

IN THE COURT OF APPEALS OF MARYLAND

No. 239

September Term, 1965

THOMAS J. LUBERT et al.

v.

WILLIAM M. SEABOLD, et al.

Hammond, C. J.
Mortimer
Oppenheimer
McMillen
Pinn,

JJ.

Opinion by Pinn, J.

Filed: May 4, 1967

The Circuit Court for Baltimore County affirmed the action of the County Board of Appeals, hereinafter referred to as the Board, of September 9, 1959, which reclassified the properties known as 5400, 5402 and 5404 Edmondson Avenue, Baltimore County, from R-6, Residence, one and two-family, to D-1, business, local. The three properties comprise the entire block of the northeast side of Edmondson Avenue between Orylgian Road and North Bend Road in the Catonsville area. The properties in question had been subject to comprehensive rezoning, which took place in 1950 when the County Council changed the land use map for the Catonsville area. The properties were involved were zoned R-6 which was contrary to the Planning Board's recommendations, which had approved D-1 classification for the properties in question.

On March 13, 1959, the Baltimore County Zoning Commissioner, hereinafter referred to as the Commissioner, denied an application for reclassification from R-6 to D-1 filed by appellates Seabold and Hunt, the then and present owners of the 5400 and 5402 Edmondson Avenue. On appeal to the Board, the Commissioner's action was affirmed. In its opinion of December 14, 1959, the Board stated:

"It is the unanimous opinion of the Board of Appeals that there has been no change which warrants a reclassification. However, as the Board has held in other instances the land use maps of Baltimore County adopted by the County Council must be upheld, unless there is substantial testimony to show an error in original zoning. The Board can find no such error in the testimony presented by the petitioners in the instant case."

WM. SEABOLD, ET AL.
Appellates
vs.
WILLIAM M. SEABOLD, ET AL.
Respondents

of the adoption by the Council of the comprehensive rezoning map and the is now Director of Planning, testified as follows:

Q. Didn't you say you thought the Planning Board was correct, however? A. However, those recommendations, which are advisory, were rejected by Council. The same issue was then acted, and the map was found to be correct. So it is my personal feeling that the events, which happened since the Planning Board made its recommendations, have shown to me that the map was correct, as adopted by Council, with respect to its not having commercial zoning here.

Mr. Bernard Willemain, a land developer, who testified at the 1961 hearing again appeared for the appellates, as an expert witness, and gave similar testimony to that given by him in the effect, that in his opinion, the comprehensive rezoning map of 1961 was in error.

However, we think that it is significant that appellates Hunt and Seabold, who in 1961 sought a reclassification of their properties from R-6 to D-1 on the basis that there was a mistake or error in the comprehensive rezoning plan, were not sufficiently persuaded by their own convictions to appeal the Commissioner's decision which upheld the comprehensive rezoning map.

We are also mindful that this Court has on other occasions stated the principle that there is a strong presumption favoring the validity of a comprehensive zoning map adopted by the proper authority, In re Co. George v. Rhonde, 240 Md. 680, 215 A. 2d 309 (1966); er. Attorney Commissioners of Queen Anne's County, et al. v. Clarence V. Miles, 241 Md. 680, 215 A. 2d 309 (1966), filed April 12, 1967.

It is true that at the time of the 1961 hearing the Imperli property (5404 Edmondson Avenue) was not included in the application, but if a mistake had been made in the adoption of the original comprehensive zoning map of 1950, the omission of the Imperli property from the 1961 application would have had no bearing on any consideration of the question of a mistake or error in the original comprehensive zoning map--had in fact such mistake or error existed. As no mistake or error was found at that time and since it is admitted by all parties that there has been no change in the character of the neighborhood, we are constrained to find that the action of the Board, and its affirmance by the Circuit Court, in reclassifying the properties from R-6 to D-1, to quote Chief Judge Hammond in Pollner v. Briefs, 244 Md. 538, 541, 224 A. 2d 460, 461 (1966), "can amount to no more than the mere impermissible change of mind or heart which was condemned in Row Const. Co. v. County Council, 227 Md. 479, and Schultz v. Montgomery County Planning Bd., 230 Md. 76. * * *"

We do not think that we could sustain the lower court without doing violence to our recent decisions in Woodlawn Ass'n v. Board, 241 Md. 187, 215 A. 2d 149 (1966) and Pollner v. Briefs, supra.

In Woodlawn, a case arising in Prince George's County, the question of error or mistake in the classification of a specific area in a comprehensive zoning plan had been adjudicated in 1952 by the District Council and the Circuit Court, which had found that there was no mistake or error in the comprehensive zoning plan or any change in the character of the neighborhood since its adoption. The property owners, in the spring of 1953, renewed their application and the District

The appellates did not appeal from the Board's decision.

