

LINWOOD P. ANDERSON, et al.

IN THE CIRCUIT COURT \$5270 X FOR BALTIMORE COUNTY

NATHAN H. KAUFMAN, etc., et al,

MISC. DOCKET No. 7 Felio 253

Case No. 2756

SE 1.2-A

VA

In this case the Court must first decide the standing in this Court of Patrick Keogh who filed a Petition to intervene in this Appeal as a Protes His Petition to intervene was filed on June 4, 1963 and on the same day Judge John E. Raine, Jr., of this Court, signed an Order or mitting him to intervent and file on Answer. His Answer was filed on June 26, 1512

On June 28, 1963 the Appellants filed a motion to strike this Petition and Order and a Motion Ne Recipiatur thereto on the principal ground that it was not filed within thirty days of the Petition for Appeal.

When the case came on for hearing in open Court thisnCourt reserved its decision on these Motions, but, largely as a matter of courtesy, did nermit argument from W. Lee Thomas, Esquire, Coursel for the attempted Intervenor. then stating that it would hear from him as "amicus curiae" if it was later decided that his client had no right to intervene when he did.

Since the hearing this Court has contacted Judge Raine who has indicated he has no objection to any action this Court may take.

The Appeal was filed on April 22, 1963 and the Petition to Intervene as previously noted, June 4, 1963, more than thirty days thereafter

While it is true the Courts have the power to extend the time for intervening this Court feels that this should be done before the thirty day period expires, and for some reasonably good cause, otherwise the thirty day limitation would have no effect at all: this Court does not think this was the intent of the rule

There is nothing in the Petition upon which Judge Raine's Order wa based to justify the delay and this Court feels obligated to grant the Motion to Strike and/or the Motion Ne Recipiatur, the legal effect of granting either being to eliminate Patrick Keogh as a party to this case.

RE: PETITION FOR SPECIAL EXCEPTION : for Convalescent Home S/S Old Frederick Road 230' west of Orginaton Roa First Distric Linwood P. Anderson, et al

REFORE COUNTY BOARD OF APPEALS OF

BALTIMORE COUNTY 5E(.2" No. 5670-X

OPINION

This is a petition for a special exception for a Convalescent Home on property locates on the south side of Old Frederick Road, 230 feet west of Orpington Road in the First District of Baltimore County.

The property is owned by Mr. & Mrs. Linwood P. Anderson who proistruct a building to house sixty patients at the present time, and then to construct an addition at a later date to bring the total number of patients to one hundred and twenty-six. The property is presently zoned "R-6" and the total acreage owned by the Anderson's is 4.5 acres. However, the special exception covers only

The petitioner presented four witnesses. Mr. Gilbert M. Nelson, Acting Chief Traffic Engineer for Baltimore County, testified that he had reviewed the application and did not believe that it would cause a traffic problem. Under crossingtion he was quite vague, stating that he had really picked up where Mr. Addison, the former Chief Engineer, had left off. He said he had talked to Mr. Addison about the petition, and had visited the property for a short time. However, it was apparent that the had made very little study of the area or the problems that might involve the school children going to St. Agnes School to the northwest, or to the children using the playground almost directly opposite the subject property.

Mr. George A. Reier, Assistant Chief of the Bureau of Public Service for Baltimore County, testified with regard to sewer and water. He left little doubt that water was not a problem. With regard to sewerage, he could not testify as to what effect the special exception would have on the sewerage in the area. He could only say that there was no sewerage problem at the present time, but could give no estimate as to how close the sewerage system was to capacity or whether the convalescent home would place too great a burden on the system.

Mr. John G. Kaufman, (no relation to the Chairman of the Board) a realtor, testified that, in his opinion, the granting of the special exception would not have an adverse effect on real estate values. He also testified that the subject property could be developed under its present zoning classification - "R-6" - with 17 semidetached homes with a yield of about four persons per home, or a total of sixty-eight

MAP It should be noted that while Mr. Thomas appeared Fifore the Board of Appeals on behalf of Mr. Keogh, the latter did not testify or take any actual SEC.2-A

The Petition is for a special exception for a convalescent home on the rear portion of the Petitioners' property on Old Frederick Road at Catonsville.

