GEORGE I. HALTER AND ANNA G. HALTER, HIS WIFE, ET AL VS BOARD OF COUNTY COMMISSIONERS OF BALTIMORE COUNTY AND BOARD OF ZONING APPEALS FOR BALTIMORE COUNTY ROBERT C. CHEEK	)	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY LAW

The Court has considered the testimony in the case, the arguments of counsel, and the opinions of the Zoning Commissioner and the Board of Zoning Appeals.

The Board apparently has a sound understanding of the guiding principles in this case. The restrictions imposed by the zoning regulations must be strictly construed.

The Zoning regulations and restrictions of Baltimore County contain no provision that would prevent the erection of a structure such as contemplated by Mr. Cheek. As stated in the opinion of the Commissioners, the tower "is definitely not an accessory building as set forth under the definitions of Section 1, Page 3 of said regulations as codified September 1, 1948, and is, therefore, not limited to '15 feet in height above the ground level'."

It appears to the Court that there is an effort on the part of the protestants to read into the zoning regulations an indefinite and variable standard of aesthetics or architectural good taste. The zoning regulations make no provision for any artistic or aesthetic code.

For some years we have been beset on all sides by busy and persistent planners, whose purpose apparently is to plan for every conceivable human activity and regiment us from the cradle to the grave with the resultant destruction of freedom. Nothing, they say in effect, is to be left to individual choice or caprice and little or nothing to normal growth and development. However, as yet we have no high official arbiter of architecture or commissar of culture and it would be a tragic day for us, in my judgment, if we ever should have one. Some planning is necessary but the tendency today is to go to unreasonable extremes.

Both our Federal and State constitutions provide for a guarantee to every citizen certain inalienable rights and liberties. Under the Federal Constitution no State shall deprive any person of life, liberty, or property, without due process of law. The Constitution of Maryland provides that the General Assembly shall enact no law authorizing private property to be taken for public use, without just compensation being first paid or tendered to the party entitled to such compensation.

Up until fairly recently property rights have been regarded as sacred as those of liberty but in recent years a growing number of short-sighted persons seem to hold the right of private property as of little importance and value. This attitude is a threat to the fundamental principles upon which our American system is founded and one which must be met with firmness and vigor.

The general tendency today is to limit the use of private property. Under the terms public health, safety and morals, and the broad, vague and legally loose and elastic catch-all of "general welfare" much is being attempted and much is being done in the restriction of property rights. As public welfare particularly means different things to different people much uncertainty has been injected into the old understanding of the theory of private property.

It is, of course, legal for an owner of land to get up restrictions for a real estate development which includes matters of an architectural and aesthetic nature but to invest public officials under a zoning ordinance with such broad powers would reduce the ownership of land to a legal fiction.

Property owners frequently, in purchasing home sites in restricted sections, submit themselves by private agreement to the opinion and decisions of the owners of real estate developments as to the design and type of construction of their dwellings and to many other restrictions, but there is nothing in our zoning laws to justify such an assumption of authority by the zoning officials or the courts. I know of no zoning official or court qualified to pass upon such a controversial matter as architectural good taste. What one generation considers offensive another may regard as a thing of beauty.

No doubt the early windmills among the dikes and canals of Holland were resented by worthy burghers as eyesores, but many windmills are to be observed in the landscapes of the old Dutch masters who apparently

considered that windmills added charm to the lowland scenery. The same is true of the covered bridges, red barns, and old mills and silos of America; once scorned as examples of raw New World construction, today they are considered quaint and furnish inspiration to many native modern artists. Perhaps a future generation of painters will delight in depicting the steel towers and aerials which many of us today regard as fantastic and incongruous.

Although much violence has been done to the old conception of the inalienable constitutional rights of liberty and property, our courts have consistently ruled that zoning acts and ordinances passed under them are valid and constitutional only when the public health, morals, safety or welfare are concerned. Judge Hammond, in Wakefield v. Kraft, 96 Atl. 2nd page 29, referring to the case of Chayte v. Maryland Jockey Club, 179 Md. 390, said:

> "Restrictions can be imposed on private property only when justified for the protection of the public health, morals, safety or welfare. The Court restricted the application of the rule, saying: 'We have been cited no case applying this principle to a situation of rezoning from a higher to a lower class. In order to impose restrictions some valid exercise of the police power must be proven. But such power is invoked for the protection of the property restricted and not to give protection to the surrounding property. It is basic to the law of property that a man shall be allowed the widest use of his property consonant with the protection of his neighbors. In order to justify therefore a restriction of that use, it must be shown that such restriction is in some manner related to the pclice power of the sovereign'."

The public safety, health, morals or welfare will in no wise be affected by the erection of the tower among the trees in Mr. Cheek's backyard. His home is still his castle within the narrow limits set by law as approved by the courts.

The Court is of the opinion that the Board of Zoning Appeals made no error in its ruling and its finding is affirmed.

March 23, 1954

John B. Gontrum, Judge

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