In 1954 two petitions, seeking reclassification from R-6 to D-1, were filed with the Commissioner with respect to the three properties here involved. The Commissioner denied the reclassification requested and separate appeals to the Board were taken. Although the Board held independent hearings, it is apparent that the applications were considered as companion cases and in separate opinions, filed September 9, 1959, the Board reversed the Commissioner's action granting rezoning from R-6 to D-1 with respect to the properties here involved. In its opinion the Board did not cite any subsequent change in the nature of the area since the comprehensive rezoning of 1950, but found that:

"The original zoning on the 1950 map was in error because of the arbitrary nature of the Council to consider existing uses at that time, and its complete failure to follow the logical recommendation of the Planning Board which did not only recognize existing uses of the subject property, but also existing uses in the immediate vicinity by which the map, as adopted, was certainly not * * *"

Appellates, "aggrieved" property owners, filed appeals in both cases to the Circuit Court, where they were heard as one. The lower court affirmed the Board's action, solely on the basis of a mistake, stating:

"All parties to these appeals agree that there has been no significant change in the area since April, 1950, when the comprehensive zoning map was adopted by the County Council of Baltimore County. Accordingly, reclassification can be justified only if it is on the ground of error or mistake in the map."

The court further stated that the Board's decision on December 14, 1959, in which it denied reclassification from R-6 to D-1 of the Seabold and Hunt properties, did not constitute res judicata and was not therefore binding upon the Board's present action. The judge

Council refused to consider the matter "res judicata" and conducted a hearing de novo on the matter which resulted in a reversal of its former decision and a reclassification of the area. This action was affirmed by the Circuit Court; however on appeal, this Court, in reversing the Circuit Court, speaking through Judge Hammond (present Chief Judge), said at p. 190:

"We find it unnecessary to discuss or decide the various contentions because we conclude that the principles of res judicata were controlling and find in the record no evidence of significant change in the neighborhood of the property between 1950 and 1959, which means that the action of the Council in rezoning in 1959 on essentially the same facts and conditions is found insufficient to permit rezoning in 1961 was arbitrary, capricious and illegal."

Even more in point with the case at bar is Pollner v. Briefs, supra, and we feel that it is controlling. In Pollner, just as in the instant case, the matter had never previously been heard by the Circuit Court as it had been in Woodlawn. Pollner presented this Court with a situation wherein the Montgomery County Council, on December 15, 1954, rezoned 12 1/2 acres in the Cabin John area from R-50 to R-30, allowing four times greater density. The area had been comprehensively zoned in 1937 by the adoption of a master plan. Thereafter, in 1951 the owners of the property endeavored to secure rezoning to R-30 but withdrew the application after the technical staff and planning board recommended disapproval. In 1952 new owners filed an application for rezoning to a classification permitting high-rise apartments. The District Council denied the application, making the specific finding "that there had been no error in the promulgation of the comprehensive rezoning of 1937 as to this property." * * * In 1956 another ap-

pealed this result because in 1951 the Board did not have before it applications to rezone all the properties here involved, but only the Seabold and Hunt properties and "reclassification of these properties alone would have had the ridiculous result of establishing as a dividing line between the B.L. land and R-6 land a property line in the middle of a block." He thus concluded:

"Accordingly, if the Board had reclassified Seabold and Hunt in 1951, such action would have been arbitrary and capricious. The case presented to this Court at this time for consideration is quite different, therefore, from that presented to the Board in 1951. * * *"

The issue before this Court is whether the lower court erred in not finding the Board's reclassification of the properties to be arbitrary, capricious or illegal in view of the absence of change in the character of the neighborhood and the Board's previous decision that the 1950 zoning map was not in error.

The record reveals that when the County Council of Baltimore County adopted the comprehensive zoning map in April 1950, the Council made a personal inspection of the properties in question prior to classifying them as R-6. It is true that the Planning Board in its recommendations had designated the block, in which these properties are situated, as D-1, but its recommendations were only advisory and the ultimate classification was the prerogative of the County Council, which chose not to follow the Board's recommendation.

A number of witnesses testified in the lower court adducing testimony on both sides of the question as to whether the original classification of the properties as R-6 was erroneous. Mr. Garvelis, who was Deputy Director of Planning for Baltimore County at the time

petition was filed. The appellates introduced the testimony of an expert witness, in the person of a land planner, to the effect that a mistake had been made in the 1957 comprehensive zoning plan because of the alleged omission of the consideration of scattered commercial uses and the existence of one apartment house in the area. The District Council found no mistake or error in the comprehensive plan, but did find that there had been changes in the character of the neighborhood. On appeal to the Circuit Court, the District Council was reversed. In the appeal to this Court, the property owner again argued that there had been a mistake or error made in the 1957 comprehensive master plan. This Court, in affirming the lower court, found that there was no mistake or error in the master plan or change in the character of the neighborhood, and that the action of the District Council was arbitrary and capricious. In Little v. Bd. of Zoning Appeals, 211 Md. 35, 195 A. 2d 41 (1956), in which was mentioned case Chief Judge Harbo, speaking for the Court, aptly stated at p. 45: "The rule seems to rest not so much on the doctrine of res judicata, but upon the proposition that it would be arbitrary for the Board to arrive at opposite conclusions on substantially the same state of facts and the same law."

ORDER REVERSED, APPEALS TO PAY THE COSTS.

