LUTHERVILLE COMMUNITY ASSOCIATION, IN THE end PETER J. KARNOSKI CIRCUIT OURT BALTIMORE COUNTY AT TAN NATHAN H. KAUFMAN, ST AL, Constituting the COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY File No. 2988 Docket Misc. Folio 369 ROIERT A. WINGARD and SLIZABETH W. WINGARD (Intervenors) : August h. 196h ----

Before: HONORABLE JOHN GRASON TURNBULL, Judge. 0 0 0

> (Counsel made opening statements to the Court,) THE COURT: Of course, the difficulties are

twofold; first, that if additional evidence is permitted at this level, then the Court is deciding a case which was not heard by the Board of Appeals. And the Court of Appeals very recently has rebuked me for deciding a case in a situation where one member of the Board of Appeals disqualified himself and the other two members divided one to one and I decided it on the record. The Court of Appeals,

very strongly, as I say, rebuked me for doing so and said that it should have been decided on the record before the Zoning Commissioner, although the Court of Appeals didn't know there is no record made before the Zoning Commissioner.

The second problem is that the power to remand, unquestionably, is present, but that could lead into a never-ending battle of delaying tactics, because a party, either the applicant or the protestant, could offer additional evidence at this level, have it remanded, the Board hear it again, on the basis of the additional evidence bring it back up here, offer additional evidence, be remanded again. So that the nover to remand, in my opinion, is one which should not be lightly used.

Under those circumstances, gentlemen, unless the proffer is one which is absolutely vital to the protestants' case, the Court will sustain the objection to

MR. POWER: If it please the Court, I do not believe the proffer is necessary. We withdraw the proffer. (Counsel made further argument to the Court.)

THE COURT: It is stipulated that the adoption of the zoning map covering the area involved was November 1h. 1955.

MR. ARMIGER: Your Honor, the only cause for delay -- I questioned the date. It seems that Mr. Power's date is the date on the map, and possibly the transcript is in error. One of the witnesses testified that the 8th District map of which we are speaking was adopted April 12, 1956. It is not too material, as far as the Appellees are concerned.

THE COURT: Well, it would have effect only in the event there was any change between November 155 and April 156.

MR. ARMIGER: It doesn't seem to be a highly significant date from our standpoint.

MR. POWER: By way of clarification, the opinion read into the record refers to the adoption of the 8th District map on April 12, 1956, and that is when the 8th District map was adopted, all but that part of the 8th District lying to the south of Seminary Avenue, which was adopted as a part of the 9th District map on November 14, 1955. But the difference in those two dates is of no significance

in that there are no changes.

I wonder if we could also further stipulate this map shows the Wingard property being goned RIO as of that date?

MR. ARWIGER: Certainly.

(Counsel made further argument to the Court.) 0 0 0

THE COURT: I don't think it is necessary to file a reply brief. Mr. Power. Mr. Armiger's memograndum largely simply points up what he said in his oral argument, and I am confident that that is what would be done if you filed a being .

It has been said many times in Beltimore County that the Circuit Court in a zoning case is simply a whistle stop on the way to the Court of Appeals, and I guess that will be the situation in this one too.

times said that unless the ruling of the Board is arbitrary, filegal, capricious or fraudulent, and unless there is no evidence upon which a reasonably debatable decision could based, that then the Court should not interfere with the

The Court of Appeals has many, many, many

PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:
Mrs. Elizabeth S. Horn, Earl

I, or we K. Seybert and Betty E. Seyberth owner S. of the properly situate in Baltimor his wife. 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 re-classified, pursuant z () R-A zone; for the following reasons:

> (a) Error on the original Land se Map as exemplified by

(b) Change in neighborhood

See Attached Description

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

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 Balti

Elizabeth S, Horn, 323 Lincoln Ave. Betty F. Seybert Contract purchaser Address . Address, 3191 Lincoln Avenue Baltimore, Maryland

John Warfie of Winning Attorney 406 Jefferson Building Towson 4, Maryland VAlley 5-7666 ORDERED By The Zoning Commissioner of Baltimore County, this. 31st

... 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 throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore M. JUL 31'64 10th day of Scotember , 1964 ... at 100 o'clock Description of the Property of Earl K. Seybert et ux and Calvin L. Horn et ux to be rezoned from R-6 to R-A