While, as this Court stated at the groument, the testimony is not as strong as it could have been with respect to traffic problems and the availability verage disposal facilities, nevertheless the Court feels that the Record does not indicate that either present a problem.

To this Court the proposed location seems to be an excellent one for the proposed and much needed facility.

The decision of the Board was a divided one, with Mr. Steinback resident of the area, in favor and with the other two members opposed.

In this particular case the Court will not, as is its usual custom, recite the facts in this Opinion, although the Record has been carefully reviewed The Court will only say that it finds the majority pointion, and the denial of the Petition, arbitrary and unreasonable. It is this Court's painion that the dissenting pointion of Mr. Steinback sycellently summarizes the testimony and his opinion is adopted as the opinion of this Court together with the restrictions he proposes.

Accordingly the decision of the Board of Appeals is reversed and the Special Exception is granted subject to the restrictions as contained in the dissenting opinion of Mr. Steinback.

The Motion to Strike and the Motion Ne Recipiatur are granted

(S) George A. Berry Judge

August 13, 1963

people.

Mr. Linwood P. Anderson, the petitioner, testified as to his desire to construct a convalescent home with sixty beds at first and then, as the need arose, he $3^{E(1)^2}$ would increase it to a maximum of 126 bods. He was unable to tell the Board the total XA number of help that he would need, except to say that he would comply with the State Regulations governing convalescent homes. He stated that there would be two shifts of nurses or nurses-aides along with the cooks, cleaning help, and general maintenance personnel. He testified that he and his wife intended to continue to live in their home which would be between the convalescent home and Old Frederick Road. He said that he would administer the operation of the home and that his wife, a graduate trained nurse, would be in charge of the medical phase of the home.

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It is the majority opinion of the Board that the petitioner has failed to present satisfactory evidence to assure that Section 502.1 of the Baltimore County Zoning Regulations would be adhered to.

Mr. Nelson's testimony left grave doubt as to whether this special exception would cause a traffic problem. It is doubtful that the establishment of this convalescent home would tend to create congestion in the roads and streets as far as to the number of automobiles is concerned. But, as to whether the cars visiting the home, plus the delivery trucks servicing this home, would be a hazard to the children going to St. Agnes Parochial School as well as to the children playing on the land opposite the subject property, was not proven to the satisfaction of the majority members of the Board. While the property opposite the subject property is zoned "M-L" and may be developed for many manufacturing uses at any time, the fact remains that it is now, and has been for a numbe of years, used as the main recreational facility in this area, with the permission of the owners, and that many children congregate for Little League baseball and other activities. Their protection must be guaranteed and without sufficient evidence to assure that this special exception would not interfere with their safety, the majority members of the Board feel that the special exception should be denied.

Mr. Reier was unable to give sufficient testimony that the granting of this pecial exception would not interfere with adequate provisions for sewerage. Lawyers for the petitioner asked that the special exception be limited to sixty beds until the sewerage question was proven, claiming that the petitioner was entitled to use his property in the same manner that was allowed under present zoning. However, no evidence was presented to show the total number of persons that would be necessary to service the sixty bed home nor whether the sewerage generated would be more or less than that coming from 17 semi-detached homes. The question of adequate sewerage was not proven to the satisfaction of the majority members of the Board.

Plane enter an Asseal on behalf of the above Annelland to the Circuit Court for Baltimore County from the Coinion ing, being known and designated as Petition No. 5670-X.

SMITH AND HARRISON

W. Lee Barrison 104 Jefferson Building n 4, Maryland Towson 4, VA 3 6200

5670XA

TY, that a copy of the within Order fo 'T day of April, 1963, to the County Office Building, Towson 4, Maryland.