MR. AND MRS. THOMAS J. LAMBERT *
603 North Bend Road *
Baltimore, Maryland 21229 *
IN THE CIRCUIT COURT FOR *
BALTIMORE COUNTY *
LARS M. SPEICHER *
616 North Bend Road *
Baltimore, Maryland 21229 *
Appellants *
vs. *
COUNTY BOARD OF APPEALS *
OF BALTIMORE COUNTY *
and *
WILLIAM H. SEABOLD, et ux. *
and *
FREDERICK T. HANF, et ux. *
Appellees *

ORDER FOR APPEAL

MR. CLARK:
Please enter an Appeal to the Court of Appeals of Maryland on behalf of Mr. and Mrs. Thomas J. Lambert and Mr. Lars M. Speicher, Appellants, from the opinion and Order of the Circuit Court of Baltimore County entered on the 5th day of May, 1966.

FRIEDMAN & GOODMAN
180 Building, 8th floor
303 East Fayette Street
Baltimore, Maryland 21202
685-1763

James J. Doherty

Harvey H. Zimmerman
Attorneys for Appellants

I HEREBY CERTIFY THAT on this 27th day of May, 1966, a copy of the foregoing Order for Appeal was mailed to Eugene G. Kicks, Esquire, Masonic Building, Towson 4, Maryland and George W. White, Jr., Esquire, Buckmaster, White, Mindel & Clarke, 10 Light Street, Baltimore, Maryland 21202, attorneys for the Appellees.

James J. Doherty

THOMAS J. LAMBERT, et al.
Appellants
vs.
COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
and
WILLIAM H. SEABOLD, et ux.
and
FREDERICK T. HANF, et ux.,
Appellees

IN THE CIRCUIT COURT FOR
BALTIMORE COUNTY
AT LAW
8/3/1957 - 8/6/1958
COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
and
HILTON J. LAMPERT, et ux.,
Appellees

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MEMORANDUM OPINION

These appeals from the County Board of Appeals by protestants who are, allegedly, "aggrieved" with the action of the Board. The Seabold and Hanf properties are known as 5400 and 5402 Edmondson Avenue. The Lampieri property is known as 5405 Edmondson Avenue. The three properties cover the entire block located on the westerly side of Edmondson Avenue between Orpington Road and North Bend Road. They have an aggregate frontage of 223 feet, more or less, with an even depth of 150 feet to a 15 foot alley.

The property owners (Appellees) have filed motions to dismiss the appeals, contending that none of the Appellants has such an interest in the case as would, under the Baltimore County Zoning Regulations, constitute him an "aggrieved person" and

entitle him to protest the desired reclassification. At the argument, however, counsel for the Seabold and Hanf interests admitted that the testimony of Mr. Thomas J. Lambert, one of the Appellants, indicated that he did have such an interest. Although the testimony of Mr. Lambert in the Lampieri case differed from that in the other case, it is clear that he lived very short distance from the rear line of the Lampieri property and that the granting of the requested reclassifications might very well have an adverse effect on him and his property. In the opinion of the Court, this case clearly differs from those presented by recent decisions of the Court of Appeals in which it was held that the protestants there involved did not have such an interest as would entitle them to object to a reclassification. Reilly vs. Crone, 240 Md. 180; City of Greenbelt vs. Jones, 237 Md. 456; Marcus vs. Montgomery County, 235 Md. 535. Accordingly, the Court overrules the motions to dismiss the appeals.

Although there were two separate applications for reclassification and although testimony was taken before the Board on different dates (Lampieri on March 30, 1965 and Seabold and Hanf on May 28, 1965), the entire record in the Lampieri case was filed in the Seabold-Hanf case and the two cases were decided simultaneously on September 7, 1965. The Board, in effect, considered them as one case. The Court will do likewise.

All parties to these appeals agree that there has been no significant change in the area since April, 1960, when the comprehensive zoning map was adopted by the County Council of Baltimore County. Accordingly, reclassification can be justified only, if at all, on the ground of error or mistake in the map.

Appellants make two contentions. First, that the

Decision of the County Board of Appeals on December 14, 1961, which denied a similar application by Seabold and Hanf, constitutes res judicata; that in the absence of substantial change (which absence is admitted) the decision of December 14, 1961, was binding upon the Board and that, therefore, the Board's action in granting the requested reclassifications was not only arbitrary and capricious, but also illegal.

Many jurisdictions hold that the doctrine of res judicata does not apply to decisions of administrative bodies. This question has never been decided, so far as this Court is aware, by our Court of Appeals. This Court, however, is convinced that when a proper case is presented, the Court of Appeals will hold that either res judicata or some principle analogous to that doctrine does apply to decisions of administrative bodies. In the opinion of this Court, however, this is not such a case. As noted above, the 1961 decision involved only the Seabold and Hanf properties. The reclassification of those properties alone would have had the ridiculous result of establishing as a dividing line between the B.L. land and R-6 land a property line in the middle of a block. Accordingly, if the Board had reclassified Seabold and Hanf in 1961, such action would have been arbitrary and capricious. The case presented to this Court at this time for consideration is quite different, therefore, from that presented to the Board in 1961. Accordingly, the Court holds that the decision and order of the County Board of Appeals on December 14, 1961, was not res judicata so far as this case is concerned.

Second, Appellants contend that the evidence in these cases does not justify a finding that the County Council of Baltimore County committed a mistake or an error in adopting the

comprehensive zoning map in April, 1960. The Court does not agree. If there was ever a case of clear mistake or error, it is that presented here.

