

B. Anderson
ENTR
ZONING FILE #67-250-RX
IN THE COURT OF APPEALS OF MARYLAND
No. 420
September Term, 1968

HERMAN J. DORF

v.

EDWARD C. MULLENDORF, et al.

Hammond, C.J.
McWilliams
Finan
Singlesy
Smith,
JJ.

Opinion by McWilliams, J.

Filed: November 4, 1969

In light of Judge Raine's pithy statement and what we have said so very recently in cases not very much unlike the instant case, we do not see what useful purpose could possibly be served by further exertion. See County Comm'rs v. Phillips, Md. (1969) [No. 394, September Term, 1968, filed October 10, 1969] and the cases therein cited; Bowie v. County Comm'rs, 253 Md. 602 (1969); Wells v. Pierpont, 253 Md. 554 (1969); Goucher College v. DuWolfe, 251 Md. 630 (1968); Randolph Hills, Inc. v. Whitely, 249 Md. 78 (1968).

ORDER AFFIRMED.
COSTS TO BE PAID BY APPELLANT.

DESCRIPTION OF PARCEL OF LAND IN MILFORD,
SECOND DISTRICT, BALTIMORE COUNTY, MARYLAND
To Accompany Reasoning Petition Dorf Property.

Beginning for the same at the corner formed by the intersection of the
northwesternmost side of Buckingham Road and the northeasternmost side of
Liberty Road as shown on Plat No. 1 Revised of Milford, recorded among the Land
Records of Baltimore County in Plat Book W.P.C. No. 8, folio 63, and running
thence North 65° 50' West binding on the northeasternmost side of Liberty Road,
as shown on said Plat, 300.00 feet to the corner formed by the intersection of
the northeasternmost side of Liberty Road and the southeasternmost side of
Croydon Road as shown on Plat No. 2 of Milford, recorded among the aforesaid
Land Records in Plat Book W.P.C. No. 8, folio 59, and running thence
North 24° 04' East binding on the southeasternmost side of Croydon Road, 150.00
feet to the northernmost corner of Lot No. 2 as shown on the Plat secondly herein
referred to, thence South 65° 50' East binding on the northeasternmost line of
Lots Nos. 2 and 1, Plat No. 2, and Lots Nos. 11 and 10, Plat No. 1, as shown
on the Plats herein referred to, 100.00 feet to the northeasternmost side of
Buckingham Road herein referred to, and thence binding thereon South 24° 04' West
150.00 feet to the place of beginning.

Being Lots Nos. 10 and 11, Plat No. 1, and Lots Nos. 1 and 2, Plat No. 2,
as shown on the Plats of Milford hereinabove referred to.

Containing 1.03 acres more or less.

cial) or adjacent thereto (siding on commercial). In the supplement
to its report the R.A. classification was recommended for Dr. Dorf's
property. On 11 July 1961 the county council held a hearing on the
proposed zoning map for the Western Planning Area. Counsel for Dr.
Dorf appeared and opposed the R.A. classification, urging a reclassi-
fication to B.L. (Business Local) and stressing the fact that "the
property faces directly onto a Sinclair Station * * * [adjacent to
which] is an A & P, a drug store and a small shopping center." Refer-
ence was made, also, to the fact that the Beltway interchange was
"within a block or so" and that Liberty Road "according to the State
Roads Commission has a car capacity of about 21,500 vehicles over a
24-hour period," and that it is "heavily travelled." The right-of-way,
at the time, was 66 feet wide. Later on 60 of the 66 feet were paved.
Apparently the request for a B.L. classification was dimly viewed. On
3 October 1961, the county council, by a unanimous vote rejected the
proposed R.A. zoning and classified the property R.10 (Residential-
Or. Family). The comprehensive zoning map was adopted by the county
council on 15 November 1962.

Three months later, in February 1963, Dr. Dorf sought to
have his property changed from the R.10 classification to the B.L.
classification, for a small shopping center, on the single ground of
error in the comprehensive rezoning of November 1962. Upon the denial
of his request by the Zoning Commissioner, he appealed to the Board of
Appeals which heard testimony on 10 March 1964. On 20 October 1964
the appeal was dismissed, with prejudice, at the request of Dr. Dorf.