June 26, 1964

Beginning for the same at a point on the south side of Lincoln Avenue as widened to 50 feet, said point of beginning being SF (distant 254 feet more or less measured westerly along said south side RPof Lincoln Avenue from the west side of Lutherville Road extended northerly, said point of beginning being on the first or South 25° 47' West 620 foot line of the land conveyed by Matilda Pearle Thomson to Earl K. Seybert et ux by deed dated October 11, 1949, and recorded among the Land Records of Baltimore County in Liber T.B.S. 1779, folio 266, and running thence binding on part of said first line South 25° 47° West 429.00 feet, thence binding reversely on the third and second lines of the land conveyed by Earl K. Seybert et ux to G. Clyde Andrew by deed dated June 9, 1961, and recorded among the Land Records of Baltimore County in Liber W.J.R. 3851, folio 440 the two following courses and distances viz: first North 64° 04' Wust 150.00 feet and second South 25° 47' West 165.70 feet, thence binding on the third through the sixth and part of the seventh line of the land conveyed by S. Edward Brillhart et ux to Calvin L. Horn et ux, by deed dated October 6, 1950, and recorded among the Land Records of Baltimore County in Liber T.B.S. 1888 folio 334, the five following courses and distances viz: first North 60° 40° West 291.75 feet, second North 13° 41° East 310.21 feet, third North 22° 41° East 118.79 feet, fourth North 13° 41' East 82.50 feet, and fifth North 31° 11' East 73.89 feet to intersect the said south side of Lincoln Avenue as widened to 50 feet, thence binding on said south side of Lincoln Avenue South $64^{\rm o}$ 04° East 501.48 feet to the place of beginning.

Description of the Property of Earl K. Seybert et ux and Calvin L. Horn et ux to be rezoned

June 26, 1964 Shaet 2

Containing 5.99 acres of land more or less. For title see the two following deeds:

MAP 1. Deed from Matilda Pearle Thompson to Earl K. Seybert, #9 et ux, dated October 11, 1949, and recorded among the Land Records 557.3of Baltimore County in Liber T.B.S. 1779, folio 266.

2. Deed from S. Edward Brillhart et ux to Calvin L. Horn 5/27/64 et ux, dated October 6, 1950, and recorded among the Land Records of Baltimore County in Liber T.B.S. 1888, folio 334,

ruling of the Board.

of approximately three and a half acres, from R 10 to a commercial classification, within a very short distance of this subject property. You also have affirmative testimony that if and when this property is developed, under Baltimore County regulations the developer will be required to widen Charles Street extended or that he will not get his building permits. And there is substantial evidence that all uttitties are evallable.

In this case you have a substantial change

Under the state of the record as I read it

I connot come to the conclusion that the Board's action was arbitrary, capricious, illegal or fraudulent, even though, frankly, if I were sitting as the Zoning Board I would have been inclined to deny the application. But the law is that I am not permitted to substitute my judgment for the judgment of the Board of Appeals.

For those brief reasons, gentlemen, the Court will sign an order affirming the action of the Board of Appeals. . . .

sioner of Baltimore County.

Protestant's Attorney

1/27/64

211

OF

MALTINGRE COUNTY

************** The petitioner seeks a reclassification from an R-10 Zone to

an R-A Zone for property located on the southeast corner of Lincoln and Front Avenues in the Righth Election District.

The testimony and evidence produced at the hearing failed to show an error in the original soming or such a substantial change in the character of the neighborhood to justify the resoning sought.

For the sforegoing ressons, it is CRDERED by the Deputy Zoning Commissioner of Beltimore County, this 23 day of September, 196h, that the above reclassification be and the came is hereby DUSTED and that the shows described property or area be and the par is hereby continued as and to remain an R-10 Zone.