The evidence discloses that on the westerly side of Edmondson Avenue extending northerly from Orpington Road to the city line and, in fact, into the city, all the properties are zoned for commercial uses and most of them are, in fact, devoted to such uses. On the easterly side of Edmondson Avenue, beginning with properties located in Baltimore city and extending along Edmondson Avenue in a southerly direction to a point some distance south of North Bend Road, the properties are zoned for commercial uses and are devoted to such uses. Photographs, offered in evidence, of the easterly side of Edmondson Avenue show that beginning at a point northerly from Orpington Road and extending in a southerly direction, there are (1) a funeral home; (2) a Shell filling station; (3) a nursing home; (4) North Bend Road; (5) Reed's drug store; (6) three smaller commercial uses; and (7) an Acme market. Several of these are directly opposite to the subject properties. In addition to this, although they are non-conforming uses, one of the two properties located across the alley at the rear of subject properties was, for many years, used for the storage of tile and the other, for years down to the present time, has been used in part for the operation of a beauty shop.

Testimony on behalf of Appellees, including that of Bernard Willemin, was to the effect that an error had been made in the zoning map so far as subject properties are concerned; that the subject properties had very little value, if any, for residential uses; that to classify these properties for anything other than business uses amounted to confiscation; that they, in

effect, constituted an island of R-6 land in a sea of B.L. zoning.

Testimony of Mr. Lambert showed that the real estate uses on Edmondson Avenue across from the subject properties, had been there between 15 and 20 years; that the rear part of the Lampieri property fronting on North Bend Road had been used for commercial purposes (non-conforming uses) for about 30 years. Testimony of Mr. William G. Spohn, Jr., was to the effect that in 1959 he had purchased his home fronting on North Bend Road, just across the alley from the rear of the Lampieri property; that when he moved in the garage located on that property was rented out for the storage of tile (delivered to and removed from the garage by truck) and that such use continued during his ownership until November or December 1963. Mr. G.O.P. McCartney testified that he owned the property on Orpington Road directly across the alley from the rear of 5400 Edmondson Avenue; that he purchased the property in 1934; that a beauty parlor is located in the basement of his home and had been operated there for 34 years; that the Shell filling station had been operated in its present location between 10 and 15 years. Mr. Bernard I. Barnes, Pastor of the West Baltimore Methodist Church was another protestant. On cross examination, however, he admitted that in the 1961 hearing he had indicated by his testimony that "it was logical and reasonable" that the properties involved in that case (Seabold-Hanf) should be commercial.

Mr. George E. Gavrili, Director of the Office of Planning and Zoning, was called on behalf of the protestants. From his testimony (as well as that of Mr. Willemin and the minutes of the Baltimore County Planning Board of a meeting held on Thursday, November 19, 1959) it was developed, that after a

field inspection trip, the Baltimore County Planning Board recommended that the subject properties, as well as several other properties, southerly from North Bend Road on the westerly side of Edmondson Avenue, should be classified B.L.; that the comprehensive zoning map submitted to the County Council for consideration recommended that such properties be zoned B.L. in the Lampiericase. Mr. Gavrili testified as follows (p.186-7): "I think the thing that is different, the factor that is different, between the Planning Board recommendation as a comprehensive plan, and the case at issue today, is that we are not dealing today with an extension of commercial zoning across the entirety of the block; we are dealing with a case which jumps over existing residential zoning by establishing commercial zoning on the far edge of what the Planning Board had thought would be logical for commercial use." On cross examination, Mr. Gavrili testified that (p.190-1): "**** If this stretch of frontage in its entirety would come in as one petition, then I would be then constrained to say it was in agreement with the map as recommended by the Planning Board, but the difference is, this is not the way it is being done. I have to agree with the property in its entirety, but not on a piecemeal basis." Finally (p.191), in response to the question "If it were extension of the existing commercial zoning, would you feel different about it than you do now?", Mr. Gavrili stated "Then I feel I would have to be constrained by the recommendation of the Planning Board." The only inference which can reasonably be drawn from these quotations from the testimony of Mr. Gavrili is that the failure of the County Council to zone the subject properties B.L. constituted a mistake or an error. The Court holds that such was the case and accordingly affirms the orders of the County Board of Appeals for Baltimore County dated September 9, 1965.

PACER
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FRANKLIN C. CORQUIN
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Plaintiffs

vs.

WILLIAM S. BALDWIN, W. GILES
PARKER and R. BRUCE ALDERMAN,
CONSTITUTING THE COUNTY BOARD
OF APPEALS OF BALTIMORE COUNTY

Defendants

MR. CIERKI

Please note an Appeal to the Circuit Court for Baltimore County in the above Petition for Reclassification from the action of the County Board of Appeals of Baltimore County in the matter of the Petition of William S. Seabold, et al. Petitioners, for reclassification from an R-6 Zone to a B-L Zone, and Special Exception for a Gasoline Service Station, and the County Board of Appeals Order, Opinion and Reasons therefor, granting the reclassification, decided by the County Board of Appeals on September 9, 1965, in Case No. 65-104-RX.

SEABOLD - No. 65-104-RX

This was after serious study and an inspection trip by the Planning Board, and was in line with the recommendations of the Planning staff.