In March 1966 Dr. Dorf again sought a reclassification to

B.L. for a filling station. The petition was withdrawn; the order of
dismissal was entered on 10 April 1966.

On 9 May 1967 Dr. Dorf filed a petition for the reclassi-
fication of his property from R.10 to R.A. with a special exception
for offices. The Zoning Commissioner granted the reclassification
and the special exception on 27 September 1967. On 27 June 1968 a
divided Board of Appeals affirmed the action of the Zoning Commis-
sioner. On 31 December 1968, the trial judge, Raine, J., reversed the
action of the Board of Appeals. In his opinion he said:

"The applicable principles are so well established
that they need be repeated only briefly, and citation of
cases is unnecessary. The court cannot substitute its
judgment for that of the zoning authorities, but where
a comprehensive land use map is adopted it must not be
changed on a piecemeal basis unless a change is dictated
by a finding that the neighborhood in question has changed
its character, or a finding that there was an error or mis-
take when a particular property was placed in a particular
zoning classification. These findings must be supported
by some credible and probative evidence. The only change
in the area since the adoption of the map in 1962 is the
completion of a long awaited project, to wit, the widening
of Liberty Road. This arterial highway was widened from
22 feet to 60 feet, and additional traffic lights have
been installed. This improvement in traffic conditions has
not changed the essential character of the area in which
the subject property is located, and the mere widening of
the highway cannot, in itself, be considered a change that
would justify a reclassification. The Board of Appeals
seems to have predicated its decision on a finding that the
present R.10 classification deprives the owner of any reason-
able use of his property, and that therefore error was
committed by the County Council in 1962. Examination of
the exhibits and the testimony discloses that the physician
who owns the property resides in the same and conducts his
medical practice there. Obviously he can sell it for some
money if he can build a three story apartment or office
building, but to contend that he is deprived of any reason-
able use of the property is sheer nonsense. In this area
Liberty Road serves as a natural and proper barrier between
commercial and residential properties. Examination of the
comprehensive map shows clearly that this would be spot
zoning, and an unwarranted intrusion into the purely resi-
dential area."

INVOICE
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE
Division of Collection and Receipts
COURT HOUSE
TOWSON, MARYLAND 21204

DATE: 7/21/68
No. 49264

REPORT TO ACCOUNT NO. 01.712
QUANTITY 1

RETURN THIS PORTION WITH YOUR RECEIPTS
DETACH ALONG PERFORATION AND KEEP THIS PORTION FOR YOUR RECORD

George W. White, Jr., Esq.
10 Light Street
Baltimore, Md. 21202

County Board of Appeals
(Sealing)

Cost of document, filed in Case No. 67-250-RX
Herman J. Dorf
161/2 Liberty Road between
Buckingham and Croydon Roads
2nd District

111.00

IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND
MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON, MARYLAND 21204

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 2nd
Date of Posting: 10/24/67

Posted for: Appeal
Petitioner: Herman J. Dorf
Location of property: N.E. 1/2 of property rd. between Buckingham
& Croydon Rds.
Location of Sign: Sec. 3 of Croydon Rd. - N.E. 1/2 of Liberty Rd.

Remarks: Sherry L. Dorf
Signature
Date of return: 10/24/67



NOTICE OF APPEAL

James H. Cook
22 W. Pennsylvania Avenue
Towson, Maryland 21204
Phone: 823-4111

I HEREBY CERTIFY that copy of the foregoing Notice of Appeal was mailed this day of January, 1969 to George W. White, Jr., Esquire, 305 W. Chesapeake Avenue, Towson, Maryland 21204.

