1, or we Caul E. Shefflett, et olegal owner. S of the property situate in Baltimore ASEA County and which is described in the description and plat attached hereto and made a part hereof, 521.1 E hereby petition (1) that the zoning status of the herein described property be re-class to the Zoning Law of Baltimore County, from an 12-40 9/20/4 _zone; for the following reasons: m.H.

1. Ever is original 2000 -3. and for such other wowen as this came my require

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. Junk YARD

Property is to be posted and advertised as prescribed by Zoning Regulations reffication and/or Special Exception advertising posting, etc., upon filing of this petition, and further agree to and are to be bound by the roning tions of Baltimore County adopted pursuant to the Zoning Law for Baltimore Betty a Shifflett.

County Level of Water the Arman M. Makeyetter the Level of the Level o

woodstock my H. Komp mar Samil mac vanil and Page Address .. 712 7m But Y, Su

ner of Baltimore County, this 11th ORDERED By The Zoning Co

, 196, 4, 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 nore County, that property be posted, and that the public hearing be had before the Zoning



Wrightmill Roay

Woodstock 2

#65-102RX

WESTERN

AREA

SEL.I-B

mH-X

9/28/14

m 36e. 1577

Billiam A. Magnadier County Surveyor

For purpose of Zoning Only

ALL that piece or parcel of land situate lying and being in the Election District of Caltimore County, State of Haryland and described as SPECIAL EXCEPTION SPECIAL EXCEPTION OF JUNK YARD

EMPINITING for the same at a point distant 333.61 feet measured south degrees 53 minutes west from the beginning point in the above description of the land containing 30.46 acres more or less of which this description is a part running thence parallel to and 300.00 feet southerly measured at a right angle from the eleventh line in the aforesaid herein above description south 60 degrees 2h minutes 18 seconds west 1,81.32 feet thence parallel to and 300.00 feet northeasterly measured at a right angle from the tenth line therein south 11 degrees 40 minutes 06 seconds east 565.42 feet theree south 78 degrees Oh minutes east 373.81 feet thence parallel to and 300.00 feet westerly measured at a right angle from the second and first lines in said herein above description the following two courses and distances wis: north 25 degrees 3h minutes 02 seconds west 363.50 feet and north 20 degrees 46 minutes 35 seconds east 395.22 feet to the place of beginning.

Containing five acres of land.



0 0 Besistration No. 1572 Halley 3-3000 Balley 3-2182

> William M. Maunadier County Surbeger

> > For purpose of Zoning Only EHO TO MH

MH-X Allthat piece or parcel of land situate lying and being in the S 9/2/64 Election District of Bultimore County, State of Maryland and described a

BEGINNING for the same in or near the easterly side of Wrights Mill He the beginning point of the land conveyed by William E. Riley, widower, to Gilbert K. Shifflett and wife by a deed dated December 1st 1960 and recorded among the land records of Baltimore County in Liber T.B.S. No 1902 folio 281 etc., said beginning point also being distant 1068 feet more or less measured southerly along Wrights Hill Road from the center of the existing paving of Davis Avenue running thence as surveyed by J. H. Rife, Registered Surveyor, in the year 196; and referring the courses of this discription to Solar Observation true meridian as established by said J. H. Rife, and leaving Wrights Hill Road and binding reversely on the last and eleventh lines in said deed the following two courses and distances wis: south 20 degrees 48 minutes 35 seconds west 412:56 feet to the end of said eleventh line and south 25 degrees 36 minutes 02 seconds east. h62.2h feet to the end of the tenth line therein and to a point in or near the center of Wrights Hill Road thence binding reversely on said tenth line and in or near the center of said road south 10 degrees 34 minutes 02 seconds east 9.90 feet to intersect the beginning of the third line of the first parcel of land conveyed by Gilbert K. Shifflett and wife, et al to State of Maryland by a deed dated September 16th 1959 and recorded among said land records in Liber W.J.R. No 3617 folio 58k etc., thence binding on said third line as surveyed aforessid south 36 degrees Oh minutes Oh seconds west 333.27 feet to the end

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DE PETITION FOR RECLASSIFICATION .

from an R-40 zone to a M.H. SPECIAL EXCEPTION for a

Junk Yard E/S of Wrights Mill Road 1068

South of Davis Avenue, 2nd District Cecil E. Shifflett, et al

special exception for a Junk Yard.

Registration No. 1577

\$65-102 PX

Western

SM. 1-B

William M. Magnadier County Surveyor releval Engineer and Kanb Sur Coleson. Mb. 21204

said third line thence north 10 degrees 39 minutes 43 seconds east 16.65 feet to Sec. + B the beginning of the last line of the second parcel of land in said deed from 9/20/14 Gilbert K. Shifflett ani wife, et al, to State of Maryland thence binding on said last line north 83 degrees 45 minutes 47 seconds west 421.39 feet to the on of the last line of the second parcel of land conveyed by Edward J. Makowski and wife, et al, to State of Haryland by a deed dated June 30th 1960 and recorded among said land records in Liber W.J.R. No 3725 folio 546 etc., thence binding reversely on said last line north 72 degrees h9 minutes 57 seconds west 734-47 feet more or less to the end of the fourth line in the first herein mentioned deed from Riley to Shifflett thence binding reversely on said fourth line and reversely on a part of the third line therein the following two courses and distances wis: north 6 degrees 40 minutes 03 seconds east 175.18 feet to the end of said third line am south 72 degrees 39 minutes 08 seconds east 260.53 feet therce leaving said third line and the survey made by J. H. Rife and running for the following two lines of division now made through the land of Edward J. Makowski and wife, et al, as now surveyed wis: north 11 degrees 40 minutes 06 seconds west 858.21 feet and north 80 degrees 2h minutes 18 seconds east 1237.83 feet to intersect the twenty eighth line of the land conveyed by Edward J. Kakowski and wife to Leonard J. Kakowski and wife by a deed dated June 18th 1958 and recorded among said land records in Liber U.L.B. No 3366 folio 5k3 etc., thence a part of binding reversely on said twenty eighth line and reversely on a part of the twenty seventh line therein the following two courses and distances viz: south 62

Registration No. 1577 Phones | Halley 3-2000

\$65-102RX

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ALLA



William M. Mannadier County Surveyor

WISTERH AL CA degrees 11 minutes 25 seconds east 68.21 feet to the end of said twenty seventh line and south 20 degrees he minutes 35 seconds west 330.00 feet to the plate of SEI. I-B beginning. 9/24/4

0 0

Phones Balley 3-3000 Balley 3-2382 Narthfield Senary

#65-102 PX

Containing 30.46 acres of land more or less



the inventory in 1965 was approximately \$225,000 and that for the same year he had a payroll of approximately \$60,000. He further stated that he has spent \$20,000 since 1956 on new equipment, tools, and an office building, and that as recently as 1963 he spent \$12,000 for regrading the property, paving the access road, and installing a drainage system. He further stated that in 1962 he was not aware of the removed land use man that was under nsideration by Baltimore County and subsequently adopted by the County Council in wember of 1962; also he was not aware of County Council Bill No. 140 (subsequently enacted as Section 200.16 of the Zoning Regulations) until April of 1964 when he received a letter from the Baltimore County zoning authorities telling him that he was obliged to close out his business by November 17, 1964.

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George Gavrelis, Director of Planning for Baltimore County, was called to testify by the protestants in this case. He testified that the Planning Staff is opposed to the reclassification because of the primarily rural atmosphere of this area, however, he also stated that the Staff was not aware of the existence of the junk yard on the subject property when it studied the area in connection with the preparation of the land use map. He caree the County presently has a substantial problem in disposing of junk automobiles but that in 1962 the Staff did not have any needs study for automobile junk yards and that the pressure for the enactment of Section 200.16 of the Zoning Regulations banning existing junk yards in residential zones came after the Planning Board's adoption of the land use map here.

