

JOHN VESPER ET AL. : IN THE CIRCUIT COURT
VS. : FOR BALTIMORE COUNTY
CHARLES H. DOING ET AL. ETC. : Misc. 5/149 1376

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JOHN A. VESPER ET AL.
vs.
CHARLES H. DOING ET AL.
ETC.

JOHN A. VESPER, et al. : IN THE CIRCUIT COURT
VS. : FOR BALTIMORE COUNTY
CHARLES H. DOING,
DANIEL W. HUBER and
CARL F. VESPER, being and consti-
tuting the Board of Zoning Appeals
For Baltimore County

MEMORANDUM

The Court has visited the property in question and examined it and the general neighborhood. There are a large number of group or row houses in this area of Baltimore County. Apparently such dwellings are in demand by workers employed in the industries in the Twelfth and Fifteenth Districts. All facilities such as sanitary and storm water sewerage, water and schools are available. The immediate neighborhood of this property, as disclosed both by photographs and personal inspection, is rather unattractive and unsightly in appearance. It is impossible to see how the construction of group or row houses could damage the neighborhood.

As the Court of Appeals in *Offutt vs. Board of Zoning Appeals*, 201 Md., page 522, said: "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."

The Vesper tract is located in the largest industrial area in Baltimore County and the State. Mr. Dargham H. Knight, whose business is specializing in industrial projects, made a survey and study of the area surrounding the property in question and gave a word picture of the general locality, and stated (what is a matter of common knowledge) the entire area is predominantly industrial and that there have been large expansions in existing industries. A number of other plants, he stated, have located in the area to be close to the steel supply sources.

Mr. Albert E. February, a registered civil engineer and a man of high standing in his profession, who has appeared in this court before, testified that he has gone over the group house situation of the Vesper tract from an engineering and a surveying standpoint, and that sanitary sewers, storm water drainage and water supply are available and adequate. Mr. Joseph G. Armstrong, another engineer, also testified to the availability of sewer and water facilities. A new school is to be constructed on a part of the Vesper tract.

The cost of construction and the sale price of the group type of dwelling is less than for comparable individual cottages. Mr. Norton Mecht, one of the large real estate operators of Baltimore, stated that group houses of the kind he contemplates building would be within the price range of the average steel worker, many of whom live in this locality. His testimony on page 17 and 18 is to the effect that the price range as to the type of houses which could be sold in this particular area would be from \$5,000 to \$10,000, subject to a ground rent, as that would be within the purchasing ability of the prospective home owners. He states that the income and ability to purchase of prospective purchasers was the reason that he selected this area to produce row houses.

I quote from his testimony before the Board, page 18:

"ANSWER: That is the reason we selected this area because you can produce a row house which comes within the range of the average industrial worker's income, his monthly payments and his ability to maintain the property afterwards - as to painting and other upkeep, and there is considerable saving in fuel and the entire project is cheaper for the average industrial worker or any person to carry than a pre-standard house."

"QUESTION: Do you feel there is a need because of the surrounding industrial character there? ANSWER: That is correct; if we did think that we would not be interested in the land. We are not buying it to keep it. QUESTION: My wouldn't you be interested in developing it as a detached project within the same price range?"

"ANSWER: In the first place it is very difficult to produce a row house

"detached house or the same price as a group house. In fact, it is impossible for the same price that you can erect a group house, row house. Since we feel that we can give greater amenities at less cost, hence, we feel that the group house answers the need better than the individual house."

"QUESTION: That would be the price range of a comparable house and equipment? ANSWER: You would have to subdivide the property if it were an all row house individual house, it should cost about \$13,000; if you give them the same amount of money that you would give them in an \$8,000 house. You can't build a pre-standard house for less money. QUESTION: That would be in what price range?"

"ANSWER: They run anywhere, if they leave the basement out, they run around \$8,000. QUESTION: For the same price you can't build as good a house? ANSWER: No, you cannot. The standard of the group house at the same price range is much higher than the pre-standard house."

It might be desirable for the builders to erect cottages on the property in question across from the cottages now on Leale, Vesper and Mecht roads. Counsel for the property owners have assured the court that such dwellings would be erected. However, on considering this matter, I do not believe that there would be any justifiable reason to compel the owners to erect cottages at those locations rather than the group type of dwelling.

