

CIRCUIT COURT

BALTIMORS COUNTY

CAMPBELL V. HELFRICH 1816 Frederick Road Catonsville 28, Maryland and

RANDOLPH RIDGELY 2 Dutton Avenue Catonsville 28, Maryland

CHRISTIAN P. SORSNSON 1501 Frederick Road Catonsville 28, Maryland

MATHAN H.KAUFMAN, JR. G. MITCHELL AUSTIN, and CHARLES STEINBOCK, JR. Constituting the County Board of Appeals of Baltimore County.

ORDER FOR APPEAL

MR. CLERK:

Please note an appeal on behalf of Campbell V. Helfrich, Randolph Ridgely and Christian P. Sorenson from the County Board of Appeals of Baltimore County to the Circuit Court for Baltimore County in the matter of the Petition for a reclassification from R-6 residential zone to a B-L business zone of the tract of land located on Frederick Road east of Hilltop Road in the First Election District of Baltimore County which said tract of land is owned by The Allan Company and contains thereon the Five Oaks Swimming Pool and lunchroom. This appeal is from the decision in Petition No. 5099 of the County Board of Appeals of Baltimore County dated August 31,1961

in which the application for reclassification, as above set forth, was granted by a majority of said Board. This appeal is filed pursuant to the provisions of Maryland Rules 1101b.

> W. Lee Thomas w. Lee Indmas Attorney for Protestants, Campbell V. Helfrich Randolph Ridgely and Christian P. Sorenson

I hereby certify that a copy of the foregoing Order for Appeal was mailed by me this & day of September, 1961 to the County Board of Appeals of Baltimore County, County Office Building, Towson 4, Maryland,

True copy-test

Zoning Commissioner of Baltimore County

non-conforming uses along the pertinent part of Frederick Road, such as Candlelight Lodge, a restaurant just to the west of Piva Oaks, the Ridgeway Inn, and a smell candy store across the road. Some of these have been there for as long as one hundred years (such as the midgeway Inn). A lawyer and a veterinarium practice in their nomes, and an insurance business is conducted in a residence. There are no commercial uses within 2,200 feet of Five Oaks. Baltimore County has a storage area on the south site of Frederick Hoad to the east of Pive Oaks. There is an attractive brick building on the front of this lot facing Prederick Avenue, which looks like a residence.

shen the County Council was considering comprehensive resoning of this part of the County in 1950 the present applicant attempted to have its property zoned S. L. After full consideration the Council continued the residential classification. Less than six months after the adoption of the new comprehensive map, the applicants count from the Youth Commissioner and the mard the resoning ter dount Council had benied it.

derive the Board It was stipulated that there had been no changes in the net marrious since the 1750 70ming Pap was adopted. Applicant's arguments were that there has been error on the part of the Council in the original oring, and the commuse the privilegs of constraint as a non-controving use objet to loss in the various and the case controllates, its investment in five Cals ans threatened estimation that the waste of the unless the contamination assura of the land our made personnent.

The called the loand found that although the area surrounding the protects was rural and residenties, the Council erred in classif in Five Oaks as residential because Candlelight Ind.c. the pining quantitationt also a mensor buring que), was on its west able and the multisone fount, storage area (because owned by the County, this in d marries no soming classification) sec on its east side. In its decision, the majority of the board stated, "It is difficult to believe that anyone would want to place a residential development on the subject property, considering the uses that now exist to adjacent properties to the East and dest," and found that the "evidence in this case leaves * * * no other conclusion except that the present A-6 classification places the property owner in a position where he may not expect a reasonable use of his property." The record, as I read it, gives no support to either the

Board's findings or its conclusion and therefore falls completely short of overcoming the strong presumption of the correctness of the original zoning in 1945 and the comprehensive resoning of 1950.