Mr. Bernard Willemain, whose qualifications are well known, testified in this case to substantially the same effect as was his testimony in the lampieri case, and added the additional testimony that he had attended the Planning Board meeting in November, 1957 and that he was present when the Board met and approved the map as their recommendation to the County Council of November 19, 1959 showing the entire 5400 block as B-L zoning. At the public hearing before the County Council at a later date the witness was present and nothing as said as to this specific property, no objection was made to the B-L zoning, and the minutes of the meeting make no reference to the subject property whatsoever. At a later closed meeting the Council adopted the zoning map leaving the subject property as R-6 apparently without the benefit of any further recommendations or evidence, or any discussion of the subject. Because of the above, added to his own studies of the area from 1959 on as expressed fully in his testimony and also in the lampieri case, he expressed the opinion that the original zoning was not proper, was in error, and the property should be rezoned as B-L. He further expressed the opinion that the present zoning was against the public interest, was discriminatory against the use of the subject tract by its owners, and testified from his own knowledge that the subject property had been used for commercial or professional use prior to the adoption of the map (as had also been the lampieri property). Mr. Willemain further expressed the opinion that there had been numerous changes in the immediate area between the original County zoning map of 1945 and the present which apparently were not considered by the Council at the time of the adoption of the original map. These changes included numerous reclassifications, special exceptions, and physical changes, the greatest of which probably was a fire which destroyed almost the whole block on the south side of Edmondson Avenue and which was replaced by new stores now occupied by Read's Drug Store and others.

There was further testimony on behalf of the petitioner by Mr. William R. Nichols, a well known real estate appraiser and realtor, who stated that, in his opinion, the Seabold property was practically useless and almost valueless in any permitted use in an R-6 classification, and the highest and best use would be under a B-L classification. He confirmed the numerous nonconforming commercial uses in the neighborhood and stated that, in his opinion, any use of this entire block for valid residential purposes was "long gone". He also stated that the proposed use would in no way be detrimental to the

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Attorney for Mr. & Mrs. Thomas J. Lambert, Leo McCartney, Lane M. Sprecher, Rev. Albert W. Gibson, Jr., and Franklin C. Corquin

I HEREBY CERTIFY that on this 24 day of October, 1965, a copy of the foregoing Order for Appeal was mailed to The County Board of Appeals of Baltimore County, County Office Building, Towson, Maryland 21204.

James J. Doherty

ORDER FOR APPEAL

SEABOLD - No. 65-104-RX

residential property in the contiguous area and supported this opinion by going into a large number of recent sales of property in the general area.

It seems clear to the Board that there is a substantial public demand for continued commercial uses of the property on this block, and if there has been no change in the specific use of this property other than that caused by physical deterioration since 1960, it is only because such changes have been prevented by the improper zoning which occurred at the time of the adoption of the map. There have been, of course, substantial increase in population and business activity in this "shopping center".

The protesters who testified, in the Board's opinion, did not present evidence sufficiently weighty to rebut the petitioners' case. Almost all of them based their objections in general terms as opposing any further commercialization and especially the establishment of any more gasoline stations. All of them were in agreement that all of the B-L zones on Edmondson Avenue had been completely built up and were operating as commercial enterprises at the time of the adoption of the map. There has been no new commercial construction since that time obviously because there was no place to put it regardless of the public demand or need for such facilities. It is further obvious that there certainly would have been some new commercial construction if the land had been available as recommended by the Planning Board in 1959. All of the protesters were unanimous in opposing the special exception for a gas station and presented a large amount of testimony that the operation of a gasoline service station would tend to create traffic hazards, would interfere with a school bus stop, and one witness had counted forty-five gas stations "in our area" which he defined as a two mile radius of the subject property. Protesters' exhibit "C" is a list of these gas stations. Almost all of the protesters expressed the opinion that the erection of the gas station would depreciate the value of their property but very little, if any, was said as to other commercial uses which seems to be a reasonable attitude because the residential community has gotten along very well for many years with the existing B-L zoning without showing any evidence of damage to residential property values in the area. The only witness presented by the protesters who could possibly be described as an expert witness was Mrs. Mildred Skiver Van Patten, who was also a protestant as a resident of the neighborhood. She has been in the real estate business for sixteen years, mostly in the Catonsville area, and her testimony was to the effect that a filling station would depreciate property values in the neighborhood. On cross-examination she stated that from her personal knowledge all of the B-L zones had been "full up" since and before 1960, and that there was certainly a definite demand for more public service facilities in the neighborhood.

It seems to the Board that the zoning of this property for commercial use would not amount to an encroachment on a residential area but simple would confirm the present and long continued use of this block, and the Board finds that the original zoning on the 1960 map was in error because of the complete failure of the Council to consider existing land

RE: PETITION FOR RECLASSIFICATION :
from an R-6 Zone to a B-L Zone,
and SPECIAL EXCEPTION for a :
Gasoline Service Station, :
NW corner Edmondson and :
Crispington Avenues, :
in District :
William M. Seabold, et al, :
Petitioners :
No. 65-104-RX

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY

OPINION

This case involves an application for rezoning from R-6 (Residential) to B-L (Business-Local) of a piece of property on the northwest side of Edmondson Avenue at the corner of Crispington Road. The petitioners have also asked for a special exception for the use of the property as a gasoline service station. This is a companion case with the application of Milton J. Lampieri, File No. 64-42-RX, which concerned the property on the northwest corner of Edmondson Avenue and North Bend Road, the two properties between them constituting the entire north-west side of Edmondson Avenue in the 5400 block; the lampieri property being 5404 and the presently considered application 5400 and 5402, there being only three properties in the entire block.

