

2078-
Oct. 18, 1960 - Judge Tumbull
Decisions of the County
Boards of Appeals reviewed.
from P-6 to P-A -

Alloc.
Held until 1/8, 1960

4499-RX

September 16, 1958

\$43.00

RECEIVED OF Louis H. Diven, attorney for petitioner,
Samuel Cimino, the sum of Forty-three Dollars (\$43.00) to cover
cost of petition, advertising and posting property situate on
the East side of Ingleside Avenue, beginning 110 feet South of
Edmondson Avenue.

Thank you.

Zoning Commissioner
of Baltimore County

HEARING

Wednesday, October 8, 1958
at 1:00 P. M.

Room 106
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland

RECEIVED
SEP 17 1958
COMPTROLLER'S OFFICE

01622-443.00

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Syllabus. [210 Md.

adopted on which the property was zoned R-6 Area (residence,
one and two family) and the issue had thus become moot. The
appeal from the order of the circuit court was dismissed without
prejudice to the future litigation of any question which had been
decided by it. p. 24

Zoning—Baltimore County—Court of Appeals. *Order of Appeal To Court of Appeals—On Appeal Only* Acts of 1953, ch. 634, providing for
an appeal to the Court of Appeals from a decision of the Circuit
Court for Baltimore County reviewing a decision of the Board
of Zoning Appeals, directs that the Court of Appeals shall not
award costs of the appeal against any party to the appeal except
the appellant. p. 24

Decided May 3, 1955.

Appeal from the Circuit Court for Baltimore County
(Goreau, J.).

Petition for zoning reclassification of property by Charles
L. Reganhardt and Celeste E. Reganhardt, his wife. From
an order of the Circuit Court, "Finding in order of the Zoning
Board of Appeals, granting the reclassification, prothonotary,
Dr. Edward Gordon Grau and Holy Cross Lutheran Church
and others, appealed.

Appeal dismissed, without prejudice, the costs to be paid by
appellants.

The case was argued before BAUNE, C. J., and DELAPLAINE,
CHIEF, HERRMANN and HARBOUR, JJ.

Herbert F. Kucner, with whom were Haskley & Singley on
the brief, for appellants.

Charles E. Graud and Robert C. Prem, with whom were
John J. Cullen, and Niles, Barten, Yost and Dambreyer on the
brief, for appellee.

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It was misleading, which we do not find, induced the in-
sured to take the policy.

The views we have expressed as to the meaning of the
policy require the judgment below to be reversed.

Judgment reversed, with costs.

GRAU v. BOARD OF ZONING APPEALS
OF BALTIMORE COUNTY

[No. 131, October Term, 1953.]

APPEAL—MOTION—Baltimore County—Appeal To Zoning Case Where
Subsequent To Appeal, Zoning Map Changed A court should
define itself in the particular relief sought in the case before it,
and refrain from deciding abstract, moot questions of law, which
may remain after that relief has ceased to be possible. In the
instant zoning case, after an appeal was taken from an order of
the Circuit Court for Baltimore County affirming an order of
the Zoning Board of Appeals changing the classification of two
lots of ground from "B" (Semi-detached) Residence to "E" Com-
mercial, the County Commissioners of Baltimore County adopted
a new Land Use Map on which the property was zoned R-6 Area
(residence, one and two family). It was held that (a) adoption
of the map had caused the issue on the appeal to become moot.
p. 23

RE JURISDICTION—Where Appeal Dismissed For Mootness, Judgment
Appealed From Not Binding In Later Action On Different
Court of Appeals—Rule Applicable To Zoning Case. Where an
appeal is dismissed by an appellate court on the ground that the
controversy has become moot, the order or judgment from which
the appeal was taken will not be binding against the appellant in a
subsequent action between the parties based upon a different
cause of action. This rule is applicable to a zoning case, in which
the circuit court had affirmed an order of a zoning board reclassi-
fying a lot of ground from "B" (Semi-detached) Residence to
"E" Commercial and thereafter a new Land Use Map had been