It is the opinion of the majority members of the Board that the

For the reasons set forth in the aforegoing Opinion, it is this 38

Any appeal from this decision must be in accordance with Chapter 1100,

COUNTY BOARD OF APPEALS

granting of this special exception could violate Section 502.1 of the Zoning

ORDER

day of March, 1963 by the County Board of Appeals, ORDERED that the special

exception petitioned for, be and the same is hereby denied.

subtitle B of Maryland Rules of Procedure, 1961 edition.

Regulations and it is, therefore, denied.

DATE & TIME: WEDNESDAY OCTOBER 17, 1962 at 1:00

The Zoning Commissioner of Baltimore County, by Matherity of the Zoning Act and Rega

LOCATION: South state of Old Frederick Road 230 feet West

THIS IS TO CERTIFY, that the annexed advertisement of John G. Rose, Zoning Commissioner of Baltimore County inserted in THE BALTIMORE COUNTIAN, a group of

three weekly newspapers published in Baltimore County, Mary suscessive warden before land once a week for One Week the 2nd day of October, 19 52, that is to say the same was inserted in the issues of

Sentember 28, 1962.

THE BALTIMORE COUNTIAN By Paul J. Margary

Editor and Manager

PETITION FOR SPECIAL EXCEPTION

THE BALTIMORE COUNTIAN

CATONSVILLE MD

5670 -X

October 2. 19 62.

LAW OFFICES SMITH AND HARRISON

- DCT 22 '62 ··· ober 22, 1962

Mr. John G. Rose Zoning Commissioner of Baltimore County County Office Building

Re: Petition for Special Exception for a Convalescent Home -S.S. Old Frederick Road 230' W. Orpington Road, 1st Dist. Linwood P. Anderson and Helen N. Anderson, Petitioners -No. 5607-K 57 70

Dear Mr. Rose:

Please enter an appeal the County Board of Appeals from your decision of October 22nd, 1962 denying the special exception for convalescent home in the above entitled matter.

Check for \$70.00 costs is attached.

Very truly yours, Cegars & Rucke

Eugene G. Ricks

BALTIMORE COUNTY, MARYLAND TO Mr. John G. Rose, Zoning Commissioner Date. October 5, 1962

SURJECT 55670-X. Special Exception for Convelescent Home.
South side of did Frederick Road 230 feet West of Orpington Road. Being property of Limsood Anderson.

Wednesday, October 17, 1962 (1:00 P.M.)

SE(2-A "X

The staff of the Office of Flamming and Zoning has reviewed the subject petition for a Special Exception for a Germalescent Home and has blocement to aske with respect to the Special Ex-ception as such. If granted, the granting should be conditional upon final approval of a site development plan by this office.

BALLOTORE COUNTY, MANY AND OFFICE OF FINANCE

No. 17411

vision of Collection and Receip COURT HOUSE TOWSON 4, MARYLAND

TOTAL BETT No. 5670-X Lineard P. Anderson et al 5_sh side Old Frederick Rose and all of Orplaytes Rose \$4.00 4-2663 7550 · · · TIL-6.00

INPORTANTI MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND MAIL TODIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON 4, MARYLAND PLEASE RETURNUPPER SECTION OF THIS BILL WITH YOUR REMITTANCE.

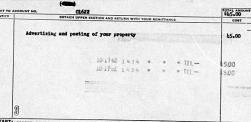
BALTIM RE COUNTY, MARYLAND OFFICE OF FINANCE

Division of Collection and Receipt COURT HOUSE TOWSON 4, MARYLAND

No. 14217 DATE 10/17/62 5670-X

Mr. Limwood P. Anderson Sh21 Old Frederick Road Baltimore 29, Md.

BILLED Zoning Department of



IMPORTANT! MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND MAIL TODIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON 4, MARYLAND PLEASE RETURN UPPER SECTION OF THIS BILL WITH YOUR REMITTANCE.