#65-78R

REFORE RE: PETITION FOR RECLASSIFICATION : from an R-10 zone to an R-A zone, SE corner Lincoln and COUNTY BOARD OF APPEALS OF 8th District Elizabeth S. Horn, Earl K. Seybert, BALTIMORE COUNTY SEC. 3-C

Betty E. Seybert, Petitioners No. 65-78-R DA NW-12A

OPINION

This case involves a petition for reclassification from an R-10 zone to an R-A zone on the south side of Lincoln Avenue in Lutherville between that street and the commercially zoned property adjoining the Baltimore County Beltway. It is contiguous to and of exactly the same topography as the property which was the subject matter of the petition of Wingard, et al, which was granted by the Zoning Commissioner; this Board; and affirmed by the Circuit Court and the Court of Appeals of Maryland in the case of Luthermunity Association vs. Wingard 296 September Term 1954. All of the facts which applied to the Wingard case also apply to the present case and at a very short hearing before the Board on August 26, 1965 the parties, petitioners and protestants, appeared and made a number of stipulations which were confirmed by several of the protestants who took the witness stand and the entire record of the Wingard case was entered as a petitioners' exhibit in the within case

It was agreed that the Board would grant the rezoning of a portion of the property south of the 100 foot strip on the south side of Lincoln Avenue which was to remain as R-10 and to be used only for cottage development. Stipulation of counsel went directly into the record of the case and a copy of the same is attached to this Opinion and is to be considered as a part thereof as though fully set out herein. It suffices to note that the petitioners have stipulated that they will enter into properly recorded restrictive covenants running with the land to guarantee that the 100 foot buffer strip shall remain in an R-10 category and shall be developed in single family cottage units. The Board, therefore, will grant the reclassification of such portion of this property that lies south of the 100 foot strip described in a metes and bounds description furnished to the Board by the petitioner

Description of 100 Foot Strip to Remain in R-10 Zone Horn - Saybert Property

September 7, 1965

Beginning for the same in the center of Lincoln Avenue 40 feet wide at the end of the last or North 31° 11' East 99.00 foot line of that parcel described in a deed dated October 6, 1950, from S. Edward Brillhart et ux to Calvin L. Horn et ux and filed among the Land Records of Baltimore County in Liber T.B.S. 1888 folio 334 and running thence South 64° 34' East in the center of said Lincoln Avenue and binding for part of the distance on the first line in said deed and binding for part of the distance on the last or South 64° 04' East 150.00 foot line of that parcel of land described in a deed dated October 11, 1949, from Matilda Pearle Thompson to Earl K. Seybert et ux and filed among the Land Records of Baltimore County in Liber T.B.S. 1779 folio 266 in all 499.12 feet thence binding on part of the second line in said last mentioned deed South 25° 47' West 100.00 feet, thence parallel to and distant 100 feet southwesterly measured at right angles to the centerline of said Lincoln Avenue North 64° 04' West 508.51 feet to intersect the sixth or North 28° 41' East 82 feet 6 inch line in the above first mentioned deed to Calvin L. Horn, thence binding on part of said sixth line North 28° 41' East 1.42 feet to the end thereof, thence binding on said last line in said first mentioned deed North 31° 11' East 99.00 feet to the place of beginning.

Containing 1.157 acres of land more or less.

#65-7BR July 30, 1964 BALTHORE COUNTY OFFICE OF PLANNING AND ZONING

COUNTY OFFICE BUILDING TOMSON 4, MARKIAND

John Marfield Arriger, asq. h05 Jefferson Building Tomon, Maryland 21204

RA

#9

SE(1.3.C

The Zening Advisory Cormittee has reviewed the subject petition and makes the following comments:

OFFICE OF PLANTING & ZATION THAFFIC E GIMERRING

Access by Front Avenue and Lincoln Avenue is considered insdequate.

FIRE BURGAU Will submit comments at later date.

The following mambers had no comment to make: Medevalopment & Rehabilitation Commission State Road, Cormission Bureau of Triffic Engineering Fire Dureau Industrial Development Commission

Yours very truly.

Chief of Permit and

Horn-Seybert - No. 65-78-R

and prepared by George W. Stevens Associates, Engineers and Surveyors, such strip to remain in the R-10 classification in accordance with the terms of the stipulation referred to above

ORDER

For the reasons set forth in the aforegoing Opinion, it is this 1977 day of October, 1965 by the County Board of Appeals, OR DERED that the reclassification petitioned for, be and the same is hereby GRANTED for all of the subject property other than the 100 foot strip described in the metes and bounds description attached hereto, such portion to remain in the R-10 classification.

