

PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

Francis H. and Selma L. Bernard, legal owners of the property situated 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 zone to an R-A zone; for the following reason:

Substantial changes in neighborhood since the adoption of the 9th District Zoning Map, and error in the original zoning.

And a variance from Section 217.3 to permit a north side-yard of 12.5 feet instead of the required 25 feet and to permit a south side-yard of 18 feet instead of the required 25 feet.

See Attached Description.

and (2) for a Special Exception, under the said Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property, for OFFICES.

Property is to be posted 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
Selma L. Bernard
Francis H. Bernard, Legal Owner
Address: 1525 York Road

SMITH AND HARRISON
By *Donald G. Cockey*
Donald G. Cockey, Attorney
Address: 10000 Baltimore Road
Baltimore, Maryland

ORDERED BY THE Zoning Commissioner of Baltimore County, this 19th day of October, 1964, 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 held before the Zoning Commission of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 27th day of November, 1964, at 10:00 o'clock A. M.

1964 OCT 18 - 93
Zoning Commissioner of Baltimore County



RE: PETITION FOR RECLASSIFICATION : BEFORE
from an "R-6" Zone to an "R-A" Zone, :
SPECIAL EXCEPTION for Offices, : COUNTY BOARD OF APPEALS
VARIANCE from Section 217.3 of : OF
the Zoning Regulations of Baltimore County, :
E/S York Road, 95' north of : BALTIMORE COUNTY
Craffley Road - 9th District :
Francis H. Bernard, et al, :
Petitioners : No. 63-153-RXV

The petitioner in the instant case requests a reclassification from an "R-6" Zone to an "R-A" Zone, and a special exception for an office building with variances relating to Section 217.3 of the Zoning Regulations of Baltimore County. The instant property is located on the northeast side of York Road at the intersection of Craffley Road in the Ninth Election District of Baltimore County. The property is now improved with a residential type dwelling where the petitioner now resides and conducts his business in dentistry. The petitioner proposed that he will maintain the outside structure in its present state, modifying the interior to suit office requirements of from one to two other professional men. This arrangement would require the above stated variances.

The instant property is located on a section of York Road which over the years and since the adoption of the land use map has experienced changes too numerous to mention in this opinion. The proposal of the petitioner in plans submitted to the Board seems to indicate that the use requested is a good compromise with the existing uses in this section of York Road. Residents of the neighborhood, and especially those on Craffley Road, were insistent that the granting of this petition would open the door to further reclassifications in an easterly direction on Craffley Road. This Board member is of the opinion that their fears are unfounded, and that the York Road frontage is committed to a commercial use as evidenced by the changes presented. This Board member feels that the proposed use would comply with Section 502.1 of the Zoning Regulations, and also would afford the adjoining property holders with reasonable protection from any easterly trend of commercial uses.

Therefore, this Board member feels that the subject petition should be granted in accordance with the provision: if the plans submitted to the Board with the choice of screening to the north and to the east to be determined by the Planning Department of Baltimore County.

Michael Post
CHAIRMAN

DATE: 10/14

Notes: Mr. Parker did not sit at this hearing.

RE: PETITION FOR RECLASSIFICATION : BEFORE
from an "R-6" Zone to an "R-A" Zone, : COUNTY BOARD OF APPEALS
SPECIAL EXCEPTION for Offices, :
VARIANCE from Section 217.3 of : OF
the Zoning Regulations of Baltimore County, :
E/S York Road, 95' north of : BALTIMORE COUNTY
Craffley Road - 9th District :
Francis H. Bernard, et al, :
Petitioners : No. 63-153-RXV

DISSENTING OPINION

I disagree with the Chairman's decision relating to the instant property.

It is conceded that there have been numerous zoning changes in the immediate neighborhood along the York Road frontage. However, I do not feel that the changes compel the reclassification of this property.

The only testimony regarding the need for variances was that the requested rezoning would necessitate side yard set-back variances. This does not seem to me to be the type of unreasonable hardship or practical difficulty that would justify the Board's granting a variance.