RE: PETITION FOR RECLASSIFICATION
AND SPECIAL EXCEPTION FOR
OFFICE BUILDING - E.S. Ingleside
Avenue 110' S. Edmondson Ave.,
1st District - Samuel Cimino,
et al., Petitioners

BY: GEORGE

COUNTY BOARD OF APPEALS

OF BALTIMORE COUNTY

No. 4499-RX

OPINION

This is a petition for reclassification from an "R-6" Zone
to an "R-4" Zone and for a special exception to use the subject property
for offices. The subject property is now improved with a large residence,
which it was testified, has been used as an apartment building containing
four apartments for approximately ten years. The surrounding property
includes a gasoline service station on the north side, a residence on the
south, residential development in the rear on the east side and a nursing
home across Ingleside Avenue to the west.

Mr. George E. Garvally, Deputy Director of the Office of
Planning of Baltimore County, stated that his office has recommended "R-4"
zoning for the subject property on the land use map now in process of
being prepared for the First District. It was testified that the only
recent change in the immediate neighborhood was the erection of a gasoline
service station on the adjoining property, also owned by the petitioners
in this case.

The petitioners admitted that there were no definite plans
for the conversion of the existing structure into offices. Mr. Cimino
stated that the building would continue to be used for apartments until
there was sufficient demand for office space.

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DELAPLAINE, J., delivered the opinion of the Court.

This is an appeal from an order of the Circuit Court for
Baltimore County affirming an order of the Board of Zoning
Appeals of Baltimore County reclassifying two lots of ground
situated at the northeast corner of Loch Raven Boulevard and
Missula Road, in the Ninth Election District of Baltimore
County from a "B" (Semi-detached) Residence Zone to an
"E" Commercial Zone.

These lots, which have been owned by Charles L. Regen-
hardt and Celeste E. Reganhardt, his wife, since 1942, were
originally classified by the County Commissioners of Baltimore
County on January 2, 1945, in an "A" (Cottage) Residence
Zone. It was at that time that the County Commissioners,
by authority vested in them by the Legislature of Maryland,
adopted zoning regulations which divided the County into
seven zones, namely, "A" (Cottage) Residence, "B" (Semi-
detached) Residence, "C" (Apartment) Residence, "E" (Com-
mercial) Residence, "F" (Light Industrial), and "G" (Heavy Industrial). *Charter of Baltimore County, 203 Md. 397, 400, 104 A. 2d 364;*
Township of Board of Zoning Appeals of Baltimore County,
203 Md. 409, 109 A. 2d 485; Annot. Board of Zoning Appeals
of Baltimore County, 203 Md. 428, 121 A. 2d 181.

In 1945 the Legislature authorized the County Commis-
sioners to vest in the Zoning Commissioner the power to amend,
supplement, or change from time to time the boundaries of the
zoning districts, divisions or zones. Laws 1945, ch. 302, Bal-
timore County Code, 1946 Ed., sec. 364. In accordance with
that authority, the County Commissioners vested in the Zon-
ing Commissioner the power to reclassify tracts of land.

In 1953 the Regulations applicable to the Zoning Commissioner
to reclassify their two lots from an "A" (Cottage) Residence
Zone to an "E" Commercial Zone. They asserted that these
had been changes in the character of the neighborhood which
had been brought about by the construction of many semi-
detached houses, group houses, and apartments, as well as by
a changing center on Loch Raven Boulevard directly across
from their lots. At that time the Zoning Commissioner refused

The protestants in this case, residents of Ingleside, an
adjoining residential development of split level homes, contended the
granting of a special exception for offices would adversely affect their
properties. They also mentioned the large number of school children
who use the sidewalks in front of the subject property and the possi-
bility of traffic hazards on Ingleside Avenue, a relatively narrow street.

The Board is of the opinion that reclassification of the
subject property should be delayed until the issuance of the land use
map for this area. It is further the opinion that the petitioner has
not demonstrated the need nor a sincere desire to use the property for
office space.

ORDER

For the reasons set forth in the foregoing Opinion, it
is this 20th day of May, 1959, by the County Board of Appeals,
ORDERED that the reclassification and special exception petitioned
for, be and the same is hereby denied.