Not only has there been no commercial change in the pertinent area since early 1960, there has been but one such significent change since 1945. This was the use of the residential building for insurance offices - apparently by way of special exception. Almost all of the non-residential uses that existed in 1945 and that now exist (actually there are fewer now since several have been discontinued) are such as the zoning laws recognize as proper in a residential cone, as, for example, by way of a Manufacturing Restricted classification, or by a special exception. These uses have proved compatible in fact, as is shown by the record; in the words or one witness, - a real estate man who built his own home across from and near Pive Oaks - there has been "a continuous growth of residential properties' in the neighborhood in the past twenty years. Pour or five of these were on Frederick goad within 2,000 feet east and 2,000 feet west of Flve Cake. Others are on streets running off Frederick goad within those distances.

This case is an almost precise rural councarpart of the case of Maltimore v. N. A. A. C. P., 221 Md. 329, in which the applicant's property was used consercially as a non-conforming use in a residential eres in smich there sere many other non-conforming uses and in which a special exception for commercial use had been granted

CAMPRELL V. HELPRICH. et al. CIRCUIT COURT RESCOM LAND LEASING CORPORATION POR THE ALLAN COMPANY BALTIMORIS COIDITS MATHAN H. KAUFMAN, JR., et al. Constituting the County Board of Appeals of Saltimore County Mise, Docket 7 Case No. 2459

OPINIONN

This appeal challenges the correctness of the action of the County Board of Accessa of Baltimore County in granting (by a two to one decision) a reclassification from R-6 to B. L. (Business, Local) of a several agre tract on the south side of Frederick Road west of Hontrese Avenue in Catenaville, w ich since 1934 has been operated as the Pive Oaks Swimming Pool and destaurant vis a nonconforming use.

The Zoning Commissioner denied the application and the applieants appealed to the Board of Appeals. The first ougstion before me is presented by a notion to display the appeal from the Board on the ground that the appeal to the Board was not taken in time. A hearing was held before the Commissioner on October 10, 1960, during which he informedthose present that he proposed to deny the recoast for chance. On Oatober 13, a letter hearing that date was mailed to counsel for all parties advising them that the application had been denied that day. The appeal to the Board was taken on November 10, 1960. Scation 23-26 of the Baltimore County Code (1961 Car. Supp.) provides that any person who feels aggri ved by a decision of the Zoning Commissioner may appeal to the Board and

that "Injotice of such appeal shall be filed, in writing, with the zoning commissioner within thirty days from the date of any final order appealed from

whether the appeal was timely depends on whether the Zoning Commissioner's announcement of his intention on October 10 was a "final order" or whether the date of the final order was October 13. The Zoning Commissioner testified that the official record of each proceeding before him is kept in a "Docket of Zoning Commissioner of Heltipore County," in which is regularly entered a record of each step taken. A certified copy of the docket entries in the case before us, taken from the Coming Commissioner's official docket shows these entries:

"October 10 At 11:00 A. M. nearing held on petition by Zoning Cosmissioner. Case nold sub curis"

"Oct. 13, 1900 Order of Toning Commissioner Genying the reclassification"

I find that the case of the final order of the foring Counts. sioner appealed from was October 13, 1960, and that the appeal was taken in due time.

In considering the case on the merits I have read the record before the beard, heard oral argument, considered written briefs, and, with the approval of counsel, revisited that part of the Frederick Road here involved (having been familiar with it for more than thirty years). I am persuaded that the action of the wourd was in a legal sense arcitrary, capricious and unwarranted.

Both the north and south sides of Frederick hoad for more than 2,000 feet to the east and to the west of Five Oaks were zoned resicential in the original coning of the County in 1945, as my the Five Oaks lot and the areas to the north and south of Frederick

At that time Pive Caks had been operated as a public swimming pool and restaurant for some eleven years, and it has since continued to operate as a non-conforming use. There are other

acress the street. It was held that no evidence of original error eas present and the logalizing of the non-conforming use was set anide as not having been fairly debatable. The present case is even etronger on the facts in favor of maintenance of the soming status que.

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There was no probative evidence that the empers of Five Caks who hought it in 1954 with full knowledge of its status - council continue to operate it profitably as it apparently has been operated since 1934, or that if they discontinued its use as a seleming pool that they could not develop it reasonably for residences. The most that the applicant showed was a lay opinion that it would be more expensive and more difficult to davelop the tract of land in question for residential use than it would be to develop the average tract of R-6 land. The fact that land is potentially more profitable if somed so the owner desires does not of itself show that its exiscing soning is wrong and that it should be changed. Henz v. Bonfield Holding Co., 221 Md. 34, 43, and cases cited.