The majority of the protestants, who were residents of the neighborhood. did not seem to be opposed to the present operation conducted on the property by Shifflett, but are fearful that the reclassification of a thirty acre tract from R-40 to M-H would:

- 1. be an unwarranted intrusion of manufacturing zoning into a rural area, and,
- 2 could possibly lead to other requests for manufactur ing zoning

It may be well here for the Board to briefly cite the testimony of each of the protestants that appeared at the hearing.

Iris Sassi: Mrs. Sassi testified that she fears the rezoning of the subject tract would lead to the rezoning of the Makowski property which adjoins Shifflett. She further testified that she did not personally appose the Shiffletts, and that the business operated by Shifflett has not adversely affected her.

Clarence W. Martin, M.D.: Dr. Martin objected to the reclassification and specifically to the junk yard. He testified that he has seen cars hauled to and from the property, and that odd and bizarre signs had been placed at the entrance road advertising the business conducted on the premises. He also cited the narrowness of Wrights Mill Road but did state that he could not see the property from his residence.

Cecil E. Shifflett - \$65-102-RX

Edward Minor: Mr. Minor, a member of the Planning Board of Baltimore County, objected to the use of the property and cited the narrowness of the roads in the vicinity. He also indicated that he cannot see the cars from his property but that at certain times he can see the reflection of the sunlight on the metal bodies. He further stated that the junk yard cannot be seen from the Patapsco State Park property.

William A. Parr: Mr. Parr the Superintendent of the State Parks system ared opposing the petition on behalf of the State stating that he feels that the Manufacturing Heavy use potentials conflict with the State Park usage of its property to the south. His testimony indicated that no development of the State property is contemplated at this time, and that the development of the property as a park here would possibly be ten years away. He also indicated that he objected to both phases of the petition but objected mor strenuously to the thirty acre M-H zone.

Myrtle E. Saurer: This witness resides on Dogwood Road approximately a mile east of the property and while she apparently cannot see the subject property she generally objects to the petition.

Harriett Saylor: Mrs. Saylor lives on Domenad Road approximately a mile and a quarter from the property and stated that on occasion she could see smoke rising from

Mrs. Conway Robinson: Mrs. Robinson lives on a farm west of the subject property and is generally opposed to the petition although she did state that the present operation on the property did not bother her.

Mrs. Quail: Mrs. Quail is the owner of the thirty acre tract on Wright Mill Road across from Dr. Martin, one of the other witnesses, and is approximately onehalf mile from the subject property. She objected primarily on the arounds that she wants the area to remain strictly residential.

There was no testimony of any substantial change in the character of the neighborhood since the adoption of the map in 1962, however, the Board feels that the zoning on the subject property is erroneous in that the Planning Staff, prior to the adoptio of the map, was apparently unaware of the existing commercial use on the property, and consequently did not even consider recommending zoning on the property that would allow the commercial use of the land to continue, even though apparently (from Cecil Shifflett's testimony) in 1962 the petitioner had an inventory of cars valued at \$97,000 located on the property. It seems to the Board that to properly adopt a land use map the County should endeavor to determine existing land uses of properties, and in cases where feasible, adopt zoning that would allow existing businesses to continue their operation as long as they are not detrimental to the general health, safety, and welfare of the public. The testimony in this case indicated that very few, if any, persons can actually see the junk

Cecil E. Shifflett - #65-102-RX

OPINION The petitioners in this case seek a reclassification from an R-40 zone to a Manufacturing Heavy (M-H) zone of a tract of ground of approximately 30.5 acres north of the Patansco State Park and west of the Wrights Mill Road in the Second Election District of Baltimore County. The petitioners also request a special exception for a Junk Yard on a five acre parcel in the center of the thirty acre tract mentioned above. The special excention sought is in accordance with Section 408 of the Zonina Regulations, and in order t comply with the setback requirements set forth in Section 408.2 the property owners are required to seek a rezoning of the entire thirty acre tract to achieve their basic request for the

REFORE

COUNTY BOARD OF APPEALS

BALTIMORE COUNTY

No A5-102-RX

The zoning map in question was adopted by the Baltimore County Council in November of 1962. The zoning on the cost, north, and west sides of the subject property is R-40 as is the great majority of all the land on the zoning map for this area. The south boundary of the property borders on property owned by the State of Maryland which is part of the Patapsco State Park. The State of Maryland acquired seven acres of property from the petitioners in 1958 for the park and at that time apparently was well aware of the commercial use on the remaining Shifflett property

The petitioners produced numerous witnesses who have been familiar with the property doting back to the late 1930's and they testified, without contradiction, that the property has been used continuously as an automobile junk yard since, at least, prior to the enactment of the zoning regulations for Baltimore County in 1945. The Board finds as a fact that the property has been used as an automobile junk yard since prior to 1945 and if it were not for Section 200. 16 of the Zoning Regulations it would presently enjoy a legal nonconforming use as a junk yard. Section 200.16 of the Zoning Regulations, which was enacted by the County Council on November 17, 1962, provides that any existing junk yard in a residential zone shall be eliminated within two years of the date of its enactment The Board understands from counsel that the constitutionality of this amendment is presently being attacked in the Circuit Court for Baltimore County but has not yet been decided.

Cecil Shifflett, one of the petitioners in this case, testified at length as to the operation of the business conducted on the property. He testified that the value of

Pursuant to the advertisement, posting of property, and public hearing on the above petition and it appearing that by reason of stification should be had; and it further appearing that by reason of a Special Exception for a ... It' IS ORDERED by the Zoning Commissioner of Baltimore County this., 196...., that the herein described property or area should be and zone, and/or a Special Exception for a. should be and the same is 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 nd it appearing that he moses of the patitioners did not prove an error in zoning.... the subject property on the Western Are. No. the above re-classification should NOT BE HAD, and see the Special Property IT IS ORDERED by the Zoning Commissioner of Baltimore County, t ..., 196.4., that the above re-class DENIED and that the above described property or area be and the same is hereby continued as and ander the Special Exception for..... be and the same is hereby DENIED

Cecil E. Shifflett - #65-102-RX

operation on the tract, and, as cited above, several witnesses testified that they knew of the use of the property but that it had not adversely affected them. Indeed, the overlooking of the existing use of this property by the Planning Staff would indicate that the junk operation is so remote and screened from public view that very few people are even aware of its

-4-

The Board feels, for reasons cited above, that there is an error with regard to the zoning of the subject tract with regard to the five acre parcel on which the special exception is requested, and not with regard to the remaining twenty-five acres on which the requests M-H zoning. If the petitioner is to continue his present operation or the five acre parcel, which we feel should be properly M-H, it will be necessary for him to obtain setback variances from the adjoining R-40 zone, as Section 408.2 of the Zoning Regulations requires a setback of at least 300 feet from any other zone. If the petitioner has to comply strictly with this regulation (408.2) then the five acre parcel would be totally unusable to him as a junk yard. We feel that strict compliance with the aforementioned Section would result in a practical difficulty or an unreasonable hardship to the petitioner in that he would be completely deprived of the use of his property. Further, we do not feel that any such variance would violate the spirit and intent of the Zoning Regulations as the setback variance that would be required is a setback only from a zoning line, and the urrounding property is all awned by the petitioner, therefore, such a setback variance could harm no one except the petitioner himself.

to an M-H zone for the entire 30.5 acres should be denied, but that the five (5) acre parcel of ground on which is requested both a reclassification and special exception should be granted. The testimony does not indicate that the special exception sought would in any way violate Section 502.1 of the Zoning Regulations, therefore, the special exception requested will be granted. We will also grant the petitioner a variance from Section 408.2 of the Zoning Regulations allowing a zero foot setback instead of the required 300 foot setback from the surrounding R-40 zone.