The Board feels, for reasons stated in the lampieri case and to be stated hereafter, that these two cases should be determined simultaneously and that either the zoning requested should be granted in both cases or refused in both cases. For the reasons stated in this opinion and in the lampieri opinion to be filed simultaneously, the Board has determined to grant the rezoning from R-6 to B-L on both properties, and to deny the special exception for a gasoline station in the Seabold case.

The entire frontage of the 5400 block on Edmondson Avenue extends evenly to an alley in the rear. This block is within a long block of the Baltimore City Line and from Crispington Road easterly both sides of Edmondson Avenue into the City have been occupied and used for commercial purposes for many years before April 5, 1960 which was the date of the adoption of the zoning map in question. All three properties have been used for varying commercial or professional purposes for many years and have been used apparently as a nonconforming use since the adoption of the map in 1960. The entire file of this Board in the lampieri case, No. 64-42-RX, was introduced in evidence in this case as petitioners' exhibit #1, and the Board wishes to adopt as part of this opinion all of its findings and conclusions made in the opinion filed in the lampieri case which was determined at the same time as the present case.

The properties across the street from the subject property, for the entire 5400 block and for the southeast side of the 5300 block, were zoned B-L by the map and also were, and are, the subject of long continued commercial use as may clearly be seen from the pictures filed as exhibits and also from the Board's inspection. There are a number of

SEABOLD - No. 65-104-RX

uses at the time and its failure to follow the recommendation of the Planning Board which recognized existing uses, was in accord with the existing uses in the immediate vicinity, and recognized the probability of future growth and demand for more commercial business services in the area. The map, as adopted, was certainly not realistic at that time both from the point of view of conditions then existing and those which might exist in the reasonably foreseeable future. This conclusion of the Board is reached, as stated in the lampieri case, with full realization of the recent Court of Appeals reiteration of the principle that case, with full realization of the recent Court of Appeals reiteration of the principle that there is a strong presumption of the correctness of the original zoning. However, we feel that this presumption should not be so strong or so blinding upon this Board as to actually perpetuate a situation which is detrimental to a neighborhood, and which, by its original adoption, completely ignored the recommendations of the Baltimore County Planning Board. For the foregoing reasons, the application for rezoning from R-6 to B-L will be granted, and the application for a special exception for a gasoline filling station will be denied as we feel the affirmative evidence indicates that the petitioner has not met the burden placed on him to prove all of the requirements of Section 502.1 of the Zoning Regulations of Baltimore County.

As stated at the outset of this opinion, the Board feels that this case must be considered in connection with case No. 64-42-RX involving the lampieri property in the same block, and it is the intention of the Board to file both opinions simultaneously.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 9th day of September, 1965 by the County Board of Appeals, ORDERED that the reclassification petitioned for, be and the same is hereby granted; and the special exception petitioned for, be and the same is hereby denied.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William S. Baldwin, Chairman

W. Giles Parker

R. Bruce Alderman

SEABOLD - No. 65-104-RX

commercial or quasi-commercial uses on the other side of the alley in the rear of the subject property, and on the side streets in the immediate vicinity which are operating either as nonconforming uses or as prohibited zoning violation at the present time. For example, at 600 Crispington Road there is a beauty shop in the basement of a residence, at 601 there is a garage which is apparently being used for the storage of tile. The pictures filed as exhibits indicate the use of the property in the two blocks on the other side of Edmondson Avenue. There was testimony in at least one of the two cases that the entire commercially zoned area, both in Baltimore City and Baltimore County, is and has been since before 1960 occupied with commercial uses, and there is a great demand for further such uses as the result of the increase of population in the area and the complete lack of any additional commercial facilities useable for the public service, necessity, and convenience with the single exception that almost all of the neighbors feel there are too many gasoline service stations in the vicinity. The properties involved in the Seabold case separate the lampieri property from the present commercially zoned property northwest of Crispington Road, namely, the 5300 block of Edmondson Avenue between Aldershot Road and Crispington Road, and these two properties have also for some years past been the subject of various, possibly nonconforming, commercial uses.

From the testimony of Mr. George E. Gavelis we take it that the Planning staff would have been in favor of commercial zoning for the lampieri property if the properties subject of the Seabold case were also zoned B-L, but they would be opposed to the granting of the lampieri petition in the absence of a favorable decision to the petitioner in the Seabold case because they feel that it would be jumping over a residential zone to grant a business-local zone which would not be in accordance with the comprehensive plan. However, the Planning staff apparently was in 1960, and still is, in agreement with the recommendations that the Planning Board made at that time concerning which we will have something to say later in this opinion. Mr. Gavelis was very definite in his testimony that he and his staff were in agreement with the original Planning Board's recommendation assuming that the entire block (this includes both lampieri and Seabold properties) were to be reclassified for business use. He definitely expressed the opinion that the best planning and zoning recommendations in this case were not followed at the time of the adoption of the map.