There was expert testimony that the Five Oaks tract could be developed profitably and reasonably for residences and that the presence of Candlelight Lodge and the Baltimore County property would not be real deterrents. The record shows that in fact they have not deterred residential construction near them. Cf. Serie v. City of Baltimore, 208 Md. 545. A residence stands between Five Oaks and the Baltimore County lot. Candlelight Lodge is residential in appearance, is well operated and its parking facilities are well coreened. Some witnesses regard it as an attraction to the neighborhood

The applicant's theory that it is entitled to corporaial coming for its lot because if it does not receive it, it might lose its privilege of non-conforming use is completely untenable. As was pointed out in Grant v. City of Baltimore, 212 Md. 30%, the policy and sim of coning is the gradual elimination of non-conforming uses as fast as the legitimate interests of all concerned will permit.

If the applicant's property were to be rade compercial because it night otherwise lose a privilege of doing business under a nonconforming was - and to lose much of its investment, as it claims it would - the purpose of the coming laxs to eliminate such uses sculd be finistrated since almost every non-conforming use would, on the same theory, be entitled to have its commercial status made

For the reasons stated. I can find no justification for the Board's action, and its order reclassifying the Five Oaks property will be reversed and the order of the Zoning Commissioner damying the reclassification will be reinstated.

> Mall Massond - Judge (Specially assigned)

June 5, 1952

Petition for Lonning Re-Clussification | 197 |
To the Suntage Commissions of the Construction of the Const

hereby petition that the zoning status of the above described property be re-classified, pursuant to the SUSINESS Zoning Law of Baltimore County, from an R-6 Property is now Non Conforming Use, now being used as a Swimming Pool and Restaurant, ... and as a restaurant known as Camilelight Lodge, and as apartments, it is the desire of the owners to have legal status to improve the properties.

Size and height of building: front ______feet; depth______feet; bright______feet. Front and side set backs of building from street lines; front ________feet; side______ Property to be posted as prescribed by Zoning Regulations.

I, or we, agree to juy expenses of above re-classification, advertising, grating, etc., upon filing of this petition, and further agree to and are to be bound by the roming regulations and restrictions of

by ORDERED By The Zoning Commissioner of Pattimore County, this,

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The Altimoral In Table See V.

THE ALTIM COUNTY, NACHEM B. CORRER, V.

MINOR D. B. BER WAS COLD. Dr. a. fally was a lost oner hills 5905 Berkley line of 9

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 hereon be had in the office of the Zoning Commissioner of Baltimore County, in the Reckerd Bldg., in Torson, Baltimore County, or the 19th thay of October 19 60 at 11790 clock ArM

10/10/60 Smith + Harrison

Zoning Commissioner of Baltimore County 6 sign

Mr. Campbell V. Helfrich, Realtor, who lives across Frederick Road from the subject property, testified that many homeowners in the area bought their homes with full knowledge of the public swimming pool. He said that reclassification would allow many other uses of the property.

This member of the Board is of the opinion that the petitioner has failed to show an error in the original zoning of this property or that a change in the character of the neighborhood has taken place. This member of the Heard feels that reseming granted to give an appropriate coming classification to a non-conforming use is contrary to the spirit and intent of the Zoning Regulations.

ORDER

For the reasons set forth above, it is the opinion of this number of the Board of Appeals, that the Reclassification petitioned for,

DATES Charles Steinbock, Jr. True copy-test

Zening Countssioner of Baltimore County

RS: PETITION FOR REGLASSIFICATION FROM AN "R-6" ZONE TO A "B-L" ZONE - Int. of Trederick Road and Hillton Road, 1st Dist. The Allan Company, Lloyd W. & Anna Hao Calk, Dr. and Hrs.

