

In The Circuit Court for Baltimore City
CIVIL

Part _____ of _____ Parts

*T-2691
OR 11-3-29*

In the Matter of

CHARLES HIRSCHFELD

VS

BOARD OF MUNICIPAL & ZONING APPEALS

C
L

100108



IN THE CIRCUIT COURT FOR BALTIMORE CITY

CATEGORY APPAA

CASE NO. 89194041/CL100108 PAGE 1 of

PARTIES	ATTORNEY(S)
<p>CHARLES & SARAH HIRSCHFIELD</p> <p align="center">VS</p> <p>BOARD OF MUNICIPAL AND ZONING APPEALS</p>	<p>WILLIAM J. RUBIN 000393 FRANK C. DERR 389421</p> <p align="center">322254</p> <p align="center"><i>Sandra K. Guttman</i></p>

DATE	DOCKET ENTRIES	NO.
7/13/89	Order of Appeal from the decision of the Board of Municipal and Zoning Appeals, and Petition.	1
8/8/89	App. Sandra K. Guttman for deft, answer	2
8/8/89	Transcript of record (Set C.T.F.)	3
8/8/89	Notice sent in accordance with Md Rule B-12	
8/18/89	Stipulation fd.	4
9-11-89	Plt's Memorandum ft.	5
10/11/89	Plt's memorandum of law fd.	6
10/17/89	Strike app. Frank C. Derr for plff.	7
10/30/89	Plffs' Reply memorandum.	8
2-20-90	Memorandum Opinion and Order that the denial by the Board of Zoning and Municipal Appeals of Appellant's application for a conditional use be, and the same hereby is "Reversed" and that the case is "Remanded" to the Board for further proceedings consistent with this Opinion. Costs to abide the final determination of this litigation fd. (Hollander J) (CLOS)	9

9

CHARLES HIRSCHFIELD * IN THE
 and * CIRCUIT COURT
 SARAH HIRSCHFIELD * FOR
 Appellants * BALTIMORE CITY
 v. * Case No. 89194041/CL100108
 BOARD OF MUNICIPAL AND *
 ZONING APPEALS *
 Appellee *

* * * * *

MEMORANDUM OPINION AND ORDER

Hollander, J.

I. Introduction and Background

Charles and Sarah Hirschfield (the "Hirschfields" or "Appellants") have appealed the decision of the Board of Municipal and Zoning Appeals of Baltimore City (the "Board" or "Appellee") dated June 16, 1989. The Board disapproved Appellants' application for conditional use (the "Application"). In the Application, Appellants sought to continue using their St. Paul Street property (the "Property") to house three dwelling units (two regular units and one efficiency unit).

The Board rejected the Hirschfields' request, finding that it did not meet the standards of the Zoning Ordinance of Baltimore City. Ordinance 1051, Baltimore City Code, Art. 30. The Board concluded that the proposed use did not provide for sufficient off-street parking spaces. It also determined

that the three units would "overcrowd the lot and structure" and would "generally have an adverse effect on the community." Decision at 3-4.¹

II. Factual Summary

The Property is located in Charles Village, a residential neighborhood of Baltimore City. It is improved by a four-story brick row house measuring 18 by 70 feet. When the Hirschfields purchased the Property in May, 1988, and at the time of their Application, five people occupied the Property. T.6. The ground floor of the Property was used as an efficiency unit, occupied by one tenant. The first and second floors were used as one duplex dwelling unit, in which three tenants resided². The third floor was used for another dwelling unit, and occupied by the Appellants' daughter, who manages the Property for them. T.3-5. Two parking spaces are located at the rear of the lot. Decision at 1.

The Property is situated in an R-8 district. The immediate neighborhood is one in which there are several multiple-dwelling properties. For example, there is a 40-unit university-owned apartment building for students in the block next to the Property. Additionally, there is a 26-unit apartment building nearby, and two properties adjacent to the Hirschfields' have four apartments each. T.4.

1. The administrative record, on appeal, has not been sequentially numbered. Accordingly, documents in the record will be described herein by name, so as to permit their identification. References to the transcript of the administrative hearing held on June 13, 1989 are abbreviated by "T", along with the particular page number of the transcript.

2. The leases held by the tenants expired in August, 1989. T.6.

Sarah Hirschfield ("Mrs. Hirschfield") testified that the ground floor efficiency unit was already present when Appellants purchased the Property. T.6.³ The Hirschfields merely added carpeting and a refrigerator to the unit. T.11. Appellants applied to the Board for approval to continue housing three dwelling units on the Property.⁴

At the hearing, Appellants presented an enlarged drawing of the parking area at the rear of their Property.⁵ This exhibit showed that the back parking pad was large enough to accomodate three cars, as Mrs. Hirschfield testified. Moreover, Mrs. Hirschfield testified that Appellants were willing to arrange the spaces on the pad to accomodate three cars. T.7. She also testified that Appellants were willing to change the location of a wall between the parking pad and the backyard of the Property in order to provide more parking space, if the Board were to condition approval of their Application on such a change. Id.

3. Mrs. Hirschfield was the only witness who testified.

4. The proposed use will not alter the way in which the premises have been utilized. The Hirschfields merely want to preserve the status quo.

In any event, an increase in the number of units does not automatically lead to greater density. As Appellants suggest, even if the Property were used as one large apartment, it could be shared by many people as "roommates." Conversely, a smaller number of people could occupy the Property with three separate dwellings. See Reply Memorandum at 6. Accordingly, the density of the area may not change, whether or not the Application is approved.

5. This drawing was an enlargement of one of the drawings the Hirschfields submitted with their original permit application filed with the Department of Housing and Community Development on February 16, 1989.

The Board also received letters from the Baltimore City Fire Department, Health Department, and Traffic Engineering Department. None voiced any objection to the Hirschfields' Application. Decision at 4. On the other hand, the Charles Village Civic Association (the "Association") asked that the Application be denied. In its letter of April 4, 1989, the Association advanced two reasons for its position.

The [Association] has historically opposed any increase in density in the neighborhood's residential dwelling units. Use of the rowhouse for two apartments should be more than sufficient to generate adequate income from the Property. Further, any increase in density would result in an additional parking burden for the surrounding neighborhood.

The Department of Planning shared the Association's concerns regarding an increase in dwellings and "the severe lack of off-street parking" in the area.⁶ See letter of April 12, 1989 from the Department of Planning.

III. Scope of Review

The Board's decision denying the Application must be supported by "substantial evidence" on the record. A scintilla of evidence is not enough. Prince George's Co. v. Meininger, 264 Md. 148, 152 (1972). Moreover, this court may not engage in judicial fact-finding. Findings of fact made by the Board are binding upon the reviewing court, if supported by

6. No evidence was presented, however, as to how many of the occupants of the Property actually owned cars. As Appellants suggest, even if the Property was occupied by just one adult, that person could own several cars. Alternatively, several tenants could reside at the Property, without owning any vehicles at all. Reply Memorandum at 5, note 2.

substantial evidence. See Board of County Comm'rs v. Holbrook, 314 Md. 210, 218 (1988). Any inference reasonably to be drawn from the facts is also left to the Board. Snowden v. Mayor and C.C. of Balto., 224 Md. 443, 448 (1961). "The Court may not substitute its judgment on the question whether the inference drawn is the right one or whether a different inference would be better supported. The test is reasonableness, not rightness." Id.

In cases involving zoning agencies, due deference is given to the agency decisions because of their "expertise". It is the agency, not the reviewing court, which must exercise the discretion to permit or deny an application. Floyd v. County Council of P.G. Co., 55 Md. App. 246, 258 (1983) (citations omitted). Where a question is "fairly debatable," then, a court may not substitute its judgment for that of the administrative body, even if the court would not have reached the same conclusion on the evidence. Eger v. Stone, 253 Md. 533, 542 (1969).

But the Board's authority is not unchecked. Where the action of the Board is arbitrary, capricious or discriminatory, or if the Board has made an erroneous interpretation of law, the decision will not stand. See, e.g., Hardesty v. Zoning Board, 211 Md. 172, 177 (1956); Heath v. Mayor and City Council of Balto., 187 Md. 296, 304 (1946). On review, then, this court must consider "whether a reasoning mind reasonably could have reached the factual conclusion the [Board] reached." Board of County Comm'rs v. Holbrook, supra, 314 Md. at 218.

IV. Discussion

A. Special Exception Use

Zoning is one of the important elements of land planning that is used to guide and accomplish the "coordinated, adjusted, and harmonious development of [a] jurisdiction...which will...promote...[the] general welfare." Code, Art. 66B, Sec. 3.06; Board of County Comm'rs of Cecil County v. Gaster, 285 Md. 233, 246 (1979). It is also a tool by which a legislative body can establish general areas or districts devoted to selected uses. Schultz v. Pritts, 291 Md. 1, 20 (1981) (citation omitted). Once a use district is created, the regulations written to effect the zoning plan will designate certain uses as permitted as of right (permitted uses), while other uses are permitted only under certain conditions (conditional or special exception uses).⁷ Id.

Appellants applied for a conditional or special exception use. In Schultz v. Pritts, supra, the Court of Appeals explained:

The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any fact or circumstance negating the presumption. The duties given the Board are to judge whether

7. The terms "conditional use" and "special exception use" are synonymous. Zellinger v. CRC Development Corp., 281 Md. 614, 619 n.4 (1977). Md. Code Ann., Art. 66B, Sec. 1.00 provides in pertinent part: "Special exception use" means a grant of a specific use that would not be appropriate generally or without restriction and shall be based upon a finding that certain conditions governing special exceptions as detailed in the zoning ordinance exist, that the use conforms to the plan and that it is compatible with the existing neighborhood."

the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

291 Md. at 11 (emphasis in original).

It is well settled that where a request for conditional use creates an adverse effect upon neighboring properties, the request must be denied. As the Court stated in Board of County Comm'rs v. Holbrook, supra, an adverse impact is established

where the facts and circumstances indicate that the particular special exception use and location proposed would cause an adverse effect upon adjoining and surrounding properties unique and different, in kind or degree, than that inherently associated with such a use regardless of its location within the zone....

314 Md. at 217-18. Accord, Schultz v. Pritts, supra, 291 Md. at 15.

In considering the issue of "adverse impact," the question of harm or disturbance to the neighboring area is critical. Although Appellants need not establish that the proposed use will benefit the area, they do have the burden of producing evidence to show that the proposed use would not be a detriment to the neighborhood or otherwise adversely affect the public interest. If the evidence makes the issue of harm or disturbance fairly debatable, the matter is one for the Board's decision, and should not be "second-guessed" by an appellate court. Board of County Comm'rs v. Holbrook, supra.

On the other hand, where an adverse impact is not established, denial of the request is not appropriate. As the Court stated in Schultz v. Pritts, supra,

"[I]f there is no probative evidence of harm or disturbance in light of the nature of the zone involved

or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal.... 291 Md. at 11 (emphasis added).

B. The Ordinance

In the light of these principles, the Hirschfields' Application must be examined. Their request is governed by the regulations of sections 2.0-12b and 12c of the Zoning Ordinance of Baltimore City, Ordinance 1051 (the "Ordinance"). Section 2.0-12b of the Ordinance provides in pertinent part:

[T]he Board may authorize, in [an R-8] District as a Conditional Use, conversion of a building used as a one or two-family dwelling for use by more than two families, and in all other districts, the conversion of a building for use by more than one family, provided that the number of families permitted is in conformity with the applicable bulk regulations for the district in which the building is located.

Section 2.0-12c directs that the Board also consider the provisions and standards set forth in Section 11.0-5a of the Ordinance in considering applications made under Section 2.0-12c. Section 11.0-5a states that the Board shall not authorize a conditional use "unless the Board finds in each specific case that the establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, security, general welfare or morals...." Among the standards enumerated to guide the Board's consideration are the nature of the proposed site, including its size and shape, and the adequacy of proposed off-street parking. Section 11.0-5a(1) and (2).

The requirements for determining the adequacy of off-street parking are set out in Section 9.0-3. This Section provides that one off-street parking space is required for each regular dwelling unit, and one space for each two efficiency units. Under the provisions of Section 9.0-1a-(2), when the intensity of use of a structure is increased through addition of regular dwelling or efficiency units, off-street parking facilities shall be increased as required.⁸ Section 9.0-2e provides that a parking space shall be at least 180 square feet in area.

C. The Board's Decision

In denying the Application, the Board found that the Ordinance was not satisfied, that the number of units would overcrowd the lot and structure, and that the proposal would have an adverse effect on the community. Decision at 4. The Board concluded that "the proposed use would menace and endanger the public health, security, general welfare and morals of the community." Id. at 5.

Appellants contend that the Board's finding that the conditional use would overcrowd the lot and structure is not supported by substantial evidence. This court agrees. The Board correctly determined that Appellants' proposal would

8. The off-street parking regulations are designed to "lessen or prevent congestion of the public streets...and so promote the safety and welfare of the public...." Section 9.0.

satisfy the applicable Bulk Regulations,⁹ with a lot area almost double the minimum required for a house with one efficiency unit and two regular dwelling units. Decision at 2. Accordingly, this court holds that a reasoning mind could not reasonably have arrived at the Board's factual conclusion that the proposal would overcrowd the lot and structure. See Board of County Com'rs v. Holbrook, supra, 314 Md. at 218.

The Board also found that one additional parking space would be needed to satisfy the off-street parking requirements. Decision at 3. But the Board concluded that "[n]o additional, off-street, parking spaces [were] proposed" by Appellants. Id. As a result, the Board analyzed the Application as "a request for authorization to house three dwelling units, two regular and one efficiency unit without providing the one, additional, parking space, in the R-8 Residence District." Id.

At the hearing, Appellants produced uncontradicted and uncontroverted testimony and exhibits which demonstrated that the parking pad at the rear of the Property was large enough for the required three parking spaces. They also indicated an ability and willingness to provide even greater space for parking if such was deemed necessary by the Board. Since the only evidence presented to the Board was that there was ample room for the required number of parking spaces, and more space was offered if desired by the Board, the Board erred in concluding that an additional parking space was not proposed.

9. See Ordinance, Section 4.8-2a(1). The lot contains 3316.5 square feet, and a minimum of 1625 square feet is required.

Appellants further argue that the Board did not follow the standards explicated in Schultz v. Pritts, supra, in determining the question of parking. Appellants allege that the Board improperly applied the standards for variances, rather than those for special exceptions, in its decision as to the parking.

The Board did specifically refer to the provisions of Section 11.0-3-e2(g) of the Ordinance, which gives the Board the authority to grant a variance should there be a need to reduce the number of off-street parking spaces.¹⁰ Decision at 3. In so doing, the Board appears to have relied on its staff report, which was prepared prior to the hearing. The report states that "[n]o additional off-street parking spaces are proposed." Data Sheet, February 16, 1989, at 2. This statement may have led the Board to apply the variance standard, rather than the conditional use standard, in reviewing Appellants' Application.

The Board seems to concede that a variance was considered. Appellee's explanation for its reference to the provision for variances is that the plat which was submitted with Appellants' application did not clearly depict that there was adequate off-street parking under Section 9.0-3. Therefore, Appellee claims, until Appellants indicated at the hearing that there

10. The Board stated the percentage of reduction would have been 33 percent, from three spaces to two, within the range of allowable reduction.

would be sufficient off-street parking, the Board thought it was to consider the Application as a request for a variance in order to satisfy the off-street parking requirement. Appellee's Memorandum at 6.

A variance involves a grant of administrative relief from the strict application of a particular limitation contained in the zoning law.¹¹ A showing of hardship is generally necessary for the allowance of a variance, and the standards for granting an application for a variance are inherently more stringent than those for a special exception. See Montgomery County v. Merlands, 202 Md. 279, 288-89 (1952).

It is impossible to determine from the record whether the Board actually considered the proposed use under the more stringent and incorrect variance standard. As a result, this court finds it appropriate to remand this case to the Board for further proceedings. The Board will thus be able to give proper consideration to the Application pursuant to the correct standards for a special exception use, and not a variance.

On remand, the Board should reconsider Appellants' Application pursuant to the standards enunciated in Schultz v. Pritts, supra, and its progeny. Appellants must establish that

11. Md. Code Ann., Art. 66B, Sec. 1.00 defines a variance as "a modification only of density, bulk or area requirements in the zoning ordinance where such modification will not be contrary to the public interest and where owing to conditions peculiar to the property, and not the results of any action taken by the applicant, a literal enforcement of the ordinance would result in unnecessary hardship.

their proposed conditional use meets the standards and requirements prescribed by the Ordinance, and that the proposed use will not have an adverse impact on the neighborhood. Id. If Appellants demonstrate to the Board that the proposed special exception use will not have an adverse or deleterious impact on the neighborhood or the public interest, they will have met their burden. Id. at 11.

