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## RECENT DEVELOPMENT

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### **ANDERSON HOUSE, LLC V. MAYOR OF ROCKVILLE: COMPREHENSIVE ZONING REGULATIONS APPLIED UNIFORMLY AND IDENTICALLY WITHIN A ZONE ARE VALID EVEN IF THEY PRODUCE DISPARATE RESULTS.**

**By: Shantay Clarke**

The Court of Appeals of Maryland held that comprehensive zoning applied uniformly and identically within a zone is valid, even where the zoning may produce disparate results among the properties within that zone. *Anderson House, LLC v. Mayor of Rockville*, 402 Md. 689, 939 A.2d 116 (2008). Additionally, the Court stated that a comprehensive zoning regulation is presumed correct and valid unless a property is singled out for disparate treatment. *Id.* at 723-24, 939 A.2d at 136-37.

Prior to 2005, the Anderson House, a residential property converted for office use, located at 39 West Montgomery Avenue in the Town Center area of the City of Rockville, was zoned "O-2" or "Transitional Office." The O-2 designation is used to safeguard properties which transfer between residential and commercial uses. On April 28, 2003, the City of Rockville enacted Ordinance 7-03, which created the C-T zone, requiring that structures converted for commercial use retain a residential character. The C-T zone also required that the properties rezoned to this designation maintain certain setback, lot width and size, and building height requirements.

On May 9, 2003, the Mayor and City Council filed a Comprehensive Map Amendment Application, which proposed that the Anderson House property and twenty other properties be rezoned to the C-T zone. Anderson House objected to this proposal because the new designation would preclude additional development on the 32,670 square foot property. The city deferred acting on the rezoning of the property because there was a more localized amendment being processed. On October 7, 2004, the Town Center Sectional Map Amendment was filed by the city, proposing that the Anderson House property be rezoned to the C-T zone. Anderson House countered by proposing that its property be split-zoned, so that one portion of the

property would remain zoned O-2 and the other portion would be rezoned C-T, which would allow development on the undeveloped portion of the lot. The Mayor and City Council rejected the proposal to split-zone the Anderson House property and thereafter rezoned the entire Anderson House property C-T on October 17, 2005 in Ordinance 21-05.

On November 8, 2005, Anderson House filed a petition for judicial review of the final action of the Mayor and City Council in the Circuit Court for Montgomery County. The city responded by contesting Anderson House's right to challenge a zoning ordinance text amendment through judicial review. In light of the city's argument, Anderson House also filed a complaint for declaratory judgment and injunctive relief in the Circuit Court for Montgomery County on March 29, 2006, which they subsequently amended on March 31, 2006. The amended complaint alleged that the development standards of the C-T zone violated the uniformity requirement of the Maryland Code, and the identicality requirement of the Rockville City Code. It further alleged that the ordinances were generally arbitrary, capricious, and an invalid exercise of zoning authority and were therefore not related to the general public interest. The two proceedings were consolidated by the circuit court at the request of Anderson House and with the consent of the city.

On December 29, 2006, the circuit court ruled in favor of the city, holding that the court lacked jurisdiction to determine Anderson House's judicial review action, with regards to Ordinance 7-03, which created the C-T zone, but that it had jurisdiction to consider Ordinance 21-05, which placed the Anderson House into the C-T zone. The circuit court rejected all of Anderson House's challenges to the development regulations of the C-T zone. Anderson House timely appealed to the Court of Special Appeals of Maryland, but before that court could decide the matter, the Court of Appeals of Maryland issued a writ of certiorari on its own initiative.

Although the Maryland Uniform Declaratory Judgments Act, codified in Maryland Code Annotated, Courts & Judicial Proceedings Article, Title 3, Subtitle 4, is generally applicable in determining the validity of municipal ordinances, section 3-409(b) states that where a statute provides a special form of remedy for a specific type of case, that statute should be followed and not the Declaratory Judgments Act. *Anderson House*, 402 Md. at 703, 939 A.2d at 125. Section 4.08 of Article 66B of the Maryland Code ("section 4.08") provides a special form of remedy; specifically, section 4.08(a) allows for judicial review