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

William S. Baldwin, Chairma

and the bright the bright by t

#65-781-

Date August 5, 1964 Mr. James A. Dyer, Chairman Zonling Advisory Committee Capt. Paul H. Reincke FROM

Elizabeth S. Horn Lincoln Avenue District 9 July 24, 1944

SE1.3-C

11 11

#9

Water mains, noters, and fire hydrants shall be of an approved type and installed in accordance with the 1954 edition of the Beltimore County Standard Lesign Manual. Spacing of hydrants is 500 feet apart at necessred along an improved road

Contact Cast. Paul H. Reincke at Valley 5-7310 for assistance

PHR/bbr

BALTIMORE COUNTY, MARYLAND INTER-OFFICE CORRESPONDENCE

Date August 5, 1964 Mr. James A. Dyer, Chairman Zoning Advisory Committee FROM Cant. Paul H. Reincke

SUBJECT Elizabeth S. Horn Lincoln Avenue District 9 July 2h, 1964 M1 A12 # 9 SE1.3-6

#65-78P-

Water mains, reters, and fire hydrants shall be of an approved type and installed in accordance with the 1964 edition of the Raltinore County Standard Design Manual. Spacing of hydrants is 500 feet apart as measured along an improved road and within 300 feet from any dwelling.

Contact Capt. Paul H. Reincke at Valley 5-7310 for assistance

PHR/bbr

LAW OFFICES JOHN WARFIELD ARMIGER COCKEYSVILLE, MARYLAND 21030

September 10, 1965

Board of Appeals for Baltimore County County Office Building Towner, Maryland 21204

Re: Elizabeth S. Horn, et al File 65-78-R

Gantlement

As per request of the Board on the day of the Hearing, I hereby furnish a metes and bounds description of the one-hundred foot buffer strip which the petitioners propose remain in an R-10 category.

As you have already been informed, this proposal is entirely acceptable to the petitioners,

Very truly yours,

cc: Gordon Power, Esquire 34 West Chesapeake Aver Towson, Maryland 21204

Bed 9-14-65

CERTIFICATE OF POSTUAG ZONING DEPARTMENT OF BALTIMORE COUNTY

Terrson, Maryland Date of Posting August 251, 251, 1904.

Posted for __ Seplansification for S-1. holi.i.

Petitioner Elizabeth S. Hora, at

Location of property SE/Cor. of Lincoln and Fr. A. Aven.

Location of Signar (1) 3/R mar. Lincoln : Franc. Aven. (1) w. a. Lincoln Aven. Lin S/Front Are. (3) S/s Lincoln Ave. 700' E/Front Are.

Remarks: Posted by Signature Data of return August, St., 18ed.

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

FO.Mr. John G. Rose, Zoning Commissionquate. August 28, 1964 FROM Mr. George E.Gavrelis, Director

SUBJECT #65-78-R. R-10 to R-A. Southeast corner of Lincoln and Front Avenues. Being property of Elizabeth S. Horn et al.

8th District

Thursday, September 10, 1964 (1:00 P.M.) HEARING:

The staff of the Office of Planning and Zoning has reviewed the subject petition for reclassification from R-10 to R-A zoning and has the following advisory comments to make with respect to pertinent planning

- It is the understanding of the planning staff that the ad-Johning property was greated but famility in part for apartments of the planning property by the circuit Court. The Circuit Court affirmed the order of the Board of Appeals which ever tained N-10 Zoning along the Lincoln Avenue frontage of that property and granted apartment coming on the Balance.
- property and granted apartment zoning on the balance.

 1. From a planning viewpoint, the rezoning of the adjacent property (59-26) has little or one effect on the land was potentially the property of the part of the property of the part of the property of the part of the property of th

RE: PETITION FOR RECLASSIFICATION R-10 TO R-A ZONE S/E Corner Lincoln and Front Avenues- 8th Dist. Elizabeth S. Horn, etal Petitioner

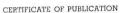


ORDER OF APPEAL

MR. CLERK:

Please enter an Appeal to the Baltimore County Board of Appeals in the above-captioned case.

> Attorney for Petitioners 406 Jefferson Building Towson, Maryland 21204 VA5- 7666



TOWSON, MD...... August 21, 19 64. THIS IS TO CERTIFY, that the annexed advertisement was ofx . 1 time xexmocree weeks before the ... 10th day of _____September _____19.64 the *** publication appearing on the 21st day of Sugart

THE JEFFERSONIAN.

Cost of Advertisement, \$...