DERGRE DEPUTY 200 THE COUNTS STORE

The publications in the deriv case each the recharafteston of property at the noncharants and and of Describe found and the statement size of Milliop Book, in the First Bistyles of Baltimor Boomty, the publicant requised the change from an "Def Came to a "Del Zome that failsted change by the County General Lab bean in error in not sound, the property "Beatmon Economy Counted Lab bean in error in not sound the property "Beatmon Economy Counter Lab bean in error in not sound the property "Beatmon Economy Counter Lab bean in error in not sound the property "Beatmon Economy Counter Lab beat in error in not sound the property "Beatmon Economy Counter Lab beat in error in not sound the property "Beatmon Economy Counter Lab beat in the Counter Lab

All the comportal type properties except the property the Lorson property, are nonconforming uses and have been so or 60 years, theoreter, there has been no charge in the general character of the neighborhood is residential and Council was not in orrer in soning the subject proporties

For the above reasons the reclassification should be

To in this 12.44 day of October, 1060, by the Deputy Scening Commissioner of Dail Lieuw Sciency, GUESKOD that but above putilion be and the same as hearby desired and that the above described reperty or srea he and the same is horeby continued as and to vanain an "h-6" (Residence) Scene.

PE: PETITION FOR RECLASSIFICATION from an H-6 Zone to a H-L Zone Int. of Frederick and Hilltop Road, lat Dist., The Allen Co-petitioner

COUNTY BOARD OF APPEALS

HATSTONERS COUNTY

No. 5099

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Lessons for the protestants placed two motions before the Board asking for a dismissal of the petition. The first motion for dismissal was based on the premise that there had been improper advertisement prior to the hearing before the Zoning Cornisgioner. This notion was unanimously overruled; the Board basing it's ruling on the fact that slawicel events in deciments of this type would not be a basis for dismissal as the parties of interest in this case have not been put in any detrimental manition. The second notion for dismissal is based on the allegation that the appeal was not timely. The petitioner filed their appeal within 30 days of the written decision of the Zoning Commissioner and not within 30 days of the oral decision of the Moning Corningionerrais Board has repeatedly held that the appeal time begins on the date of the written order and not of the oral opinion; for this reason, this notion was also unanimously overruled.

In considering the marits of the natitioner's case, the majority opinion of the Board of Appeals has considered only the question as to whether the Bultimore County Council made an error in placing the subject property in an x-6 classification rather than a B-L classification when the Zoning Map was adopted for the 1st district of Bultimore County on April 5, 1960.

The netitioner at the outset of the hearing stated that there had been no substantial change in the neighborhood that would justify a reclassification. The area surrounding the subject property is one of word characteristics with the majority of the properties carrying a nonconforming commercial use status on residentially zoned properties.

NE. PETITION FOR RECLASSIFICATION OF PEOPERTY OF THE ALLAN COMPANN, Frederick Road, Rast of Hilltop Road, Lat District, from an "R-6" Zone to a "PL-I Zone

BREORK COUNTY BOARD OF APPEALS

BALTETMORE COURTY No. 5099

....... DISSENTING OPINION

This is a Petition for the Reclassification from #R-6" to #B-L" for a tract of approximately three acres on the South side of Prederick Head, near Hillton Pood, in the Catenaville area, Approximately 2-3/6 seres of this property are now being used by the Five Cake Swinning Pool and an adjacent Lunchroon. A frame cottage occupies a corner of the tract. The public swimming pool has been in existence since prior to the adoption of the Baltimore County Zoning Reculations and constitutes a non-conforming use in this MP_68 some Cordia Light Loise a Restaurant is adjacent to the subject property on the West. Tois also is a non-conforming use in an

Frederick Road, at this point, has a 60 foot right of way with a paved portion ranging from 20 to 22 feet. It was testified that a traffic count on Frederick Road, East of Rolling Road, indicated a daily average traffic flow of 8.300 vehicles. No. Walter Addison. Proffic Engineer for Baltimore County, stated that increased commercial activity in this area would aiversely affect traffic conditions.

The Petitioner stipulated that no change had occurred in the neighborhood since the adoption of the Land-Hoo Man for this district on April 5, 1960.