ORDER

For the reasons set forth in the aforegoing Opinion, it is this 25th day of A.av. 1966 by the County Board of Appeals, ORDERED that the reclassification from an R-40 zone to an M-H zone in accordance with the attached legal description, be and the same is hereby granted, and that the petitioner is granted a variance from Section 408.2 of the Zoning Regulations allowing a zero foot setback instead of the required 300 foot setback from the surrounding residential zone for the storage of automobiles not in running condition and further that the special exception requested be and the same is hereby granted subject

Cecil E. Shifflett - #65-102-RX

to the following restrictions:

1. That a stockade type fence shall completely surround the property and dense evergreen screening, at least six (6) feet in height and at least five (5) feet in width, shall be planted outside the aforesaid fence

-5-

- That burning of automobiles shall take place on the property no more than once each month, and then only on week days and days on which the wind velocity shall be at least ten miles an hour or more to rapidly dissipate any smoke emitting from such burning
- That no public address system shall be used on the property in conjunction with the operation conducted thereon
- That there shall only be one sign at the entrance of the property advertising the business conducted thereon, and such sign shall be unlighted, constructed of wood, and not larger than twenty (20) source feet

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

i - mHe

CECIL E. SHIFFLETT FT AL

à NO 45-102-94

E/S Wrights Mill Road 1068' S. of Davis Avenue 2nd District

Reclassification from R-40 to M.H. 30.46 Total Acre

Special Exception for a Junk Yard on 5 acres of subject property

Aug. 14, 1964 Petition filed Dec. 1 Reclassification & SE DENIED by Z.C. * 26 Order of Appeal to County Board of Appeals filed Order of Board GRANTING reclassification on five (5) May 25, 1966 Order for Appeal filed in Circuit Court by Geo. W. White, Esq., for Minor, et al. (File *3559) June 23 Order for Appeal filed in Circuit Court by
H. Emalie Parks, Esq., for Greater Patapsco
Community Association, et al. (File #3564) E Nov. 14, 1967 Board AFFIRMED - Judge Maguire (both appeals) Order for Appeal to Court of Appeals filed Jan. 15, 1969 Board and Circuit Court REVERSED - Court of Appeals (*7) Concurring Opinion of Judge Barnes "because I <u>must</u> as a result of the doctrine of <u>stare</u> decisis.

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CIRCUIT COURT

WILLIAM S. BALDWIN, JOHN A. SLOWIK AND PAUL T. MCHENRY, JR. CRCIL B. SHIFFLETT ET AL

BALTIMORE COURTS

8/109/3564

APPEAL

Kindly enter an appeal to the Court of Appeals of Maryland from the Order of this Court dated November 14, 1967 affirming the decision of the County Board of Appeals of Baltimore County dated May 25, 1966 in this case.

> George W. White, Jr. Buckmaster, White, Mindel & Clarke Attorneys for Petitioners

I HEREBY CERTIFY that a copy of the above was mailed this /2 day of December, 1967 to Richard D. Payne, Esq., attorney for Intervenor and to the County Solicitor for Baltimore County.

for Attorneys for Petitioners

H. KEMP MACDANIEL ()



Baltimore County Office of Planning & Zoning County Office Building 111 W. Chesapeske Avenue Baltimore, Maryland 21204

Attention: Mr. John G. Rose, Zoning Commissioner

Re: Petition for Reclassifica-tion from R-10 to M-H and Special Exception for Junk Yard - E.S. Wrights Mill Rd. 1065 3. Davis Ave., 2nd District - Cecil E. Shiff-let, et al., Petitioners -No. 65-1026KX

Please enter an appeal to the Baltimore County Zon-ing Appeals on behalf of Gecil E. Shifflett, et al, Petitioners, from the adverse ruling of your order dated Becomber 1, 1964. Enclosed is a check in the amount of \$80.00 to cover the costs of this appeal.

> Very truly yours, MacDANIEL AND PAYNE

Alten, That amil H. Kemp MacDaniel

MICROFILMED

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO. John G. Rose, Roning Commissioner Date. September 29, 1964 FROM George E. Gavrelis, Director

SUBJECT. . 165-102-RX. R-40 to M.H. and Special Exception for a Junk Yard. East side of Wrights Mill Road 1068 feet South of Davis Avenue. Being property of Cecil E. Shifflett, et al.

2nd District HEARING:

Wednesday, October 7, 1964 (10:00 A.M.)

المعرور المراج

The planning staff is unable to comment on the subject petition within the required time. The petition was not transmitted to the staff for comment. Members of the staff are available if properly subpoenaed to present oral testimony on the subject petition.

GEG: hm

65-102-RX 9 CERTIFICATE OF POSTING DEPARTMENT OF BALTIMORE COUNT

Date of Posting SEPT 12, 19.64. Posted to RESINS LEEM & 42 to M.H. Spec. Exp. Junk your Petitioner CECIL SHIFFLETT, CTAL Location of presenty Els of WAIGHTS MULL Red 1968'S OF DAVIS AVE

ocation of Signal MALGATS MUL RA 1968' 5 0F DAVIS AUS (3+4) W/S WRIGHTS MIN ROL NO'NW OF STREAM (RRICES RUN)

4 signs

Date of return Syst 24, 1914

65-102 RX

CONTINUESTS OF BOSTIM

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EDWARD MINOR and TERESE K. MINOR, * his wife and CLARENCE W. MARTIN and EUTHA I. MARTIN, his wife * IN THE CIRCUIT COURT FOR BALTIMORE COUNTY Vs. AT LAN

WILLIAM S. BALDWIN, JOHN A. SLOWIK and PAUL T. MCHENRY, JI Constituting the COUNTY BOARD PEALS OF BALTIMORE COUNTY Misc. Docket 3550

MEMORANDUM OPINION AND ORDER OF COURT

This case involves an appeal from the County Board of Appeals of Baltimore County, which by its Order dated Hay 25, 1966, granted a reclassification of five (5) acres of a 30.5 acre tract requested in their petition, from an R-40 zone (Residence - 1 Family), to an H-H zone (Manufacturing - Heavy), with a Special Exception for a Junk Yard. Further, the Board granted a variance from Section 408.2 of the zoning regulations, aflowing a zero foot set-back instead of the required 300 foot set-back from the surrounding R-40 zone. Further, the Board imposed restrictions with respect to the use of the Junk Yard as follows:

- That a stockade type fence shall completely surround the property and dense evergreen screening, at least six (6) feet in height and at least five (5) feet in width, shall be planted outside the aforesaid fence.
- 2. That burning of automobiles shall take place the property no more than once each on the property no more than once each month, and then only on week days and days on which the wind velocity shall be at least ten miles an hour or more to rapidly dissipate any smoke emitting from such burning.
- That no public address system shall be used on the property in conjunction with the operation conducted thereon.

4. That there shall only be one sign at the entrance of the property advertising the business conducted thereon, and such sign shall be unlighted, constructed of wood, not larger than twenty (20) square feet.

The protestant plaintiffs are property owners in an

R-40 zone (Residence - 1 Pamily), whose properties are anywhere from 1/4 of a mile to 1 mile or more from the applicants' property, and have recently seen a five acre tract nearby rezoned to M-H (Manufacturing - Heavy), a Special Exception for a Junk Yard, and a zero set-back variance, rather than the required 300 foot set-back, granted by an Order of the County Board of Appeals of Baltimore County. The protestants are appealing the decision of the Board of Appeals, not especially because they are distraught at the presence of the Junk Yard, but because they fear that the potential of M-H zoning in their neighborhood opens-the door to several other possible manufacturing operations which could be far more repugnant than a Junk Yard.. M-H zoning in Baltimore County opens the door for practically any type of operation of an industrial nature. Actually, the majority of the protestants testified that they had no objection to the Junk Yard itself, which is well camouflaged by trees and the hilly topography of the land, and which Junk Yard has existed since the late 1930's. Thus the Junk Yard was in existence prior to 1945 when the zoning regulations were adopted by Baltimore County originally, and which regulations permit a non-conforming use of any properties in the County to continue after the adoption of these regulations, with some exceptions.

It is well established that the function of the Circuit Court is not to zone, and that the said Court will disturb the order of the Board of Appeals only where the question is not fairly debatable, or where there is evidence in the record of unreasonableness, arbitrariness, or capriciousness.

Pinney v. Halle, 241 Md. 236; Mothershead v. Board of County Commissioners, 240 Md. 365; City of Baltimore v. Borinsky, 239 Md. 611; Beth Tfiloh v. Blum, 242 Md. 84, etc.