The minutes of the Baltimore County Planning Board's meeting of Thursday, November 19, 1959 (petitioners' exhibit #2 - File No. 64-42-RX) have the following to say (at page 2):

- Properties on the Northwest Side of Edmondson between Crispington and North Bend Roads - from R.A. to B-L. Both the Seabold and Hanf properties at 5400 and 5402 Edmondson Ave. are sandwiched between properties used commercially and across the street from existing business uses. In order to permit the additional commercial expansion of this "center" the committee recommended that not only the 2 properties in question

IN THE MATTER OF
THE PETITION OF
WILLIAM M. SEABOLD, and
ESTHER J. SEABOLD,
and
FREDERICK T. HANF, and
ANNA E. HANF
FOR ZONING RECLASSIFICATION
AND SPECIAL EXCEPTION
IN RE: 5400 and 5402 Edmondson
Avenue

BEFORE THE ZONING COMMISSIONER
OF BALTIMORE COUNTY
County Office Building
Towson, Maryland

NOTICE OF APPEAL

Come now on this 5 day of November, 1964 the Petitioners in the within proceeding, by Kerr and Kerr, their Attorneys, and Appeal the Decision of the Zoning Commissioner of Baltimore County of October 21, 1964, to the County Board of Appeals.

Notice of the within Appeal is hereby acknowledged this day of November, 1964, by the Zoning Commissioner of Baltimore County.

I Herely Certify, That on this 5 day of November, 1964 I delivered a copy of the foregoing Notice of Appeal to the office of the County Board of Appeals.

Delivery of a copy of the within Notice of Appeal is acknowledged this day of November, 1964 by the County Board of Appeals.

BALTIMORE COUNTY, MARYLAND

No. 27566

OFFICE OF FINANCE

Division of Collection and Receipts
COURT HOUSE
TOWSON 4, MARYLAND

DATE 11/10/64

TO: Nelson R. Kerr, Esq.,
210 W. Pennsylvania Avenue,
Towson 4, Md.BILLED BY: Office of Planning & Zoning
119 County Office Bldg.,
Towson 4, Md.

01-422

TOTAL AMOUNT

DEPOSIT TO ACCOUNT NO.

DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE

COST

Cost of appeal in matter of property of Wm. Seabold, et al \$70.00

2 signs

10.00

\$80.00

PAID - Baltimore County, Md. - Office of Finance

11-1264 6421 • 27566 TTP- 80.00

IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND
MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON 4, MARYLAND
PLEASE RETURN UPPER SECTION OF THIS BILL WITH YOUR REMITTANCE.PETITION FOR
RECLASSIFICATION AND
SPECIAL EXCEPTION

1st District

ZONING: From R-6 to R.L.
ZonePetition for Special Exception
for Gasoline Service
Station

LOCATION: Northwest corner of Edmondson and Orpington Avenues

DATE & TIME: WEDNESDAY,
OCTOBER 7, 1964 at 2:00
P.M.PUBLIC HEARING: Room
104, County Office Building,
111 W. Chesapeake Avenue,
Towson, MarylandThe Zoning Commissioner of
Baltimore County, by authority
of the Zoning Act and Regulations
of Baltimore County, will hold a public hearing
concerning all that parcel of
land in the First District of
Baltimore County.Beginning for the same at a
point formed by the intersection
of the southeast side of
Orpington Road with the north-
west side of Edmondson Avenue
as shown on a plat of
Meridale Farm Sub-Division
Plat No. 2 and recorded among
the Land Records of Baltimore
County Maryland in W.P.
C. No. 76 Folio 6, thence
running with and binding on
the northwest side of Edmondson
Avenue South 11 degrees
16 minutes 30 seconds West
148.66 feet, thence leaving
said Edmondson Avenue and
running for a line of division
North 41 degrees 00 minutes
00 seconds West 150.00 feet
to the southeast side of a 15
foot alley as shown on the
plat first above mentioned,
thence running with and binding
on the southeast side of
said alley North 41 degrees
16 minutes 30 seconds East
148.66 feet to the southwest
side of Orpington Road, thence
running with and binding on
said Orpington Road, South
61 degrees 00 minutes 00
seconds East 150.00 feet to
the place of beginning.Containing 0.57 acres of
of land more or less.Being and comprising all
of lots 41, 42 and the north-
easternmost 37.16 feet of lot
46 as shown on plat first
above mentioned.Being the property of William
Seabold, et al as shown on
plat plan filed with the Zoning
Department.

By Order Of

John G. House
Zoning Commissioner Of
Baltimore County

CERTIFICATE OF PUBLICATION

BALTIMORE COUNTY, MD. September 17 1964.

THIS IS TO CERTIFY, That the annexed advertisement was
published in THE TIMES, a weekly newspaper printed and pub-
lished in Baltimore County, Md. once in each of one

successive weeks before the 7th

day of October 1964, the first publication

appearing on the 17th day of September

19 64

THE TIMES.

John M. Martin
Manager

Cost of Advertisement \$ 20.00

Purchase Order A2187

Requisition No. N9863

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District 1ST Date of Posting Sept 19 1964

Posted for: Reclassification from R-6 to R.L. - Spec. Excep. Gas Station

Petitioner: William Seabold

Location of property: NW corner of Edmondson & Orpington Aves.