It appears to me, from the plat introduced into evidence and a personal viewing of the property, that the granting of a special exception for an office building at this location would violate Section 502.1 (d) in that it would be creating undue concentration on a residential lot. I also feel that the protestors' complaints of parking and traffic on Craffley Road are justified and, therefore, the petition violates Section 502.1 (b).

I feel that we must treat this petition in its entirety; that is, the reclassification and the special exception. If the special exception is denied, as I think it should be, the property which is only 70 feet by 150 feet, in my opinion, is too small to be developed in a residential apartment classification. Therefore, I feel that the entire petition should be denied.

Therefore, the Zoning Commissioner's C-order denying this petition should be affirmed.

DATE: 10/14

Notes: Mr. Parker did not sit at this hearing.

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: G. Mitchell Austin, Esquire Date: July 4, 1964
FROM: Office of Law
SUBJECT: Split Decision of the Board

You have asked for an opinion as to whether there has been a split decision of the Board of Appeals (one member of the Board having disqualified himself) the Board could issue an order confirming or denying the decision of the Zoning Commissioner, and further you wish to clarify whether or not a split decision is equivalent to a proper ruling and whether or not it is appealable since no order was written by the Board except that contrary opinions were handed down by the two individual members who sat in at the hearing. We shall endeavor to answer these questions in their entirety.

Putting first things first, there must be a vote taken and entered into the minutes in order to have a formal determination by the Board. As stated by the Superior Court of New York in *Stanley vs. Board of Appeals*, 5 N.Y.S.2d 956, "the acts of individuals of a public board, although constituting in numbers a majority of the Board, are not equivalent in themselves to formal action by the Board as a public body", which brings us to your first question. But what kind of ruling should be rendered?

You will note in *Montgomery County vs. Walker*, 228 Md. 574, one of the cases cited in your request. The Board actually gave notice that the application "had failed for want of a majority". This being a five man board, the 2 - 2 vote was held by the Court of Appeals to be an effective denial of the application, and it was further held that such "statutory denial" was reversible by the trial court. The failure to obtain the three affirmative votes required by local ordinance was in legal effect a denial of the application. However, in *Montgomery County vs. The Board* of original jurisdiction in the matter.

The Biermann case, 187 Md. 514, which you cited, was also a "statutory denial", but offers the only criteria acceptable to the Court of Appeals by which to judge whether the lack of concurrence by a majority confirms the Zoning Commissioner's Order or denies the application for the change.

Applying the Biermann principle in *Levy vs. T. Slide* (decided March 11, 1964) the only Maryland case in point, the court rejected the Board as a fact finding body, yet said its action was not illegal, stating that the issue to be decided was not whether there was substantial evidence to support a majority finding, but whether there was a reasonable basis to support the refusal. This bit of legal legwork leaves much to be desired; but it is clear that this decision

G. Mitchell Austin, Esquire - 2 - July 2, 1964

accorded the same "presumption of validity" to the inability of the Board to produce a majority vote as it did in those cases where the denial was statutorily imposed. Both are tantamount to a denial of the application.

It is significant to note that in the Levy case the Court quoted, with approval, two New Jersey cases (both incidentally were "statutory denials"). One, *Miller vs. Boston*, 171 A.2d 6, contributed the following: "The presumption of validity must be accorded the veto of the minority member", so that "... consequently, the question on appeal is whether the majority member, in voting against the variance, was arbitrary, capricious or unreasonable". As the Court said elsewhere in *Levy* (this is so from the Biermann case, 187 Md. 514) "it would be more accurate to say that approval is prevented by the exercise of a veto power". The other New Jersey case quoted in *Levy* was *Griggs vs. Zoning Board*, 183 A.2d 444, wherein the Superior Court of New Jersey, after recognizing that a local ordinance required a concurring vote of at least three members (the vote was 2 - 2) said that "even in the absence of such a provision, a tie vote is regarded as a statutory denial".

Section 603 of the Baltimore County Charter provides that there shall be a hearing de novo upon the issue before the Board. Our interpretation of de novo is the same as that handed down by the Maryland Court of Appeals in *Montgomery Ward vs. Biermann*, 199 Maryland 485. The Court therein stated that a case on appeal from a judgment of the People's Court of Baltimore City is tried de novo in the Baltimore City Court and the case is decided as if no judgment had been rendered in the People's Court, regardless of which party may have taken appeal.