The Board may deny the Application only if the use and location proposed would have an adverse effect upon adjoining and surrounding properties. Id. at 15. The Board may not reject the presumed validity of Appellants' use based only upon "unspecific and unsupported protestations and concerns" as to a general parking problem in the area, or a "historical opposition" to an increase in density. Mayor and City Council of Balto. v. Foster and Kleiser, 46 Md. App. 163, 171-72 (1980).

If the Board concludes, on remand, that the proposed use would have an adverse impact on the neighborhood, so as to warrant denial of Appellants' Application, the Board should make specific findings to that effect for the record. General and conclusory findings that the proposed use would menace and endanger the public health, security, general welfare and morals is insufficient. "It is not permissible for...any administrative body simply to parrot general statutory requirements or rest on broad conclusory statements." Rodriguez v. Prince George's County, 71 Md. App. 539, 550 (1989).

ORDER

Therefore, for the foregoing reasons, it is this 20th
day of February, 1990, by the Circuit Court for Baltimore City,
ORDERED, that the denial by the Board of Zoning and
Municipal Appeals of Appellants' application for a conditional
use be, and the same hereby is, REVERSED;

And it is further ORDERED, that the case is REMANDED to
the Board for further proceedings consistent with this Opinion.

Costs to abide the final determination of this litigation.



Ellen L. Hollander, Judge

cc: William J. Rubin, Esquire
Attorney for Appellants
200 Court Square Building
Baltimore, Maryland 21202

Sandra R. Gutman, Esquire
Assistant City Solicitor
Attorney for Appellee
Room 143, City Hall
100 North Holliday Street
Baltimore, Maryland 21202

JS
[Signature]

FILED

IN THE **OCT 30 1989**
CIRCUIT COURT FOR
BALTIMORE CITY

CHARLES HIRSCHFIELD, et al.,	*	
Appellants	*	
v.	*	
BOARD OF MUNICIPAL AND ZONING APPEALS	*	89194041/CL100108
Appellee	*	
	*	
* * *	* * *	* * *

REPLY MEMORANDUM OF APPELLANTS

The Appellants, Charles and Sarah Hirschfield by their attorney, William J. Rubin, pursuant to Maryland Rule B12 hereby submit this Reply Memorandum in response to the Memorandum of Law of the Appellee, the Board of Municipal and Zoning Appeals (hereinafter referred to as the "Appellee's Memorandum"), and say:

The Board Applied
The Wrong Legal Standard

In responding to Appellants' argument that the Board erred in referring to and applying the statutory standard for obtaining a variance (Section 11.0-3e.2.(g) of the Zoning Ordinance), Appellee argues that the Board could have believed from a review of Appellants' application alone that:

"it may have been necessary to reduce the percentage of the off-street parking requirements. . . . in order to vary the terms of the zoning ordinance so as to grant Appellants' request. Not until Appellants indicated at the hearing that there was sufficient off-street parking, did it become no longer necessary for the Board to determine whether a variance would be needed." (Appellee's Memorandum at p.6)

Thus, Appellee concedes, as indeed the Board decision appealed from also concludes, that the evidence presented at

the hearing established that the three parking spaces required by Section 9.0-3 of the Zoning ordinance were available on the premises and provided by the Appellants. Since the evidence at the hearing established that there was sufficient off-street parking that a variance was not needed, it is obvious that the Board had no reason to refer to the standard for a variance in its decision and its doing so is a clear error of law. Unlike the conditional use which Appellants are presumably entitled to make of their property,¹ the burden is upon the applicant who seeks to obtain such a variance. The difference is patently material and Appellants here were improperly subjected by the Board to a heavier and improper standard.

The Board's Decision Is Arbitrary And
Unlawful Because There Was No Evidence
In The Record To Justify The Denial
Of The Conditional Use

Appellee's effort to bring the Board's decision within the ambit of the "fairly debatable" standard of review of administrative decisions must fail because it is based speculation, conjecture and irrelevancies, and not on evidence on the record. At page 6 of Appellee's Memorandum, after

¹ Appellee has agreed, as we previously submitted, that the instant case involves a conditional use "which the legislature has deemed to be permissible 'absent any fact or circumstance negating the presumption.'" (Appellee's Memorandum at page 4)

conceding that Appellants met the off-street parking requirement of three spaces set forth in Section 9.0-3 of the Zoning Ordinance, Appellee then argues:

"[T]here still remains the parking problem which was referred to by Planning and Charles Village. At the time of the hearing Appellants testified that there were five professional adults living on the premises. Since there is only parking for three automobiles, two of the occupants would necessarily have to park in the neighborhood. Charles Village specifically stated that the increase in density would result in an additional parking burden thus making it a problem for the entire community."

A review of the record reveals that in fact the Charles Village Civic Association, Inc. wrote a letter requesting disapproval of Appellant's application in which no reason is given why the use of Appellants' property for three dwelling units would have any adverse effect different from the effect of using any other property in the District for such purpose, but instead stated that they took the position of opposition because they "historically opposed any increase in density in the neighborhood residential dwelling units" and because "any increase in density would result in an additional parking burden for the surrounding neighborhood." (Emphasis added) Similarly, the Planning Department's report dated April 12, 1989 gave as the only reason for opposing the application that:

"The Charles Village Civic Association has been monitoring conversions. Generally, they are concerned about an increase in dwellings and the

severe lack of off-street parking. The Planning Department supports the efforts of the Charles Village Civic Association and recommends disapproval of this appeal."

Thus, the so-called "parking problem" admittedly has nothing to do with Appellants' particular proposed use, but merely represents the desire of the Civic Association and the Planning Department to deny to "any" property owner the precise right to use his own property in a manner that has been determined to be lawful by the City Council which established in Section 2.0-12b. of the Zoning Ordinance that the use of this property for three dwelling units is allowed as a conditional use, subject to meeting the specific requirements of the bulk regulations in Section 4.8-2a.1 and the parking requirements in Section 9.0-3. Having satisfied these requirements, the denial of their right to so use their property is simply and necessarily an arbitrary decision. For the Board to deny the Hirschfields the right to use their property for three dwelling units as the law allows them to do, because there is perceived to be a "parking problem", is no different than if the Board told the Hirschfields or any other property owner that they could not use their property for two dwelling units or for one dwelling unit or for any other lawful use that by legislative enactment one is entitled to make of his own property. It is fundamental constitutional principle that a property owner may not be restricted in the use of his property by administrative fiat, but rather only by legislative enactment uniformly applied.

The argument made by Appellee goes even further in suggesting that because there were five adults living on the premises, this somehow gave the Board the right to deny the Appellants a lawful use of their property.² Furthermore, the evidence actually presented at the hearing was that the use of the property for three dwelling units was not even an increase in the way in which the property had previously been utilized. Mrs. Hirschfield testified that all three dwelling units were there when they bought the property and that with the exception of a refrigerator, "everything else was in place." (transcript at page 11).

Similarly, Appellee's reliance upon the general statements of intent and purpose of the zoning ordinance set forth in Section 1.0-2, inter alia, to "lessen congestion in the streets", "to avoid undue concentration of population", and so forth, is wholly misplaced. It would be and is the essence of arbitrariness to base a decision upon generalized rubrics of policy and general purpose, without specific, substantial evidence in the record of specific harm that the proposed use would generate. The Board can no more deny the

² It should also be noted that Appellees suggestion that "two of the occupants would necessarily have to park in the neighborhood" is utter speculation unsupported by anything in the record since there was no evidence whatsoever that the five adults living on the premises owned five automobiles. In fact, because there is nothing in any provision of law that regulates how many automobiles a resident may own or keep, it is completely irrelevant whether the premises is occupied by five adults who own five automobiles or zero automobiles or, for example, one adult who may own ten automobiles.

Hirschfields the right to use their property for the three units authorized by law because the Board may want to "avoid undue concentration of population" than it could lawfully tell citizens how many children they could have and house in a particular dwelling. Indeed, the absurdity of such an approach is apparent when once realizes that a very likely outcome of a denial to the Hirschfields of the right to utilize their property for three dwelling units housing five adult professionals may well be that the Hirschfields will decide, as they have the legal right to do, to utilize the same building for two dwelling units which they may rent to eight unrelated college students or two families containing an unlimited number of related persons. See Zoning Ordinance §13.0-2 37., defining the term "family."

To allow to stand a decision such as this one on the basis of the generalized objections of the neighbors or the desire to protect the neighborhood is precisely what the Court of Appeals has repeatedly held to be illegal and unconstitutional zoning by a plebiscite of the neighborhood. See Benner v. Tribbitt, 190 Md. 6, 20, 57 A.2d 346, 353 (1948):

"But in restricting individual rights by exercise of the police power neither a municipal corporation nor the state legislature itself can deprive an individual of property rights by a plebiscite of neighbors or for their benefit."

As The Court of Special Appeals stated in Entzian v. Prince George's County, 30 Md. App. 256, 262, 360 A.2d 6, 10 (1976), quoting an earlier decision of the Court of Appeals:

"'Zoning is not a plebescite' and therefore testimony in opposition restricted solely to lay witnesses, petitions of objection to the proposal by residents, and testimony amounting to unsupported dislike and fear of (a) project, . . . amounted to no evidence at all.'"

Particularly apropos is the case referred to in Entzian, Rockville Fuel and Feed Co. v. Board of Appeals, 257 Md. 183, 262 A.2d 499 (1970), where the Court of Appeals reversed the denial of an application for a special exception (conditional use) for a concrete plant. Chief Judge Hammond noted that the Court of Appeals did not agree with "[t]he Board's view that the burden was on the applicant to show affirmatively that the requested use will 'promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity and general welfare of the community'" (257 Md. at 190, 262 A.2d at 503). Pointing out that the very nature of a special exception was that the legislative body has by making the particular use a special exception established that "if certain standards and requirements enumerated in the ordinance are met in a particular case, the various special exceptions specially authorized are a part of the comprehensive zoning plan and therefore promote the health, safety and general welfare", and that the applicant's burden is only to "show that his use meets the prescribed standards and requirements" and not that it "accords with the general

welfare." (257 Md. at 190, 262 A.2d at 503). Applying these principles, the Court held that the evidence presented in opposition consisting of a memorandum of the planning commission which contained no facts, a petition signed by 240 residents objecting to the use and the testimony of two lay witnesses complaining about possible structural damage to adjacent buildings, dust and adverse effects on the roads from the proposed plant and its attendant truck traffic "amounted to no evidence at all" and rendered the Board's decision as arbitrary and legally unwarranted.

In the instant case, the record reveals even less, in that not a single individual testified nor was a scintilla of evidence presented in opposition to the proposed application, beyond the two letters containing nothing more than generalized and totally unsupported dislike of the idea of allowing more dwelling units in the neighborhood.

The obvious conclusion is that if the residents of Charles Village or City agencies wish to reduce the density of the neighborhood, they must petition their elected representatives to do so by amending the Zoning Ordinance. They cannot do so by denying to property owners such as the Hirschfields who have met all of the prescribed standards and

requirements, the legal right to use their property as the law allows them to do.

For all of the forgoing reasons, the decision of the Board must be reversed.

RESPECTFULLY SUBMITTED



William J. Rubin
200 Court Square Building
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(301) 727-2168
Attorney for Appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of October, 1989 a copy of the foregoing Reply Memorandum of Appellants was mailed, postage prepaid, to: Sandra R. Gutman, Esquire, Assistant Solicitor, City Hall Room 43, 100 North Holliday Street, Baltimore, Maryland 21202, attorney for Appellee.



William J. Rubin

JD

FILED

OCT 17 1989

CHARLES HIRSCHFIELD, et al.,
Appellants

* IN THE
* CIRCUIT COURT FOR
* BALTIMORE CITY
* BALTIMORE CITY

v.
BOARD OF MUNICIPAL AND
ZONING APPEALS

Appellee

* 89194041/CL100108
*

* * * * *

NOTICE OF WITHDRAWAL

Pursuant to Rule 2-132, Maryland Rules of Procedure, please strike the appearance of Frank C. Derr as one of the attorneys of record for the Appellants, Charles Hirschfield and Sarah Hirschfield. The Appellants continue to be represented by William J. Rubin.

William J. Rubin

WILLIAM J. RUBIN

Frank C. Derr

FRANK C. DERR
200 Court Square Building
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(301) 727-2168
Attorneys for the Appellants

I HEREBY CERTIFY that on this 17th day of October, 1989, a copy of the above was mailed, postage prepaid, to: Sandra R. Gutman, Esquire, Assistant Solicitor, City Hall, Room 43, 100 North Holliday Street, Baltimore, Maryland 21202.

Frank C. Derr

FRANK C. DERR

60
ac

FILED

OCT 11 1989

CIRCUIT COURT FOR
BALTIMORE CITY

CHARLES HIRSCHFIELD, et al.

*

IN THE

Appellants

*

CIRCUIT COURT

vs.

*

FOR

BOARD OF MUNICIPAL
AND ZONING APPEALS

*

BALTIMORE CITY

*

Appellee

*

Case No. 89194041/CL100108

* * * * *

MEMORANDUM OF LAW

STATEMENT OF THE CASE

This case is before the Court on an Appeal from Charles and Sarah Hirschfield (Appellants) from a final decision of the Board of Municipal and Zoning Appeals (the Board) denying Appellants' request to permit three dwelling units at 3008 St. Paul Street, Baltimore, Maryland.

QUESTION PRESENTED

Whether the decision of the Board was supported by substantial evidence and is therefore correct.

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STATEMENT OF FACTS

The subject property is located at 3008 St. Paul Street in an R-8 zoning district. It is in an area of Baltimore City known as Charles Village.

The premises is improved by a four-story, brick, three family dwelling. At the time of the Board's hearing the ground floor was used for an efficiency unit, the first and second floor were used for one dwelling unit and the third floor was used for one dwelling unit. Appellant applied to the Board for approval to continue housing three dwelling units on the property.

A hearing on Appellant's application was held before the Board on June 13, 1989. The testimony showed that Appellants purchased the property in May, 1988, for the price of \$150,000.00 (T. 2); the property is a brick row house (T. 3); there are many multiple family residential dwellings throughout the Charles Village area (T. 4); that there are presently three apartments in the property, with the Appellants' daughter (who manages the property) living on the third floor, three people living in the apartment located on the first and second floors and a tenant in the basement efficiency (T. 4,5). The leases all expired in August 1989.

Appellants presented a blow-up of the parking area which showed that a back parking pad could accomodate three cars. (T. 6,7). Appellants also stated that the additional apartment would not be detrimental to the neighborhood nor cause access problems pertaining to fire or police protection. (T. 7).

Read into the record were the reports which the Board received from several City agencies. The Fire Department had no objection to the proposed use. The Health Department imposed several conditions on its approval. Noteworthy, was the Health Department's insistence on access from all dwelling units to the trash and garbage storage area. The Department of Planning (Planning) recommended disapproval of the use for the following reasons:

1. The Charles Village community, which is predominantly residential, contains both single-family and multi-family housing.
2. The building in question was approved by the Board for two dwelling units in 1977.
3. The Charles Village Civic Association monitors conversions of property and are concerned about increases in the number of dwelling units.
4. The Civic Association is also concerned with parking in the area.

The Board also received a letter from Gertrude C. Bartel, President of the Charles Village Civic Association (Charles Village), stating that the Association voted to oppose the conversion because an increase in density would result in an additional parking burden for the surrounding neighborhood and because it opposed the increase in density in residential units in the area. The letter also stated that use of the property for only two apartments would be sufficient to generate an adequate income. The Association thus requested that the use be denied.

The Board considered all of the evidence, including the relevant standards and sections of the Zoning Ordinance. It concluded that the proposal did not meet the required standards and should be denied, finding that the three units would

overcrowd the lot and structure and would have an adverse effect on the surrounding community.

DISCUSSION

A special exception or conditional use (the two terms are used interchangeably) has been held to be a zoning device that delegates to an administrative board the authority to permit uses which the legislature has deemed to be permissible "absent any fact or circumstance negating the presumption." Schultz v. Pritts, 291 Md. 1, 11 (1981).