We find that the question was fairly debatable and that there is no evidence that the action of the Board was unreasonable, arbitrary, or capricious.

The zoning officials will rezone if there is evidence of substantial change in the character of the neighborhood since the inception of the existing zoning ordinances, or if there is evidence of original error in the drawing of the comprehensive zoning map. Bosley v. Hospital, 246 Md. 197; Queen Anne's County v. Miles, 246 Md. 355, etc.

The evidence of original error in the instant matter seems crystal clear. The Junk Yard business was in existence long before the zoning map was adopted in 1962. Mr. George Gavrelis, Director of Planning for Baltimore County, admitted under oath, that his staff was not aware of the evistence of the Junk Vard when they prepared the zoning map. Further, the owner, Cecil Shifflett, has a substantial investment in his business approaching \$300,000. We might add that the admission of Mr. Gavrelis seems an attestation to a fine effort on the owner's part to minimize the unavoidable evesore of a Junk Yard by shielding the metal components with trees and hills. It is an effort that deems emulation by other Junk Yard owners

The Petitioner owns 30.5 acres. By granting only five (5) acre reclassification, the Board found a very equitable remedy. The remainder of the tract remains R-40, providing a buffer against the rest of the neighborhood and making it possible for the owner to operate his junkyard in the entire five acres without adhering to set-back ordinances. It would be both an unnecessary hardship and futile not to grant the set-back variance as the surrounding property remains his own and a 300 foot set-back would eliminate the Junk Yard.

The Court admits that the threat remains that the five acres could become an immensely more noxious enterprise if Shifflett should sell the five acres. We find this unfortunate but place the blame for this possible inequity on the legislative agency which wrote the inflexible area of the zoning. Again it is not the function of the Court to write zoning laws, or substitute their judgment for that of the agency. In Mothershead v. Bd. of Comm'rs., 240 Md. 365 (decided November 18, 1965), the Court, in quoting from Judge Hammond's opinion in Board v. Oak Hill Parms, 232 Md. 274 p. 283 stated at pages 371-372 as follows-

> sufficient their judgments for that of the agency and not to choose between equally permissible inferences or make independent determinations of fact, because to do so would be exercising a non-judicial role. Rather, they have attempted to decide whether a reasoning mind could reasonably have reached the result the agency reached upon a fair consideration of the fact picture painted by the entire record.
>
> "In the cases dealing with consideration of the "In the cases dealing with consideration of the weight of the evidence, the matter seems to have come down to whether, all that was before the agency considered, its action was clearly erroneous, or to use the phrase which has become standard in Maryland zoning cases, not fairly debatable"

****the courts have exercised restraint so as not to

See cases cited supra.

1003

PARKS & PARKS

The testimony before the County Board of Appeals further developed that County Council Bill No. 140 subsequently enacted as Section 200.16 of the zoning regulations phased out

tunk wards in Raltimore County as of November 17, 1964. record clearly shows that the Petitioner, Cecil Shifflett, was not were of this phasing out until April, 1964. As a result. the validity of this ordinance was contested before the Circuit Court for Baltimore County, and Judge John E. Raine, Jr. found that the ordinance was a valid exercise of police power. Or appeal to the Court of Appeals of Maryland, the matter of Cecil Shifflett v. Baltimore County, Maryland, etal, decree of Judge Raine was affirmed. The Court would like to comment on this matter of Shifflett v. Baltimore County, 247 Md. 151, decided on June 8, 1967, whereby the elimination of non-conforming As a result, uses was deemed to be constitutional and reasonable 2020006/ Cecil Shifflett would be out of business unless the reclassification and special exception were awarded to him. We feel that the harm to the applicants outweighs a very nebulous benefit to the public by disallowing this business of substantial investment and

In the appellants' memorandum, it set forth, "to sustain a piecemeal change, there must be strong evidence of mistake in the original zoning or in the comprhensive rezoning, or else a substantial change in conditions." Appellants cite The Shadynook Improvement Association v. Molloy, 232 Md. 265; Pahl v. County Board of Appeals, 237 Md. 294; Becker Company v. Jerns, 230 Md. 541; Dill v. Johar Corp., 242 Md. 16. We heartily agree with this summation of the law which disfavors spot zoning. Law of its very nature must be flexible and find exceptions. This instant case is such an exception for truly we cannot see how there could be stronger evidence of mistake in the original zoning

-5-

The County Board of Appeals also imposed stringent restrictions on the use of the five acres by screening, limitations as to burning, eliminating any public address system, and the limitation of the use of signs affecting the business. These limitations will be additional protection and safeguards to the protesting property owners

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For the reasons stated above, it is this 14th day of November, 1967, by the Circuit Court for Baltimore County, ORDERED that the order of the County Board of Appeals of Baltimore County dated May 25, 1966, be and the same is hereby affirmed.

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THE GREATER PATAPSCO COMMUNITY IN THE ASSOCIATION, INC. c/o J. AUSTIN DEITZ Davis Avenue Woodstock, Maryland CIRCUIT COURT FOR CONTANT BOBTHSON BALTIMORE COUNTY Davis Avenue Woodstock, Maryland (AT LAW) J AUSTIN DELTE Moodstock, Marylan NICHOLS WALTEMEYER APPEAL FROM THE Davis Avenue Woodstock, Maryland : COUNTY BOARD OF APPEAL WESLEY OUAIL OF BALTIMORY COUNTY Wrights Mill Road odstock, Maryla vs. WILLIAM S. BALDWIN JOHN A. SLOWIK PAUL T. MC HENRY Constituting the County Board of Appeals of Baltimore County County Office Building Towson, Maryland 2120

The above named Appellants by Parks and Parks, their attorneys being aggrieved by the action of the County Board of Appeals of Baltimore County on the 25th day of May, 1966, in reclassifying from R-40 Zone to a M.H. Zone certain land owned by Cocil Shifflett et al. on Smights Mill Boad South of Davis Avenue in the Second District of Baltimore County. The Appellants are further aggrieved by the action of the aforementioned Board in allowing a zero foot setback instead of the required Three Hundred

ORDER FOR APPEAL

(300) foot setback from the surrounding residential zone for the storage of automobiles not in running condition. The Appellants are further aggrieved by the granting of special exception by said Board for a junk yard and therefore, respectfully request that an appeal be entered in the above-entitled case to the Circui Court for Baltimore County At Law.

> PARKS AND PARKS 2101 One Charles Center Baltimore, Maryland 21201 Attorneys for Appellants BY 7/ Endi Paul

I HEREBY CERTIFY, that a copy of the aforegoing Order for Appeal was mailed to H. Komp MacDaniel, Esquire, 26 West Pennsylvania Avenue, Attorney for Appellees, on this 24 day of June 1066.

PARKS & PARKS

THE GREATER PATAPSCO COMMUNITY IN THE CIRCUIT COURT ASSOCIATION. INC. ASSOCIATION, INC.
COMMAY ROBINSON, J. AUSTIN DEITZ, *
NICHOLAS WALTEMEYER, WESLEY QUAIL POR BALTIMORE COUNTS vs. WILLIAM S. BALDWIN, JOHN A. SLOWIK and PAUL T. MCHERRY, JR., constituting the COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Misc. Docket Folio 109 CECIL B. SHIPPLETT, ET AL.

MEMORANDUM OPINION

This case involves an appeal from the County Board of Appeals of Baltimore County, which by its Order dated May 25, 1966, granted a reclassification of five (5) acres of a 30.5 acre tract requested in their petition, from an R-40 (Residence - 1 Family) zone, to an M-H zone (Manufacturing - Heavy), with a Special Exception for a Junk Yard. Further, the Board granted a variance from Section 408.2 of the zoning regulations, allowing a zero foot set-back instead of the required 300 foot set-back from the surrounding R-40 zone. Further, the Board imposed restrictions with respect to the use of the Junk Yard as follows:

- That a stockade type fence shall completely surround the property and dense evergreen screening, at least six (6) feet in height and at least five (5) feet in width, shall be planted outside the aforesaid fence.
- That burning of automobiles shall take place on the property no more than once each month, and then only on week days and days on which the wind velocity shall be at least ten miles an hour or more to rapidly dissipate any smoke emitting from such burning.
- 3. That no public address system shall be used on the property in conjunction with the operation conducted thereon.