Location of Signs: (11 ft.) on E. side of 5402 Edmondson Ave.

(3 ft 4 in) " " " 5400 " "

Remarks: J. S. House

Posted by: J. S. House Date of return: Sept 24, 1964

4 Signs

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District 1ST Date of Posting Nov 25 1964

Posted for: APPEAL

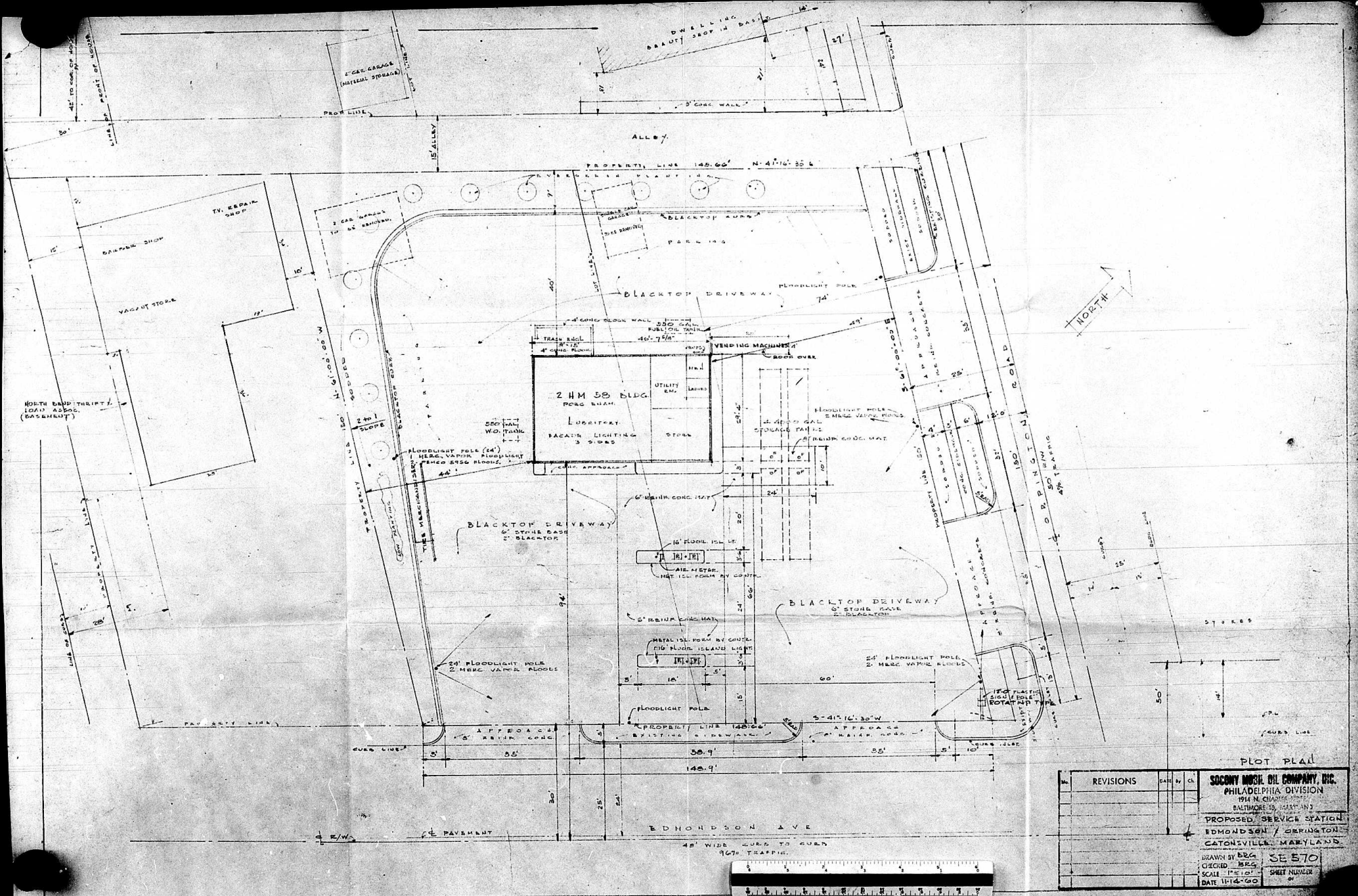
Petitioner: William M. Seabold, et al.

Location of property: NW corner Edmondson & Orpington Avenues

Location of Signs: on E. side of 5400 and 5402 Edmondson Ave.

Remarks: J. S. House

Posted by: J. S. House Date of return: Nov 25 1964



PLOT PLAN

REVISIONS	DATE	BY	CHK

SOCO NY MOBIL OIL COMPANY, INC.
PHILADELPHIA DIVISION
 1914 N. CHAMBERS ST.
 BALTIMORE 15, MARYLAND

PROPOSED SERVICE STATION
EDMONDSON / SPRINGTON
CATONSVILLE, MARYLAND

DRAWN BY **BRG**
 CHECKED **BRG**
 SCALE **1"=10'**
 DATE **11-14-60**

SE 570
 SHEET NUMBER **1**