The application in question concerns the conversion of a dwelling and comes under the regulations of Sections 2.0-12.b and c of Article 30 of the Baltimore City Code (the Zoning Ordinance) which state:

"b. ... the Board may authorize, in a[n] R-8 ... District as a Conditional Use, conversion of a building used as a one or two-family dwelling for use by more than two families, and in all other districts, the conversion of a building for use by more than one family, provided that the number of families permitted is in conformity with the applicable bulk regulations for the district in which the building is located.

c. In considering applications under this section, the following procedures shall be applicable in addition to those provisions and standards set forth in Sections 11.0-3.c. and 11.0-5.a of this Ordinance."

Since Appellants request approval for a conditional use, the Board must follow the directives of Section 12.0-2.c and apply the relevant standards of Section 11.0-5.a. That section states that "no conditional use shall be authorized unless the

Board finds in each specific case that the establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, security, general welfare or morals."

Section 11.0-5.a lists thirteen standards which are to serve as a guide for the Board's consideration. The following standards are applicable to Appellant's request:

- "1. the nature of the proposed site, including its size and shape and the proposed size, shape, and arrangement of structures;
2. the resulting traffic patterns and adequacy of proposed off-street parking and loading;
3. the nature of the surrounding area and the extent to which the proposed use might impair its present and future development;
4. the proximity of dwellings, churches, schools, public structures, and other places of public gathering;

* * *

11. the intent and purpose of this ordinance as set forth in Chapter 1; and
12. any other matters considered to be in the interest of the general welfare.

Appellant presented an enlargement of the parking pad with a diagram showing that the area was adequate for the parking of three vehicles. However, the plat which was submitted with Appellant's application did not clearly depict that there was adequate off-street parking under Section 9.0-3.

Appellants state that the Board should not have referenced Section 11.0-3.e.2(g) in its decision. That section gives the Board the authority to grant a variance should there be a need to reduce the number of off-street parking spaces. Appellants argue that since a conditional use was sought, there was no need for the Board to refer to a provision which dealt with variances.

Appellants misconstrue the Zoning Ordinance, in that under the plat submitted with the application it may have been necessary to reduce the percentage of the off-street parking requirements. Thus, the Board would have had to apply Section 11.0-3.e.2(g) in order to vary the terms of the Zoning Ordinance so as to grant Appellants' request. Not until Appellants indicated at the hearing that there was sufficient off-street parking, did it become no longer necessary for the Board to determine whether a variance would be needed.

Furthermore, even though Appellants argue that they have complied with the off-street parking requirements and parking is no longer an issue, there still remains the parking problem which was referred to by Planning and Charles Village. At the time of the hearing Appellants testified that there were five professional adults living on the premises. Since there is only parking for three automobiles, two of the occupants would necessarily have to park in the neighborhood. Charles Village specifically stated that the increase in density would result in an additional parking burden, thus making it a problem for the entire community.

In Schultz v. Pritts, supra, the court stated that an applicant for a conditional use has the burden of showing that the use meets the prescribed standards and requirements, and that it must be shown to the Board's satisfaction, that the proposed use will be conducted without real detriment to the neighborhood. The court said:

"The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of the harmony of the comprehensive plan of zoning fairly debatable the matter is one for the Board to decide."
291 Md. at 11.

Appellants in this case have failed to show that the proposed use will not be conducted without having a detrimental effect on the neighboring community. A reversal by this Court would have to be predicated on the Board's having acted unreasonably, arbitrarily or unjustly. The record is devoid of such showing. The Board weighed the evidence, applied the applicable standards of the Zoning Ordinance and determined that the use be disapproved. Clearly, the issue was fairly debatable and there is substantial evidence to support the Board's decision.

Section 1.0-2 sets forth the intent and purpose of the Zoning Ordinance. It states that the ordinance is intended, among other things, "to lesson congestion in the streets, ... to promote health and the general welfare ... to prevent overcrowding of land ... and to avoid undue concentration of population." Appellants use of the property reflects on and is contrary to those stated purposes.

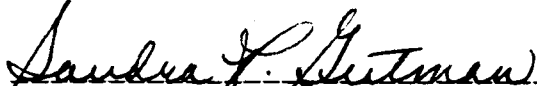
It is a well established rule of law that the weighing of the evidence in a zoning case is left to the expertise of the zoning board, and it is the duty of such board to decide the application of the ordinance to the facts at hand. Prince George's County v. Meininger, 264 Md. 148 (1978).

It is also well settled that a court cannot substitute its judgment for that of the zoning authority if the question is fairly debatable. Sembly v. County Board of Appeals, 269 Md. 177 (1973). The court will therefore reverse a zoning board's action only where there are no grounds for reasonable debate and where the action of the zoning authority has been found to be arbitrary or capricious. Hardesty v. Board of Zoning Appeals, 211 Md. 172 (1956).

The Board was required to make a determination based on the evidence before it. It weighed the evidence presented by all parties and determined that the permit not be granted, finding that the use would be detrimental to the health, safety and welfare of the community. The issue was fairly debatable, the decision was based on substantial evidence and the Board committed no error in reaching its decision.

CONCLUSION

For the reasons stated herein, the decision of the Board should be affirmed.


SANDRA R. GUTMAN
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Room 143, City Hall
100 Holliday Street
Baltimore, Maryland 21202
Telephone: 396-3933

Attorneys for Appellee

CERTIFICATION OF MAILING

I HEREBY CERTIFY THAT on this 11 day of October, 1989, a copy of the foregoing Memorandum of Law was sent by first class mail, postage prepaid, to Frank C. Derr, Esquire, 200 Court Square Building, Lexington & Calvert Streets, Baltimore, MD 21202.

Sandra R. Gutman

SANDRA R. GUTMAN
Assistant City Solicitor

FILED

SEP 11 1989

CHARLES HIRSCHFIELD, et al.

*

IN THE

Appellants

*

CIRCUIT COURT FOR BALTIMORE CITY

v.

*

BALTIMORE CITY

BOARD OF MUNICIPAL AND ZONING APPEALS

*

Appellee

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89194041/CL100108

*

MEMORANDUM

The Appellants, Charles and Sarah Hirschfield, by their attorneys, William J. Rubin and Frank C. Derr, pursuant to Rule B-12, Maryland Rules of Procedure, submit this Memorandum in support of their appeal from the decision of the Appellant, Board of Municipal and Zoning Appeals:

ADMINISTRATIVE BACKGROUND

On February 16, 1989, the Hirschfields filed a permit application¹ with the Department of Housing and Community Development of the Mayor and City Council of Baltimore. They sought conditional use approval by the agency to permit them to continue to use their property located at 3008 St. Paul Street,

¹ The application is contained in the administrative record which has been filed with the Court but not sequentially numbered. Whenever possible, documents in the record will be described in this Memorandum in a way to permit their identification. References to the transcript of the administrative hearing held on June 13, 1989, are abbreviated "T.____" followed by the page number of the transcript.

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Baltimore, Maryland 21218, hereafter referred to as the "property", for one efficiency and two regular dwelling units.

On the same day, the application was denied by the Zoning Administrator. The only substantive basis given by the Zoning Administrator was that the intended use would violate the Off-Street Parking requirements of Section 9.03 of the Zoning Ordinance of Baltimore City, Ordinance 1051, hereafter referred to as "the Ordinance." The Hirschfields filed an appeal of the Zoning Administrator's decision to the Board of Municipal and Zoning Appeals, hereafter referred to as "the Board."

After proper notice, a hearing was held before the Board on June 13, 1989. In a decision dated June 16, 1989, the Board disapproved the application. The Hirschfields appealed the decision of the Board and filed the instant action.

FACTUAL BACKGROUND

The property which is the subject of the instant action contains a four-story, brick structure, eighteen feet by seventy feet. The ground floor is used for one efficiency unit, the first and second floors are used for one regular dwelling unit, and the third floor is used for one regular dwelling unit. The property is in a R-8 Zoning District. (Page 1 of the decision of the Board, dated June 16, 1989).

At the hearing, Mrs. Hirschfield testified that she and her husband purchased the property in May of 1988 for One Hundred

Fifty Thousand Dollars (\$150,000.00) (T. 2). The Hirschfields' twenty-five year old daughter lives on the third floor and manages the property for them. (T. 3).

The property is located in the residential neighborhood known as Charles Village, which contains numerous multiple-dwelling properties. For example, there is a twenty-six unit apartment building nearby and the two adjacent properties have four apartments each. Johns Hopkins University owns a forty-unit apartment building for students in the block next to the property owned by the Hirschfields. (T. 4; Appellants' Notice of Appeal dated February 16, 1989.)

Mrs. Hirschfield testified that a computer programmer from the Johns Hopkins Medical School occupied the ground floor, efficiency apartment; a city planner with the Mayor and City Council of Baltimore, a night editor with the Baltimore Sun, and a cardiology research associate occupied the duplex unit on the first and second floors; and her daughter occupied the third floor. (T. 5). The total number of people occupying the property, five, was the same number as when the Hirschfields bought the property and the efficiency unit already was present. (T. 6). Indeed, all the Hirschfields did to renovate the ground floor efficiency was to install carpeting and a refrigerator. (T. 11).

At the hearing, the Hirschfields produced an enlargement of one of the drawings which accompanied their application and upon which they had drawn yellow lines on the parking pad depicted at the rear of the property.² When divided by the yellow lines, the parking pad was large enough to accommodate three parking spaces of one hundred eighty (180) square feet each.³ Mrs. Hirschfield testified that she was willing to arrange the parking spaces on the pad as drawn on the exhibit (T. 7). She also stated that she would re-locate the wall between the parking pad and the back yard of the property if the Board conditioned approval of her application on requiring more space for parking. (T. 7).

Finally, Mrs. Hirschfield testified at the hearing that, in her opinion, granting the conditional use would not be a detriment to the neighborhood nor would it cause any problem with access for fire or police protection. (T. 7). No one else testified at the hearing.

In its decision, the Board acknowledged receiving letters from the Baltimore City Fire Department, Health Department, and

² The hearing exhibit inadvertently was not included with the administrative record transmitted from the agency but has been included in the Court file by Stipulation.

³ Mrs. Hirschfield testified and the exhibit showed that the parking pad would have three spaces, each ten feet by eighteen feet, for a total of one hundred eighty (180) square feet as required by Section 9.0-2e of the Ordinance.

Traffic Engineering Department, all of whom had no objection to the Hirschfields' application. The Board also received a letter from the Charles Village Civic Association which noted that it "historically opposed any increase in density in the neighborhood's residential dwelling units" and the "additional parking burden" and requested that the application be denied. Finally, the Board received a letter from the Baltimore City Planning Department which recommended disapproval of the application because it "supports the efforts of the Charles Village Civic Association."

The Board acknowledged that the property complied with the requirements of the Bulk Regulations contained in Section 4.8-2-a-1 of the Ordinance. The Board also noted that Section 9.0-3 of the Ordinance required one off-street parking space for each regular dwelling unit and one space for two efficiency units. Inexplicitly and contrary to the evidence and exhibit, the Board stated that "(n)o additional, off-street parking spaces are proposed." (Board Decision at page 4). However, the Board acknowledged that the only evidence before it was that Mrs. Hirschfield "testified that there is ample room to park three cars on the rear of the lot." (Board Decision at pages 3-4).

The Board gave as reasons for its decision that it was "of the opinion that the proposal does not meet the standards required under the Ordinance," that it "felt that three units

would overcrowd the lot and structure" and "generally have an adverse effect on the community." The Board purported to make a finding that "the proposed use would menace and endanger the public health, security, general welfare and morals." (Board Decision at pages 4-5).

ISSUE

Was the decision of the Board arbitrary because it used a standard inapplicable to conditional uses, because its finding that the intended use would adversely affect the community was not supported by any evidence, and because the Board failed to consider the Hirschfields' plan for additional parking and their presumptive right to a conditional use?

ARGUMENT

On appeal, the Court may affirm, reverse, or modify a decision of the Board or remand the application to the Board for further proceedings. Maryland Rule B-3; Section 11.0-3 1.4 of the Ordinance. In general, the Court is limited to the record developed by the agency and will not hear additional evidence. Maryland Rule B-10.

In the instant action, the Hirschfields have sought

approval for a conditional use ⁴ to continue to use the property for two regular dwelling units and one efficiency dwelling unit in an R-8 Zoning District. A conditional use is a permissive land use category authorized by a zoning body pursuant to existing provisions of the zoning law. It is different from a variance, which refers to administrative relief from the strict application of a particular limitation contained in the zoning law, or a non-conforming use, which refers to a property owner's vested right against changes in the zoning law which may impair the owner's existing use of the property. Similarly, a conditional use is not a request for rezoning or reclassification. See generally, Abrams, Guide to Maryland Zoning Decisions at 263 et seq. (Second Ed. 1984).

In its decision, the Board incorrectly applied the standard contained in Section 11.0-3 e(g) relating to the Board's authority to grant a variance of the normal requirements for off-street parking. The section, entitled "Variances," is wholly irrelevant to a conditional use, which is controlled by Section 11.0-3C, and should not have been used by the Board to judge the Hirschfields' application.

A conditional use is a presumptively valid use of land. It is a zoning mechanism that delegates to an administrative board

⁴ The terms "conditional use" and "special exception use" are synonymous. Zellinger v. CRC Development Corp., 281 Md. 614, 619 n.4, 380 A.2d 1064, 1067 n.4 (1977).

the limited authority to allow enumerated uses which the legislative body has determined to be permissible, absent any fact or circumstance found by the Board to negate the presumptions. Once the applicant has met the standards contained in the zoning law for a conditional use, the applicant is presumed to be entitled to the use and does not have the burden of affirmatively establishing that the use would benefit the community. If "there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception (conditional) use is arbitrary, capricious, and illegal." Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319, 1325 (1981).

Section 2.0-12b of the Ordinance authorizes the Board to permit conversion of a building used as a one or two-family dwelling for use by more than two families in a R-8 Zoning District as a conditional use provided that the conversion conforms with the applicable bulk regulations for the district.

The standards for conditional uses are enumerated in Section 11.0-5a of the Ordinance. To authorize a conditional use, the Board must find that it "will not be detrimental to or endanger the public health, security, general welfare, or

morals," upon consideration of certain expressly delineated factors, of which adequacy of parking is one.

Section 9.0-2 provides that a parking space shall be at least one hundred eighty (180) square feet in area and, when determining the total number of spaces required by the Ordinance, fractions less than one-half may be disregarded while fractions of one-half or greater shall be counted as one space.

In the instant action, there was absolutely no evidence before the Board that the conditional use proposed by the Hirschfields would overcrowd the lot and structure and have any adverse effect on the community. The Board specifically found that the conditional use complied with the bulk regulations regarding lot size. The only legal or factual objection raised in the proceedings below was the question of parking.

The burden was not on the Hirschfields to prove that the proposed, conditional use would not adversely affect the community. By creating conditional uses, the legislative has

determined that, as a general rule, they do not menace or endanger the public health, safety, general welfare, or morals within the area of their permitted use. The Board has a limited amount of discretion to deny the use if there is substantial evidence to show that, notwithstanding the underlying legislative conclusion, a particular structure would, in fact, have such an effect. But it may not thwart the legislative will based upon unspecific and unsupported protestations and concerns.

Mayor and City Council of Baltimore v. Foster and Kleiser, 46 Md. App. 163, 416 A.2d 762, 767 (1980).

In the instant action, there was no evidence before the Board that the Hirschfields' conditional use would have any adverse effect on the public health, safety, general welfare, or morals. The only objection to the conditional use was from a civic group which admitted to opposing all increases in density, exactly the objection which is impermissible under the scheme of the Ordinance. The increase in density of one efficiency apartment at the property is expressly authorized by the City Council in this Ordinance and therefore presumed valid unless specific, adverse findings about this specific proposed use are made.

In the absence of evidence showing an adverse effect, the Board's finding that the proposed, conditional use "would menace and endanger the public health, security, general welfare, and morals" is nothing more than a bare unsupported conclusion and therefore totally arbitrary. Even if the record contains evidence of any such adverse effect, the Board must make a specific finding based upon evidence before it: "It is not permissible for ... any administrative body simply to parrot general statutory requirements or rest on broad conclusory statements." Rodriguez v. Prince George's County, 71 Md. App. 539, 550 (1989). Here, the Board not only did not make such a

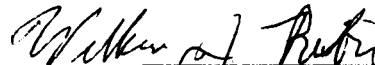
finding, but it could not have, since the evidence before it conclusively established that all of the applicable legal requirements were met and satisfied. The only objection raised was with respect to parking, and at the hearing, the Hirschfields produced uncontradicted and uncontroverted testimony and exhibits which demonstrated that the parking pad at the rear of the property was large enough for the required three parking spaces of one hundred eighty (180) square feet each. There was absolutely no evidence before the Board that the Hirschfields had failed to provide for sufficient parking spaces, nor did they request, nor need, a variance.