Any appeal from this decision must be in accordance
with Rule No. 1101 of the Rules of Practice and Procedure of the Court
of Appeals of Maryland.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Charles E. Garvally
John J. Cullen

NOTED: Mr. Spiro T. Agnew did not sit in the above case.

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to change the classification of the lots to an "E" Commercial
Zone, but reclassified them as a "B" (Semi-detached) Resi-
dence Zone. No appeal was taken from that action of the Zon-
ing Commissioner.

In June, 1953, the Reganhardts filed their appeal with applica-
tion with the Zoning Commissioner, this time for reclassifi-
cation from a "B" (Semi-detached) Residence Zone to an "E"
Commercial Zone. On July 17, 1953, the Zoning Commis-
sioner, believing that reclassification to an "E" Commercial
Zone would be "spot zoning" and detrimental to the general
welfare of the community, passed an order denying the peti-
tion.

The Reganhardts appealed from that order to the Board
of Zoning Appeals. On December 31, 1953, the Board, re-
versing the action of the Zoning Commissioner, passed an
order granting the reclassification of "the lots from a "B"
(Semi-detached) Residence Zone to an "E" Commercial
Zone. In support of its action, the Board stated in its
opinion: "Since 1945 there has been a phenomenal growth
in cottage, semi-detached, and group houses, as well as com-
mercial zones in this area. The Board is of the opinion
that the granting of this reclassification would not be detri-
mental to the health, safety, and general welfare of the com-
munity."

On January 28, 1954, Dr. Edward Gordon Grau and other
owners of property in the Ninth Election District filed a
petition in the Circuit Court for a writ of certiorari directed
to the Board of Zoning Appeals for the purpose of annulling
the Board's order. They alleged that the order was illegal,
arbitrary, and unreasonable and constituted a gross abuse of
administrative discretion.

The petitioners alleged that the evidence showed: (1)
that reclassification from a "B" (Semi-detached) Residence
Zone to an "E" Commercial Zone would be "spot zoning"
and detrimental and in direct opposition to the zoning plan;
(2) that it would create a traffic hazard, increase traffic on
heavily burdened adjacent highways, and impede the normal
flow of traffic; (3) that it would materially depreciate real-

Opinion of the Court

denial property values in the community; and (4) that it would interfere with the enjoyment of residential property and be detrimental to the health, safety and general welfare of the community. The protesters also stated that the evidence showed that additional commercial zoning is necessary or desirable to serve present or future needs of the community.

Judge Ganssner heard the case on September 24, 1954, and on June 24, 1955, entered an order affirming the order of the Board. It was from that order that the protesters appealed to the Court of Appeals.

However, on March 30, 1955, approximately three months before the decision of the Court below, the County Commissioners passed an order repealing the County Zoning Regulations in effect at that time, and adopted new Zoning Regulations in lieu thereof. On November 14, 1955, the County Commissioners, after public notice and hearings and upon recommendations of the Planning Commission of Baltimore County and the Zoning Commissioners, adopted a new Zoning Map for the Ninth Election District.

It was contended by stipulation of counsel in this case that the two lots in question were zoned in an R-6 Area (residence, one and two family) on the new Zoning Map, and that the County Commissioners did not make any reservation of these two lots from that area.

It is clear that this case has become moot, because the reclassification ordered by the Board of Zoning Appeals on December 31, 1953 has been superseded by the County Commissioners. As we stated in *Hammer v. Home Sales Company*, 201 Md. 425, 18 A. 2d 261, a court should confine itself to the particular relief sought in the case before it, and refrain from deciding moot questions of law, which may remain after that relief has ceased to be possible.

The situation in the present case is similar to the situation in *Lake Falls Association v. Board of Zoning Appeals of Baltimore County*, 209 Md. 561, 121 A. 2d 809. It was urged by the appellants in that case that they be allowed to challenge the classification of their property on the new

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Zoning Map adopted by the County Commissioners in November, 1955. But we pointed out that such action would circumvent the procedure provided by the statute and would constitute an original trial of the case in the Court of Appeals. Likewise in the case before us, there might be new issues of fact, as the evidence for or against the new classification in an R-6 Area might be substantially different from the evidence for or against the reclassification in an "B" Commercial Zone.