4. That there shall only be one sign at the entrance of the property advertising the business conducted thereon, and such sign shall be unlighted, constructed of wood, not larger than twenty (20) square feet. The protestant plaintiffs are property owners in an

R-40 zone (Residence - 1 Pamily), whose properties are anywhere from 1/4 of a mile to 1 mile or more from the applicants' property, and have recently seen a five acre tract nearby rezoned to M-H (Manufacturing - Heavy), a Special Exception for a Junk Yard. and a zero set-back variance, rather than the required 300 foot set-back, granted by an Order of the County Board of Appeals of Baltimore County. The protestants are appealing the decision of the Board of Appeals, not especially because they are distraught at the presence of the Junk Yard, but because they fear that the potential of M-H zoning in their neighborhood opens the door to several other possible manufacturing operations which could be far more repugnant than a Junk Yard. M-H zoning in Baltimore County opens the door for practically any type of operation of an industrial nature. Actually, the majority of the protestants testified that they had no objection to the Junk Yard itself, which is well camouflaged by trees and the hilly topography of the land, and which Junk Yard has existed since the late 1930's. Thus the Junk Yard was in existence prior to 1945 when the zoning regulations were adopted by Baltimore County originally, and which regulations permit a non-conforming use of any properties in the County to continue after the adoption of these regulations, with some exceptions.

It is well established that the function of the Circuit Court is not to zone, and that the said Court will disturb the order of the Board of Appeals only where the question is not fairly debatable, or where there is evidence in the record of unreasonableness, arbitrariness, or capriciousness

Finney v. Halle, 241 Md. 236; Mothershead v. Board of County Commissioners, 240 Md. 365; City of Baltimore v. Borinsky, 239 Md. 611; Beth Tfiloh v. Blum, 242 Md. 84, etc.

We find that the question was fairly debatable and that there is no evidence that the action of the Board was unreasonable, arbitrary, or capricious,

The zoning officials will rezone if there is evidence of substantial change in the character of the neighborhood since the inception of the existing zoning ordinances, or if there is evidence of original error in the drawing of the comprehensive zoning map. Bosley v. Hospital, 246 Md. 197; Queen Anne's County v. Miles, 246 Md. 355, etc.

The evidence of original error in the instant matter seems crystal clear. The Junk Yard business was in existence long before the zoning map was adopted in 1962. Mr. George Gavrelis, Director of Planning for Baltimore County, admitted under oath, that his staff was not aware of the existence of the Junk Yard when they prepared the zoning map. Further, the owner, Cecil Shifflett, has a substantial investment in his business approaching \$300,000. We might add that the admission of Mr. Gavrelis seems an attestation to a fine effort on the owner's part to minimize the unavoidable eyesore of a Junk Yard by shielding the metal components with trees and hills. It is an effort that deems emulation by other Junk Yard owners.

The Petitioner owns 30.5 acres. By granting only a five (5) acre reclassification, the Board found a very equitable remedy. The remainder of the tract remains R-40, providing a buffer against the rest of the neighborhood and making it possible

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for the owner to operate his junkyard in the entire five acres without adhering to set-back ordinances. It would be both an unnecessary hardship and futile not to grant the set-back variance as the surrounding property remains his own and a 300 foot set-back would eliminate the Junk Yard.

The Court admits that the threat remains that the five acres could become an immensely more noxious enterprise if Shifflett should sell the five acres. We find this unfortunate but place the blame for this possible inequity on the legislative agency which wrote the inflexible area of the zoning. Again it is not the function of the Court to write zoning laws, or substitute their judgment for that of the agency. In Mothershoad v. Bd. of Comm'rs., 240 Md. 365 (decided November 18, 1965), the Court, in quoting from Judge Harmond's opinion in Board v. Oak Hill Farms, 232 Md. 274 p. 283 stated at pages 371-372 as follows:

****the courts have exercised restraint so as not to substitute their judgments for that of the agency and noted thouse between equally permissible inferences or the substitution of fact, because to do so would be exercised in the substitution of fact, because to do so would be exercising a non-judical role. Rather, they have attempted to decide whether a reasoning mind could reasonably have reached the result the agency reached upon a fair consideration of the fact pitch. The case dealer and relies recorderation of the weight of the evidence, the matter seems to have come down to whether, all that was before the agency considered, its action was clearly erroneous, or to use the phrase which has become standard in Maryland zoning class, not fairly debatable.

See cases cited supra.

The testimony before the County Board of Appeals further developed that County Council Bill No. 140 subsequently enacted as Section 200.16 of the zoning regulations phased out

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junk yards in Baltimore County as of November 17, 1964. The record clearly shows that the Petitioner, Cecil Shifflett, was not aware of this phasing out until April, 1964. As a result. the validity of this ordinance was contested before the Circuit Court for Baltimore County, and Judge John E. Raine, Jr. found that the ordinance was a valid exercise of police power. Or appeal to the Court of Appeals of Maryland, the matter of Cecil Shifflett v. Baltimore County, Maryland, etal, decree of Judge Raine was affirmed. The Court would like to comment on this matter of Shifflett v. Baltimore County, 247 Md. 151. decided on June 8, 1967, whereby the elimination of non-conforming As a result, uses was deemed to be constitutional and reasonable/ Thus; Cecil Shifflett would be out of business unless the reclassification and special exception were awarded to him. We feel that the harm to the applicants outweighs a very nebulous benefit to the public by disallowing this business of substantial investment and longevity

In the appellants' memorandum, it set forth, "to sustain a piecemeal change, there must be strong evidence of mistake in the original zoning or in the comprhensive rezoning, or else substantial change in conditions." Appellants cite The Shadynook Improvement Association v. M .loy, 232 Md. 265: Pahl v. County Board of Appeals, 237 Md. 294; Becker Company v. Jerns, 230 Md. 541; Dill v. Johar Corp., 242 Md. 16. We heartily agree with this summation of the law which disfavors spot zoning. Law of its very nature must be flexible and find exceptions. This instant case is such an exception for truly we cannot see how there could be stronger evidence of mistake in the original zoning

The County Board of Appeals also imposed stringent restrictions on the use of the five acres by screening, limitations as to burning, eliminating any public address system, and the limitation of the use of signs affecting the business. These limitations will be additional protection and safequards to the protesting property owners.

For the reasons stated above, it is this 14th day of November, 1967, by the Circuit Court for Baltimore County. ORDERED that the order of the County Board of Appeals of Baltimore County dated May 25, 1966, be and the same is hereby affirmed



OFFICE OF FINANCE COURT HOUSE TOWSON 4, MARYLAND \$80.00 Ma. 64-100-01 PART order, Mr. Officer of Black 12-6964 6357 . 27658 IVP-000 MICROFILMER IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON 4, MARYLAND LEASE RETURN UPPER SECTION OF THIS BILL WITH YOUR REMITTANCE. BALTIMO 'E COUNTY, MARYL ND ELEPHON No. 25251 OFFICE OF FINANCE DATES/11/64 COURT HOUSE TOWSON 4, MARYLAND BY: Zoning Department of "0 150.00" Petition for Reclassification & Special Exception for Cecil Shifflet 50.00 8-116- 6734 * 25251 NF-

BALTIMORE COUNTY, MARYL ND ELEPHON No. 25378 OFFICE OF FINANCE ner-19/7/64 COURT HOUSE TOWSON 4, MARYLAND BILLED W44.78 130.00 130,00 10-764 0300 · 25378 ILP-MICROFILMED-IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND

INVOICE

MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON 4, MARYLAND PLEASE RETURN UPPER SECTION OF THIS BILL WITH YOUR REMITTANCE.