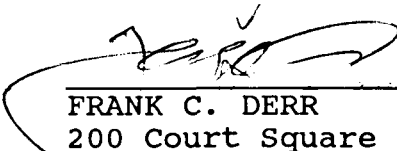
The Court should reverse the decision of the Board because it is based upon the wrong standard used and it is not based upon evidence in the record. Even if the Court holds that the decision of the Board should not be reversed because of its erroneous standard and insufficient findings, nonetheless the Court should reverse the decision of the Board because the Board failed to consider the Hirschfield's plan for additional parking.

CONCLUSION

Therefore, because the Board applied the wrong standard, because there was no evidence before it to deny the Hirschfields their presumptive right to a conditional use, and

because the Board failed to and could not have given a legally valid reason for its decision, the Court should reverse the decision of the Board and order that the Hirschfields be permitted to continue to use the property for two regular dwelling units and one efficiency unit.



WILLIAM J. RUBIN


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Attorneys for the Appellants

CERTIFICATE OF SERVICE

I hereby certify that on September 11, 1989, a copy of the above was mailed, postage prepaid, to Sandra R. Gutman, Assistant Solicitor, City Hall, Room 143, 100 North Holliday Street, Baltimore, Maryland 21202, Attorney for the Appellee.


FRANK C. DERR
Attorney for the Appellants

HIRSCH-M. FCD

NOTICE SENT IN ACCORDANCE WITH MARYLAND RULE B-12

Charles & Sarah Hirschfield

Docket:

Board of Municipal & Zoning Appeals

Folio: 89194041/CL100108

File:

Date of Notice: 8/9/89

STATE OF MARYLAND, ss:

8th August

I HEREBY CERTIFY, That on the day of
Nineteen Hundred and eighty-nine, I received from the Administrative
Agency, the record, in the above captioned case.

SAUNDRA E. BANKS, Clerk
Circuit Court for Baltimore City

CC-39

NOTICE SENT IN ACCORDANCE WITH MARYLAND RULE B-12

Charles & Sarah Hirschfield

Docket:

Board of Municipal & Zoning Appeals

Folio: 89194041/CL100108

File:

Date of Notice: 8/9/89

STATE OF MARYLAND, ss:

9th August

I HEREBY CERTIFY, That on the day of
Nineteen Hundred and eighty-nine, I received from the Administrative
Agency, the record, in the above captioned case.

SAUNDRA E. BANKS, Clerk
Circuit Court for Baltimore City

CC-39

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FILED

AUG 18 1989

CIRCUIT COURT FOR BALTIMORE CITY

CHARLES HIRSCHFIELD, et ux *
Plaintiffs/Appellants *
v. *
BOARD OF MUNICIPAL AND *
ZONING APPEALS *
Defendant/Appellee *

IN THE *
CIRCUIT COURT FOR *
BALTIMORE CITY *
89194041/CL100108 *

STIPULATION

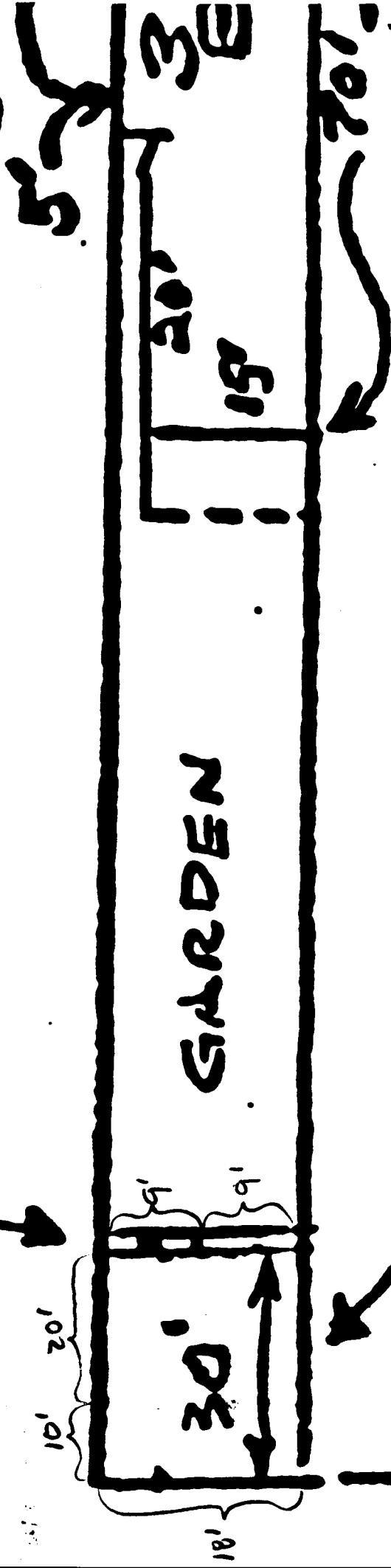
The parties hereby stipulate that the administrative record filed in the above-captioned action shall be supplemented to include the attached diagram which was an exhibit at the administrative hearing held on June 13, 1989. The exhibit inadvertently was not included in the record that previously was filed with the Court.

Sandra R. Gutman
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BRICK WALL

3008 ST. ALEX



PARKING

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AUG 8 1989

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CIRCUIT COURT FOR
BALTIMORE CITY

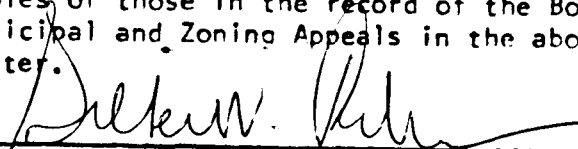
APPEAL NO. 214-89X

Application of Sarah & Charles Hirschfield
to house three dwelling units at 3008 St.
Paul St.

TITLE PAGE-STOCK NO. 100TP

SPENCER MFG. CO. HASTINGS MN - LOS ANGELES - CHICAGO
LOGAN OH - MCGREGOR TX - LOCUST GROVE GA

I HEREBY CERTIFY that the papers herein are true
copies of those in the record of the Board of
Municipal and Zoning Appeals in the above-entitled
matter.



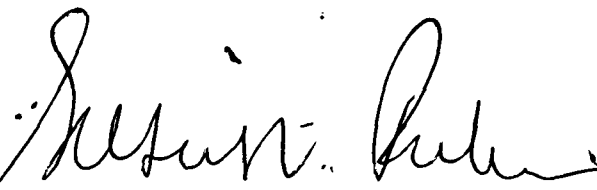
GILBERT V. RUBIN, EXECUTIVE DIRECTOR

July 18, 1989



CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY THAT in accordance with Rule B-2-d of the Maryland Rules of Procedure, all parties or their representatives have been notified of the filing of this appeal.

BY: 

GILBERT V. RUBIN, EXECUTIVE DIRECTOR
BOARD OF MUNICIPAL AND ZONING APPEALS

COPY



GILBERT V. RUBIN
EXECUTIVE DIRECTOR

BOARD OF MUNICIPAL AND ZONING APPEALS

THIS IS NOT A PERMIT

14TH FLOOR
417 E. FAYETTE STREET
PHONE 301-396-4301
BALTIMORE, MARYLAND 21202

DO NOT START WORK OR USE THE PROPERTY IF THIS APPLICATION IS APPROVED UNTIL YOU GET A PERMIT OR CERTIFICATE OF OCCUPANCY FROM THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT WITHIN ONE YEAR OF THE HEARING DATE.

JUN 16 1989

At a meeting of the Board of Municipal and Zoning Appeals on Tuesday, June 13, 1989 the following resolution was adopted:

"Resolved, that in the matter of Appeal No. 214-89X
Sarah & Charles Hirschfield, 61 Indian Field Ct., Mahwah, New Jersey
Appellant,
to permit the housing of three dwelling units

at 3008 St. Paul Street

the BOARD OF MUNICIPAL AND ZONING APPEALS, after giving public notice, inspecting the premises, holding a public hearing, considering all data submitted, and by authority of Ordinance No. 1051, approved April 20, 1971, known as the Zoning Ordinance, made a study of the premises and neighborhood and finds that the property is on the west side of St. Paul Street, 80 feet north of 30th Street, in an R-8 Zoning District.

"The premises is improved by a four story, brick, three family dwelling, 18 feet by 70 feet. The ground floor is used for one efficiency unit, first and second floors are used for one regular dwelling unit, and the third floor is used for one regular dwelling unit. There are also two parking spaces on the rear of the lot. It is proposed to continue to house three dwelling units, two regular and one efficiency unit.



"Prior to April 20, 1971, the date of passage of the New Comprehensive Zoning Ordinance No. 1051, the property was zoned Residential Use, C-1-1/2 Height and Area District.

"Under the Bulk Regulations of Section 4.8-2-a-1, a minimum lot area of 1625 square feet is required for housing two regular and one efficiency dwelling unit. This lot contains 3316.5 square feet.

"Notwithstanding the Bulk Regulations, however, in the R-8 Residence District, no building now or hereafter used as a one family dwelling shall hereafter be altered or changed to be used for occupancy by more than one family, and no building now or hereafter used as a two family dwelling shall hereafter be altered or changed to be used for occupancy by more than two families. For the purpose of this Paragraph, an empty building shall be considered as a one family dwelling unless it was last lawfully used as a dwelling for two or more families in compliance with the normal bulk requirements of the district in which it is located under Section 2.0-12-a.

"However, under the provisions of Section 2.0-12-b, the Board may authorize in the R-8 Residence District, the conversion of a building for use by more than one family, provided that the number of families permitted is in conformity with the applicable bulk regulations for the district in which the building is located and in accordance with the provisions and standards set forth in Sections 11.0-3-c and 11.0-5-a.

"Under the provisions of Section 9.0-3, one off-street parking space for each regular dwelling unit, and one space for each two efficiency units is required.

"Under the provisions of Section 9.0-1-a-2, when the intensity of use of structure or premises is increased through addition of dwelling or efficiency units, floor area, seating capacity, or other units of measurements, off-street parking facilities as required herein shall be provided for such increase in intensity of use. The required number of off-street parking spaces in this case would be one, additional parking space. No additional, off-street, parking spaces are proposed.

"Under the provisions of Section 11.0-3e 2(g), the Board may authorize the applicable off-street parking spaces required to be reduced by not more than 75 percent of the applicable regulations. The percentage of reduction in this case would be 33 percent.

"The prior zoning would have permitted the housing of three families.

"The testimony shows that this appeal presents a request for authorization to house three dwelling units, two regular and one efficiency unit without providing the one, additional, parking space, in the R-8 Residence District. The testimony reveals that the owner acquired this property in May 1988 for \$150,000. It is proposed to use the premises for three dwelling units. There are presently five people residing in the building. The appellant also testified that there is ample room to park three cars on the

rear of the lot. It was also stated that the continued use of the premises for three dwelling units would not adversely affect the community, and the lot is of sufficient density for four units.

"The Board acknowledges receipt of letters from the Fire, Health and Traffic Engineering Departments, all of whom indicate that they have no objection to this appeal.

"On the other hand, the Board acknowledges receipt of a letter from the Department of Planning, which states that the applicant proposes to convert the existing, two family dwelling unit into three dwelling units, one to be located on the first and second floors, and one on the third floor. This building was previously approved by the Zoning Board for two dwelling units in 1977. The Charles Village Community Association has been monitoring conversions. Generally, they are concerned about an increase in dwellings and the severe lack of off-street parking. The Planning Department supports the efforts of the Charles Village Civic Association and recommends disapproval of this appeal.

"The Board acknowledges receipt of a letter, dated April 4, 1989 from the President of the Charles Village Civic Association, Incorporated, wherein they state, the Association voted to oppose this request to increase the density.

"The Board is of the opinion that this proposal does not meet the standards required under the Ordinance and should be rejected. The Board felt that three units would overcrowd the lot and structure, and generally have an adverse effect on the community.

"With due consideration to the guides and standards set forth in Sections 11.0-5a and 11.0-5c of the Zoning Ordinance and

to the reports of the several City Departments as required by the Zoning Ordinance, the Board finds that the proposed use would menace and endanger the public health, security, general welfare and morals.

"In accordance with the above facts and findings, the Board disapproves the application."

Leibel V. Rubin

EXECUTIVE DIRECTOR

Sent to:

Appellant

Frank C. Derr, Esq.
200 Court Sq. Bldg. - 21202

Mrs. Gertrude Bartel, Pres.
Charles Village Civic Assn., Inc.
3401 Greenway - 21218

Larry Reich
Planning - 8th floor

Zoning Enforcement Section

BOARD OF MUNICIPAL AND ZONING APPEALS

DATA SHEET — FOR OFFICE USE ONLY

COMPILED FROM THE RECORD PRIOR TO THE PUBLIC HEARING

214-89X

JUN 13 1989 1:00 PM

APPEAL NO.

DATE FILED Feb. 16, 1989

HEARING DATE

19

PURPOSE OF APPEAL	To house three dwelling units
PREMISES	3008 ST. PAUL STREET
LOCATION	w. side of St. Paul St., 80' n. of 30th St.
NAME OF APPELLANT	SARAH & CHARLES HIRSCHFIELD
ADDRESS OF APPELLANT	61 Indian Field Ct., Mahwah, NJ 07480
NAME OF OWNER	SAME
ADDRESS OF OWNER	SAME
SIZE OF LOT	18' x 184'3"
DESCRIPTION OF EXISTING BLDG. OR USE	4-sty. brick, three family dwelling, 18' x 70' ground fl. - one eff. unit, 1st & 2nd fl. - one reg. dwg. unit and 3rd fl. - one reg. dwg. unit. Also 2 parking spaces on rear of lot
DESCRIPTION OF PROPOSED BLDG. OR USE	To continue to house three dwelling units, two regular and one efficiency unit
DECISION OF ZONING ADMINISTRATOR	Disap. & Ref. under Sec. 2.0-12b - Conditional & Sec. 9.0-3 - Off-Street Parking

LOCATED IN A R-8 ZONING DISTRICT

NONE

PRIOR CASES -----

STAFF REPORT: Prior to 4/20/71, the date of passage of the New Comprehensive Zon. Ord. No. 1051, the property was zoned Residential Use, C-1-1/2 Height and Area District.

"Under the Bulk Regulations of Section 4.8-2-a-1, a minimum lot area of 1625 square feet is required for housing two regular and one efficiency dwelling unit. This lot contains 3316.5 sq. ft.


"Notwithstanding the Bulk Regulations, however, in the R-8 Residence District, no building now or hereafter used as a one family dwelling shall hereafter be altered or changed to be used for occupancy by more than one family, and no building now or hereafter used as a two family dwelling shall hereafter be altered or changed to be used for occupancy by more than two families. For the purpose of this Paragraph, an empty building shall be considered as a one family dwelling unless it was last lawfully used as a dwelling for two or more families in compliance with the normal bulk requirements of the district in which it is located under Section 2.0-12-a.

"However, under the provisions of Section 2.0-12-b, the Board may authorize in the R-8 Residence District, the conversion of a building for use by more than one family, provided that the number of families permitted is in conformity with the applicable bulk regulations for the district in which the building is located and in accordance with the provisions and standards set forth in Sections 11.0-3-c and 11.0-5-a.

"Under the provisions of Section 9.0-3, one off-street parking space for each regular dwelling unit, and one space for each two efficiency units is required.

"Under the provisions of Section 9.0-1-a-2, when the intensity of use of structure or premises is increased through addition of dwelling or efficiency units, floor area, seating capacity, or other units of measurements, off-street parking facilities as required herein shall be provided for such increase in intensity of use. The required number of off-street parking spaces in this case would be one, additional parking space. No additional off-street parking spaces are proposed.

"Under the provisions of Section 11.0-3e 2(g), the Board may authorize the applicable off-street parking spaces required to be reduced by not more than 75 percent of the applicable regulations. The percentage of reduction in this case would be 33 percent.

"The proposal in this case is to house three dwelling units, two regular and one efficiency units without providing the one additional, parking space in the R-8 Residence District. 

