

RE: PETITION FOR RECLASSIFICATION
from an "R-6" Zone to an "R-A" Zone,
NW 1/4 Old Court Road, 1020' from
Liberty Road
Second District
Oscar Dreisen & Gerald Freedman,
Petitioners

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. 63-85-R

OPINION

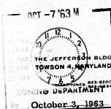
This is an appeal from an Order of the Zoning Commissioner denying an application for change of zoning classification to "R-A" on a small tract now zoned "R-6" and a larger tract (about three acres) now classified as "R-6", both adjoining a larger parcel of land which has been developed by the same owner under an "R-A" classification for garden apartments with road access thereto through the present "R-6" area. The "R-6" area lies between the "R-A" property and Old Court Road, about 1000 feet south of Liberty Road and south of an extensive area of commercially zoned land oriented to Liberty Road.

The tract is bounded on the north and west by other "R-A" Zones now under development and on the east and south (across Old Court Road) by various residential classifications. A short distance to the west is the pleasant residential development known as "Southgreen" or "Liberty Manor" whose residents are required to use Old Court Road for access to the main roads and commercial areas in the district.

The petitioners' case is based on the claim of error in the original zoning map and there was opinion evidence by expert witnesses that this was the case. However, the reasons given for the opinions are neither compelling nor persuasive to the Board. From testimony by the Acting Director of Planning for the County and others it would appear that the present zoning was correct when adopted as part of a comprehensive plan and with a realistic approach to the problem. The present "R-6" Zone was planned as a shield or buffer between the "R-A" area and Old Court Road, and there is no reason why this "R-6" area cannot be physically developed under that classification. The apparent motivation for the requested change is, in our opinion, purely economic which is, of course, no reason to grant a change of classification and the Order of the Zoning Commissioner must therefore be affirmed and the reclassification denied.

WILLIAM PAUL SMITH
W. LEE HARRISON
RICHARD C. MURRAY
GEORGE HARRIS JONES
ROBERT A. BLAKE
DONALD J. BLUMBERG

LAW OFFICES
SMITH AND HARRISON



Mr. Edward D. Hardesty
Deputy Zoning Commissioner
County Office Building
Towson, Maryland

Re: Petition for Reclassification
from R-6 and B-1 zone to R-A zone
NW 1/4 Old Court Road, 1020' from
Liberty Road - 2nd District
Oscar Dreisen & Gerald Freedman
Petitioners - Case No. 63-85-R

Dear Mr. Hardesty:

Please enter an appeal to the County Board of Appeals from your Order dated October 1st, 1963 in the above entitled case.

I enclose herewith check for \$70.00 advance costs.

Very truly yours,

WILLIAM PAUL SMITH

by Richard C. Murray
Attorneys for Petitioners

rcm/4

ORDER

For the reasons set forth in the foregoing Opinion, it is this 1st day of April, 1964 by the County Board of Appeals, ORDERED that the reclassification petitioned for, be and the same is hereby denied.

Any appeal from this decision must be in accordance with Chapter 1100, subtitle B. of Maryland Rules of Procedure, 1961 edition.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

DAVID H. B. JONES
CHAIRMAN

Note: Mr. Austin did not sit at this hearing.

ALAN B. BORD

RE: PETITION FOR RE-CLASSIFICATION
from "R-6" and "B-1" Zone to
an "R-A" Zone, NW 1/4 of Old
Court Road, 1020' from Liberty
Road, 2nd District Oscar Dreisen
and Gerald Freedman-Petitioners

BEFORE
DEPUTY ZONING COMMISSIONER
OF
BALTIMORE COUNTY
Case No. 63-85-R

Upon hearing on the above petition for re-classification from an "R-6" and "B-1" Zone to an "R-A" Zone, the land lying on the Northwest side of Old Court Road, 1020' from Liberty Road, in the Second Election District of Baltimore County, the testimony produced at the hearing did not indicate that the Official Zoning Map of Baltimore County was in error when adopted by the County Council.

For the reason stated above the re-classification should not be had.

IT IS ORDERED by the Deputy Zoning Commissioner of Baltimore County, this 1st day of October, 1963, that the above re-classification be and the same is hereby DENIED and that the above property or area be and the same is hereby continued as and to remain an "R-6" and "B-1" Zone.

Edward D. Hardesty
Deputy Zoning Commissioner

PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, or we, Oscar Dreisen and Gerald Freedman, legal owners of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition (1) that the zoning status of the herein described property be reclassified, pursuant to the Zoning Law of Baltimore County, from an "R-6" & "B-1" zone to an "R-A" zone, for the following reasons:

There was error in the adoption of the land use map generally known as the Western Area Planning Map and for such other and further reasons that may be assigned at the time of hearing.

Property is to be petitioned and advertised as prescribed by Zoning Regulations. I, or we, agree to pay expenses of above reclassification 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 County.