James H. Cook

MEMORANDUM - OPINION

This zoning appeal involves a 1.03 acre tract on the northeast side of Liberty Road between Buckingham Road and Croyden Road, a short distance south of the Baltimore County Parkway. When the Western District Comprehensive Land Use Map was adopted by the County Council in 1962 the subject property and all of the surrounding area south of the Beltway and east of the Liberty Road was zoned R-10. Directly across Liberty Road from the subject property is a small shopping center. The subject property has been used for some time as a residence, combined with a physician's office. All of the surrounding residences are individual homes. The Deputy Zoning Commissioner granted a reclassification from R-10 to R-A, with a special exception for a three story office building. The Board of Appeals (Mr. Parker dissenting) upheld the reclassification and special exception grant. This court believes that such action is arbitrary and capricious, and that the reclassification order must be set aside.

The applicable principles are so well established that they need be repeated only briefly, and citation of cases is unnecessary. The court cannot substitute its judgment for that of the zoning authority, but where a comprehensive land use map is adopted it must not be changed on a piece-meal basis unless a change is dictated by a finding that the neighborhood in question has changed its character, or a finding that there was an error or mistake when a particular property was placed in a particular zoning classification. These findings must be supported by some credible and probative evidence. The only change in the area since the adoption of the map in 1962 is the completion of a long awaited project, to wit, the widening of Liberty Road. This arterial highway was widened from 22 feet to 60 feet, and additional traffic lights have been installed. This improvement in traffic conditions has not changed the essential character of the area in which the subject property is located, and the mere widening of the highway cannot, in itself, be considered a change that would justify a reclassification. The Board of Appeals seems to have predicated its decision on a finding that the present R-10 classification deprives the owner of any reasonable use of his property, and that therefore error was committed by the County Council in 1962. Examination of the Exhibits and the testimony discloses that the physician who owns the property resides in the same and conducts his medical practice there. Obviously he can sell it

for more money if he can build a three story apartment or office building, but to contend that he is deprived of any reasonable use of the property is arrant nonsense. In this area Liberty Road serves as a natural and proper barrier between commercial and residential properties. Examination of the comprehensive map shows clearly that this would be spot zoning, and an unwarranted intrusion into the purely residential area.

Although the Record does not contain all of the facts necessarily underlying the contention, the applicant for rezoning argues that the Council consistently zoned property as R-A when it was situated on the opposite side of a highway from commercial areas, and that the subject property was not so treated. Although it is true that some R-A zones were located adjacent to commercial areas, the map does not show any pattern existing, or that the subject property was treated in any different fashion.

Lack of credible evidence of change or mistake justifies reversal. In addition, it seems clear that the proposed use of the subject property would tend to create traffic congestion and hazard. For example, see the testimony of the expert Thompson on page 70 of the transcript. Cars backed up on Buckingham waiting to enter Liberty Road at the light would block the entrance to the subject property.

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For the above reasons, briefly stated, an order will be signed reversing the action of the Board of Appeals.

1s/ Raine
JUDGE

December 30, 1968

EDWARD C. MULLENDORE, et al.	:	IN THE
	:	CIRCUIT COURT
vs.	:	FOR
	:	DALTIMORE COUNTY
WILLIAM S. BALDWIN, etc.	:	
and	:	
HERMAN J. DORF	:	MISC. NO. 4018

O R D E R

In accordance with the Opinion of this Court filed in this case December 30, 1968, the Order of the County Board of Appeals of Baltimore County granting the reclassification and special exception petitioned for is reversed and the Petition for reclassification and special exception is denied, January 7, 1969.

Per Rame, J.
Judge

EDWARD C. MULLENDORE, et al	:	IN THE
Protestants-Appellants:	:	CIRCUIT COURT
VS.	:	FOR
	:	BALTIMORE COUNTY
WILLIAM S. BALDWIN,	:	
JOHN P. SLEWIK,	:	
W. GILES PARKER,	:	Misc. Docket No.
Constituting the Board of	:	Folio 336
Appeals of Baltimore County	:	Case No. 4018
Appellees	:	

ORDER FOR EXTENSION OF TIME
FOR FILING TRANSCRIPT

It is this 9th day of August, 1968, by the Circuit Court for Baltimore County ORDERED that the time for filing the transcript of the record of the hearing before the Board of Appeals in the above-entitled case be extended for sixty days to October 18, 1968.