"The prior zoning would have permitted the housing of three families.

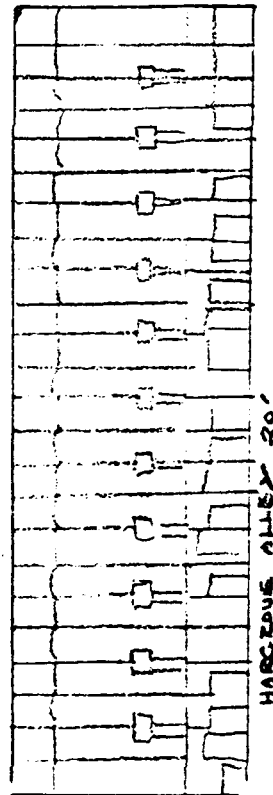
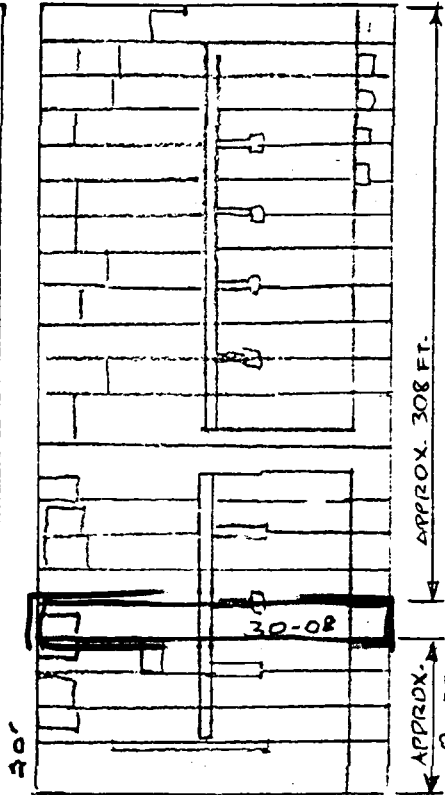
B-1-3

E. 31st St. 66'

R-8

HOMEROOD APARTMENTS

R-8



R-8

SCALE: 1"=100'

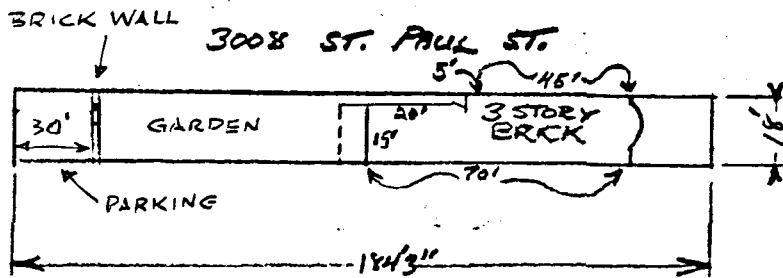


LOVE GROVE ALLEY

E 30th St 66'

ST. PAUL ST 66'

R-8



NOTE

THERE IS NO GARAGE. THE ENTIRE WIDTH OF THE PROPERTY IS AVAILABLE FOR PARKING.

SCALE: 1"=50'

PROPERTY OF CHARLES & SARAH HIRSCHFELD 3008 ST. PAUL ST. BALTIMORE, MD. USE: DWELLINGS

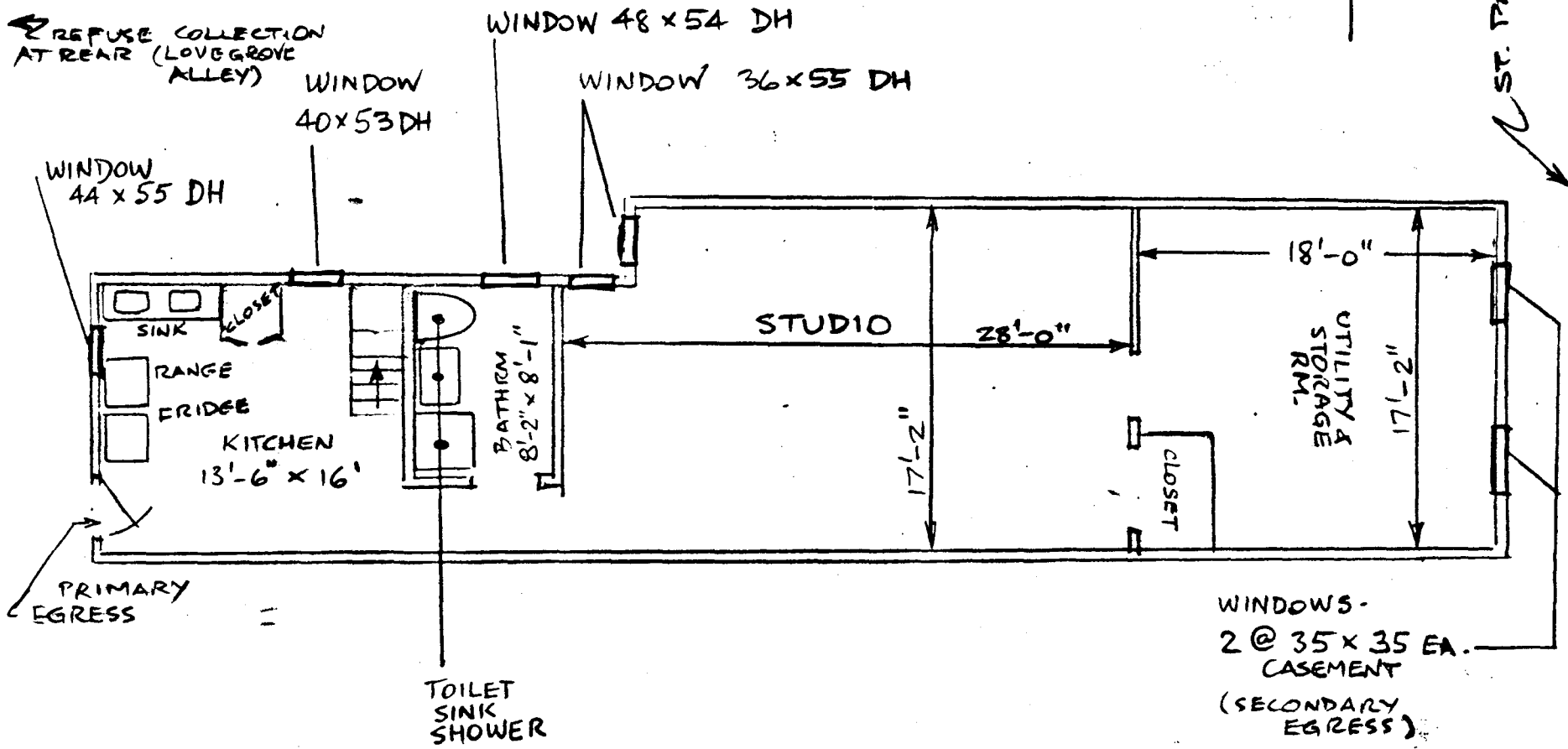
"I hereby affirm under penalties of perjury that this plat is complete and accurate and complies with the Rules of the Department of Municipal and Zoning Appeals."

Charles Hirschfeld
Sarah Hirschfeld

3008 ST. PAUL ST.
BALTIMORE MD.
GROUND FL
1/8" = 1 FT.



ST. PAUL ST.



3008 ST. PAUL ST.
BALTIMORE MD.
FIRST FL.
1/8" = 1 FT.

REFUSE COLLECTION
AT REAR (LOVEGROVE
ALLEY)



ST. PAUL ST.

LAUNDRY RM WINDOW 31x77 DH

DINING RM WINDOW 42x96 DH

KITCHEN WINDOW 40x75 DH

KITCHEN WINDOWS
2 WINDOWS @ 52x26 EA.
CASEMENT

BACK PORCH

SINK
FRIDGE
RANGE

13'-6"
14'-0"

7'-9"
8'-8"

14'-4"
DINING RM.

17'-2"

23'-9"
11'-10"
LIVING ROOM

HALLWAY

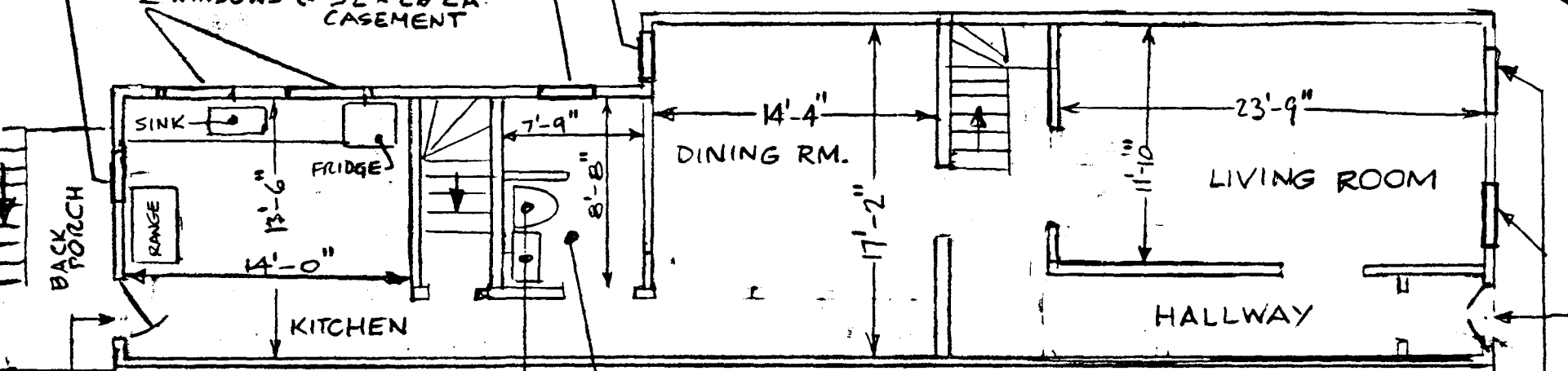
TOILET
& SINK

SECONDARY
EGRESS

LAUNDRY ROOM -
HALF BATH

LIVING RM. WINDOWS
2 DH WINDOWS
35x96

PRIMARY
EGRESS



3008 ST. PAUL ST.
BALTIMORE MD.

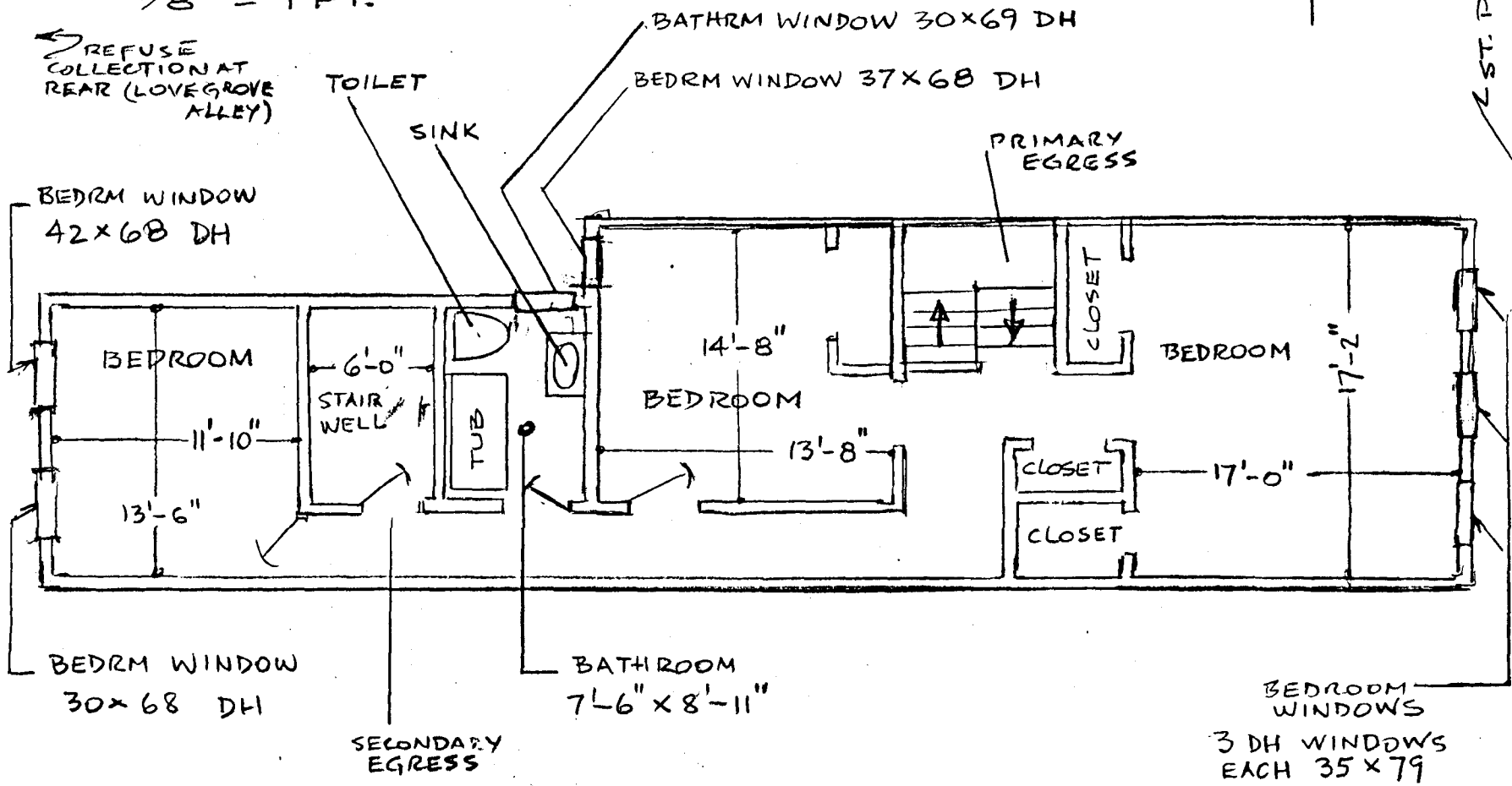
SECOND FL.

1/8" = 1 FT.



2 ST. PAUL ST.

REFUSE
COLLECTION AT
REAR (LOVEGROVE
ALLEY)



BATHRM WINDOW 30X69 DH

BEDRM WINDOW 37X68 DH

PRIMARY
EGRESS

BEDRM WINDOW
42X68 DH

TOILET

SINK

BEDROOM

STAIR
WELL

TUB

14'-8"

BEDROOM

BEDROOM

17'-2"

13'-6"

6'-0"

13'-8"

CLOSET

CLOSET

17'-0"

BEDRM WINDOW
30X68 DH

BATHROOM
7'-6" X 8'-11"

SECONDARY
EGRESS

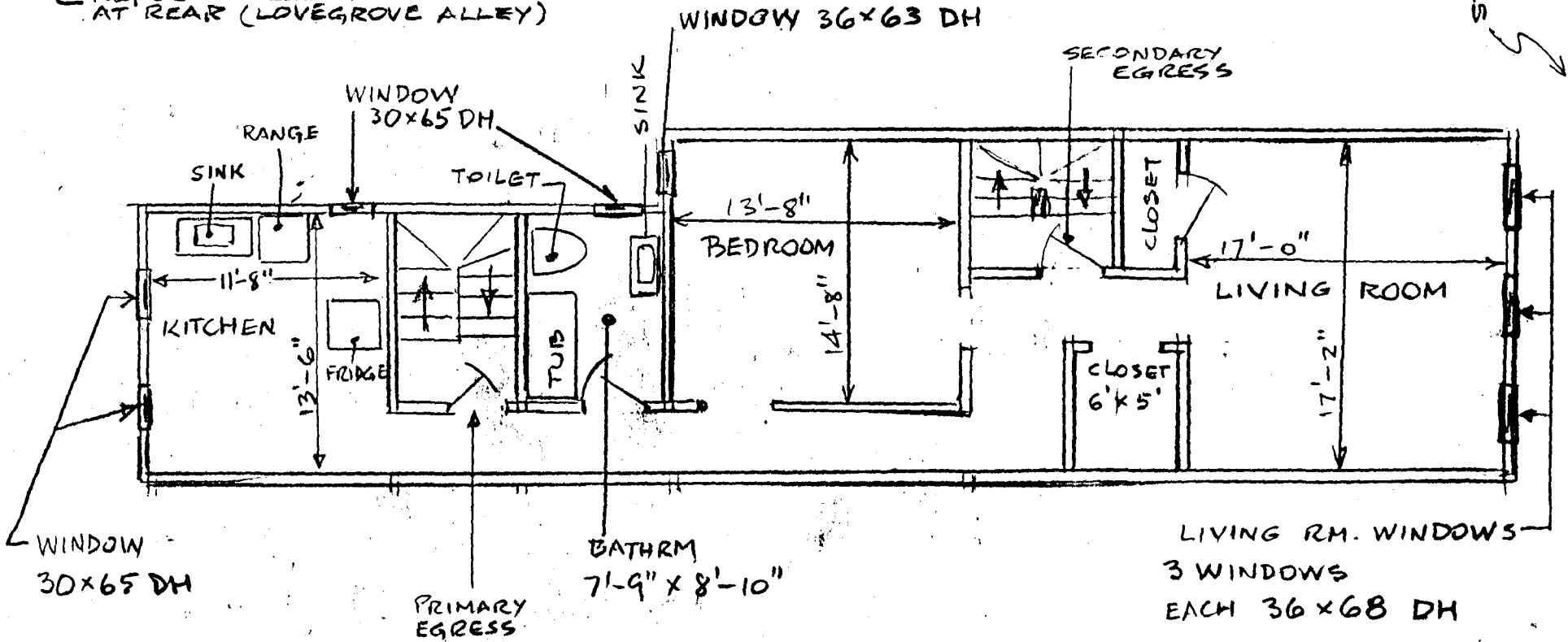
BEDROOM
WINDOWS
3 DH WINDOWS
EACH 35 X 79

3008 ST. PAUL ST.
BALTIMORE MD.
THIRD FL.
1/8" = 1 FT.



ST. PAUL ST.