Nor does it make any difference whether the Board's action is considered as quasi-judicial or quasi-legislative, for the scope of review is addressed to whether or not there was sufficient evidence to sustain the Board's conclusion. *Greenblatt vs. Johnson*, 225 Md. 379.

To summarize, it is our considered opinion that first the Board should make a formal decision in the form of an order in every case which comes before it. Should there be a tie vote, the order should direct that the application is denied for reason that it "failed for want of a majority". Such an order or determination on a split decision is, of course, appealable by the party aggrieved by it; and is reversible by the Circuit Court on the issue of whether or not there is a reasonable basis in fact to support the refusal as an exercise of the police power.

Approved:

Philip F. Bennett
Philip F. Bennett
Assistant County Solicitor

RF:bmj

FRANCIS H. BERNARD and SELMA L. BERNARD : IN THE
VS : CIRCUIT COURT
COUNTY BOARD OF APPEALS :
OF BALTIMORE COUNTY : FOR
AID : AT LAW
ROBERT O. STOCKDALE and EDWARD A. COCKEY, 3rd : Miss. 7/30/64

ORDER FOR APPEAL BY
Robert O. Stockdale, Edward A. Cockey, 3rd,
and the Intervenor Association, Inc.
APPEALS

Mr. Clark:

Enter an appeal to the Court of Appeals on behalf of Robert O. Stockdale, Edward A. Cockey, 3rd, and the Intervenor Association, Inc., Intervenor, from the judgment entered in this action on October 5, 1964.

John P. Montgomery
John P. Montgomery
Attorneys for Intervenor

CERTIFICATE OF SERVICE

We hereby certify that a copy of the foregoing Order for Appeal was mailed to Eugene O. McKee, Esq., and Donald G. Gilmore, Esq., 104 Jefferson Building, Towson, Maryland, Attorneys for Petitioners.

John P. Montgomery
John P. Montgomery
Attorneys for Intervenor

Notes: Mr. Parker did not sit at this hearing.

63-153

FRANCIS H. BERNARD and
SELMA L. BERNARD
VS
COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
AND
ROBERT G. STOCKDALE and
EDWARD A. COCKEY, Jr.

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW
Misc. 7/394/3037

000000

MEMORANDUM

This is an Appeal by the owners of property located at the northeast corner of York Road and Croftley Road from an Order (a) denying reclassification on that property from R-6 to R.A.; (b) denying a requested variance, and (c) denying a special exception for use as offices.

The Petition of the Appellants initially had been denied by the Zoning Commissioner and thereafter, after hearing before two of three members of the Board of Appeals, the members of the Board divided. The legal effect of this even division among sitting Board members upon Court review requires first decision. This Court concludes that the plain language of Judge Hammond in the case of Levy v. Seven Slade, Inc., 234 Md. 145, at page 159, compels the conclusion that this situation "produced a combination of the denial of the application which the zoning Commissioner had ordered" and authorizes this Court to reverse only if it finds there was "no reasonable basis in fact to support the denial" as shown by the record made before the Board.

Accordingly, the testimony before the Board must be examined solely for the purpose of determining whether there is any reasonable basis for the action rejecting the Petitions for reclassification, the variance, and the special exception.

The Petitioner for a long period of time resided in the property with his family, and conducted there as well his practice as a dentist. The increased size

of his family makes it necessary for him to acquire a new and larger dwelling for their comfort. Concededly, the instant applications seek to permit the continued use of the property for the conduct of his profession. Under the existing zoning of the property such a course would be impossible for the reason that the practice of dentistry in an R-6 zone is permitted only when its practitioner also resides within the building.