A. Menchini
JUDGE

10-22-70

HOWARD C. WELLSMORE
3606 Croydon Road
Baltimore, Maryland, 21207
JAMES W. SPARKLIN
3606 Buckingham Road
Baltimore, Maryland, 21207
JOHN C. BURDETTE, JR.,
3614 Croydon Road
Baltimore, Maryland, 21207
DONALD KIRCH
3605 Kiroch Road
Baltimore, Maryland, 21207
FRANCIS PAGAN
3605 Buckingham Road
Baltimore, Maryland, 21207
WARD JONES
3700 Croydon Road
Baltimore, Maryland, 21207
CLARENCE F. FOCK
3608 Buckingham Road
Baltimore, Maryland, 21207
MARGARET D. FREYMAN
3609 Croydon Road
Baltimore, Maryland, 21207
WALTER WILASCH
3720 Buckingham Road
Baltimore, Maryland, 21207
Protestants-Appellants

vs.
WILLIAM S. BALDWIN
JOHN A. SLOWIK
W. GILES PARKER,
Constituting the Board of
Appeals of Baltimore County
County Office Building
Towson, Maryland, 21204
Appellees

ORDER OF APPEAL

Please enter an appeal on behalf of all of the Protestants
from the Order of the County Board of Appeals of Baltimore County,

IN THE

CIRCUIT COURT

FOR

BALTIMORE COUNTY

dated the 27th day of June, 1968, in Case No. 67-250-RX, granting
the reclassification and special exception petitioned for.

George N. White, Jr.
Backmaster, White, Mindel & Clarke
305 West Chesapeake Avenue
Towson, Maryland 21204
Attorneys for Protestants-Appellants

CERTIFICATE OF COMPLIANCE

I hereby certify that a copy of the Order for Appeal to
the Circuit Court for Baltimore County from the decision of the
County Board of Appeals in Case No. 67-250-RX dated the 27th day of
June, 1968, was delivered to the Board prior to the filing of this
Order, as shown below.

George N. White, Jr.
for Attorneys for Protestants-Appellants

Service of a copy of the Order for Appeal in Case
No. 67-250-RX is admitted this 19th day of July, 1968.

COUNTY BOARD OF APPEALS

By *W. Giles Parker*

I CERTIFY that a copy of the foregoing was mailed this
day of July, 1968, to James H. Cook, Esquire, 22 West
Pennsylvania Avenue, Towson, Maryland, 21204, Attorney for Applicants.

for Attorneys for Protestants-Appellants

-2-

RE: PETITION FOR RECLASSIFICATION
from an R-10 zone to an R-A zone
and SPECIAL EXCEPTION
for offices
NE/S Liberty Road between
Buckingham and Croydon Roads
2nd District
Herman J. Dorf, Petitioner
BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. 67-250-RX

DISSENTING OPINION

The undersigned dissents from the majority Opinion of the Board and the
Order passed in accordance therewith for the following reasons:

The subject property has been occupied by Dr. Dorf since 1953 as a home,
and since 1954 or thereabouts as an office for an extensive and successful medical practice.
Dr. Dorf originally purchased this lot upon which his home is located in 1953, and in 1954
bought the lot next door upon which he constructed a wing or other structure connected
to the residence which he has used ever since as a medical office. His practice has been
successful, he is well thought of in the community, and has been a good neighbor.

The evidence is clear that he does not wish to give up his medical practice
at this location, nor does he wish to sell his home, together with his practice, to another
doctor which he could very readily do at any time, although there is a difference of opinion
as to the amount of money he would realize from such a sale. Under these
circumstances it appears to me ridiculous to take the position that the R-10 zoning of this
property by the map, dated November 15, 1962, would "deprive Dr. Dorf of any reason-
able use of his property", and I am indeed surprised that an expert planner of the standing
of Mr. Bernard Willemain could so testify.

This property was the subject of an application for change to B.L. zoning
filed in September, 1961, Case No. 5390. This Board (of which this dissenter was a
member at that time) took testimony in the case on March 10, 1964, and the case was
thereafter dismissed at the request of the petitioner under date of October 20, 1964. In
1966 an application for a change to B.L. zoning and a gas station was filed by the
petitioner, and subsequently withdrawn. He is now asking for R-A zoning with a
special exception for an office building on the grounds of error in the original zoning,
as well as a change in the character of the neighborhood.