County Office Building 1 W. Chesapeake Avenue vson 4, Maryland

ion has been received and accepted for filing this

JOHN G. ROSE Zoning Commission Owners Name: Cecil Shifflette, et al

Reviewed by Ames & Al

MICROFIL MED

MPORTANT: MAKE CHECKS PAYABLE TO DALTIMORE COUNTY, MARYLAN PLEASE RETURN UPPER SECTION OF THIS BILL WITH YOUR REMITTANCE

IN THE COURT OF APPEALS OF MARYLAND

No. 7 September Term. 1968

EDWARD MINOR, et al. and CONWAY ROBINSON, et al.

CECIL E. SHIPPLETT. et al.

Harmond, C.J. Marbury Barnes McWilliams Singley Smith,

Concurring Opinion by Barnes, J.

Filed: January 15, 1969

ZONING FILE #65-102-RX

Barnes, J., concurring:

I most reductantly concur in the result in this case.

I only concur because I <u>must</u> as a result of the doctrine of <u>stare</u> <u>decisis</u>.

The result in the case on this appeal - contrary to the result reached both by the Scard and by the Circuit Court - is based upon two lines of decision in this Court both of which I consider to be quite erroneous and contrary to a correct understanding of the constitutional provisions involved.

The first of these erroneous lines of decision is the Maryland "change in conditions - mistake in original scning" rule. My comments upon this unfortunate rule in regard to its curious inception, its illogical character and its unhappy results, have already appeared at some length in earlier dissenting and concurring opinions. See <u>MacDonald v. Board of County Count'rs</u>, 236 MA. 549, 557, 660, 210 A.2d 353, 339, 340 (1965). See also <u>Mather v. Montecorry Count's</u> 289 MA. 62, 77, MEXT 238 A.2d 265, 277 (1966) and <u>Randolph Mathery</u>, 249 MA. 78, 90. Expect 238 A.2d 257, 264 (1965).

These comments need not be repeated again or even summarized here. The present case, however, appears to me to be a good example of an unfortunate and uncome result, emanating from this erroneous doctrine, which is gravely injurious to the property rights of Smifflett, the property owner, and to the public interest

Pirst of all, it is established that the junk use is a lawful use of private property, and does not create a muisance per a. Town of Bladensburn v. Bern, 215 MA. 292, 295, 139 A. 703, 705-05 (1958).

Secondly, the private property involved in this case has been used for the lawful purpose since 1932, assuming, argundo, that Section 200.16 of the Saltimore County Moning Regulation is unconstitutional. The property owner has a substantial investment of approximately \$300,000 in this property and the business conducted there. The use of this property for a lawful business is, in my opinion, a vested property right. The lawful use provides substantial employment for 10 full-time employee, and two part-time employees, with a payroll of approximately \$50,000 per year. The use not only is beneficial to the economy generally but specifically provides employees.

ment and advances the public interest in that inportant way.

Thirdly, the westing of this property right occurred some
3 years before the original soning in the area in 1945 and has
continued without interruption until the present time.

What other property owner has been injured by this use?

Some of the protestants in this case did not even know of the existence of the use when they acquired and noved into their properties. While others knew about the use, some could not see the subject property from their own properties; and not one testified in regard to any specific injury to thin personally or even to any specific mount of depreciation in the value of his property resulting from Shifflett's use. The terrain where the junk use is carried on is guite rough and at one ties there was a quarry on the property. No nearby or other property owner has sought any relief in equity for any alleged muisance, doubtless because there is no muisance. And yet, monviithstanding this factual situation, his long-established lawful and benoficial use, by the terms of Scotton 200.15 of the Baltimore

County Zoning Regulations, enacted by the County Council on November 17, 1962, must be obliterated, with no provision for just compensation, unless the Board could pursuant to its celegated algitalities powers recome a sufficient part of the outject property to enable the property owner to continue the use. At this point the difference between what I conceive to be the proper constitutional Courtine which ought to be applied and the Maryland "Change-distable" rule becomes clearly evaporate.

It is conceded that there has been no "change in conditions" since the last comprehensive recoming to justify the heard in observation that the proof in the present case does not support the beard's finding that there was a "mistake in original soning." There was no expert testimony to this effect introduced on behalf of Smifflett. Indeed, the <u>smit</u> expert testimony in the case that of Xr. Garrells - indicated (hypothetically, at least) that there was, in his opinion, no error in the original soning. It is apparent, I think, that merely because there was a non-conforming use created at the time of the original soning, which was not then made to conform by sone type of soning, there is not, inso that a "mistake" in the original soning.

If, however, the proper constitutional doctrine were applied, which, in my opinion, is whether or not the resoning action of the Board was "arbitrary, unreasonable or caprictous" and thus a denial of due process of law contrary to Article 23 of the Declaration of Rights in the Naryland Constitution - the

have no constitutional power to disture the logislative action, unless there is some violation of another constitutional protection enjoyed by the property owner, e.g., when there is an attempt to take private property for public use without the payment of just compensation contrary to Article III, Section 40 of the Maryland Constitution.

This brings me to the second line of erroteous cocinion, which began with <u>Grant v. Nayor and Sity Council of Emissions</u>, 212 Md. 301, 129 A.24 363 (1957) and has unfortunately been continues with increasing vigor in <u>Butow Emterprises</u>, Inc. v. Nayor and Sity Council of <u>Emissione</u>, 241 Md. 680, 217 A.24 398 (1966) and <u>Emissione</u>, 241 Md. 680, 217 A.24 398 (1966) and <u>Emissione</u>, 247 Md. 151, 20 A.7310 (1967).

In my concurring opinion in Stavens v. Clov of Salitbury, 240 Md. 555, 573, 214 A.dd 775, 765 (1965), I indicated my distress at the Court's epproval of the jurior decision in <u>Grant</u> and expressed the hope that the <u>Grant</u> decision would be overruled by the Court as soon as possible or, at least, swietly limited to the facts in the <u>Grant</u> case. As indicated, neither hope was realized.

In my concurring opinion in <u>Squyens</u>, I quoted at some length from the "dissenting" opinion² of Judge Van Voorhie of the

 By coincidence, by the operation of our general practice of situting in panels of five judget, I did not sit in either backs Enterprises, The v. Nucyor and City Counsil of salabilators or in Shifthon v. Balvimore County. I would have discensed in both cases had I sat.

 As pointed out in Note 1 in the concurring opinion in the Stevens case, the Ven Yearn's produce and really "laborating" opinion as there was no mightly opinion in the Marketon case. Court of Appeals of New York in Impédien v. City of Buffale, A N.Y.26 958, 7528 (N.S.26 958) 658

N.Y.26 953, 958, 7528 (N.S.26 95) 658

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The area percention of private property in the Mills Acessing Johnson who is is united for public use, but provides that is shift now to take the provides that is shift now to take the condition of the mills for the mills of t

Quite agant from our colligation as I see it to protect Shirthest's property status water the provisions of the Marylana Constitution, to fail to require parameter Shirthest for the depression of the state of continue to use part of the safety property for the lands are as any system, contant to the public district. There will Shiftlett got the necessary maney to continue his business? Where will he became his business, if he is formunate anough to have safficient private resources to re-establish his business at another location, in view of the very for locations in Bultimore County as a result of the present legislative and other restrictions? If he is forced out of business, who will perform the useful function accomplished by his business and where will his expleyees be impleyed inf resource the uses necessary to support them and their families? If we had held that Section 200.16 of the Baltimore County Coning Regulations, inserted Exember 17, 1565, was unconstitutional and void, as I finily believe in the be, Shiffelett would not have to sack answer to these questions and, in my opinion, the public interest would also be served.

nower (unless limited by the provisions of the delegation of the exercise of this power to an arency other than the logislative hody (realf) - it is elear to be that the Board's action in this case was not at all "arbitrary, unreasonable for capricious" but, on the contrary, was a reasonable decision, based on the preserva- . tion of vested property rights and calculated to advance the public interest. In short, as I have indicated in the other opinions mentioned, the Maryland "change-mistake" rule confines the exercise of the legislative power in resoning cases to a consideration of two factors only, and thus creates a new constitutional limitation. As I see it, there are a number of other equally important factors which the legislative body exercising the rezoning power could wall take into consideration in reaching a reasonable decision. even though there may not be in the particular case a "change in conditions" or "mistake in original zoning." Indeed, the tempering of the effect of a harsh and inequitable application of a general provision of the zoning law to a particular factual situation is one of the essential functions of the Board in exercising its regarding functions, so long as the exercise of that necessary power does not result in arbitrary, unreasonable, discriminatory or capricious action. In my opinion, reasonable men could conclude that both justice to the property owner and the public interest required the granting of the resoning in this case and it cannot properly be said that the Board's action offended the constitutional

limitation of due process of law by being arbitrary, unreasonable

or capricious or discriminatory. When this situation exists, we

usual test in other challenges to the exercise of legislative

IN THE COURT OF APPEALS OF MARYLAND

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No. 7

September Term, 1968

EDWARD MINOR, et al. and CONMAY ROBINSON, et al.