The York Road is one of the principal arteries by which vehicular traffic is brought to and through the increasingly heavily populated areas of Baltimore County and, in common with practically every such main artery in Baltimore County (except dated access highways), York Road, in certain stretches, has been permitted to develop commercially by "strip zoning". Strip zoning seems almost universally condemned by planners for a wide variety of reasons. Those most apparent to this Court are: (1) that the operation of business and commercial enterprises upon major arteries creates a vast number of extra local intersections which induce a new kind of jousting between modern knights in mobile armor. Challenging mobile knights seek entry upon the main artery. The challenged mobile knights speed up their mounts by application of right-footed modern spur. The contention proceeds, frequently with sound and always with fury. Some manage complete escape from the violence of collision; some sustain only the crumpling of their armor and become only somewhat less shining knights; and some there are who bleed and die within their armor, like their ancient forbears discovering too late its incomplete protection; (2) the daytime vista—the ever extending piecemeal strip seems to bring on another challenging conflict. Discordance of size and shape and color and design seems an essential element in any construction. Not only is it untidely that any of the buildings on the strip will join the Parthenon or Colosseum in exciting the admiration of mankind after two thousand years; it is probable that they will cause, in the years of our children's children, a new program for rehabilitation planners of that day and excite the protests of their then owners; (3) the nighttime view—seen from afar, the lights along the strip seem gleaming jewels, like diamonds and rubies and sapphires and emeralds casting brilliance into the sky,

and dimming the more subtle silver jewels of the heavens. Also, close up, the seeming jewels appear as the shoddiest costume jewelry with many baubles missing from their settings—striking the eye like a missing tooth in a grinning five year old. But the voices of the planners against strip zoning has been as a voice crying in the wilderness and zoning authorities throughout the generation that Baltimore County has known zoning laws have persistently and consistently authorized strip zoning on substantially all major arteries in this County. But it is not permitted to the Courts to question the wisdom of the legislative process even though it may "loath, despise, and exorcise the thought" of strip zoning. It is, in short, power loss to find it. It is bound, however, to require equal treatment in its grant.

The subject property lies almost midway between Seminary Avenue on the south and Bellona Avenue on the north. The distance between Seminary and Bellona Avenues is about 1200'. All four corners of both intersections were classified for commercial use in the comprehensive zoning map adopted on November 14, 1955.

The following is a list of zoning changes, giving the locations, the nature of the changes, the dates on which the same were granted and the manner in which the changes occurred:

Case No. 4127 R.X.
Via York 610' N. Seminary
N 79' X W 200'
Reclassification R-6 to R.A. with
Special Exception for Doctor's Office
Zoning Commissioner Order 1/6/58
(to be hereafter specifically referred to)

Case No. 4202 R.X.
Reclassification R-6 to R.A.
With Special Exception for Office Building
Via York 60' N Seminary
N 10' X W 160'
Zoning Commissioner Order 4/6/60

Case No. 5461 R.X.
Reclassification R-6 to R-6 to R.A.
With Special Exception for Gasoline
Filling Station
S.W. cor. York & Bellona
S. 284.28' X W 200'
Zoning Commissioner Order 1/24/62

Case No. 63-119 R.
Reclassification R-6 to R.L.
Via York 500' N. Seminary
N 100' X W 200'
Zoning Commissioner Order 11/4/63

Case No. 4304
Reclassification R-6 to R.A.
With Special Exception for Doctor's Office
NE cor. York & Thornhill Rd.
N 50' X E 150'
Zoning Board Order 6/5/58

Case No. 5010 XA
Special Exception for Gasoline Filling
Station
S.E. cor. of York Rd. & Seminary Ave.
S 104' X E 100'
Zoning Commissioner Order 7/14/60

Case No. 5204
Special Exception for gasoline filling station
S.E. cor. York Rd. & Marquis Rd.
(opposite Bellona)
S. 149' X E 100'.
Zoning Commissioner Order 2/5/61.

All of the above mentioned changes impel the mind of the Court to the conclusion that the rejection of the instant petition for reclassification can be explained only upon the basis of an unequal justice under law. A study of Case No. 4127 R.X. compels such conclusion.

Case No. 4127 R.X. was a petition for reclassification from R-6 to R.A. with a special exception for a doctor's office. The property is known as No. 1526 York Road. The order reclassifying the property, dated January 6, 1958, explaining the reasons therefore contained the following language:

"It appearing that by reason of location the building to the south being a residence converted into apartments, the building adjoining on the north being converted as a chiropractor's office and a dentist's office, and the fact that the building is located in the neighborhood has charged suitably to warrant the reclassification and a special exception." (Italics supplied)

The "dentist's office" referred to therein is the subject of the present applications:

This is the final irony. The zoning authorities in 1954 have denied to the subject property the right to continue the use to which it has been committed for years—after using that very property as a reason or excuse or justification for the very action that commenced the change of the face of this area from residential to business usage.