Witnesses for the petitioner mentioned other commercial uses in the general area. However, those business uses were all non-conforming uses in residential areas. In fact, several of these uses date back to the

Regidents of the neighborhood, in opposition to this petition stated that a reclassification of the subject property would bring about a change along Frederick Road and would result in additional petitions for reclassification for other non-conforming uses in the eres.

This member of the Roard feels it is improper to reclassify property solely to give a permanent appropriate classification to a nonconforming use. It is not the function of this Board to make permanent the non-conforming uses. In the case of Grant vs Baltimore, 212 Md. 301 the Court of Appeals stated: "Novertholess, the carnest aim and ultimate purpose of soning was and in to reduce non-conformance to conformance as specially as practible with due regard to the legitimate interests of all

The present owners of the subject property acquired the swiming pool in 1954 with full knowledge of its status as a non-conforming use and of the matrictions as to the use of the land. Therefore, this member of the Board gives little weight to the potitioner's contention that he is deprived of a reasonable use of the property

The Petitioner's principal argument is that there was error in the original coming of the property. After a complete and community study of the area including public hearings, the Baltimore County Council determined that the Petitioner's property should remain in an R-6 classification. The Zoning Map for this portion of the First District was emacted and adopted by the Baltimore County Council in April 1960.

The Patitioner mentioned the unce on the adjoining properties namely. Candle Light Lodge to the West and a Baltimore County storage depot on the East. The restaurant is on a large tract of land and is adomiately servened. The storage denot is get back from the highway an is fronted by an attractive building which is in conformity with residential surroundings. The fact that the present non-conforming uses in the arms do not affect the residential mosabilities in the neighborhoo is horse out by the erection of several substantial homes to the East of ie County denot land.

2200 feet to the west of the springs property, on the north side of Frederick Road, is approximately 5 acros good Business Local. The subject property, some 2-3/k acres, lies on the south side of Frederick Road, Adjacent to this property, on the north side of Frederick Road is the Candielight Jadge, a dining establishment which has been in existence for a member of years. This location from the year nature of itis eneration. derives almost all it's natrogen from persons using automobiles as their means of transportation, and like other restaurants of this character, almost all of its business is carried on during the evening hours and of Sundays. Emediately adjacent to the subject property on the East, is property owned by Baltimore County. This property is being used by Raltimore County as a denot for the storage of sand, gravel, and other materials necessary for the maintenance of the highways in this section of

The majority nembers of the Board have no doubt that the County Council erred in placing the subject property in an R-6 classification. The only question in our minds is whether the property should be reclassified B-L or whether it should carry another residential category namely; N-G or R-A. The majority members of the Board have considered both R-G and R-A and feel that these categories as well as M-6, places unreasonable restrictions on the property owner.

It is difficult to believe that amone would want to place a residential development on the subject property, considering the uses that now exist on adjacent proporties to the East and West. The Tea Room or Mostaurant operation on the Mest, carries a large amount of automobile traffic, most of which is during the evening hours or on Sunday. The very time that regidence would be expecting peace and tranquility, they would find themselves with car lights and noises from the restaurant operation. The parking lot of the restaurant is directly adjacent to the western property line of the subject property and would certainly cause a nest undesirable situation for those persons whose homes or apartments have wostern exposurers.

On the Eastern property line, the depot being used by the Highways Department of Baltimore County would most certainly be detrimental to any residential use that might be adjacent to it. Testimony was to the effect that the office building use in connection with the roads operation has been recently enlarged and nodernized and it is certainly reasonable to angume that this operation will continue in its present location. The majority opinion of the Board is that evidence in this case leaves it with no other conclusion except that the present R-6 classification place the property owner in a position where he may not expect a reasonable use of his property. This would also be true were we to reclassify the property to R-4 or R-G.

ORDER

For the rossons set forth in the aforegoing Opinion, it is this 3/ day of August, 1961, by the County Board of Appeals, OWDERED that the reclassification petitioned for, be and the same is hereby

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

COUNTY BOARD OF APPEALS

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Zoning Comissioner of Haltipore Count