We maintain that where an appeal is dismissed by the Court of Appeals on the ground that the controversy has become moot, the order of judgment from which the appeal was taken will not be subject to appeal by the appellant in a subsequent action between the parties based upon a different cause of action. *Restatement, Judgments*, sec. 69 (2); *Griff v. Tappan*, 1 Cte. 123 F. 2d 377. However, we will dismiss this appeal without prejudice to any future litigation of any question which was decided by the Court below in this case, and we will instruct the Clerk of the Court to send a copy of this opinion to the Circuit Court for Baltimore County so that it will become a part of the record.

We must order appellants to pay the costs of this appeal, as the Legislature has expressly directed that in cases of appeal from any decision of the Circuit Court for Baltimore County reviewing a decision of the Board of Zoning Appeals, the Court of Appeals shall not award costs of the appeal against any party to the appeal except the appellant. Laws 1953, ch. 634.

Appeal dismissed without prejudice, the costs to be paid by appellants.

PAUL F. HARRIS

ATTORNEY AT LAW
115 E. BALTIMORE AVENUE
CATONSVILLE 12, MD.

October 17, 1958

Mr. Willis H. Adams
Zoning Commissioner
County Office Building
111 W. Chesapeake Avenue
Towson 4, Maryland

Re: Petition for Reclassification
and Special Exception for Office
Building--E. S. Ingleside Ave.,
118 S. Monmouth Ave., 1st Dist.
Daniel Cimino, et al., Petitioners

Dear Mr. Adams:

Kindly enter an appeal in the above captioned case. I am enclosing a check for \$50 for the cost of the appeal.

Yours truly,
Paul F. Harris

PFH:dc

Baltimore 12-118

PETITION FOR (1) ZONING RECLASSIFICATION
(2) SPECIAL EXCEPTION

To the Zoning Commissioner of Baltimore County:

THOMAS G. CIMINO

All that parcel of land in the First District of Baltimore County on the East side of Ingleside Avenue, beginning 118 feet South of Edmondson Avenue; thence Southerly and binding on the East side of Ingleside Avenue 150 feet; thence North 75 degrees 30 minutes East 220 feet; thence North 15 degrees 30 minutes West 163 feet; thence South 75 degrees 31 minutes West 220 feet to the place of beginning.

County, from an R-6 Zone to an R-A Zone; and
(2) For a Special Exception, under said Zoning Law and Zoning Regulations of Baltimore County, to use the above described property, for office building

Property to be posted as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of the above reclassification and Special Exception, 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 for Baltimore County.

Samuel Cimino, Jr.
Daniel Cimino, Jr.
Oscar S. Cimino
Thomas G. Cimino
Cimino Legal Center
556 S. Rolling Road
Address

ORDERED BY the Zoning Commissioner of Baltimore

County this 22nd day of August, 1958, at 5:30 PM, that the subject matter of this petition be advertised in a newspaper of general circulation throughout Baltimore County and that the property be posted, as required by the Zoning Regulations and Act of Assembly aforesaid, and that a public hearing thereon be had in the office of the Zoning Commissioner of Baltimore County, Maryland, on the 29th day of October, 1958, at 1 o'clock P.M.

Willis H. Adams
Zoning Commissioner
of Baltimore County

Upon having on the above petition (1) a reclassification from an "R-6" Zone to an "R-A" Zone and (2) for a special exception to use said property for an Office Building, as the "R-A" classification requested will provide a reasonable transition between the commercial zoning and the residential zoning on Ingleside Avenue and will not detrimentally affect the health, safety and the general welfare of the community, the reclassification and special exception should be granted.

It is this 24th day of October, 1958, by the Zoning Commissioner of Baltimore County, that the aforesaid petition should be granted the first, for reclassification from an "R-6" Zone to an "R-A" Zone and, second, for a special exception to use said property for an Office Building; subject, however, to approval of plans for the development of said property by the Office of Planning and the Bureau of Land Development.