The evidence is clear that York Road in the area of the subject applications has become an almost complete strip zone area. The few remaining R-6 classifications have been effectively, if indirectly, placed in a forbidden "spot zoning" category, and it requires but a glance at the present zoning map to see it.

There is no substantial evidence that the requested special exception would create a condition contravening §102.1. The requested variance is clearly not in conflict with the spirit of the zoning law. Falls within the rule announced in Lovell Federal Savings & Loan Association v. Burdick, 227 Md. 243, and should have been granted.

For the reasons heretofore stated the Order of the Zoning Commissioner (in law sustained by the inability of the Board of Appeals to agree) is reversed, the reclassification from R-6 to R.A. is granted, and the special exception for use as an office building is granted, and the variance sought is authorized.

W. ALBERT MINCHINE, Judge

October 5, 1964

IN THE COURT OF APPEALS OF MARYLAND
No. 373
September Term, 1964

ROBERT G. STOCKDALE, et al.

v.

FRANCIS H. BARNARD, et ux.

Remond
Barney
Barney
Opposition
Barney.

32.

Opinion by Harbury, J.

Filed: July 29, 1965

Objecting neighbors, the protestants, appeal from an order of the Circuit Court for Baltimore County reversing an order of the County Board of Appeals and granting a petition of the appellees, the applicants, for the reclassification of certain property, which petition the Board had denied. The reclassification had originally been disallowed by the zoning Commissioner. The Board by a one to one split decision, only two members having heard the case, affirmed the finding of the zoning Commissioner.

The appellees filed a motion to dismiss the appeal, which was heard immediately prior to the argument on the merits. The motion raises two contentions: (1) that none of the protestants has sufficient interest to maintain this appeal, and (2) that they were too late in intervening and answering the petition on appeal from the Board's order.

The first of these is based on the fact that the Bridlewood Association, Inc., one of the appellants, did not participate in the appeal from the Board, nor was it either an aggrieved party or a taxpayer. There seems to be no question that the other protestants, Robert G. Stockdale and Edward A. Cockey, Jr., have a sufficient interest, since Stockdale's residence adjoins the property in question, and Cockey resides next to Stockdale. The appellants argue that the Bridlewood

Association, Inc., is a proper party on appeal because certain members own houses on the same street near the applicants' property. We do not agree with this contention. Under the ordinances of Baltimore County authorizing appeals by persons aggrieved, this Court has held that an appeal is not xxx authorized by an association as a party aggrieved by reason of its members being aggrieved. Improvement Ass'n v. Balto., 200 Md. 215, 191 A. 2d 734, and cases therein cited. The motion to dismiss the appeal of the Bridlewood Association, Inc., is therefore granted. However, on the record, Stockdale and Cockey are taxpayers and parties in the lower court, and are consequently entitled to appeal to this Court. Windsor Mills Imp. Ass'n v. Balto., 195 Md. 303, 304, 73 A. 2d 531.

The second ground upon which dismissal is sought is that the protestants' petition to intervene and answer to the petition on appeal failed to set forth any cause for the failure to file then within thirty days, as provided by Maryland Rule 57. The record indicates that the petition to intervene and answer were not filed by the appellants until September 8 and 9, respectively, 1964, which dates were nineteen and twenty days beyond the thirty day period provided by the Rules. Appellants then filed a motion to strike and a motion to replead to the petition because of its late filing. A hearing on these motions resulted in a denial of both of them, and the court below proceeded to a hearing of the case on its merits. We think that the lower court had the power and right to rule as he did.

Although Rule 59 states that a party to the proceeding before the administrative agency shall, within thirty days of the date of the filing of the petition of appeal, file a demurrer or an answer, it also provides that the time for demurring or answering can be "such longer or shorter time as may be fixed by the Court." We said in Tracy v. Commissioner, 235 Md. 556, 459-60, 201 A.2d 820.

