

Commission and adopted the report of the Board. The Mayor approved the ordinance passed by the Council.

[1] Alleging damage to their respective properties and seeking declaratory and injunctive relief, this proceeding was instituted by a group of property owners in the neighborhood of the rezoned property as residents, citizens and taxpayers of the City of Baltimore. The National Association for the Advancement of Colored People (N.A.A.C.P.) and a residential protective association were also joined as parties in the bill of complaint. While it seems clear that these associations were not proper parties, no objection was raised below and we shall not consider it here since there are several parties plaintiff who are property owners. See *Southland Hills Improvement Ass'n of Baltimore County v. Raine*, 1959, 220 Md. 213, 151 A.2d 734.

The evidence shows that prior to the passage of the ordinance the rezoned property was subject to a lawful non-conforming use in a residential zone. It had been used as a repair shop and garage for the storage of trucks, gasoline and oil for over thirty years. Surrounding the rezoned property there are a number of other non-conforming uses. In the same block as the rezoned property there is a coal yard, an automobile repair shop and a manufacturing plant, all of which are second commercial uses, and a laundry, a restaurant, a bar and a funeral home, which are first commercial uses. The entire frontage on the north end and south side of the 500 block of Wilson Street is 655 linear feet, of which 414 feet is used commercially. Since the original zoning, the Board [of Zoning Appeals] has permitted a change of non-conforming use and granted an exception with respect to 514-516 Wilson Street, which is directly opposite the rezoned property, and had been used as a photography school. Recently a special exception was granted to use the same premises as a plant for the processing, finishing and assembling of precision parts, which is a second commercial use. The property immediately to the rear of the rezoned property is zoned first commercial. Pennsylvania Avenue, approximately one block away, is entirely zoned for second commercial use.

In addition to the above undisputed facts, there was also testimony by real estate experts, on behalf of the City and Schneider, to the effect that the rezoning would not adversely affect the surrounding properties or cause deterioration of the neighborhood because the area was already heavily commercialized, and that any change in use would be an improvement since the rezoned property could not be used for residential purposes. But there was no evidence of error in the original zoning or of a substantial change in the character of the neighborhood since the original zoning other than the granting of the special exception. On the contrary, although they produced no expert witnesses there was testimony by the protesting property owners to the effect that they had consistently endeavored to preserve the residential character of the neighborhood, that the rezoning would seriously affect the enjoyment and value of their properties for future residential use, and that the restricted and actual use within the residential use district—despite the existing non-conforming uses and the sole special exception—was still predominantly residential as it has always been since the inception of zoning in Baltimore City.

The City and Schneider contend (i) that the lower court was without authority to substitute its judgment for that of the legislative body since the question of validity was fairly debatable and the protesting property owners had presented insufficient evidence to overcome the presumption of validity; (ii) that the property owners offered no proof that they had suffered special damages which differed in kind and character from that suffered by the public generally; and (iii) that it was error to admit into evidence the prior actions of administrative agencies not empowered by statute to zone or rezone.

(1)

[2-4] The courts have long recognized the general rule that on a review of zoning and rezoning ordinances the function of reviewing court is restricted and that such court may not substitute its judgment for that of the legislative body. On the contrary, whenever the validity of a zoning classification is fairly debatable, the legislative judgment should be controlling. *Missouri Realty, Inc. v. Ramer*, 1958, 216 Md. 442, 140 A.2d 655; *Wakefield v. Kraft*, 1953, 202 Md. 136, 96 A.2d 27; *Village of Euclid, Ohio v. Ambler Realty Co.*, 1926, 272 U.S. 365, 388, 47 S.Ct. 114, 71 L.Ed. 303.¹ Moreover, there is a presumption in favor of the validity of the legislative enactment. *Kroen v. Board of Zoning Appeals*, 1956, 209 Md. 420, 426,