CECIL E. SHIPPLETT, et al.

Hammond, C.J. Marbury Barnes McWilliams Singley Smith,

Opinion by Smith, J. Barnes, J., concurs in the result.

Filed: January 15, 1969

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ZONING FILE #65-102-RX

Appelless (Shifflett) have operated an automobile junk yard at their present location in the extreme western section of Saltimore County since about 1932. The zone in which they are located is an R-Mo zone. Their use has been a nonconforming use since the adoption of content in Saltimore County in 1945.

Shifflett is no stranger to this Court. See Shifflett v.

Beltimore County, 247 Nd. 151, 200 A. 2d 310 (1967) Wherein We uphold
the validity of the Baltimore County ordinance adopted in 1962 requiring the elimination of junk yards in all residential zones of the
county within two years.

Shifflett applied to the Zoning Cormissioner of Baltimore County for a reclassification of his property-to-an ME zona and for the granting of a special exception pursuant to the Zoning Law and Zoning Regulations of Baltimore County permitting a junk yard. 'The reasons sasigned were error in original zoning, and change in the maighborhood. The request was demied.

Appeal was entered to the County Board of Appeals of Beltimore County. That Board denied reclassification of the entire Trive.

30.5 acro tract but did grant reclassification of the /acro parcel of ground on which the junk yard was located. It, likewise, granted the special exception.

Appellants appealed to the Circuit Court for Baltimone County which court affirmed the decision of the Board of Appella. This appeal followed. For the reasons hereinafter set forth we hold the reasons instance and the country of th

Junk yards are not permitted in any zone in Baltimore County except in an MH zone and then only by special exception.

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The area in Question lies just morth of Patapaso State Park. It is located "as the erec files" almost a mile from an XXX sone. With that exception, the land for quite some distance around full feet property is classified for residential use.

The zoning map in question was adopted on November 15, 1962.

The area was zoned as residential, however, from the adoption of zoning in Baltimore County in 1945.

The Mi classification (manufacturing heavy) is the most liberal of the zones in Baltimore County as to the uses permitted therein.

Shifflett presented testimony of five witnesses other than himself. Their testimony was devoted elmost entirely to the long standing use of the property for junk yard purposes. It is conceded that the junk yard operation is carried on on the five area portion for which the special exception was requested.

The Shifflett witnesses mentioned the one time existence of a quarry on subject property. The only portion of their restimony concerned with surrounding property was that of the witness Duvail who said there were about 20 houses in about a three mile section of Road Wright's Will Road from Doppood/around the loop back to Old Court Road.

Access to subject property is by Nright's Kill Road, the The paved portion of which was said to be nine feet in width a V subject property.

Although Mr. Gavrelis, D rector of Planning for Baltimore

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County, connected with the County Minning Department times 1981, tostified on cross examination furning been called as a without by the processing, that at the time of the adoption of the saning map by the Planning Board he personally had no knowledge of the industrial use of Shifflett, and Shifflett regarded whith in this Cours as evidence of error in original soning, no other evidence was presented as to the knowledge of lack of knowledge of the Baltimore County Minning suthertizes as to the use of the land for junk yard purposes. The Board of Appeals found as a fact that the property hid been used on in europoidis junk yard since prior to 1955 and that if it were not for Scotian SOULS of the Monthly or the Minning Shift of the Monthly or larged homosphering the Souls as junk yard. In finding error/the original soning the Board stild

"There was no bestimant of any substantial channe, in the observer of the nationate of the substantial channe, in the observer of the nationate state of the national content of the substantial channel of the content of the substantial channels are parametry unaware of the existing commercial use on the property, and consequently discovered the content of the property, and consequently discovered the commercial use of the limit to continue, gvan though apparently (from Geal battlewer's become of the limit to continue, gvan though apparently from Geal battlewer's to seem to the Board that to properly adopt a land use now the downly should endautor to department of the property. It seems to the Board that to properly adopt a land use now the downly should endautor to department out the general salong existing bettinesses to containe that opportunities allow existing bettinesses to containe that opportunities and the salone and the substantial to the general salone statement of the substantial to the general salone existing bettinesses to containe that opportunities and the salone that the salone of the property by the fallow of the property by the fallower of the pro

In sustaining the action of the Board of Appeals the Circuit Court said in part:

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"The original order in the instant matter some organic lear. The Junk the during a dept. The Junk the during a dept. The Junk the during a depted in 196. Are deeped during in Percetor of Finance for Baltimore Country addition under out, Junk his safet has not surve of the oritione of the Junk the safet has not surve of the oritione of the oritinate of the oritinate of the original properties the owner, Cost Entificiet, has a substantial investment in his business approaching \$500,000 investment in his business approaching \$500,000 investments.

A careful reading of the record does not disclose any statement on the part of Nr. Gevenlis wherein he said that his staff was not aware of the sentence of the junk yard when they propared the soning map. Interconfigure enough, no such statement is ofted in Shifflett's brief. It is true, as Shifflett's brief stated, that in response to a question of Nr. Saldwin of the Board of Appeals Nr. Gevrelic stated that the Flanning Seard in making its recommendation nermally considers the existing uses of the property. The mast series of questions and markers went, however, as follows:

"Q. And usually you try to recognize, say if I have a nonconforming gas station, or a grocery store, or something along the read, you usually try to recognize the extering connervatal or industrial uses, don't your A. In all fairness; I would have to any not always.

"Q," don't mean in every ear A. They are identified, and from a planning Velepting, and if it is been they do rate contain flaving commercial forling own that is successfully contained to the Board, southerful tooling own the identified of the Board, status, if it is a neutronization too, and the contained velepting, and from the Board velepting, to be role than the establishment of contain potentials is interpretable, the recommendation to make you retain the Recommendation to make to retain the Recommendation to make to retain the

Mr. Cavrelis also testified as follows in response to a series of Questions about the lack of an MH zone on the Western Area

"Q. Houldn't you, normally, in adopting a map, and the state of the state of the land use? A. No, not at all, all, all, all one the land use? A. No, not at all, all, all, all one can be considered to the state of the state of

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"I do recall we had some N-H zoning in the 13th District, where we had some concentration of rail access.

"Q. Cortainly a 5-acre junk yard doesn't require access to rail or part, does in? A. Well, we are talking about N-M soning broadly, and I answered the question in that voim.

"G. (By Mr. HacDeniel) Why do you require a junk yard to be in an M-H some there? You are in favor of a junk yard in an M-H some jaron's you? A. Nith the right direumstances, yes.

. "C. But if a junk periods in an N-H come, do you feel that all the other requirements in an N-H come must be there in order for there to be a junk year exacting in that order A. Compressivy yes

"Q. Why, - if they are not needed for the junk yard? A. You can go around and around and around."

