neighborhood is such that the construction of this chopping center would not be detrimental to the general welfare of the community. The petitioners pointed out Dust the presence of the Inti-Aircraft Esttery to the south of the property across Smith Avenue; the presence of the Bendix Radio Plant on the Ourtis-Bright Airport property; the presence of the Stone Quarry on the McMahon property to the west Loress Green Spring Avenue the Servit Bestaurant on the east wide of Old Pirlice Road and the Noe Orean Drive-In Restaurant at the northeast corner of Old Pinlice Road and Smith Avenue, make the subject property almost surrounded with non-residential uses.

The notitioners contended that this is the only section of the County and City which us not now served by a regional shopping center and that this appears to be the logical location of such a

-5-

- That evergreen screening be planted along Old Pinlice Road to protect the houses on the east side of said Foad.
- That all lighting used in the operation of this center be directed away from the adjoining prop-erties.
- That no signs shall be erected on the bordering roads but that signs shall be restricted to the general area of the buildings proper.
- is. That applications for building permits shall not be approved as to sening exce, that a plan be filled with the Zoning Beartment approved by the Battimore County Planning Commission for the construction of buildings of a regional shopping conter only.



The petitioners pointed out with the construction of the proposed Beltway and the widening of Old Pimlico Road and Green Spring Avenue in conjunction with the building of the Jones Fells Expressing, and with the accessibility from Park Heights Avenue, Reintersteam Read and Cross Country Bulevard, that the property is as easily accessible from all directions.

It was pointed put by the potitioners that plans have been completed and money has been appropriated by the City to bring source to the general area, and that the whole area will be developed without dolay duo to the bringing of the sewers to the area.

The protestants to the granting of this reclassification contend that the project is premature in that there is no need in the area for such a project and that the use of this property as planned will be detrimental to the general velfare of the community and will have a depreciating affect upon property values.

Hr. Malcoin H. Dill, Mirector of the Baltimore County Planting Commission, in commenting on this petition stated in part

I understand that the compresented eventual development according conter in this location. For a center of that the content of "I meanthm that the course fathed command development of a regional scoping content in this lesistam. We a subset of sixty stage of a regional scoping content in this lesistam. We a subset of sixty stage of a regional scoping content in the stage of the sixty stage of the course, is extremely important if the project it is the associated, so may be conveniently leasted for the population that it is insteaded name be conveniently leasted for the population that it is insteaded name to conveniently leasted for the important in the irreduction in pleting a site for such a center is that if the development was until there is a large values of potential patterns in its irreduction and the site of the site of the convenient such as the site of th

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Petition for Zoning Re-Classification

To The Zoning Commissioner of Baltimore County :-

all that parcel of land in the 3rd Bistrict of Baltimore County, begins all the purcel of land in the 3rd Bistrict of Baltimers Country, beginning at a point formed by the interaction of the omner lines of inuits areases and a point formed by the interaction of the control lines of inuits areases and band; if the 3rd General 3rd

- 1	hereby petition that the zoning status of the above described property be re-classified, pursuant to the
	Zoning Law of Baltimore County, from an A. B. S. zone to an Z. Contract zone.
	Reasons for Re-Classification: ##DER OFFE Comm. USG.
	Size and height of building: frontfeet; depthfeet; heightfeet.
	Front and side set backs of building from street lines: frontfeet; sidefeet.
	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 potition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

Milliam & Berman Mely Joldman Legal Owner Address 100 Brienburgs EN

ORDERED By The Zoning Commissioner of Baltimore County, this . 16th 1:52., that the subject matter of this polition be nevertised, as required by the "Zoning Law of Balumore 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 Zonling missioner of Baltimore County, in the Reckerd Bldg., in Towson, Baltimore County, on the 7th _day of January.... 19 53 at 10:00'clock. 4. M.

1/53 AM Notify MY M.P.Smit MI BIENETA

SIGNS

Zoning Commissioner of Baltimore County

improved with quite a number of cettages. There is also an approval plan for the remaining acrease south of Smith Avenue as far east as the Bennie View Golf Club.

plus for the canalysis accesses such as Satth Armon as far cast as the Sammis two Colf Cills.

Transact roads loading to lite site are insidented to acres a Colf Cills.

Transact roads loading to this site are indequate to acres a Colf Cills.

Access to the Colf C

can actually considering topography and other factors, there seem to the note of the fall that modelsheatern away, or comparable step, that is not other site in that modelsheatern away, or comparable step, that is not only the step of the fall that is not the saturation of the fall that is not that is not that is not the fall that is not th agona see acong ago on improvement of the time beautiful because in the part of the membership of the Saburtan Club in the idea of development of a regional chapping center there, this remote possibility should be seriously considered in deciding on the potition in questions.

TOTAL WAR TOUTH DESTAURTED

Location - N.s. of Smith Avenue between Old Pimlico Road & Green Spring Avenue Owner - William T. Bierman, et al

Present Zoning - "A" Residence

Proposed Coming - "E" Commercial

February 2, 1953

This is in reply to your request for an opinion regarding the planning factors involved in the proposed rescaling of a proximately 50 acres as noted above.

involved in the proposed reaching of approximately 50 areas as noted shows. I understand that the owners intended eventual development of a regional shopping center in this location. For a center of that type, 50 area is not too large, selection of the right location, of course, is extractly important if the mentally located for the right location, of course, is extractly important if the intended for the population that it is intended to serve. One difficulty thereoe is a large values of potential paterns in the insolitate valinity, there is very its along the content of the content

as far east as the honds 'tem Gal' Gogras.'