REFUSE COLLECTION
AT REAR (LOVEGROVE ALLEY)



LIVING RM. WINDOWS
3 WINDOWS
EACH 36x68 DH

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BEFORE THE BOARD OF MUNICIPAL AND
ZONING APPEALS

Sarah & Charles Hirschfield
3008 St. Paul Street

To house three dwelling units

Appeal No. 214-89X

on

June 13, 1989

The above entitled matter came for hearing pursuant
to notice.

BEFORE: Herbert Brown, Chairman
Gilbert V. Rubin, Executive Director
Lynn Sassin, Member
Melvin R. Kenney, Jr., Member
Barbra A. Green, Member
Gia A. Blattermann, Member

APPEARANCES

FOR THE APPLICATION

PROTESTING

Frank Durham, Esquire

Sarah Hirschfield
61 Indian Field Court
Mahwah, New Jersey 07480

DB/SG

P R O C E E D I N G S

CHAIRMAN BROWN: 214-89X, 3008 St. Paul Street.

The appeal is to continue to house three dwelling units, two regular and one efficiency unit in an R-8 zoning district.

MR. DURHAM: Frank Durham, on behalf of the Appellants. This is Sarah Hirschfield, one of the owners.

CHAIRMAN BROWN: All right, if you're going to testify kindly raise your right hand please.

(Witness sworn)

CHAIRMAN BROWN: Okay, go ahead, counsel.

MR. DURHAM: Do you and your husband own this property?

MS. HIRSCHFIELD: Yes, we do.

MR. DURHAM: When did you purchase it?

MS. HIRSCHFIELD: In May of 1988.

EXECUTIVE DIRECTOR RUBIN: '88.

MS. HIRSCHFIELD: Sorry, yes, '88, sorry.

MR. DURHAM: And how much did you pay for it?

MS. HIRSCHFIELD: \$150,000.00.

FREE STATE REPORTING INC.

COURT REPORTING • DEPOSITIONS

D.C. AREA 261-1902

BALT. & ANNAP. 974-0947

1 MR. DURHAM: And does your daughter live on the
2 property?

3 MS. HIRSCHFIELD: Yes, she does.

4 MR. DURHAM: Does she also manage it for you?

5 MS. HIRSCHFIELD: Yes, she does.

6 MR. DURHAM: How old is your daughter?

7 MS. HIRSCHFIELD: 25.

8 MR. DURHAM: And how long has she lived in
9 Baltimore?

10 MS. HIRSCHFIELD: Approximately 7 years.

11 MR. DURHAM: And she's a member of the New
12 Democratic Club and the Charles Village Civic
13 Association?

14 MS. HIRSCHFIELD: Yes she is, she's on the
15 executive board of the New Democratic Club.

16 MR. DURHAM: This is a brick row house?

17 MS. HIRSCHFIELD: Yes.

18 MR. DURHAM: In Charles Village?

19 MS. HIRSCHFIELD: Yes.

20 MR. DURHAM: What's the general character in
21 the immediate neighborhood?

1 MS. HIRSCHFIELD: It's residential but multiple
2 dwelling residential.

3 MR. DURHAM: Are there apartment buildings in
4 the nearby alley?

5 MS. HIRSCHFIELD: Yes, across the, I believe
6 it's the Love Ladies alley. I think that's the name of
7 it.

8 MR. DURHAM: Is it Love Grove?

9 MS. HIRSCHFIELD: Love Grove, sorry. There's a
10 Hopkins dwelling with many apartments for it, 40 some.

11 MR. DURHAM: And you've asked for a conditional
12 use to put an efficiency in the ground floor?

13 MS. HIRSCHFIELD: That's correct.

14 MR. DURHAM: And how many other apartments
15 would be in the house?

16 MS. HIRSCHFIELD: Altogether there would be
17 three if that efficiency were in there.

18 EXECUTIVE DIRECTOR RUBIN: How many are there
19 right now, Counsel?

20 MR. DURHAM: There's one on the third floor
21 occupied by the Appellant's daughter.

1 EXECUTIVE DIRECTOR RUBIN: Is the first floor
2 occupied yet?

3 MR. DURHAM: The first and second floor
4 together are one apartment.

5 MS. HIRSCHFIELD: It's a duplex.

6 MR. DURHAM: And how many tenants are in the
7 first and second floor apartment?

8 MS. HIRSCHFIELD: First and second floor duplex
9 has 3 people living in it.

10 MR. DURHAM: And what are their occupations and
11 approximate ages?

12 MS. HIRSCHFIELD: One is a city planner, about
13 28. The other is an editor, a night editor at the
14 Baltimore Sun. I would think he's 40'ish, 40 something.
15 And there's a cardiology research associate who's in her
16 mid-20's. They share the duplex.

17 MR. DURHAM: And you currently have a tenant in
18 the basement?

19 MS. HIRSCHFIELD: That is correct. He's a
20 computer person at the medical school, Johns Hopkins
21 Medical School.

1 MR. DURHAM: When is his lease up?

2 MS. HIRSCHFIELD: In August.

3 MR. DURHAM: And how about the lease for the
4 first and second floor apartments?

5 MS. HIRSCHFIELD: In August.

6 MR. DURHAM: When you purchased the building in
7 1988, how many people resided in it?

8 MS. HIRSCHFIELD: Four in the duplex and my
9 daughter, so there's a total of 5. Currently there are
10 5.

11 MS. SASSIN: What is the rental charge?

12 MS. HIRSCHFIELD: The basement is 3 and a
13 quarter and the three people sharing the duplex pay
14 \$300.00 a month apiece, so that would be \$900.00.

15 MR. DURHAM: I'd like to show the Board a blow-
16 up of one of the drawings that was submitted with the
17 application which shows yellow lines painted on the
18 parking pad behind this property. One of the objections
19 to the, to your application was that there was
20 insufficient parking.
21

MS. HIRSCHFIELD: Right.

1 MR. DURHAM: There's a pad behind the property
2 which has enough space for 3 parking spaces of 180 square
3 feet apiece, if it is divided up as the yellow lines
4 show. If the, if the Board grants your application with
5 a condition that you arrange the parking in this way,
6 will you do so?
7

8 MS. HIRSCHFIELD: Certainly.

9 MR. DURHAM: If the Board grants your
10 application with the condition that the wall in your back
11 yard be moved forward to permit even more space for
12 parking are you also willing to do that?

13 MS. HIRSCHFIELD: Certainly.

14 MR. DURHAM: In your opinion would granting
15 this additional use cause a detriment to the
16 neighborhood?

17 MS. HIRSCHFIELD: Not at all.

18 MR. DURHAM: Would it cause any problem with
19 access for fire or police protection?

20 MS. HIRSCHFIELD: Not at all.

21 MR. DURHAM: I have nothing further from this
witness.

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EXECUTIVE DIRECTOR RUBIN: Okay, I've got some letters to get in the record. The letter from the Health Department indicates they have no objection. Fire department no objection and Traffic and Transit no objection. There's also a letter from the Department of Planning, and that letter says, "The subject R-8 zoned property is located on the west side of St. Paul Street, just north of 30th.

The Charles Village Community is predominantly residential with a mixture of both single family and multi-family housing. The Applicant proposes to convert the existing 2 family dwelling into three units, one to be located on the first and second floors and one on the third floor.

This building was previously approved by the Zoning Board for 2 units in 1977. The Charles Village Community Association has been informed of this appeal. The Charles Village Civic Association has been monitoring conversions and generally they are concerned about any increase in dwellings and the severe lack of off street parking. The Planning Department supports the efforts of

1 the Charles Village Association and recommends
2 disapproval of this appeal." The Charles Village Civic
3 Association writes a letter and says that "At the March
4 meeting of the Charles Village Association, the Board
5 considered a request to convert the above-captioned
6 property from 2 to 3, from 2 apartment dwellings to 2
7 apartments and one efficiency.
8

9 It is our understanding that the owners wish to
10 convert the basement to an efficiency. By letter dated
11 February 16th, 1989 the owners expressed to the Board the
12 reasons for their request and after discussing the
13 owners' position the Board voted to oppose the request.

14 The reason for the Board's position is two-
15 fold. The Board has historically opposed any increase in
16 density in the neighborhood in the residential dwelling
17 units and use of the row houses where two apartments
18 should be more than sufficient to generate adequate
19 income for the property.

20 Further, any increase in the density would
21 result in an additional parking burden for the
surrounding neighborhood. We would therefore ask that

1 the request be denied." It's signed by the president of
2 the Charles Village Association. Anything else?

3 MR. DURHAM: Briefly I'd just like to point out
4 that the Bulk Regulations are complied with in this --
5 and apparently the only specific objection is the
6 parking. Under the ordinance there should be three
7 parking spaces for this configuration. And the parking
8 pad...

9 EXECUTIVE DIRECTOR RUBIN: You've indicated you
10 can supply the three parking spaces?

11 MR. DURHAM: That's correct, under the current
12 Act.

13 MR. KENNEY: Is the efficiency apartment in
14 operation now?

15 MS. HIRSCHFIELD: Yes, there's one person
16 living in it and there's only one. There would only be
17 one.

18 MR. KENNEY: How long have they been there?
19 Would you say?

20 MS. HIRSCHFIELD: Since August.

21 MR. KENNEY: When did you renovate it for that?

1 MS. HIRSCHFIELD: August.

2 MR. KENNEY: About August? And what did it
3 cost you to do that, do you remember?

4 MS. HIRSCHFIELD: We did it ourselves.

5 MR. KENNEY: Ball park.

6 MS. HIRSCHFIELD: All we had to do was put in a
7 refrigerator. Everything else was in place.

8 MR. KENNEY: Was there? Okay.

9 MS. HIRSCHFIELD: So we bought a frig and put
10 in a little bit of carpeting and that was it.

11 EXECUTIVE DIRECTOR RUBIN: Was the third unit
12 in there when you bought it?

13 MS. HIRSCHFIELD: Oh yes.

14 EXECUTIVE DIRECTOR RUBIN: It's been there?

15 MS. HIRSCHFIELD: Oh yes, it was. But we put
16 in a frig. There was no frig.

17 EXECUTIVE DIRECTOR RUBIN: All right, you'll
18 hear from us in about a week or so.

19 MS. HIRSCHFIELD: Okay, thank you.

20 (Whereupon, case #214-89X was adjourned.)
21

C E R T I F I C A T E

This is to certify that the foregoing transcript
In the matter of:

CASE NO. 214-89X

BEFORE: THE BOARD OF MUNICIPAL AND ZONING APPEALS

DATE: JUNE 13, 1989

PLACE: 100 NORTH HOLLIDAY STREET

represents the full and complete proceedings of the
aforementioned matter, as reported and reduced to
typewriting.

Debbie Becker

Debbie Becker
FREE STATE REPORTING, INC.

Ward 12
 Sec. 19
 Blk. 3860
 Lot 19

This Application Must Be Filled Out In Ink or on Typewriter.
 See Inside for Instructions.

MAYOR AND CITY COUNCIL OF BALTIMORE
 NEIGHBORHOOD PROGRESS ADMINISTRATION/DHCD
 CONSTRUCTION AND BUILDINGS INSPECTION DIVISION
PERMIT APPLICATION

Dist. No.
 Date Issued
 Permit No.
 Minor Pr. No.

PLANS NO.

Official Designation: _____
DO NOT WRITE ABOVE THIS LINE

PROPERTY ADDRESS 3008 St. Paul Street

K/A

OWNER Sarah and Charles Hirschfield Address 61 Indian Field Ct., Mahwah, NJ 07430

LESSEE Address Lic. No.

PRIME CONTRACTOR Address Lic. No.

ELECTRICAL CONTRACTOR Address Lic. No.

PLUMBING CONTRACTOR Address Lic. No.

GAS FITTER Address Lic. No.

ARCHITECT OR ENGINEER Address Lic. No.

A. TYPE OF IMPROVEMENT

C. TYPE OF USE

NEW CONSTRUCTION

ADDITION/ALTERATION

OTHER Change of use only.

USE

DESCRIPTION OF ~~WORK~~ (Be specific when plans are not submitted):

Use premises for three dwelling units:

Ground floor - one efficiency apartment.

First and Second floor - one dwelling unit.

Third floor - one dwelling unit.

DEPARTMENT	DATE	APPROVED BY	DISSAPPROVED	AREA/PLANNER
C.H.A.P.				
CHARLES CTR./INNER HARBOR				
COMMERCIAL REVITALIZATION				
DEPT. OF PLANNING				
MKT. CTR. DEV. CORP.				
NPA/DHCD PLANNING				
OTHERS				

REFER FD HD PD NOTES

EXISTING USE(S) 3 dwelling units (JDU)

PROPOSED USE(S) 3 dwelling units

Estimated total cost of work \$ Expected Date of Completion

F. DIMENSIONS	Front (Ft.)	Depth (Ft.)	Height (Ft.)	Stories	Area (Sq. Ft.)	Volume (Cu. Ft.)
Present Building						
Proposed Building						
Lot			X	X		X

METERS: Electric Existing New Relocate Enlarge

Gas Existing New Relocate Enlarge

PERMIT CHARGES: Applicant must complete information in category columns only.

CATEGORY	FEE	CATEGORY	FEE
SMOKE CONTROL		DISPENSERS & TANKS	
PERIODIC INSPECTION		No. of Tanks..... Gals. Ea.	
MISCELLANEOUS		No. of Dispensers Intake Dia.	
CHANGE OF OCCUPANCY		FIRE PROTECTION	
ZONING		Sprinklers:	
CONSTRUCTION		No. New	
New Building		No. Relocated	
Addition		Standpipes: No.	
Alteration		CO ² System: Cu Ft. Protected	
Repair		GAS FUEL BURNING EQUIPMENT	
Misc. Const.		No. Units Type BTU Input	
Sediment and Erosion Control			
Storm Water Management			
Cost of Const Work Only \$			
ELECTRICAL		ELEVATORS	
New Service Amps		No. to be installed	
No. of circuits to be installed or altered		No. to be altered	
Fixtures only		Type Use	
Temp. wiring kw.		Serial No.	
Other		PLUMBING	
HEATING & FUEL BURNING EQUIP. (other than gas)		No. fixtures to be installed	
No Units Type BTU Input		No. fixtures to be reconstructed	
		No. electric water heaters	
		Water service pipe	
		Sanitary sewer connection?	
REFRIGERATION & AIR CONDITIONING		Storm water connection?	
No. Units Type		Other	
Refrigerant		TOTAL FEES	
Total Rating BTU Tons			
Alterations or Repairs			
Ventilation System CFM			

Fees Checked By: Date:

The owner of the above described property hereby approves this application and agrees to comply with all ordinances of the Mayor and City Council of Baltimore and to do no work not specifically covered by this application.

"I declare under penalties of perjury that this application, including any accompanying plans, specifications, etc., has been examined by me and, to the best of my knowledge and belief is a true, correct and complete statement of the work to be covered by this application."