There is absolutely no substantial evidence to support either position.
Abstracts from the minutes of the County Council appear in the record (exhibit A) and
some minutes of the Planning Board (exhibit B) which indicate that there was some
discussion of R-A zoning before the Planning Board, although at that time Dr. Dorf,
through his counsel, requested B.L. zoning. However, the County Council, after a

Herman J. Dorf - Case #67-250-RX

full discussion and with knowledge of all of the pertinent facts, zoned the property R-10
so that it would remain the same as all the rest of the very lovely and long established
residential community known as Millford, (petitioner's exhibit #4).

The only possible evidence to support a claim of change in the character of
the neighborhood was the fact that Liberty Road has been widened since the adoption of the
zoning map and is now able to carry more traffic than previously, although the volume of
traffic on this road has steadily increased since its improvement. This seems to be the
case everywhere in Baltimore County apparently through the local application of a variation
on Parkinson's Law; namely, that the volume of traffic seems to increase in direct propor-
tion to fill up the traffic arteries provided for it. The testimony showed, however, that
the construction of the office building planned by Dr. Dorf would generate up to 1200 trips
per day in addition to what is presently on the two side streets from which access to the
Dorf property is possible. It seems to me that if this means anything, it would show that
the granting of this application would "tend to create congestion in roads, streets or alleys
therein" (Section 502.1b).

From the testimony of the protesters, it seems clear to me that Dr. Dorf's
proposal would detract from the market value of some of the homes in the Millford community
and, hence, would "be detrimental to the health, safety or general welfare of the locality
involved" (Section 502.1a).

I have carefully considered all of the evidence in this case, each exhibit in
my notes and the notes of others, and in the exhibits file, and I can find no substantial
evidence to support this petition. I, therefore, must dissent from the decision of the
majority, even though I sympathize with Dr. Dorf's desire to maintain his medical practice
at this location and at the same time realize the greatest possible economic benefit for
himself, neither of which mounts up to a sufficient reason for granting either rezoning or
the special exception.

W. Giles Parker

Date: June 27, 1968

RE: PETITION FOR RECLASSIFICATION
from an R-10 zone to an R-A zone
and SPECIAL EXCEPTION
for offices
NE/S Liberty Road between
Buckingham and Croydon Roads,
2nd District
Herman J. Dorf, Petitioner
BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. 67-250-RX

OPINION

The petitioner in this case seeks a reclassification of his property, approxi-
mately one acre in size, situated on the north side of Liberty Road approximately one block
east of the ramp leading to the Baltimore County Beltway, from an R-10 zone to an R-A
zone, and also requests a special exception to construct a professional office building on
the land. The present improvements on the property consist of a two bedroom stone
residence occupied by the petitioner, and a separate doctor's office connected to the
residence by a breezeway.

The subject property is across from a B-L zoned tract of land that is occupied
by a small shopping center known as the Liberty Crest Shopping Center, which contains a
food store, a drug store, and a gasoline service station. The tract of land owned by the
petitioner has approximately 300 feet of frontage along the north side of Liberty Road and
extends to a depth of 150 feet. It is bounded on the east by Buckingham Road, and on
the west by Croydon Road. The petitioner, Dr. Herman J. Dorf, testified that he pur-
chased the parcel in two parts: the original purchase being about thirteen years ago of
the lot, 150 feet by 150 feet, on the corner of Croydon and Liberty Roads, and the
following year he purchased the second lot from a Mr. Sullivan.

The petitioner proposes to erect on the property a three story professional
office building, 60 feet by 120 feet, with sufficient parking to comply with the Baltimore
County regulations. The plan introduced as petitioner's exhibit #2 indicates that there
are no entrances proposed on Liberty Road; the ingress and egress to the property being
from Buckingham and Croydon Roads.

