

#3222

CHARLES L. PUGHREY
VS.
CHARLES B. DODD et al.,
consisting of the Board
of Zoning Appeals of
Baltimore County

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
MISC. NO. 1289

OPINION

This is an appeal from an Order of the old Zoning Board passed on April 13, 1955 denying the reclassification of property on the southeast side of Annapolis Road from an A Residence Zone to an S Commercial and an F Light-Industrial Zone. The transcript of the record was filed in this Court on July 14, 1955, but for reasons unknown to the Court the Appeal was not argued until the spring of 1957. Because of the lapse of time involved it appeared necessary to this Court to take additional evidence, the same being necessary for the proper disposition of the matter and pursuant to the provision of Section 532 H of the Public Local Law, and with the consent of counsel for the applicant and the protestants, the Court appointed George R. Berry Referee to take additional testimony and report to the Court. This procedure was ordered by this Court on April 24, 1957. However, the Order was not filed with the Clerk's Office until May 2, 1957. On June 11, 1958 testimony was taken before the Referee and a transcript thereof, together with the Referee's report, was given to the Court on August 12, 1958 and will be filed with the proceedings in this case.

The Court has considered all of the testimony taken before the Zoning Board, the Court has heard arguments of counsel and the Court has carefully considered the testimony and report of the Referee.

The Court should not substitute its judgment for that of the Administrative body, but where there is clear and obvious error in the material findings of the Administrative body, the Court should not hesitate to reverse its action. When the Zoning Board denied the reclassification requested it did so on the basis that there was no error in the original zoning, nor any showing "that sufficient changes have taken place in the character of the neighborhood, since the original zoning, to warrant the reclassification sought". This Court agrees that there was no error in the original zoning, but that there has been a very substantial and material change in the character of the area which not only justifies but demands the reclassification of the subject property and that under the circumstances of this case the denial of the reclassification sought would be completely arbitrary and illegal, practically amounting to a confiscation of the petitioner's property.

Since the original zoning the subject property was bisected by an approach to the Baltimore Harbor Tunnel. In connection with this project the state condemned approximately fifteen acres of the petition's property, leaving approximately eighteen acres remaining. The northern boundary of the petitioner's property is an elevated express-way rising at least thirteen feet above the petitioner's land. The Court agrees with the Referee that this construction has completely changed the general aspect of this property and has seriously affected its usefulness for residential development. No reasonable person, using a modicum of common sense, could find otherwise. On the south the property is bounded by a high voltage power line on the east by a railroad right of way and beyond the tracks is a power station and a county dump. On the west side is the Old Annapolis Road. The subject property is isolated from the rest of the community by these barriers. There is no evidence that the reclassification of the subject property would be detrimental to the health, safety, morals or general welfare of the community. Without repeating the findings contained in the Referee's report, the Court shall merely state that it is completely in accord with those findings and any contrary finding is

legal, arbitrary and capricious, and this Court will pass an Order reversing the Board of Zoning Appeals and granting a reclassification of the petitioner's property abutting on the Old Annapolis Road to "Business-Local" for a depth of 150 hundred feet, and reclassifying the remainder of the petitioner's property, being that portion abutting the railroad right of way, as "Manufacturing-Light".

August 12, 1958

RE: PETITION FOR RECLASSIFICATION FROM AN "A" RESIDENCE ZONE TO AN "S" COMMERCIAL ZONE AND AN "F" LIGHT INDUSTRIAL ZONE - Property located at a point 200 feet S.E. of Annapolis Road, 120 feet S. Delaware Ave., 13th District - Chas. L. Pughrey, Petitioner

The petition in the above entitled case is for a reclassification of property from an "A" Residence Zone to an "S" Commercial Zone and an "F" Light Industrial Zone, in an "A" Residence Zone.

The evidence failed to show an error in the original zoning or that sufficient changes have taken place in the character of the neighborhood, since the original zoning, to warrant the reclassification sought. It was testified by the protestants that there is considerable commercially zoned property undeveloped in the area and that there is no further need for commercialization. To reclassify the subject property would be detrimental to the safety and the general welfare of the community and be "spot zoning".

It is this 13th day of April, 1955, ORDERED by the Zoning Commissioner of Baltimore County, that the aforesaid ORDER of the Zoning Commissioner denying the reclassification is hereby affirmed.

Board of Zoning Appeals
of Baltimore County

County Council of Baltimore County
Maryland

BILL No. 205
Introduced by Mr. Dignan (1st), Councilman

By the County Council, December 23, 1958.
I hereby certify that this is the original of Bill No. 205, which was introduced and read the first time on the 19th day of December, 1958.
By Order: Lee S. Thomson, Secretary

A BILL
Entitled

AN ACT, to approve Zoning Reclassification No. 3222, dated August 12, 1958, and to amend the official Zoning Map of Baltimore County, pursuant to Section 532(c) of the Code of Public Local Laws of Baltimore County, 1955 edition.

- SECTION 1. Be it enacted by the County Council of Baltimore County, Maryland, that Zoning Reclassification No. 3222, dated August 12, 1958, reclassifying the property of Charles L. Pughrey from "A Residence" to "Business Local and Manufacturing Light", as per following descriptions; be and the same 6 if hereby approved, said property being situated in the Thirteenth 7 Election District of Baltimore County and more particularly 7a described as follows:
- 8 Business Local: BEING all that parcel of land in the 9 Thirteenth District of Baltimore County, on the east side of 9a Annapolis Road, beginning 120 feet south of Delaware Avenue; 9b thence southerly and binding on the east side of Annapolis 9c Road 120 feet South of Delaware Avenue) thence south 62 de- 10 grees 07 minutes west 701 foot line (said line intersects Annapolis 10 11 Road 120 feet South of Delaware Avenue) thence south 62 de- 11 grees 07 minutes east 481 feet; thence south 11 degrees 29 min- 12 utes east 2014 feet; thence south 76 degrees 00 minutes east 13 14 15 16 17 18 19 20 21 22

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- 1 750.39 feet to a point 200 feet east of Annapolis Road; thence 1a northerly and parallel to Annapolis Road 1285 feet plus or 1b minus to place of beginning.
- 1c SECTION 2. And be it further enacted, that the official Zoning 2 Map of Baltimore County is hereby amended in accordance with 3 the reclassification described in Section 1 hereof, and the Zoning 4 Commissioner of Baltimore County is hereby directed and au- 5 thorized to make said amendment upon the official Zoning Map.
- 6 SECTION 3. And be it further enacted, that this Act is hereby 7 declared to be an emergency measure affecting the public health, 8 safety or welfare, and, having been passed by the affirmative 9 vote of five (5) members of the County Council the same shall 10 take effect from the date of its enactment.

READ AND PASSED this 6th day of January, 1959.
By Order:

Lee S. Thomson, Secretary

PRESENTED to the County Executive, for his approval this 7th day of January, 1959.

Lee S. Thomson, Secretary

APPROVED AND ENACTED: January 15, 1959.

Christian H. Kahl
County Executive

I HEREBY CERTIFY THAT BILL No. 205 IS TRUE AND CORRECT AND WILL TAKE EFFECT ON JANUARY 15, 1959.

Augustine J. Muller
Chairman, County Council

February 3, 1959

EXPLANATION: *Italics indicate new matter added to existing law.*
Brackets indicate matter stricken from existing law.
CAPITALS indicate amendments to bill.

**NO PLAT
IN
THIS FOLDER**