Though ordinarily an answer should be filed within the thirty days, we think that Rule 59 is not inflexible and mandatory as to the thirty day period. It is not shown that the applicants were prejudiced by the delay from early June to early August in the filing of the answer, and the delay seems to have been due at least to some extent to delay on the part of the applicants in furnishing the pro-securants with a copy of the petition of appeal as had been promised. * * * We accordingly hold that the time requirement of Rule 59 is not mandatory, and we think that it was within Judge Thornhill's discretion to refuse to strike out the answer of the pro-securants, and we find nothing to indicate any abuse of discretion on his part in so refusing.

3. Irving v. Montgomery County, 235 Md. 111, 210 A. 2d 359. The appellants Stockdale and Cockey were protestants before the Board and the appellees and their counsel were fully aware of their identity, their opposition and the grounds for the opposition. They also were aware that the appellants intended to continue their fight in the circuit court and knew the lawyers who would represent them there. Counsel for both sides apparently met with Judge Menchins in regard to a hearing of the appeal which had been set tentatively for August 31 but which had to be postponed, and was, by agreement, put down for September 10. The appellees knew also that an answer was to be filed and the essence of what the answer would contain. The answer was filed on September 9 and contained no surprises. No actual prejudice to the appellees by reason of the late filing of the answer is either claimed or shown.

disciplinary. DePaul v. Board, 237 Md. 221, 205 A. 2d 805; Levy v. Seven Slades, Inc., 234 Md. 145, 198 A. 2d 267; Missouri Realty, Inc. v. Bawer, 216 Md. 422, 140 A. 2d 655; Offutt v. Bd. of Zoning Appeals, 204 Md. 551, 105 A. 2d 219.

The Zoning Commissioner, as pointed out in his opinion above, after a visual inspection, found that the portion of York Road in question was a thriving residential development. One member of the Board accepted the advice and conclusions of the Zoning Commissioner and, in addition, in his opinion found that the granting of a special exception at ~~xxxxxxxxxxxxxxxxxxxx~~ this location would be creating undue concentration on a small residential lot and would also create parking and traffic problems. This resulted in the denial of the application even though the other member was of a contrary view. At this point the function of the reviewing court was to decide whether the presumption of the correctness and constitutionality of the Board's quasi-legislative action had been overcome by the showing of the applicant that there was no reasonable basis in fact to support the denial as an exercise of the police power. Levy v. Seven Slades, Inc., supra; Montgomery County v. Walker, 228 Md. 574, 180 A. 2d 865; H. & C. C. of Balto. v. Berman, 187 Md. 514, 50 A. 2d 804.

The record shows that the subject property lies on York Road almost midway between Seabury Avenue on the south and Ballona Avenue on the north. On the opposite side of York

The words of Tracy, supra, are apposite and, as was said there, we think it was within the trial judge's discretion to refuse to strike the answer and we find nothing to indicate any abuse of discretion on his part in so refusing. We deny the motion to dismiss insofar as it is based upon delay in the filing of the appellants' petition and answer in the Circuit Court.

We now proceed to the merits of this case. The appellees filed with the Zoning Commissioner of Baltimore County an application for a reclassification of property owned by them from an R-6 to R-A zone, with a special exception for office use and a variance relating to setback. The R-6 zone in Baltimore County is for one or two-family residential use, with an area of 6,000 square feet for a one-family dwelling and of 10,000 square feet for a two-family dwelling. The R-A zone is for residential use as apartments. The basis for the petition was set forth as substantial changes in the character of the neighborhood and an error in the original zoning map adopted for the 9th Election District of Baltimore County in 1955. The evidence as to original error, if there was any, was not sufficient to require discussion by us. The subject property is located at the northeast corner of York Road and Croftley Road in the community known as Bridlewood. It is improved by a two-story house on a lot 150 feet in depth, and fronts some 70 feet