The question of the need for the row type house in this community is one which neither the Court nor the zoning authorities should be called upon to decide.

To invest administrative bodies and courts with the power to pass upon matters of need would further undermine our system of private property and individual initiative. Planners and zoning authorities and officials generally have extended their powers until the owners of real estate, in many instances, have few rights left excepting the bare

Legal title and the privilege of paying taxes.

In addition to the fundamental commands and constitutional questions involved there is a very practical consideration to keep in mind. The opinion of a competent real estate operator and builder who is willing to invest millions of dollars in the development of the character planned for the Vesper property is entitled to far greater weight than that of an official, administrative or judicial, who has had neither experience nor training in the home building business.

However, it might be noted that the need for houses of a group or row type in a community of this character would seem to be self-evident, although to one accustomed to living in the country, it is hard to understand why any one would elect to live in a row house. The fact remains, however, that many persons prefer that type of dwelling.

It appears to the Court, for reasons not apparent in this case, the Board of Zoning Appeals has denied to the owners of this property the right to use it in the same profitable, legal and beneficial manner which has been enjoyed by property owners close by. No question of health, safety or morals is involved, and the general welfare of this community, in my opinion, would be promoted by the construction of the houses as planned.

In view of the extensive development in this general neighborhood along the group or brick row lines, and the undoubted suitability of this location for group or row houses, the refusal of permission to the owners of this property to erect similar dwellings would be unreasonable and an act of great injustice. The Court is of the opinion that there is no room for reasonable debate in this case and that it is declaring the action of the Board arbitrary and discriminatory, unconstitutional and illegal. For the reasons assigned, the action of the Board will be reversed.

John B. Conrath, Judge.

RE: PETITION FOR RECLASSIFICATION FROM AN "A" RESIDENCE ZONE TO A "D" RESIDENCE ZONE - Property R. Holabird Ave., W. Vesper Ave., 12th District, Albert Vesper, et al., Petitioners - The Calmont Company, Contract Purchaser.

The appeal in the above entitled matter coming on for hearing on the 4th day of March, 1951, before the Board of Zoning Appeals of Baltimore County from an Order of the Zoning Commissioner of Baltimore County dated October 24, 1950, denying the petition for reclassification from an "A" Residence Zone to a "D" Residence Zone in regard to the property described therein, and it appearing from the facts and evidence adduced at the appeal that the granting of the said reclassification would be detrimental to the general welfare of the community, and for reasons set forth in the opinion; therefore,

It is this 22nd day of April, 1951, Ordered by the Board of Zoning Appeals of Baltimore County that the reclassification from an "A" Residence Zone to a "D" Residence Zone in regard to said property be denied.

Carl F. Vesper
Chairman
Board of Zoning Appeals of
Baltimore County

OPINION OF THE BOARD OF ZONING APPEALS
OF
BALTIMORE COUNTY

This is an appeal from an Order of the Zoning Commissioner of Baltimore County dated October 24, 1950, denying a petition for reclassification from an "A" Residence Zone to a "D" Residence Zone in regard to the property described in the petition.

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

The property which is the subject of this petition contains 14.9 acres of land, more or less, located at Holabird Avenue at the Holabird Depot area and lying in general west of Vesper Avenue. Much emphasis was placed upon various industries which are located in this section of the county and with the number of employees at each plant in an effort to show that either this is an industrial area or that there is a great demand for residential properties of the group type to house employees of the various industries.

There was also some indication that there have been various reclassifications of properties since the original zoning in January, 1945, to justify reclassification of this property. The Board is of the opinion that this general area is in a group-house zone and that the denial of a petition for reclassification from an "A" Residence Zone to a "D" Residence Zone would not automatically deprive any persons of a dwelling, especially in view of the fact that there are other tracts of land in this section of the county which have already been reclassified, upon which no development of group houses has begun.

The homes in the immediate neighborhood are cottage type, and the owners have just as much right to look to this Board for the continuation of the present classification as

the petitioners have for a change of the same. Certain residents in the area testified that the water supply was very inadequate under present conditions, and that the concentration of group houses would unduly burden the water system to such an extent as to jeopardize the water supply and pressure. One of the witnesses for the petitioners, a surveyor, testified that the water facilities were satisfactory but he made no claim that he had made a study of the site from that standpoint. There was no witness from the Metropolitan District to corroborate the petitioners' point of view, and certainly the testimony of the property owners in the area as to the inadequacy of the water supply was uncontradicted.