of a zoning action by a circuit court of the county. *Anderson House*, 402 Md. at 704, 939 A.2d at 125. While the circuit court relied on section 4.08(a) in its reasoning, the Court also considered the effect of section 4.08(f) on Anderson House's right to challenge Ordinance 21-05. *Anderson House*, 402 Md. at 704-05, 939 A.2d at 125. Section 4.08(f) allows the circuit court to review an appeal of any matter arising under the zoning laws within the locality. *Anderson House*, 402 Md. at 705, 939 A.2d at 126. The Court recognized the difference between piecemeal zoning and comprehensive zoning, noting that comprehensive zoning is a purely legislative process, while piecemeal zoning is a quasi-judicial process subject to judicial review. *Id.* at 707 n.17, 939 A.2d at 127 n.17.

Despite an in-depth jurisdictional analysis, the Court ultimately found that making a definite determination as to jurisdiction in this case was not critical. *Id.* at 711-12, 939 A.2d at 129-30. The Court found that the consolidation of the two cases initiated by Anderson House was sufficient to grant the circuit court jurisdiction to adjudicate Anderson House's challenges. *Id.* at 711-12, 939 A.2d at 129-30.

Anderson House raised three arguments on appeal. *Id.* at 712, 939 A.2d at 130. First, Anderson House argued that by imposing various lot sizes, height restrictions, and floor area restrictions on the properties zoned C-T, the city violated the uniformity requirement of section 4.02(b)(2) of Article 66B of the Maryland Code ("section 4.02(b)(2)"). *Anderson House*, 402 Md. at 712, 939 A.2d at 130. Second, Anderson House argued that the C-T zone restrictions violated the identicality requirement of sections 25-1 and 25-91 of the Rockville City Code. *Anderson House*, 402 Md. at 712, 939 A.2d at 130. Third, Anderson House argued that the city abused its police powers under section 4.01(b)(1) of Article 66B of the Maryland Code when it rezoned the Anderson House property to the C-T zone. *Anderson House*, 402 Md. at 712, 939 A.2d at 130.

The uniformity requirement of section 4.02(b)(2) states that "all regulations shall be uniform for each class or kind of development throughout each district." *Anderson House*, 402 Md. at 713, 939 A.2d at 130. The Court noted that the purpose of the statute was to dissuade zoning discrimination amongst property owners. *Id.* at 716, 939 A.2d at 132. The Court, relying on *Mayor of Rockville v. Rylyns Enterprises, Inc.*, 372 Md. 514, 814 A.2d 469 (2002), determined that the kind of discrimination violative of the statute was that which singled out a property for disparate treatment. *Anderson House*, 402

Md. at 717, 939 A.2d at 133. The Court held that the uniformity requirement was not violated when a zoning regulation was applied uniformly, but had disparate results, as in the instant case. *Id.* at 720, 939 A.2d at 134-35.

The Court applied the same reasoning to Anderson House's allegation that the C-T zone provisions violated the identicality requirement of the Rockville City Code. *Id.* at 721, 939 A.2d at 135. Anderson House argued that the C-T zone restrictions required different zoning conditions for each C-T property, which violated the city's identicality requirement. *Id.* at 720-21, 939 A.2d at 135. The Court rejected this reasoning, holding that because the restrictions were applied identically, there was no violation of the identicality requirement of the Rockville City Code. *Id.* at 722, 939 A.2d at 136.

Finally, Anderson House argued that the City of Rockville abused its police powers under the Maryland Code when it reclassified the Anderson House property into the C-T zone. *Id.* at 722, 939 A.2d at 136. The Court ruled that because the rezoning of the Anderson House property was part of a comprehensive zoning scheme, the legislature had broad authority in the reclassification of properties, as long as the rezoning was consistent with the general public interest. *Id.* at 722, 939 A.2d at 136. Because there is a strong presumption of correctness and validity in favor of the legislative body, the Court determined that Anderson House had not overcome its burden in showing that the City of Rockville had abused its powers. *Id.* at 724, 939 A.2d at 137.

In enacting zoning ordinances, some properties will be adversely affected. However, with this decision, the Court of Appeals of Maryland reinforces the notion that mere adverse impact on a single property will not render those ordinances invalid. Thus, the Court makes clear that disparate results will not equal disparate treatment.