4. Road there have been some zoning applications granted for R-A classification. However, on the east side of York Road there have been no changes for over two blocks with the exception mentioned above at the corner of Thornhill Road. Judge Menchins in his colorful, opinion Levy v. Seven Slades, Inc., supra, and concluded that the Board had no reasonable basis in fact to support the denial, and reversed the Board, thus allowing the applicants' petition for relief. He based his decision on the fact that several zoning changes had been granted in the area. But, on examination of the record shows that all except one of these changes were on the opposite, west side of York Road from applicants' property. We have held in past cases that a street or road may be a natural boundary line between two zones. Supra to H. & C. C., 235 Md. 1, 201 A. 2d 359. In Sheddenbrook Pwp. Assn. v. Hollis, 232 Md. 265, 192 A. 2d 592, we held that the existence of apartment uses on one side of the street does not alter the use of the land on the opposite side, and therefore the street is an appropriate line of demarcation. Here, there was evidence before the Commissioner and the Board from which they reasonably could and did reach their conclusions. We therefore think that the questions before them were at least fairly debatable and that the trial court actually substituted its judgment for that of the Commissioner and the Board, and that in so doing, it exceeded the proper exercise of its powers.

5. on the east side of York Road, a four lane highway also known as Route 111. The appellees purchased the property in 1956 and Dr. Barnard began the practice of dentistry, opening an office in the house in 1957, a permissive use provided he reside on the premises. The entrance to the dental office is from Croftley Road. The Baltimore County official zoning map indicates that the land on the north and south of this property, on the east side of York Road, is zoned R-6, with the exception of one small lot zoned R-A at the corner of Thornhill and York Roads. Dr. Barnard filed his application because he wished to move his family, which had increased in recent years, to a larger home but to retain the location of his office and convert the remainder of his house into apartment use.

After a public hearing the Zoning Commissioner denied the application request. His order indicated:

"Visual inspection of the property reveals that the house owned by the petitioners is part and parcel of a very fine residential development which may be described as a thriving residential development and one which is extremely well kept."

There is no reason to change the present residential classification because it is obvious that this particular portion of York Road is now being properly used for residential purposes. The only break in classification on York Road is another residential use for doctors' offices, at the corner of York and Thornhill Roads. * * *

The reclassification granted at the corner of York and Thornhill Roads was dubious at best and the many restrictions imposed by the then Board of Appeals indicates a real danger that might be caused by this reclassification. In this case it was ordered that there shall be no parking on the subject property other than that permitted for an ordinary residence. Such a restriction certainly implies that further apartment zoning would be improper.

6. Having reached this result we need not consider appellants' final argument that there was no evidence to justify appellees' request for a variance or special exception.

For the reasons set forth above, the order of the Circuit Court must be reversed with directions to reinstate the order of the Board denying the reclassification, special exception and variance.

ORDER REVERSED AND CASE REMANDED FOR THE PASSAGE OF AN ORDER REINSTATING THE ORDER OF THE BOARD. THE APPELLEES TO PAY THE COSTS IN THIS COURT AND BELOW.

7. This decision was affirmed by the County Board of Appeals. However, the Circuit Court for Baltimore County reversed the findings of the Zoning Commissioner and the Board.

The appellants in this appeal first argue that the lower court exceeded the limits of its scope of review. They maintain that since the Board split one to one in its decision, the case was before the Circuit Court on exactly the same footing as if the decision had been unanimous. However, the appellees argue that the Court below has an unlimited review. It has been clearly set out by this Court that on appeal from a split decision from the Board the Circuit Court can not make its own independent findings of fact, but must resolve whether the decision of the Board is or is not in accordance with law. Thus, it must decide as if the appeal had been taken from a majority decision by the Board. The function of the reviewing court is limited and it may act aside as not in accordance with law and action of the Board which is arbitrary, illegal or discriminatory. It is not the function of the reviewing court to make or remove but only to decide whether the Board properly applied the applicable law to the facts. The Court can not substitute its own judgment for that of the Board if the question is fairly debatable. If there is room for reasonable debate as to whether the facts justify the Board in its decision, it must be upheld. It is only where there is no room for reasonable debate, or where the record is devoid of supporting facts, that the Court is justified in declaring the legislative action of the Board arbitrary or

**NO PLAT
IN
THIS FOLDER**

MICROFILM