The granting of the reclassification on the basis of the testimony in the case and from the Board's information obtained from a view of the property, would constitute an intermingling of houses and would be detrimental to the general welfare of the community; and, therefore, the Board will pass its Order denying the reclassification.

Carl F. Vesper
Chairman
Board of Zoning Appeals of
Baltimore County

WILLIAM B. DAVIDSON
ATTORNEY AT LAW
1100 NORTH STREET
BALTIMORE 5, MD.

STUART R. WILCOX
ASSOCIATE

November 2, 1953

Zoning Commissioner of Baltimore County
303 Washington Avenue
Towson 4, Maryland

Re: Petition for Reclassification from an
"A" Residence Zone to "D" Residence Zone -
Property M. Holabird Ave., N. Vesper Ave.,
12th Dist., Albert Vesper, et al, Petitioners -
The Oakmont Company, Contract Purchaser

Dear Sir:

Enclosed herewith is Notice of Appeal to the Board
of Zoning Appeals signed by the Petitioners and Contract Pur-
chaser. Please file, etc.

Yours very truly,

Wm B Davidson
William B. Davidson

WBD:ef
Enclosure

NOTICE OF APPEAL
PETITION FOR RECLASSIFICATION FROM AN "A"
RESIDENCE ZONE TO "D" RESIDENCE ZONE -
Property M. Holabird Ave., N. Vesper Ave.,
12th Dist., Albert Vesper, et al, Petitioners -
The Oakmont Company, Contract Purchaser

NOTICE OF APPEAL

To the Zoning Commissioner of Baltimore County:

The undersigned, Petitioners (including Contract Purchaser) in the
above matter, feeling aggrieved by the decision of the Zoning Commissioner in
the above matter, desire to appeal same to the Board of Zoning Appeals.

Please note and enter appeal to the Board of Zoning Appeals of
Baltimore County from the decision and order of the Zoning Commissioner of
Baltimore County passed on October 26, 1953 denying the reclassification in
the above matter.

John A. Vesper
John A. Vesper

Maria Vesper
Maria Vesper

Robert A. Vesper
Robert A. Vesper

John A. Vesper
John A. Vesper

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John A. Vesper

Petition for Zoning Re-Classification

To The Zoning Commissioner of Baltimore County--

I, or we, the undersigned, legal owners, and contract purchaser
in the Twelfth District of Baltimore County, description of which is attached
hereto and made a part hereof and as shown on the plat filed herewith and made a
part hereof.

All that tract of land in the Twelfth District of Baltimore County
lying to the north of Holabird Avenue west of Vesper Avenue, described as
follows:

BEGINNING for the same at a point on the southwest outline of the
Petitioners' tract as shown on the plat filed with the Zoning Commissioner
of Baltimore County, where said outline is intersected by a line drawn parallel
with and distant 150 feet northerly measured at right angles from the north
side of Holabird Avenue and 35' west of the west side of Leslie Road and running
thence binding on said southwest outline north 17 degrees 01 minutes west 010
feet more or less to a bend or angle in said southwest outline, thence following
on the outlines of the Petitioners' tract as shown on said plat the following
courses and distances, viz.: north 16 degrees 50 minutes 07 seconds west 985
and 62/100ths feet, north 20 degrees 13 minutes east 750 feet, south 73 degrees
12 minutes east 530 feet, south 67 degrees 53 minutes east 379 and 2/10ths feet,
south 58 degrees 43 minutes east 579 and 5/10ths feet, south 18 degrees 12 minutes
west 31 and 33/100ths feet, south 57 degrees 25 minutes 27 seconds east 330
55/100ths feet, south 23 degrees 37 minutes west 966 and 62/100ths feet, and
south 13 degrees 41 minutes west 552 feet more or less to intersect a line
drawn parallel with and distant 150 feet northerly measured at right angles
from the north side of Holabird Avenue, thence leaving said outline and binding
on such a line so drawn north 80 degrees 34 minutes west 410 feet more or less
to the place of beginning.