Mr. Joseph D. Thompson, an expert traffic engineer testifying on behalf of
the petitioner, stated that in 1962, at the time of the adoption of the Western Area map,
Liberty Road in front of the subject property had 22 feet of paving on an old turnpike
right-of-way width of 66 feet. Since that time the road has been reconstructed, and now
has a paved width of 60 feet and is five lanes wide in front of the subject property, with
traffic lights at both Croydon and Buckingham Roads. There was testimony that when the
road was widened, it moved the paved portion of the road thirteen feet closer to the Dorf
dwelling and removed substantial trees and shrubbery. Mr. Thompson also testified that,

in his opinion, the proposed special exception, if permitted in accordance with the plan as
shown on petitioner's exhibit #2, would not cause any congestion in the streets near the
subject property.

A recognized expert realtor and real estate appraiser testified that, in his
opinion, Dr. Dorf could not possibly dispose of his property for strictly residential use and
realize the investment in the property. He further testified that he did not think the
property would be saleable to another doctor for use as his residence and office for \$45,000
(the amount of Dr. Dorf's investment in the property) as the house only has two bedrooms
and one bath, and a purchaser, in his opinion, would be obliged to spend at least another
\$15,000 on improvements. He also stated that the shopping center directly across the
street and the heavy traffic on Liberty Road, detract from the desirability of the property
for strictly residential use. In his opinion, the proposed office building would have no
adverse effect on the surrounding community, and cited two examples of office buildings in
Baltimore County that he felt were comparable: the Chesapeake Building in central Towson,
and the Arco Building at the corner of York and Stevenson Roads.

Bernard Willemain, an expert in the field of land planning and a former
Deputy Director of Planning for Baltimore County, testified that, in his opinion, the R-10
zone placed on the property by the County Council in 1962 was erroneous in that it deprived
the owner of any reasonable use of the land. He further testified that the reconstruction
of Liberty Road since 1962, and the general intensified build up of the area are sufficient
changes to justify the reclassification requested. He also stated that the granting of the
special exception for the proposed professional office building would not violate any of the
requirements of Section 502.1 of the zoning regulations.

The petitioner produced the official Planning Board's zoning map that was
submitted to the County Council in February, 1961 (petitioner's exhibit #5), and the
recommendations of the Planning staff (petitioner's exhibit #3) which show that the Planning
staff and Planning Board recommended to the County Council that the subject property be
placed in an R-A zone.

The protesters, who were mostly residents of the Millford development,
opposed the petition primarily on two grounds: (1) that the proposed office building would
create traffic congestion, and (2) that the reclassification and special exception would
depreciate the residences in the neighborhood. A real estate appraiser, testifying on
behalf of the protesters, stated that, in his opinion, the property could be sold for use as a
doctor's office for a price in the neighborhood of \$50,000 to \$55,000. However, he also
stated on cross examination that if the property were sold for strictly residential use, in his
opinion, the sale price would be at least \$20,000 less. Numerous residents of the

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Millford community testified to the heavy traffic on Liberty, Buckingham and Croydon Roads,
and felt that the proposed office building would further burden the streets immediately
around the subject parcel.

The majority of the Board finds as a fact that the proposed office building
would not violate subsection b. of Section 502.1 of the regulations. There is no question
that the development of the property as proposed would place additional traffic on the
streets, but the majority of the Board cannot find as a fact that it would create such con-
gestion as to require the Board to deny the special exception. The majority of the
Board also finds that the County Council was in error in placing the R-10 classification on
the subject property as it deprives the owner of any reasonable use of his property, and that
the changes that have occurred in the neighborhood are sufficient to justify the reclassifi-
cation from R-10 to R-A; and finds, especially from the testimony of the petitioner's expert
realtor, that the proposed use would not have any depreciating effect on the surrounding
residential community. The majority of the Board feels that the reclassification is
warranted as is the special exception, and finds that the granting of the special exception
would not in any way violate Section 502.1 of the zoning regulations.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 27th day
of June, 1968 by the County Board of Appeals, ORDERED that the reclassification and
special exception petitioned for, be and the same are hereby GRANTED, subject to the
following restriction:

That the development of the property shall be substantially
in accordance with the plan submitted in evidence by the
petitioner as petitioner's exhibit #2

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

John A. Slowik

10-22-70