Morrover, on the quarry aspect devention testified a quarry can exist with a special exception in .-10, 5-10, and R-40 professional

zones and in business and manufacturing zones where no blasting was

The only expert testimony before the Board of Appeals was that of Mr. Gavrelis who testified:

The detail has national potential or study of the particular that provides the particular that the particular that the particular that the particular theory is not the the particular theory is notified interest to the particular theory is notified interest to the particular property refer interests to the particular property refer interests to the that independent coning would be not all appropriate, patential coning would be not all appropriate, patential coning the particular to the particular to the particular to the particular that is not a particular to the particular that is not a particular to the particular that is not a particular to the particular that is not particular to the particular that is not particular to the particular that is not particular to the particular that the particul

"Prom a small position, however, we do not at all feel that junk yards are a foliations or happy or compatible land the penerally. They offer, very obviously, some very unique problems, and offer, rose very difficult relationships as all in the modern properties, recognised the state of the second section of the section

The burden of proof in a coming case is on the individual seeking conting reclassification. In <u>B.A. w. Gounty Board of Advalog</u> 237 Md. 254, 255 A. 26 245 (1955) we said:

Fundar the well a sabilities of the starthold, be a summer is a person of the second state of the second s

of original souting and of comprehensive resolving, and " " " to custain a pleocomol counce investor, those motivation may referred or intensit in the original continuous and original continuous and the original substantial change in conditions," <u>disciplingois from the original change</u> in conditions, " <u>disciplingois from the original change</u> in the original change of the original chang

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In Reese v. Mandal, 224 Md. 121, 167 A. 26 111 (1961) we

said:

"In leasing the solids of the Board of Appeals herein, we shart off with a serial postage of the "wilding of the classification must have the comprehensive may me adopted, and those who attack the classification bear a heavy burson of oversoning the presurption of their validity-heavier in the class of comprehensive moning than in the class of piecemal reclassification." If a 150.

We further said there:

Sound is reasonably and visit as the assist taken by the stand is reasonably and visity debatable, as we have stated has the case that the other stands as which the other stands as an analysis overstand that assist $\frac{1}{2}$ and $\frac{1}{2}$

Stated in another way:

** If the Course may are absolutes their independence of the Course may be described as the Course of the Course o

See also, Goucher College v. Develve / 13435, September Term,

1967 decided December 5, 1968] civing Armostone, sunra.

. Judge Singley, in stating the law applicable to reclassiff- sation continuous $\boldsymbol{\epsilon}$

"Resulver, the "It lours will, where the record

is so devoid or substantial supporting facts as to be incapable of substant sizes, declared to be incapable of substant sizes, declared to be incapable of substant sizes, declared to be incapable of substant su

In Mewitt v. Co. Compins, 220 Md. 48, 58, 151 A. 26 144 (1959) Chief Judge Brune quoted, with approval, Huff v. Board of Wherein our present Chief Judge stated:

"Young a conting ordinance or an emergence puts a small area in a some different rice than of a small area in a some different rice than of a surrounding them, in a fine rice that of a surrounding them, and the surrounding the same state of the surrounding that is a surrounding to a surrounding the surrounding that is a surround a document of the control of the con may performs or the enabling secure, and so bear as the surface relationship to the public health, surface, novels and general workers, to it which correct w. Secure of somethy solution, to it which the secure of the secure of somethy solutions of the secure of somethy solutions of solutions and the secure of source of sourc

There are certain exceptions to "spot zoning "recognized in the Cassel and Termink cases, "such as the creation of small districts within a residential zone for the operation of such establishments as greenry stores, drug stores, barber shops, and even gasoline stations, for the assommation and convenience of the residents of the residential zone. Cf. Elicopt v. City of Baltimore, 180 Md. 176, 23 A. 2d 649." Howatt, supra, at 60.

The opinion in the Circuit Court for Baltimore County states

"* * * We feel that the harm to the applicants outweight a very nebulous benefit to the public by disallowing this business of substantial investment and longevity."

This position is in direct conflict with Chief Judge Hammond's comment in Huff which appeared in Hawitt, supra.

If we were to assume, arguendo, that the Baltimore County Planning Department was unaware of the use made of subject property, it would nevertheless be noteworthy that there was no expert testimony before the Board of Appeals as to the reasonable probability of a different coming classification had the coming authorities been aware of such use. It also is noteworthy that the only expert who testified before the Board stated with reference to an MH some that he regarded an inherent requirement to be access to rail or port facilities. There

The presence of nonconforming use in an area would not and could not be evidence of error in original zoning requiring a change of classification. To so hold would defeat the very purposes of moming. Ordinarily, planners expect that nonconforming uses will wither on the vine, so to speak, and ultimately disappear. The usual soning ordinance growides, as does the Baltimore County ordinance, that a discontinuance of a nonconforming use for a specified period of time shall be deemed an abandonment.

No evidence was presented that the use contemplated for the subject property was the only use for which it was fitted. In fact, the modern home of Shifflett was located thereon. Although there was an allegation that the topography of the land was "rough and rugged", there was no showing that the 30.5 screen of land of Shifflots differed in its terrain from the many seros of residential land surrounding to.

The burden of proof was on Shifflett. The Board of Appeals conceded that there was no syldence of any substantial change in the character of the neighborhood. The uncontradicted evidence is that the entire surrounding area is devoted to residential uses. We hold the record to be devoid of substantial supporting facts as to original. error. The request here is squarely within the language of $\underline{\mathrm{war}}$ and Hewitt, supra. The request/for the sole benefit of the private interests of the owner and is for a use inconsistent with the uses to which the rost of the district is restricted.

> ORDER REVERSED, COSAS TO BE PAID BY THE APPELLERS

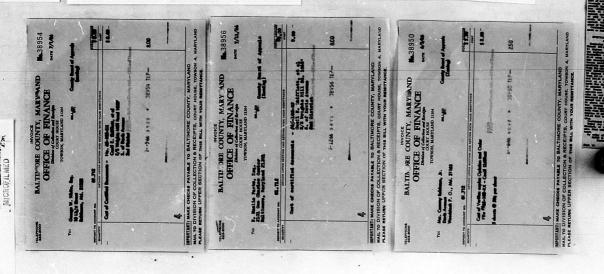
CERTIFICATE OF PUBLICATION

TOWSON, MD. September 18, 1964 THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed day of ______Cotober ______19_64_, the THR publication appearing on the. 18th day of September

THE JEFFERSONIAN.

Cost of Advert

MICROFILMED



2 ELECTION DISTRICT OF BRITINGRE COUNTY, MD. - EN & L.J. MAKOWSKI R-40 PRRT of 28 LINE GLB 33GG folio 543 123783 S 42:11-25 E 6821 N 80° - 24' - 18 E PART OF 27 TH LINE 9.L.B. 3366 tolio 543 Beginning S.OAC. Beginning 30.46 Ac. 1 -4. - 3 84 53 W 333 CI / 481.32 9 80 24 18 W 8 R-40 300 DIKE THE TOTAL ENTRANCE ROAD - LAST LINE T.B.S. 1902 folio 281 E.J. & L.J. MAKOWSKI KATZEN SCREENING TO BE 5.00 HCRES R-40 PROVIDED AS REQUIRED PRRT of 35 LINE TB.5 1902 - 281 7 MILL 4TH LINE TB.S. 1902 - 281 " LINE TO S. 1907 4.L. 10 281 510-34-02 6 890 -10 TH LINE TES. 1902 401.0 281 LAST LINE 2 PARCEL WUR 3725 46 546 #65-102RX 3 ANE 1ª PARCEL W.J.R. 3617 tolio 584 Westery 421.39 LAST LINE 244 PARCEL W.J.R. 3617 felio 584 N 10 39-43 E 16 65 Area SEC. I-B STATE OF MARYLAND DEPT. OF FOREST AND PHEKS STATE OF MARYLAND DEPT. OF FOREST AND PARKS FOR PURPOSE OF ZONING ONLY PRESENT ZONING = R-40
PROPOSED ZONING = M-40
PROPOSED ZONING = M-H WITH SPECIAL EXCEPTION
RREIL M-H = 30-94 ACRESS (TOTAL)
SPECIAL EXCEPTION 5 ACRES
PRESENT USE = JUNK YARD
PROPOSED USE = JUNK YARD WILLIAM M. MAYNADIER COUNTY SURVEYOR
OF IL ENSINEER | LAND SURVEYOR 0 2 4 6 8 10 12 14 16 18 20 22 24 28 28 20 78 26 24 24 25 20 18 16 14 12 10 8 6 4 7 COUPT HOUSE SCHLE / 100 FONSON 4 . MD.

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