THE OAKMONT COMPANY (Contract Purchaser)
By H. M. Davis Vice Pres. 11 S. Fayette St., Baltimore 5, Md.

ORDERED By The Zoning Commissioner of Baltimore County, this 21st day of
September 1953, 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 public hearing herein be had in the office of the Zoning
Commissioner of Baltimore County, in the Record Bldg., in Towson, Baltimore County, on the
21st day of October 1953, at 11:00 o'clock A.M.

Zoning Commissioner of Baltimore County

herely petition that the zoning status of the above described property be reclassified, pursuant to the
Zoning Law of Baltimore County, from an "A" Residence zone to an "D" Residence zone.
Reasons for Re-Classification: Development of the land

Size and height of building: front feet, depth feet, height feet
Front and side set backs of building from street lines: front feet, side feet
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 zoning regulations and restrictions of
Baltimore County adopted pursuant to the Zoning Law of Baltimore County.

John A. Vesper Mr. H. Vesper
Maria Vesper Albert H. Vesper
Anna W. Stahl Legal Owners

Sophie E. Vesper Address: 610 Joseph L. Leliser
Clinton and Elliott Streets
Baltimore 24, Maryland
By H. M. Davis Vice Pres. 11 S. Fayette St., Baltimore 5, Md.

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21st day of October 1953, at 11:00 o'clock A.M.

Zoning Commissioner of Baltimore County

(over)

Pursuant to the advertisement, posting of property, and public hearing on the above petition
and it appearing that by reason of

the above re-classification should be had.
It is Ordered by the Zoning Commissioner of Baltimore County, this 21st day of
October 1953, that the above described property or area should be and the same is
herby reclassified, from and after the date of this Order, from a "A" Residence zone to a "D" Residence zone.

Zoning Commissioner of Baltimore County

Pursuant to the advertisement, posting of property and public hearing on the above petition
and it appearing that by reason of the fact that the property is located in a residential
area with inadequate utilities and school facilities, the granting of which
would be detrimental to the general welfare and be "spot zoning".

the above re-classification should NOT be had.
It is Ordered by the Zoning Commissioner of Baltimore County, this 21st day of
October 1953, that the above petition be and the same is hereby denied and that the
above described property or area be and the same is hereby continued as and to remain a "A" Residence zone.

Zoning Commissioner of Baltimore County

Approved _____
County Commissioners of Baltimore County

Date _____ By _____ President

Petition for Zoning Re-Classification

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in the Twelfth District of Baltimore County, description of which is attached
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All that tract of land in the Twelfth District of Baltimore County
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(over)

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October 1953, that the above described property or area should be and the same is
herby reclassified, from and after the date of this Order, from a "A" Residence zone to a "D" Residence zone.

the above re-classification should NOT be had.
It is Ordered by the Zoning Commissioner of Baltimore County, this 21st day of
October 1953, that the above petition be and the same is hereby denied and that the
above described property or area be and the same is hereby continued as and to remain a "A" Residence zone.

Zoning Commissioner of Baltimore County

Pursuant to the advertisement, posting of property and public hearing on the above petition
and it appearing that by reason of the fact that the property is located in a residential
area with inadequate utilities and school facilities, the granting of which
would be detrimental to the general welfare and be "spot zoning".

the above re-classification should NOT be had.
It is Ordered by the Zoning Commissioner of Baltimore County, this 21st day of
October 1953, that the above petition be and the same is hereby denied and that the
above described property or area be and the same is hereby continued as and to remain a "A" Residence zone.

Zoning Commissioner of Baltimore County

Approved _____
County Commissioners of Baltimore County

Date _____ By _____ President

THE OAKMONT COMPANY (Contract Purchaser)
By H. M. Davis Vice Pres. 11 S. Fayette St., Baltimore 5, Md.

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21st day of October 1953, at 11:00 o'clock A.M.

Zoning Commissioner of Baltimore County

(over)

Date _____ By _____ President

PAID
NOV 4 - 3
COUNTY COMMISSIONERS
OF BALTIMORE COUNTY
BY W. M.

PETITION # 2736

RESIDENCE 'D'

COMMERCIAL 'E'

BALTO. CO. PLAN COMM. 10-9-53

Scale 1" = 500'

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