Willis H. Adams
Zoning Commissioner
of Baltimore County

of the property having a frontage of approximately 165 feet on the East side of Ingleside Avenue and a depth of approximately 220 feet;

hereby petition (1) that the zoning status of the above described property be reclassified, pursuant to the Zoning Law of Baltimore County, from an R-6 Zone to an R-A Zone; and
(2) for a Special Exception, under said Zoning Law and Zoning Regulations of Baltimore County, to use the above described property, for office building

Property to be posted as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of the above reclassification and Special Exception, 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 for Baltimore County.

Samuel Cimino, Jr.
Daniel Cimino, Jr.
Oscar S. Cimino
Thomas G. Cimino
Cimino Legal Center
556 S. Rolling Road
Address

10/14/58
10 AM
Notified
L.H. Piren
503 Court House
#2

AUG 22 Rec'd

Baltimore County, Maryland
OFFICE OF LAW
Inter-Office Correspondence

TO: John G. Rose, Zoning Commissioner Date: February 9, 1961
FROM: William E. Hammond
SUBJECT: Petition 4499-RX - Cimino, Jr., et al

I am in receipt of your memo dated January 9, 1961, in which you requested an opinion as to the effect of the action of the Baltimore County Council on Judge Turnbull's opinion in the above appeal case.

According to your memo, pending a decision of the Circuit Court for Baltimore County, the Baltimore County Council zoned the area in question, presumably by the adoption of a Land Use Map, in such a fashion that it is in conflict with the subsequent decision of Judge Turnbull.

If this be true, then at the time of the hearing before Judge Turnbull, a defense to the appeal should have been presented that the question was moot in that there was an intervening action of the legislature, to wit: County Council, resolving, in effect, the litigation. I cite as references the cases of *Lake Falls Association vs. Board of Zoning Appeals*, 209 Maryland 561 and *Grau vs. Board of Zoning Appeals*, 210 Maryland 19.

For your edification, I am attaching photo-static copies of the cases heretofore cited. In the *Grau* case, I cite the following:

"A court should confine itself to the particular relief sought in the case before it, and refrain from deciding abstract, moot questions of law, which may remain after that relief has ceased to be possible. In the instant zoning case, after an appeal was taken from an order of the Circuit Court for Baltimore County affirming an order of the Zoning Board of Appeals changing the classification of two lots of ground from 'B' Residence to 'B' Commercial, the County Commissioners of Baltimore County adopted a new Land Use Map on which the property was zoned R-6 Area. It was held that the adoption of the map has caused the issues on the appeal to become moot."

To: John G. Rose, Zoning Commissioner

Page Two

Assuming that the facts are as assumed, then I believe the question of law is definite and as stated above.

If anything further is desired, please so advise.

William E. Hammond
Assistant Solicitor
WEH:lp
att.

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 1st Date of Posting: 9-24-58
 Posted for: GR-6 zone to an R-A zone & Office Building
 Petitioner: Samuel C. Cimino & Thomas C. Cimino
 Location of property: E/S of Inglewood Ave., 118 ft. S. of Edmondson Ave.
West side of Edmondson Ave. 310-312 Inglewood Ave.
 Location of Signs: Posted on property known as 310-312 Inglewood Ave.
 Remarks: _____
 Posted by: George R. Hammond Date of return: 9-25-58
signature

#4499

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

FROM: Zoning Department Date: January 30, 1961
 TO: Office of Law - Att. Wm.D. Hammond, Esq.
 SUBJECT: Petition 4499-EX - Cimino, Jr. et al

MAP
#1
SEC. 2-A

RA-XA

The Zoning Commissioner granted a change of zoning from "R-6" to "R-A" on October 9, 1958. This was reversed by the Board of Appeals and the Board of Appeals was reversed by Judge Turnbull on October 18, 1960. The zoning granted was 165' x 220'.

While the case was pending the Baltimore County Council zoned the same area but only to the extent of 100' x 250'. Does the ruling of Judge Turnbull or the action of the Baltimore County Council apply?