SIGNED: *[Signature]* *[Signature]* DATE: *12/12/88*
Signature of Owner or Authorized Agent Print Name
 ADDRESS: 61 Indian Field Court Mahwah New Jersey 07430
Print Number and Name of Street City State Zip Code Phone

ZONING *BEFFORD*

By *B.A.* Date *2-16-19*

REFERRALS APPROVED

By Date

PRELIMINARY INSPECTION

By

APPROVALS

STRUCTURAL (DESIGN) (FEE) CHECKED

By Date

ELECTRICAL (DESIGN) (FEE) CHECKED

By Date

MECHANICAL (DESIGN) (FEE) CHECKED

By Date

APPROVED

V. *[Signature]* RUDOLPH F. JANSSEN
 Director-Construction & Buildings Inspection

Per:

Date:

NOTICE OF APPEAL TO THE BOARD OF MUNICIPAL AND ZONING APPEALS

TO: THE BOARD OF MUNICIPAL AND ZONING APPEALS
Room 701 - Saratoga Street Municipal Building
Baltimore, Maryland

3905

FROM: Sarah & Charles Hirschfield, 60 Indian Field Court, Mahwah, N.J.
(Name) (Address) 07430

GENTLEMEN: REFERRING TO MY APPLICATION DATED February 16, 19 89
FOR PERMIT TO use for three dwelling units, left ground floor; 1 du first
floor; & second floor; 1 du third floor.

AT PREMISES DESIGNATED AS 3008 St. Paul Street
DISAPPROVED & WHICH WAS DISAPPROVED (REFERRED) ON February 16, 19 89
UNDER SEC. 2.0-12b; 9.0-3 OF THE ZONING ORDINANCE

FOR THE REASON THAT IT VIOLATES THE ZONING ORDINANCE IN THE FOLLOWING RESPECTS:

- 2.0-12b: Conditional Reversion
- 9.0-3: off street parking

Zoning District: R-8

\$85.00

A copy of application is attached herewith.

Notice of an appeal from this decision is hereby given within ten days from date of the decision as required by the rules of the Board.

I will file, within the prescribed time limit, an appeal on proper form, a copy of the decision of the Zoning

and appeal, I will post the premises as required by your Board.

FORM (301) 727-2168

Send copy of letter to:

FRANK C. DERR
ATTORNEY AT LAW

Respectfully,

AM06 PAID MCCC BALTO
0003 FEB 17 89 12:39PM
3992 MISC 95.00

[Handwritten Signature]

Signature of Applicant

200 COURT SQUARE BLDG.
BALTIMORE, MD.
21202

HORN, BENNETT & REDMOND, P.A.

Frank C. Derr acting for the

PLEASE PRINT OR TYPE

Form 1 BMZA 88-1850-5180

Appeal No. 214-89X

Notice of Appeal Filed

2/16 19 87

APPEAL FROM THE DECISION OF THE ZONING ADMINISTRATOR UNDER THE ZONING ORDINANCE.

TO: The Board of Municipal and Zoning Appeals, Baltimore, Md. _____ 19____
7th floor — Municipal Building Annex — 222 E. Saratoga St.

An appeal is hereby taken from the decision of the Zoning Administrator, and application is hereby made for an order, reversing said decision or authorizing an exception to the requirements of the Zoning Ordinance or approving an application, under the power vested in your Board, so as to permit the:

- Retention
- Construction
- Extension
- Alteration
- Conversion
- Use

of the premises for three dwelling units — two regular and one efficiency apartments.

in accordance with the application and plans filed with the Zoning Administrator, and as hereinbelow described:

Premises designated as 3008 St. Paul (St. Rd. Ave.)

Located on the ^{North, East} ~~South, West~~ side of St. Paul Ave., and (St. Rd. Ave.)

distant 308 80' feet ^(North, East) ~~(South, West)~~ of the corner formed by the intersection of

East 30th Ave. and St. Paul Ave. (St. Rd. Ave.)

Name of Appellant Sarah & Charles Hirschfield Address 61 Indian Field Ct., Mahwah, NJ 07480

Name of Owner Same Address Same P. O. Zone

Size of Lot 18 ft. front X 184 ft. 3 in. ft. deep (or if) irregular see plat.

DESCRIPTION OF ALL BUILDINGS AND USES ON THE LOT IF MORE THAN ONE BUILDING USE SPACE IN REMARKS TO DESCRIBE ADDITIONAL BUILDINGS

	Existing	Proposed (purpose of appeal)
Size of Building	<u>18</u> ft. front & <u>70</u> ft. deep	<u>same</u> ft. front & <u>same</u> ft. deep
Height	<u>app. 33-36</u> ft. <u>4</u> stories	<u>same</u> ft. <u>same</u> stories
Character of Const.	Frame Brick Masonry Metal	Frame Brick Masonry Metal
No. of families housed	<u>3</u>	<u>3</u>
Describe use of each floor of a building	Ground Floor: 1 efficiency dwelling unit. First & Second Floors: 1 duplex dwelling unit. Third Floor: 1 dwelling unit.	<u>to house three (3) dwelling units</u> Same.
Date of Construction	<u>Approximately 1910</u>	
REMARKS:		<u>off street parking space on rear of lot</u>

Has there been any previous appeal to this Board on these premises? No Appeal No. _____

Located in a R-8 Zoning District.

Attached hereto and made a part of this application, is submitted all papers as required on the sheet of instructions furnished me. I hereby depose and say that all the above statements and the accompanying statements are correct and true.

Sworn to before me, this 12th day of December 19 88 } Sarah Hirschfield Charles Hirschfield
(Appellant to sign here.)

Kathleen Plumer
(Notary.)

NOTE: In Positive Appeals when the Appellant is not the Owner, the affidavit on the reverse side must be executed.

STATEMENT OF APPELLANT ON REVERSE SIDE

A STATEMENT OF FACTS IN SUPPORT OF THE APPEAL MUST BE MADE IN THE SPACE BELOW BEFORE THE CASE CAN BE SCHEDULED FOR A HEARING.

TO: THE BOARD OF MUNICIPAL AND ZONING APPEALS:

Referring to the application on reverse side of this sheet, I submit the following reasons in support of the appeal:

This appeal is to allow the continued use of the property for three dwelling units - two regular and one efficiency. The building is a well-constructed brick attached row house on a street of primarily multiple dwelling units. The house is four houses away from a 26-unit apartment house (at 4 East 30th Street) and across Lovegrove Alley there is a 40-unit apartment house owned by Johns Hopkins University and occupied by graduate students. The two adjacent houses have four apartments each.

The lot is 18' by 184'3" and contains 3,317 square feet, or sufficient density for four full-size dwelling units plus one additional efficiency unit. The building contains approximately 1,128 square feet on each floor or a total of 4,512 square feet.

The property was used for many years for two dwelling units, with a family of four or more persons occupying a large apartment consisting of the ground level, and the first and second floors. We purchased the property in May, 1988 as a home for our 25-year-old daughter who works as a research associate in the Psychology Department at the Johns Hopkins University School of Medicine. In order to be able to lease the remainder of the building to responsible tenants, we found it necessary to create a separate efficiency apartment on the ground level.

Our daughter will continue to occupy her third floor apartment and to be the resident manager of the property. All current tenants are mature, young professionals who have respect for the house and grounds and we intend to continue renting to similar tenants.

The addition of one person to a house of this size in this zone will not affect the character of the neighborhood or make the building materially different from similar buildings on the block. All changes to the building are internal and the appearance of the house remains unchanged. The addition of one efficiency apartment will not be detrimental to or endanger the public health, security, general welfare or morals and will be an asset to the neighborhood.

Signature of Appellant
Signature of Appellant.

Affidavit of Ownership (To be used in Positive Appeals if the Appellant is not the Owner.)

STATE OF MARYLAND, } ss: _____ being duly sworn
CITY OF BALTIMORE, }

deposes and says that he resides at _____ St., Ave.,

in the City of _____ in the State of _____, and

(1st) That he is the owner of all that certain lot, piece or parcel of land situated, lying and being in the City of Baltimore aforesaid and known and designated as _____ St. Ave., and

(2nd) That the statements of fact contained in the annexed application are true, and

(3rd) That he hereby authorizes _____ to make said application in his behalf. (Appellant's name)

Sworn to before me, this _____ day of _____ 19____ } (Owner sign here)

(Notary.)

(over)

FROM	NAME & TITLE	Philip A. Berman <i>PAB/bep</i> Director
	AGENCY NAME & ADDRESS	Bureau of Community Hygiene Baltimore City Health Department 303 E. Fayette Street, 4th Floor
	SUBJECT	Zoning Appeal No. 214-89X 3008 St. Paul Street

CITY of
BALTIMORE
MEMO



TO Gilbert V. Rubin, Executive Director
Board of Municipal and Zoning Appeals
417 E. Fayette Street, 14th Floor

DATE: 13 June 1989

This is in reply to your letter of 18 May 1989 pertaining to the application of Sarah and Charles Hirschfield, 61 Indian Field Court for a permit to house three dwelling units at 3008 St. Paul Street. Your file reference on this case is Appeal No. 214-89X.

The plans and specifications have been reviewed and there would appear to be no health hazard involved in the usage stated above provided that:

1. The dwelling units conform to the requirements of the City Housing, Building, and Health Codes.
2. Adequate and conforming central containers for trash and garbage are provided in accordance with sections 509 and 1003 of the Housing Code. For three dwelling units there must be at least 5 - 20 gallon metal receptacles with tight fitting lids.
3. The area where the central refuse containers are stored is kept free of spillage and other nuisances and the containers are kept covered with tight fitting lids after refuse is added.
4. The premises, which include the adjoining sidewalk, gutter, and alley, are kept clean and free of nuisances to the neighborhood.

NOTE: Safe and appropriate access from all dwelling units to the trash and garbage storage area should be given strong consideration from a public health standpoint, to reduce potential for illegal disposal of refuse by tenants.

PAB:bep
cc: Sarah & Charles Hirschfield
John Huppert
Bernard Bochenek
File

THE BOARD OF MUNICIPAL AND ZONING APPEALS

14TH FLOOR

417 E. FAYETTE STREET

BALTIMORE, MARYLAND 21202

RECEIVED

MAY 19 3:20 PM '89

May 18, 1989

BUREAU OF PERMITS
ENVIRONMENTAL SERVICES
DIVISION

In your reply
please refer to
Appeal No. 214-89X

Department of Transportation

Dear Sir:

In accordance with Ordinance No. 1051, approved April 20, 1971, known as the Zoning Ordinance, we are submitting herewith a copy of the plans accompanying the application of Sarah & Charles Hirschfield, 61 Indian Field CT., Mahwah, NJ 07430
c/o Frank C. Derr, Esq., 200 Court Square Bldg., 727-2168
for a permit to house three dwelling units

at 3008 St. Paul Street

The Board asks if you will be kind enough to send an early report, so that it will be available at the public hearing on Tues., June 13, 1989 at 1:00 P.M.

EROSION AND SEDIMENT CONTROL

APPROVED

Frederick Marc SH

SEDIMENT CONTROL REPRESENTATIVE

5-23-89

DATE

Very truly yours,

Gilbert V. Rubin

Gilbert V. Rubin
Executive Director

FIRE DEPARTMENT HEADQUARTERS
BALTIMORE, MARYLAND

26-2100-0156 REV. 3/86
1400-26-12

DATE: May 24, 1989

FROM: Mr. Peter J. O'Connor
Chief of Fire Department

TO: Mr. Gilbert V. Rubin, Exec. Director
Board of Municipal and Zoning Appeals

APPLICATION: House three (3) dwelling units.

LOCATION: 3008 St. Paul Street

CONSTRUCTION OR INSTALLATION: A three (3) story, non-sprinklered building of brick construction and currently occupied as a dwelling.

REPORT: At your request, Lieutenant Reginald Jackson of the Fire Prevention Bureau conducted an inspection on May 23, 1989 of the above premises.

The Fire Department has no objections to Zoning Appeal No. 214-89X, provided, that all applicable Codes and Ordinances of Baltimore City are complied with.

RESPECTFULLY SUBMITTED,



CHIEF OF FIRE DEPARTMENT

ivj-

FROM	NAME & TITLE	LARRY REICH, DIRECTOR
	AGENCY NAME & ADDRESS	DEPARTMENT OF PLANNING 8th Floor, 417 EAST FAYETTE STREET
	SUBJECT	3008 ST. PAUL STREET

CITY of
BALTIMORE
MEMO



TO

Mr. Gilbert V. Rubin, Executive Director
Board of Municipal and Zoning Appeals
14th Floor, 417 East Fayette Street

DATE: April 12, 1989

The Department of Planning is in receipt of the application of Sarah and Charles Hirschfield to use the premises for three dwellings, one to be located on the ground floor, one on the first ~~second~~ floors, and one on the third floor.

Section 2.0-12b of Ordinance #1051 states that the conversion of dwellings is a conditional use that requires the approval of the Board of Municipal and Zoning Appeals. Section 9.0-3 of Ordinance #1051 states off-street parking regulations.

The subject R-8 zoned property is located on the westside of St. Paul Street just north of East 30th Street. The Charles Village community is predominantly residential with a mixture of both single-family and multi-family housing.

The applicant proposes to convert the existing two-family dwelling unit into three dwelling units, one to be located on the first and second floors, and one on the third floor. This building was previously approved by the Zoning Board for two dwellings in 1977.

The Charles Village Community Association has been informed about this appeal and may respond to the Board.

The Charles Village Civic Association has been monitoring conversions. Generally, they are concerned about an increase in dwellings and the severe lack of off-street parking. The Planning Department supports the efforts of the Charles Village Civic Association and recommends approval of this appeal.

L. Reich

LARRY REICH
DIRECTOR

LR/RM/jjr

Mr. David Tanner, Zoning
Mr. Ron Miles, HCD, Sector Chief
Ms. Benita Wilson, Second District Planner



bell

Protect

April 4, 1989

Mr. Gilbert V. Rubin
Executive Director
Board of Municipal and
Zoning Appeals
417 E. Fayette Street
Baltimore, Maryland 21202

RE: 3008 St. Paul Street

Dear Mr. Rubin:

At the March Board Meeting of the Charles Village Civic Association, the Board considered the request to convert the above captioned property from a two apartment dwelling unit to two apartments and one efficiency. It is our understanding that the owners wish to convert the basement to an efficiency.

By letter dated February 16, 1989, the owners expressed to the Board the reasons for their request. After discussing the owners' position, the Board voted to oppose the request. The reasons for the Board's position are twofold. The Board has historically opposed any increase in density in the neighborhood's residential dwelling units. Use of the rowhouse for two apartments should be more than sufficient to generate adequate income from the property. Further, any increase in density would result in an additional parking burden for the surrounding neighborhood. We would, therefore, ask that the request be denied. Thank you for your consideration of our position.

Very truly yours,

Gertrude C. Bartel

Gertrude C. Bartel
President

Charles Village Civic Association

GCB:mld

cc: Ms. Benita Edwards Wilson
Ms. Sarah Hirschfield, MSW, CSW

THE BOARD OF MUNICIPAL AND ZONING APPEALS
14TH FLOOR
417 E. FAYETTE STREET
BALTIMORE, MARYLAND 21202

May 18, 1989

In your reply
please refer to 214-89X
Appeal No. _____

Copy Sent To:
Health, Fire and Transportation Depts.

Dear Sir:

In accordance with Ordinance No. 1051, approved April 20, 1971, known as the Zoning Ordinance,
we are submitting herewith a copy of the plans accompanying the
application of Sarah & Charles Hirschfield, 61 Indian Field CT., Mahwah, NJ 07430
c/o Frank C. Derr, Esq., 200 Court Square Bldg., 727-2168
for a permit to house three dwelling units

_____ ,
at 3008 St. Paul Street

The Board asks if you will be kind enough to send an early report, so that it will be available
at the public hearing on Tues., June 13, 1989 at 1:00 P.M.

Very truly yours,

Gilbert V. Rubin
Executive Director

BOARD OF MUNICIPAL AND ZONING APPEALS

14th Floor
417 E. FAYETTE STREET - 21202

3008 ST. PAUL ST.

Baltimore, Md., MAY 18 1989

To the Appellant:

Your appeal to the Board of Municipal and Zoning Appeals has been assigned Number 214-89X and scheduled for a Public Hearing as indicated on the form below. Hereafter refer to this matter by Appeal Number. Everything included within the heavy black lines is required to appear on the sign.