Dend

HERBERT L. COHEN H. RUSSELL SMOUSE ROBERT F. FISCHER

DIED SON & DIED SON ATTORNEYS AT LAW
10 LIGHT STREET
BALTIMORE, MARYLAND 21202 148 ATOCA 717733 Thursday

April 29th 1 9 6 5

- MAY -3 '65 W ZONING

Mr. John G. Rose, Zoning Commissioner of Baltimore County, County Office Building Towson, Maryland 21204

I am writing to you on behalf of Mr. and Mrs. Linwood P. Anderson, owners of the property known as No. 5411 Old Frederick Road. Mr. and Mrs. Anderson filed a petition for a special exception for a convalescent home which would affect a special exception for a convatescent none which would attend to a convatescent none which would are a convatescent none which was denied by you and an appeal was taken to the County Board of Appeals of Baltimore County, No. 56704. By order of the majority members of the board, dated March 28, 1963, the special exception members of the board, dated March 26, 196.3, the spocial exception was denied. An appeal was taken by Mr. and Mrs. Anderson to the Circuit Court for Baltimore County. A hearing of this appeal was had before ludge George A. Berry and by order dated August 13, 1963 the decision of the County Board of Appeals was reversed and the special exception was granted subject to central restrictions set forth in the dissenting equinon of Mrs. Charles Standard Standard County and County appeal was taken to the Court of Appeals of Maryland by persons appear was taken to the court of appears of maryand by persons opposed to the granting of the permit but upon motion filed on behalf of Mr. and Mrs. Anderson this appeal was dismissed and Judge Berry's decision became final.

Up to the present time Mr. and Mrs. Anderson have not actually begun construction of the home. However, they have done a great deal of work in preparation and desire to preserve their special exception. I am aware of the fact that the period

TELEPHONE VALLEY 3-3000

BALTIMORE COUNTY, MARYIND OFFICE OF FINANCE

Division of Collection and I COURT HOUSE

No. 14230

BILLED Office of Planning & Zoning 119 County Office Publishing Tourson by No.

TOTAL AMOUNT 10 2962 1864 . . TIL-7000

IMPORTANTI MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON 4, MARYLAND PLEASE RETURN UPPER SECTION OF THIS BILL WITH YOUR REMITTANCE.

> CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY

Towson, Maryland #5670 Date of Posting 9-26-62 Posted tor Special Exception for banvalescent Home Petitioner: Linward D. Gololeron retinant Jesuscary superior and the ford 230 ft. while of Organization of Sugar State of the Surface for Society of March of Sugar Surface of Sugar Sugar Surface of Sugar Surfa Organistan Rough

PIERSON & PIERSON

Mr. John G. Rose

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April 28, 1965

of two years has not yet expired but as a matter of precaution we would like to obtain at this time an extension for an additional period of two years.

If there is anything further that we need do to obtain such extension beyond the writing of this letter I would appreciate your advising me. If the letter is sufficient I trust that we may anticipate your favorable action and will look forward to hearing from you.

Very truly yours,

PIERSON & PIERSON

Edward Pierson Edward Pierson

TELEPHONE

BALTIMORE COUNTY, MARY ND OFFICE OF FINANCE on of Collection and R

50.00 Lenwoodanderum 6-562 5654 · · ML-IMPORTANTI MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND

MAIL TODIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON 4, MARYLAND PLEASE RETURNUPPER SECTION OF THIS BILL WITH YOUR REMITTANCE.

MANDATE

Court of Appeals of Maryland No. 261 , September Term, 19 63

Patrick Keogh and Joseph J. Broening

Linwood P. Anderson et ux

Appeal from the Circuit Court for Baltimore County. Filed: October 7, 1963.

#5670-X

October 16, 1963: Motion to dismiss appeal filed.

October 26, 1963: Answer to motion to dismins filed.

December 3, 1963: Motion granted and

STATEMENT OF COSTS

In-Circuit Court:

Stenographer's Costs

In Court of Appeals:

TATE OF MARYLAND, Set:

I do hereby certify that the foregoing is truly taken from the record and proceedings of the said

In testimony whereof I k we hereunto set my hand at Clerk and affixed

the seal of the Court of Appeals, this fourth A. D. 19 63.