Contract purchaser
Gerald Freedman
Legal Owner
Address: 8870 Piney Branch Road
Silver Spring, Maryland

SMITH AND HARRISON
Richard C. Murray
Richard C. Murray's Attorney
Address: The Jefferson Building
Towson 4, Maryland VA 3-6200

ORDERED By The Zoning Commissioner of Baltimore County, this 1st day of MAY, 1963, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout the Baltimore County, that property be posted, and that the public hearing be held before the Zoning Commissioner of Baltimore County in Room 104, County Office Building in Towson, Baltimore County, on the 21st day of MAY, 1963, at 1:00 P.M.

Zoning Commissioner of Baltimore County

OSCAR DREISEN and
GERALD FREEDMAN
VS
JAMES H. BAUMANN, JR., et al
111 1400 15th Avenue, B. & O. Station
AND
ROBERT J. ALCHODI and
NATHAN BELL, et al

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MEMORANDUM

This is an appeal in behalf of the owners of land on Old Court Road. For the purposes of this decision, Old Court Road will be considered as running east and west, and Liberty Road will be considered as running north and south. On this orientation the subject property lies on the north side of Old Court Road at a point 1666 feet west of Liberty Road. In its entirety it consists of 11.44 acres and the present application involves essentially a request for the reclassification of parcel one consisting of .265 acres, presently zoned "B-1", and parcel two consisting of 3.655 acres presently zoned R-6, to an R-A classification. This would conform these parcels to the present zoning of the remaining 7.524 acres. The present zoning was accomplished by a Plat approved in November, 1962, and the current issue arises under an alleged mistake in that map.

One suggestion is made that error is shown by the fact that the tiny sliver representing parcel one was zoned B-1, a use to which its size would forbid any utility. The easy answer to this suggestion is that in the light of the fact that this sliver of land adjoined the land of this owner zoned R-1, the parcel could have been used for that purpose pursuant to the provisions of Section 230.1 of the Zoning Law.

The suggestion then is made that it was error to classify parcel two (3.655 acres) R-6, because that party met all of the criteria for the establishment of R-A zones, i.e., that it adjoined commercial property, that it reasonably could serve as a transition between commercial property and lands intended for individual

residential use, and that it had reasonable access to adequate roads. It is a consideration that parcel two lying on the north side of Old Court Road with an even depth of 150 feet on that road would meet these criteria.

It is argued by the appellants, however, and the Court accepts the argument, that although the land does possess the general characteristics of the criteria established for the purpose of determining generally whether it fits a general pattern for R-A classification, this does not resolve the issue. The evidence establishes very clearly that although the land meets the general criteria, this property should not be zoned R-A because there are other lawful considerations which bar its use for such purposes. These are: 1) The grant of R-A zoning would permit an extension of the commercial uses of the property which it borders on the east by special exception for office building construction; 2) would operate to destroy the planned intent and purpose to maintain the residential characteristics of Old Court Road to the west of Liberty Road; and 3) would be used as an excuse for other owners of property fronting on Old Court Road to seek reclassification.

It seems clear therefore, that the question whether this property should be reclassified from R-6 to R-A is a matter for reasonable debate. It cannot be said that there was error in original zoning, or that the action of the Board was arbitrary and capricious.

Last conclusion is that the land that comprises parcel two is not susceptible of any use under the R-A classification, and that accordingly such zoning as applied to it is confiscatory. On this issue it will suffice to say that the evidence persuades the mind of the Court that the applicants have not met the heavy burden for such showing.

The decision of the Board is affirmed.

ALBERT B. BORDING, Judge

December 29, 1964

SMITH AND HARRISON
LAW OFFICES
111 1400 15th Avenue, B. & O. Station
BALTIMORE COUNTY, MARYLAND

Beginning for the same at a point on the northwest side of Old Court Road at the distance of 1020 feet more or less measured southeasterly to its intersection with the southeast side of Liberty Road, thence binding on the northwest side of Old Court Road southeasterly 750 feet more or less to the center of Dons Run thence leaving said Old Court Road and running in a northeasterly direction and along the last line of the land which by Deed dated August 22, 1962 and recorded among the Land Records of Baltimore County in Liber W.J.R. No. 4034, Folio 612 was conveyed by Frank Strelitz and wife to Oscar Dreisen and others, in all 340 feet more or less to the sixth line of the Zoning Description 2 R-A 9 thence binding reversely on a part thereof southeasterly 30 feet more or less, thence binding reversely on a part of the fifth line of said Zoning Description, said fifth line being parallel with and 170 feet measured northwesterly at right angle to the said northwest side of Old Court Road, northeasterly 720 feet more or less to the third line of the land which by Deed dated January 14, 1959 and recorded among the Aforesaid Land Records in Liber W.J.R. No. 3473, Folio 645 was conveyed by Frank Strelitz and wife to Francis C. Dorsey and wife, thence southeasterly 175 feet more or less to the place of beginning.

ENCLOSURE 12/6/62 J. C. 662566