The certificate of posting at bottom of this form shall be dated, signed and filed at the office of the Board prior to the Public Hearing.

Owner/appellant or an authorized representative, previously approved by the Executive Director, must be present at the public hearing.

The sign shall be posted not later than JUNE 3 19 89
By Order of the Board [Signature]

Rule of the Board of Municipal and Zoning Appeals for posting:

- Posting - The premises shall be posted in accordance with the following rules:
 - A. The sign shall be not less than four (4) feet long and three (3) feet high, with black lettering not less than two (2) inches high, on white background.
 - B. The sign shall be posted in a conspicuous manner, not over ten feet above the ground level, and where it will be clearly visible and legible to the public.
 - C. The sign shall be posted not later than ten (10) days prior to the date of the Public Hearing, and shall be maintained in good condition until after the Public Hearing. Where proposed structures or uses are to be on the rear of the lot, the sign shall nevertheless be posted on the front of the premises, unless otherwise directed.

POST SIGN CONSPICUOUSLY ON FRONT OF PROPERTY

WORDING OF SIGN TO BE POSTED ON PREMISES

To Whom it May Concern:

Notice is hereby given by the Board of Municipal and Zoning Appeals that it will hold a public hearing Tuesday JUNE 13TH, at 1:00 P.M. in Room 215, City Hall on Appeal No. 214-89X for a permit TO HOUSE THREE (3) DWELLING UNITS TWO (2) REGULAR AND ONE (1) EFFICIENCY on these premises located in a R-8 Zoning District.

To the Board of Municipal and Zoning Appeals

14th Floor Baltimore, Md., 1989
417 E. Fayette Street - 21202

I hereby certify that the sign was posted on the premises in question in accordance with the above instructions on 19

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
ZONING ENFORCEMENT SECTION

417 East Fayette Street
Room 100
Baltimore, Maryland 21202

February 16, 1989

Mr. Larry Reich, Director
Department of Planning
417 East Fayette Street - 8th Floor
Baltimore, Maryland 21202

Dear Sir:

We are forwarding herewith a copy of the plat with reference to the application
of Sarah & Charles Hirschfield
to Use premises for three (3) dwelling units; one (1) efficiency ground floor
one (1) dwelling unit 1st & 2nd floor, one (1) dwelling unit 3rd floor.
at 3008 St. Paul Street

In accordance with Ordinance No. 1051, approved April 20, 1971, this application
is herewith referred to you for an advisory report. Said advisory report is to be forward
to the Board of Municipal and Zoning Appeals, 417 East Fayette Street - Room ²
within fifteen (15) calendar days of this request.

Sincerely yours,

Donald C. Tall
for DAVID C. TALLENT
General Superintendent
Zoning Administrator
and Enforcement

Enclosure

WHITE - Original
CANARY - Board of Municipal and Zoning Appeals
PINK - Zoning Administrator
GOLDENROD - Zoning Enforcement Section

Excerpts from Minutes

Meeting of 6-13-89

22

In accordance with the above facts and findings, the Board disapproves the application.

Messrs. Brown, Kenney and Mesdames Blattermann, Green and Sassin voted in the affirmative. Motion carried. Hack

19.* The following resolution was adopted by the Board:

RESOLVED, that in the matter of Appeal No. 214-89X, Sarah and Charles Hirschfield, 61 Indian Field Court, Mahwah, New Jersey, Appellants, to permit the housing of three dwelling units at 3008 St. Paul Street, the Board of Municipal and Zoning Appeals, after giving public notice, inspecting the premises, holding a public hearing, considering all data submitted, and by authority of Ordinance No. 1051, approved April 20, 1971, known as the Zoning Ordinance, made a study of the premises and neighborhood and finds that the property is on the west side of St. Paul Street, 80 feet north of 30th Street, in an R-8 Zoning District.

The premises is improved by a four story, brick, three family dwelling, 18 feet by 70 feet. The ground floor is used for one efficiency unit, first and second floors are used for one regular dwelling unit, and the third floor is used for one regular dwelling unit. There are also two, parking spaces on the rear of the lot. It is proposed to continue to house three dwelling units, two regular and one efficiency unit.

Prior to April 20, 1971, the date of passage of the New Comprehensive Zoning Ordinance No. 1051, the property was zoned Residential Use, C-1-1/2 Height and Area District.

Under the Bulk Regulations of Section 4.8-2-a-1, a minimum lot area of 1625 square feet is required for housing two regular and one efficiency dwelling unit. This lot contains 3316.5 square feet.

Notwithstanding the Bulk Regulations, however, in the R-8 Residence District, no building now or hereafter used as a one family dwelling shall hereafter be altered or changed to be used for occupancy by more than one family, and no building now or hereafter used as a two family dwelling shall hereafter be altered or changed to be used for occupancy by more than two families. For the purpose of this Paragraph, an empty building shall be considered as a one family dwelling unless it was last lawfully used as a dwelling for two or more families in compliance with the normal bulk requirements of the district in which it is located under the provisions of Section 2.0-12-a.

However, under the provisions of Section 2.0-12-b, the Board may authorize in the R-8 Residence District, the conversion of a building for use by more than one family, provided that the num-

ber of families permitted is in conformity with the applicable bulk regulations for the district in which the building is located and in accordance with the provisions and standards set forth in Sections 11.0-3-c and 11.0-5-a.

Under the provisions of Section 9.0-3, one, off street, parking space for each regular dwelling unit, and one space for each two efficiency units is required.

Under the provisions of Section 9.0-1-a-2, when the intensity of use of structures or premises is increased through addition of dwelling or efficiency units, floor area, seating capacity or other units of measurements, off street parking facilities, as required herein, shall be provided for such increase in intensity of use. The required number of off street parking spaces in this case would be one, additional, parking space. No additional, off street, parking spaces are proposed.

Under the provisions of Section 11.0-3-e-2-(g), the Board may authorize the applicable off-street parking spaces required to be reduced by not more than 75 percent of the applicable regulations. The percentage of reduction in this case would be 33 percent.

The prior zoning would have permitted the housing of three families.

The testimony shows that this appeal presents a request for authorization to house three dwelling units, two regular and one efficiency unit without providing the one, additional, parking space in the R-8 Residence District. The testimony reveals that the owner acquired this property in May, 1988 for \$150,000. It is proposed to use the premises for three dwelling units. There are presently five people residing in the building. The appellant also testified that there is ample room to park three cars on the lot. It was also stated that the continued use of the premises for three dwelling units would not adversely affect the community, and the lot is of sufficient density for four units.

The Board acknowledges receipt of letters from the Fire, Health and Traffic Engineering Departments, all of whom indicate that they have no objection to this appeal.

On the other hand, the Board acknowledges receipt of a letter from the Department of Planning, which states that the applicant proposes to convert the existing, two family dwelling unit into three dwelling units, one to be located on the first and second floors, and one on the third floor. This building was previously approved by the Zoning Board for two dwelling units in 1977. The Charles Village Community Association has been monitoring conversions. Generally, they are concerned about an in-

crease in dwellings and the severe lack of off street, parking. The Planning Department supports the efforts of the Charles Village Civic Association and recommends disapproval of this appeal.

The Board acknowledges receipt of a letter, dated April 4, 1989 from the President of the Charles Village Civic Association, Incorporated, wherein they state, the Association voted to oppose this request to increase the density.

The Board is of the opinion that this proposal does not meet the standards required under the Ordinance and should be rejected. The Board felt that three units would overcrowd the lot and structure and generally have an adverse effect on the community.

With due consideration to the guides and standards set forth in Sections 11.0-5-a and 11.0-5-c of the Zoning Ordinance and to the reports of the several City Departments, as required by the Zoning Ordinance, the Board finds that the proposed use would menace and endanger the public health, security, general welfare and morals.

In accordance with the above facts and findings, the Board disapproves the application.

Messrs. Brown, Kenney and Mesdames Blattermann, Green and Sassin voted in the affirmative. Motion carried.

20. Appeal No. 215-89X; application of Penn Advertising of Baltimore to erect an illuminated, double faced, bulletin sign at 340 W. North Avenue, was scheduled for public hearing today, but at the request of the attorney for the appellant, the case was postponed and has been re-set for hearing on July 11, 1989, and all parties so notified.

21.* The following resolution was adopted by the Board:

RESOLVED, that in the matter of Appeal No. 216-89X, J. Hollis B. Albert, III, Senator Limited Partnership, 5904-06 York Road,, the Board of Municipal and Zoning Appeals, after giving public notice, inspecting the premises, holding a public hearing, considering all data submitted, and by authority of Ordinance No. 1051, approved April 20, 1971, known as the Zoning Ordinance, made a study of the premises and neighborhood and finds that the property is on the northwest corner of York Road and Rosebank Avenue, in a B-2-2 Business District.

The premises is improved by a two story, masonry building, 140 feet by 174 feet, used for the Senator Theatre with seating for 922 patrons. It is proposed to construct two, two story, masonry additions, 52 feet by 60 feet and 57 feet by 54 feet, for

Jpd.
FILED

AUG 8 1989

CIRCUIT COURT FOR BALTIMORE CITY

CHARLES & SARAH HIRSCHFIELD *
Appellant *
vs. *
BOARD OF MUNICIPAL *
AND ZONING APPEALS *
Appellee *

IN THE *
CIRCUIT COURT FOR *
FOR *
BALTIMORE CITY *
Case No. 89194041/CL100108 *

* * * * *

ANSWER TO PETITION FOR APPEAL

The Board of Municipal and Zoning Appeals, Appellee, by Sandra R. Gutman, Assistant City Solicitor, its attorney, in Answer to the Petition for Appeal heretofore filed says:

1. It admits in part the allegations contained in paragraphs 1 and 2 of the Petition. Since additional off-street parking was required, approval for a variance as well as a conditional use was necessary.


2. It denies the allegations contained in paragraph 3 of the Petition, including sub-paragraphs a, b, c, e, f and g.

3. It admits that the application was for approval of a conditional use as alleged in paragraph 3, sub-paragraph d of the petition, however approval for a variance was also needed and Appellee therefore denies the remaining allegations of sub-paragraph d.

In further answering said Petition the Appellee states that the Board of Municipal and Zoning Appeals (the Board) had sufficient and credible evidence upon which to base its decision

and that the decision of the Board was fair and reasonable and in accordance with the provisions of Zoning Ordinance 1051, approved April 29, 1971.

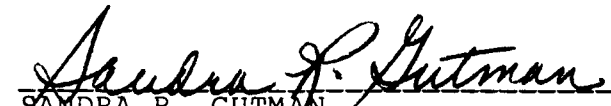
WHEREFORE, having fully answered the Petition heretofore filed, the Appellee prays that it be dismissed with costs.


SANDRA R. GUTMAN
Assistant City Solicitor
Room 143, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202
Telephone: 396-3933

Attorney for Appellee

CERTIFICATION OF MAILING

I HEREBY CERTIFY THAT on this 8 day of August, 1989, a copy of the foregoing Answer to Petition for Appeal was sent by first class mail, postage prepaid, to William J. Ruben, Esquire, and Frank C. Derr, Esquire, 200 Court Square Building, Lexington & Calvert Streets, Baltimore, MD 21202.


SANDRA R. GUTMAN
Assistant City Solicitor

FILED

JUL 13 1989

CIRCUIT COURT FOR
IN THE BALTIMORE CITY

89194041

CIRCUIT COURT FOR

CL 100108
9:49AM07/14/89 002#009 A ***

BALTIMORE CITY
#0891940
#0000041

CIVIL \$80.00
LIBRA \$5.00
**TTL \$85.00
ID: CHECK \$85.00
CHNG \$0.00

CHARLES & SARAH HIRSCHFIELD *
61 Indian Field Court *
Mahwah, New Jersey 07430 *

Appellants *

v. *

BOARD OF MUNICIPAL AND *
ZONING APPEALS *
417 East Fayette Street *
Baltimore, Maryland 21202 *

Appellee *

* * * * *

ORDER FOR APPEAL

Clerk:

Pursuant to the Zoning Ordinance of Baltimore City and Rule B2, Maryland Rules of Procedure, please enter an appeal from the decision of the Board of Municipal and Zoning Appeals dated June 16, 1989, Appeal Number 214-89X, disapproving the Appellants' application for conditional use approval to continue to use their property located at 3008 St. Paul Street, Baltimore, Maryland 21218 for two regular and one efficiency dwelling units.

WILLIAM J. RUBIN

FRANK C. DERR

200 Court Square Building
Lexington & Calvert Streets
Baltimore, Maryland 21202
(301) 727-2168
Attorneys for the Appellants

CHARLES & SARAH HIRSCHFIELD
61 Indian Field Court
Mahwah, New Jersey 07430

Appellants

v.

BOARD OF MUNICIPAL AND
ZONING APPEALS
417 East Fayette Street
Baltimore, Maryland 21202

Appellee

IN THE

CIRCUIT COURT FOR

BALTIMORE CITY

ID:

* * * * *

PETITION FOR APPEAL

The Appellants, Charles and Sarah Hirschfield, by their attorneys, William J. Rubin and Frank C. Derr, pursuant to the Zoning Ordinance of Baltimore City and Rule B2, Maryland Rules of Procedure, bring the above-captioned appeal against the Appellee, Board of Municipal and Zoning Appeals of Baltimore City, and, for their reasons, say:

1. The administrative action appealed from herein is the final decision of the Board of Municipal and Zoning Appeals of Baltimore City (hereinafter, the "Board"), dated June 16, 1989, in Appeal Number 214-89X disapproving the Appellants' application for conditional use approval to continue to use their property located at 3008 St. Paul Street, Baltimore, Maryland 21218 for two regular and one efficiency dwelling units.

2. The decision of the Board constitutes the final action of an administrative agency subject to judicial review pursuant to Maryland Rule B1. The Appellants are the owners of the subject property and were the applicants in the proceedings before the Board and are directly aggrieved by the final action of the Board.

3. The decision of the Board was arbitrary, capricious, erroneous, illegal, improper, not supported by substantial evidence, constituted a denial of due process of law, and resulted from an improper application of the law to the facts, in that:

(a) There was no proper and/or substantial evidence before the Board that the proposed use would violate the standards of Sections 11.0-5a and 11.0-5c of the Baltimore City Zoning Ordinance;

(b) There was no proper and/or substantial evidence before the Board that the proposed use would menace and endanger the public health, security, general welfare and morals;

(c) The Board improperly relied upon matters which were not proper or admissible evidence;

(d) The application in question was for the approval of a conditional use which, under established principles of law, the Board was required to grant in the absence of substantial evidence in the record that the legislative standards relating thereto had been violated;

(e) No evidence before the Board justified its denial of use of the premises for the purpose sought, as a conditional use, because the only proper evidence before the Board established that the proposed use would have no adverse effect upon the neighborhood or community beyond those inherently associated with such conditional use irrespective of its location within the R-8 Residence Zoning District;

(f) The Board wrongfully relied upon and illegally applied the standards of Section 11.0-5c of the Zoning Ordinance of Baltimore City which standards apply only to applications for variances, and Appellants did not apply for any variance, nor was any variance required;


(g) The Board failed to make any findings of fact or to provide any reasons or reasoning to support its decision, as is required by established case law;

WHEREFORE, the Appellants, Charles and Sarah Hirschfield, request the Court to reverse the decision of the Board of Municipal and Zoning Appeals or, in the alternative, to remand the action to the Board for further proceedings in accordance

with law and to order any and all such other relief as the nature of the Appellants' causes and justice require.



WILLIAM J. RUBIN

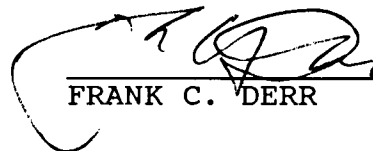


FRANK C. DERR

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Attorneys for the Appellants

I HEREBY CERTIFY that on July 13, 1989, a copy of the above was hand-delivered to the Board of Municipal and Zoning Appeals of Baltimore City, 417 East Fayette Street, Baltimore, Maryland 21202.



FRANK C. DERR

D. Lee
2-1-10
Image 101

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MSA SC 5458-82-150

Dates: 1989-1994

Description: Circuit Court for Baltimore City, Cases # 94004032; 94018024

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HIRSCHFIELD VS BD OF MUNICI APL Box 367 Case No. 89194041 [MSA T2691-3003, OR/11/3/29] *DL 2-1-10 Image 101*

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