Clerk of the Court of Appeals of Maryland

Costs shown on this Mandate are to be settled between counsel and NOT THROUGH THIS OFFICE

Red. 12.5.63

... 00 PETITION FOR ZONING RE-CLASSIFICATION #5670X AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

1, or we Linus - Bulley M. legal owner of the property situate in Baltim County and which is described in the description and plat attached hereto and made a part hereo&E (.2-A hereby petition (1) that the zoning status of the herein described property be re-classified, pu "X to the Zoning Law of Baltimore County, from an ... _zone; for the following reasons

See Attached Description

and (2) for a Special Exception, under the said Zoning Law and Zoning Regulations of Baltimor County, to use the herein described property, for a convalence tome

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above re-classification and/or 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 Limos SP alexu

Contract purchaser

Edward Fileon Jefferen Stelly 10 Address Baltin duz Ind

Address Legal Owner 45h w. Protest Dello 1.20

ORDERED By The Zoning Commissioner of Baltimore County, this 25th day

July _____, 196_2, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation through-out Baltimore County, that property be posted, and that the public hearing be had before the Zoning

County in Room 106, County Office Building in Towson, Baltimore JUL 25 627th ____day of __Cotober 1962 at 1100 o'clock

Allen M. anderson

PIERSON & PIERSON SARATOGA Z-ZZED



ANDERSON
Frederick Rd. 230' W of ton Rd.

1st

Zoning Commissioner Baltimore County Office of Planning and Zoning 111 W. Chesapeake Avenue

Re: Petition for Special Exception for Convalescent Home, S/S Old Frederick Road 230' W. of Orpington Road, 1st District -Linwood P. Anderson, et al, Petitioners -No. 5670-X

Dear Mr. Rose

Mr. John G. Rose

By your Order dated May 6, 1965 the special exception granted in the above matter was extended for a period of two years beginning August 13, 1965 and expiring August 13, 1967.

For various reasons, including the difficult situation which has prevailed for the past year or so in obtaining mortgage financing, the owners of this property, Mr. and Mrs. Limwood P. Anderson, have not been able to proceed with the construction of a convalencent home. A great deal of time, effort the struction of a convalencent home that we have desire to preserve their special exception be extended for an additional period that the special exception be extended for an additional period two years, beginning August 13, 1967 and expiring August 13, 1959.

If there is anything further that we need do to obtain such extention beyond the writing of this letter, I would appreciate your advising me. If the letter is sufficient, I trust that we may anticipate favorable action on your part and will look forward to hearing from you.

Very truly yours, Edward Pierson Edward Pierson

Pursuant to the advertisement, posting of property, and public hearing on the above petition and the above Reclassification should be had; and it further appearing that by reason IT IS ORDERED by the Zoning Commissioner of Baltimore County this ., 196 ..., that the herein described property or area should be and granted, from and after the date of this order. Zoning Commissioner of Baltimore County Pursuant to the advertisement, posting of property and public hearing on the above petition and it appearing that the transfer of the trustimony presented at the hearing did not satisfy the compliance of Section 502.1 of the Zoning Regulations, OG-PH-MAD: Special Exception should NOT BE GRANTED IT IS ORDERED by the Zoning Commissioner of Baltimore County, this.

October 196.2 , that the Special Exception for be and the same is hereby DENIED.



BEFORE #SL70XA COUNTY BOARD OF APPEALS BALTIMORE COUNTY 3E(.2-A No. 5670-X

DISSENTING OPINION

This is a petition for a special exception for a Convalescent Home on the south side of Old Frederick Road, 230 feet west of Orpington Road in the First District

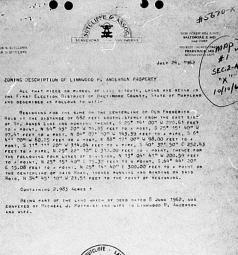
The land awned by the petitioner is approximately 4.5 acres and is now zoned "R-6". However, the land involved in the petition is approximately 2,9 acres and is set back from Old Frederick Road a distance of 550 feet. A residence occupied by the petitioner and which he stated he plans to continue to live in, lies between the proposed convalescent home and Old Frederick Road.