Zoning Commissioner

October 20, 1958

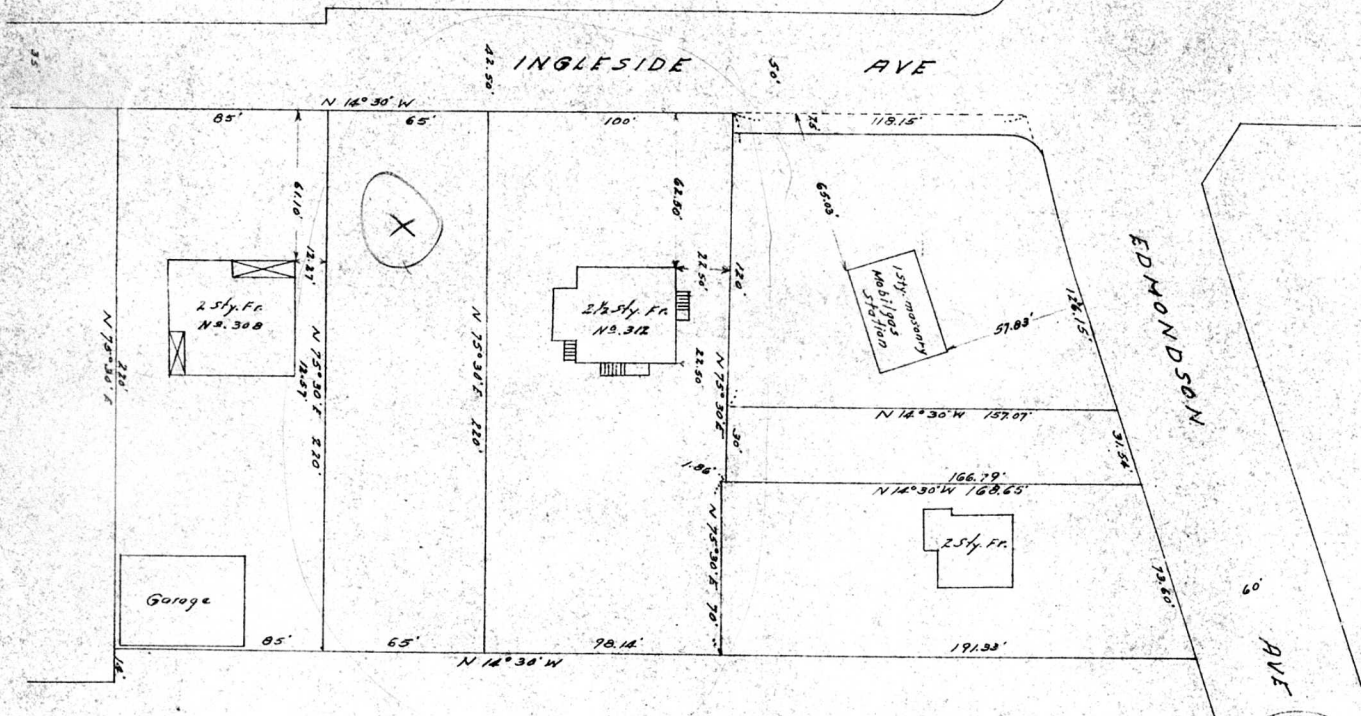
\$50.00

RECEIVED of Paul F. Harris, Attorney for Samuel Cimino, et al, petitioners, the sum of \$50.00 being cost of appeal to the County Board of Appeals from the decision of the Zoning Commissioner rendered in the matter of reclassification and special exception for Office Building, east side Inglewood Avenue, 118' south of Edmondson Avenue, First District.

Zoning Commissioner

RECEIVED
OCT 20 1958
COMPTROLLER'S OFFICE
By _____

01.622



4499-RXA
MAP
#1-A

PROPERTIES AT S.E. CORNER OF
INGLESIDE & EDMONDSON AVES.
SCALE 1" = 40'
FEB. 7, 1958.
CHAS. W. HEMLER.
DIST. 1, BALTO. CO. MD.