Fresch reads indign to this size as findequate to serve a regional stopping center. Plans for the area to the south of faith Avenue, however, include 100-foots right-draws for freem opping avenue of Hillion Sand, include 100-foots right-draws for freem opping avenue of Hillion Sand, sinch Avenue indepting center indicates provision for dual-lawsing mitth Avenue, which would saterially help the traffic statemin adjacent to it. There are no prevent, plans for widening of orest Pring Avenue novin of Batth Avenue, but conditions that the statement of the Sandard Sand Lune, Gross-Country Realevard, Seven Mile Lare, and Slade Avenue which is preposed to be extended from Park Relights Avenue to Seven Mile Lare, at which point a section of Slade Avenue has been constructed, with direct alignment into Smith Avenue. A center of this type in any case tends to take from 3 - 5 years to develop. Thus inadequacy of existing streets should not be regarded

as too serious a factor in judging the appropriateness of the site.

The tract of land itself, as indicated by the tentalive plan for its develop-ment, appears well saited for this sind of use. The proposed development plan proviles a practicable and efficient grouping of buildings, adequate parking, and well-boated entrances and exits.

and well-located entraness pid entits.

Considering loops may not observe futures, there seems to be no other site in other nontenessers area, of comparable site, that would be as matinized to regional shopping center as the one in question. One possible enteresting the control of the contr

Actually only a mirest analysis study could reveal definitely or or not this general locality has a present and pitential infloture distin-sarficient to justify a requisal adopping center. Such as analysis sould take into consideration the precisity of other existing or prospective large conters like the one just aromound for the Board by the Histon development History are not destruction of the content of the content in the content like the content in the content in the content of the content o

tract in question.

The sparsity of present revisiontial divelopment within the immediate vicinity is rube that it such hardly be said that a regional center of the type proposed aboud not be permitted because of any possible seperating effects or randomizing proportion. Actually, I think that a well-planned center, assemble adsects improvement of approach model by the time the center is built, should not have an unfrareshible officer on the way of the center is built, should not have an unfrareshible officer on the way the proposed of the proposed of

sequence must not sits or on those which sight be built design the interiar be real problem. It be proposed resonic were practed, lies in the fact that under our present learning Regulations, the entire treat would be thrown open and only for any type of consecutal such has for grape includes a consecution of the size of the size of the consecution of the size of the size of the consecution of the size of this treat which consecution the size of the size of

properly into the future plan and that their direct entrances and exits near any street corner would be temporary and sould be eliminated at the time of construction of the shorping center, so that their only access would be by way of the general entrances to the center likely.) As now planned times would be removed once distance from the anist street interactions in order to world traffic congestion.

Possibly a better arrangement would be to add planned chapping centers to the list of them in the present centing regulations which call this receive when the list of them in the present centing regulations which call the presents when the should think that there would be lass objection or the presently momen in the general velocity of this large treat were resonal specifically for the present control of the present of the present of the present of the present substantian committed is used a part of the grunting of each a special present with less likelihood of legal shillenging than would be the one if they were attached to straight connected; because,

Smolevan Diec Moleclm H. Dill, Director Baltimore County Planning Commission

cc: Augustine J. Muller Christian E. Kahl W. W. MacVicer

CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY

Towson, Maryland #2445 District_3.10 Date of Postjing 12-21-52

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And Something the Southern Court of the Southern Southern

February 2, 195h

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MCRIMED of Service Realty Co. The. Mes sun of 95.60 cost of cartified /spics of polition andother papers filed in the matter of reclassification of property of Bineman, Mein and Coldons, Old Pinlico Road, Smith Amorns and Green Spring Avenue, 3rd District.

Eoning Comissioner

PAID FEB 2 -1-54 COUNTY COMMISSIONERS OF BALTIMORE COUNTY 11.71

2445

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February 2, 1954

MICHIERD of Maitman P. Simp, et al, the sam of \$5.60 being cost of certified copies of patitics and other papers filed in the matter of reclassification of property of Bierman, Elein and Coldman, Old Pimlico Road, Smith Avenue and Orean Spring Avenue, 3rd District.

Zoning Consission r

PAID FEB 2 - 1954 COUNTY COMMISSIONERS OF BALTIMORE COUNTY 87 __ M. TM

comber 31, 1952

RECEIVED of William T. Hierman the sum of Forty Six (36.00) Dellers, being cost of patition for reclas-trication, advertising and posting property, Smith Avenue and Pinlico Rood, 3rd blatrict.

Zoning Commissioner

tharing: Widnesday, Jan. 7, 1953 at 10:00 Balls

PAID JAN 5 - 1953 COUNTY COMMISSIONERS
OF BALTIMONE COUNTY
BY Word Whong March 6, 1953

RETEIVED of John S. Raine, Jr., Eqquire, Attorney for Protestants, the curs of Twenty Two (\$22.00) Dollars being cost of appeal to the doard of Zoning Appeals of Baltimore County from the decision of the Zoning Comissioner rendered in the matter of reclassification of property, North side of Smith Avenue, between Oreen Spring Avenue and Old Pinlice Road, 3rd District.

Zoning Commissioner

PAID MAR 9 - 1953 COUNTY COMMISSIONER OF BALTIMORE COUNTY By Three Whene

NO PLAT IN THIS FOLDER