The petitioner testified that he plans to eventually erect a one-story building with in ultimate maximum capacity of 126 beds, although he plans to build for only 60 beds in the beginning. The building is to be placed in the interior of the rear portion of the lot with trees screening the area on three sides.

Mr. Gilbert M. Nelson, Acting Chief Traffic Engineer for Baltimore County, stated that, in his opinion, the proposed convalescent home would not create traffic congestion in the streets and roads. He said the entrance as shown on the plat plan would not create a hazard and that there was adequate sight distance in both directions on Old Frederick Road.

Mr. George A. Reier, Assistant Chief - Bureau of Public Services for Baltimore County, testified that the Joint Zoning Advisory Committee had reviewed the subject petition and had no adverse comment. This Committee includes representatives from Zoning, Planning, Traffic, Health, Education and other interested County agencies. He also stated that water is available for the site and that the proposed use for a convalescent home would not create any greater use of water and sewer facilities than it would if developed as "R-6" residential property.

John G. Kaufman, a realtor, stated the proposed convalescent home would not have an adverse effect on the value of surrounding homes. He said that 27 "R-6" homes could be built on this tract with 17 of them on the 2,9 acres involved in the petition





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SEC.2

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SEC.2-A

Protestants to the proposed convalescent home contended that it would create traffic hazards and would adversely affect the value of their homes

The attorney for the protestants, who is himself one of the three protestants in this case, attempted to place great stress on the fact that the patitioner had not proven that the sanitary sewer facilities would not be overtaxed if the special exception is granted. This member of the Board feels that Mr. Reier's testimony indicated that the use requested would not appear to interfere with adequate provisions for sewerage. The County authorities would not be likely to issue a building permit unless water and sewer facilities were available.

I am of the opinion that in being able to write restrictions governing the use of the subject property for a Convalescent Home, any doubt is removed that one may have as to any adverse effect that the special exception would have on the general wellfare of the locality involved. It is, therefore, the opinion of this member of the Board that the special exception should be granted subject to the following restrictions:

- 1. That the building be limited to one story in height
- The Convolescent Home must be completely air-conditioned in order to avoid any possible noises from the Home
- 3. That adequate screening by means of trees and Home, parking lots and the residences on Mt.

 De Sales Road
- 4. All site plans for the subject property, including plans for ingress and egress from said property, must be approved by the Office of Planning and

In my opinion, the granting of this special exception would not be contrary to any of the provisions of Section 502.1 of the Baltimore County Zoning Regulations.

Charles Steinbook,

DATE: March 38 1963

RE: PETITION FOR SPECIAL EXCEPTION for Convalescent Home 5/5 Old Frederick Road 230' W. of Orpington Road, First District Linwood P. Anderson, et al, Petitioners- No. 5670-X

It is this 644 day of May, 1965 by the Loning Commissioner of Baltimore County, ORUERED that the special exception granted in the above matter, be and the same is hereby extended for a period of two (2) years beginning August 13, 1965 and expiring August 13, 1967.

.

_ day of August, 1967, by the Zoning Commissioner of Baltimore County, ORDERED that the aforesaid

Special Exception should be and the same is extended from August 13, 1967 to August 13, 1970,

Zoning Commissione Baltimore County

Rec'd Oct. 22, 1962

Smith and Harrison Jefferson Bldg.,

Oct. 22, 1962

Mr. John G. Rose, Zoning Commissioner of Baltimore County County Office Building Towson 1, Maryland

Res Potition for Special Exception for a Convalescent Home - S.S. Old Fred rick Road 230 W. Orpington Road, 1st District -Linwood F. Anderson and Helen N. Anderson, Petitioners -No. 5670

Please enter an appeal to the County Board of Appeals from your decision of Gotober 22, 1962 denying the special exception for convalescent hope in the above entitled

Check for \$70.00 costs is attached.

Very truly yours

Eugene G. Ricks

Attorney for Petitioners

EP: ss