RS: PRITICE FOR RECLASSIFICATION
R-10 to R-A Zone
SE corner of Lincoln and Front
Avenues- bth Pistrict
Elizabeth S. Horn et al-



......

The patitioner sasks a reclassification from an S-10 Zene to an R-A Zone for property located on the southeast corner of Lincoln and Front Avenues in the Eighth Election District.

The testimony and evidence produced at the hearing failed to show an error in the critical coming or such a substantial change in the character of the neighborhood to justify the rescuing anotht.

For the aforegoing reasons, it is GUDDUED by the Deputy Zening Contissioner of Beltimore County, this 23 day of September, 126b, that the above reclassification be and the same in hereby DESIGN and that the above described property or area be and the same is hereby continued as and to remain an R-10 Zone.

BEFORE THE 5-78-8 N THE MATTER OF ZONING COMMISSIONER THE PETITION OF ELIZABETH S. HORN, Et Al for Reclassification from an R-10 Zone to an R-A Zone OP BALTIMORE COUNTY Southeast corner of Lincoln and Front Avenue 8th District

APPEARANCE

Please enter the appearance of POWER AND MOSNER for the following protestants:

> Peter J. Karnoski Helen D. Karnoski, His Wife 308 Lincoln Avenue Lutherville, Maryland

Carl W. Sprague Frances F. Sprague 325 Seminary Avenue Lutherville, Maryland

Lutherville Community Association, Inc. A Body Corporate

> POWER AND MOSNER GORDON G. POWER 34 West Chesapeake Avenue

Towson, Maryland 21204 VAlley 3-1250

65-78-8

BALTIMORE COUNTY, MARYLAND

No. 27512 OFFICE OF FINANCE DATE 10/20/64

Division of Collection and Receipt COURT HOUSE TOWSON 4, MARYLAND

John Wurfield Armiger, Esq., Jafferson Building

DILLED Office of Planning & Zening 119 County Office Bldg., Towson 4, Md.

QUANTITY	CCOUNT NO. 01-6	BETACH UPPER ELOTION AND RETURN WITH YOUR RE-ITTANCE	COST
	Cost of - No. 65-78-R	Appeal - Elizabeth S. Horn	\$70,00
		PAID - Edition County (Ad Office of No.	and a second
		102264 ests * 27512 TEP-	000
	3		- etione

PLEASE RETURN UPPER SECTION OF THIS BILL WITH YOUR REMITTANCE.

BALTIMERE COUNTY, MARYIMND OFFICE OF FINANCE

Division of Collection and Receip COURT HOUSE TOWSON 4. MARYLAND

To: John Warfield Armiger, Esq. 406 Jefferson Building Towson, Md. 21204

OLLED Zoning Separtment of altimore County

No. 25256

DATE 8/12.6L

NTITY	OZ-622 CETACH LIPPER EYCE-DN AND RETURN WITH YOUR DESIGNATURE CETACH LIPPER EYCE-DN AND RETURN WITH YOUR DESIGNATION.	\$50,00 COST
	Petition for Reclassification for Elizabeth 5. Hern, et al	50.00
	6-1264 02.9 • 15254 NA-	50.00
	Ā.	

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

CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY Towson, Maryland

DistrictSVR	Date of Posting AVENSY 224 1994			
Posted for: Finitussification.from.dsl0.in	<u> </u>			
Petitioner:Ellisabeth.SMors, et. al				
Location of property: RS/mor. of lineals and Stant Aven.				
tocation of Signs: [1] . 3/A. co.r Lincoln . E. Fron	. Aven (2). 9/A. Liscoln. Ave 300!			
E/Front Ave. (3) 5/2 lincoln Ave. 7004	E/Erant. Ave			
Remarks:				
Posted by Signature	Date of return 808483, 27, 1804			

Towson, Maryland Date of Posting Petitioner: How - Asu 1417 Location of Signs: 3/5 late Vention & good all. Date of return NOV 5 176 9

CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY

Owners Nome: Elizabeth Horn, et al Reviewed by: Anus & New

August 12, 1964

John Warfield Armiger, Eeq. hof Jefferson Building Tosson, Md. 2120h BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

County Office Building 111 W. Chesopeake Avenue Towson 4, Maryland

Your petition has been received and accepted for filing this 31st day of July

