

Copy: Sent to Board of Zoning Appeals of Baltimore County, by service to Dr. Samuel H. Hoover, Howard Spilling, Towson, Maryland

DR. NATHAN JANNEY and
BERNICE JANNEY, his wife,
ALBERT REID, JR., and
LORRETTA REID, his wife, and
MAY E. WOLF,
COMPLAINANTS
VS.
BALTIMORE TROTTER RACES, INC.
CHARLES H. DOUGLASS, Zoning Commissioner of Baltimore County,
CHRISTIAN H. KAHN, JOHN R. HAUT, BRENNEN A. TRAIL, constituting the County Commissioners of Baltimore County, and
DR. SAMUEL H. HOOVER, EARL L. SINGLE and CALVIN J. CARTER, constituting the Board of Zoning Appeals of Baltimore County
DEFENDANTS

TO THE HONORABLE, THE JUDGES OF SAID COURT

The Bill of Complaint of Dr. Nathan Janney and Bernice Janney, his wife, Albert Reid, Jr. and Loretta Reid, his wife, and May E. Wolf, by Sol C. Berenbom and H. Richard Smith, their Attorneys, against Baltimore Trotting Races, Inc., Charles H. Douglass, Zoning Commissioner of Baltimore County, Christian H. Kahn, John R. Haut, and Brennen A. Trail, constituting the County Commissioners of Baltimore County, and Dr. Samuel H. Hoover, Earl L. Single and Calvin J. Carter, constituting the Board of Zoning Appeals of Baltimore County, Defendants, respectfully represents:

1. That Dr. Nathan Janney and Bernice Janney, his wife, are taxpayers of Baltimore County, in the State of Maryland, being citizens of the State of Maryland, and they are the owners of property known as 7003 Crossland Road, which is situated in

CHARLES H. DOUGLASS and
THEODORE L. PORTER, his wife, et al
VS.
BOARD OF ZONING APPEALS FOR
BALTIMORE COUNTY
IN THE CLERK'S COURT
FOR BALTIMORE COUNTY
IN LAW

The Court, after hearing the argument on the motion for reargument and the petition for modification of the opinion filed in the above-entitled matter announced that it refused the motion for modification of the opinion.

The first cause and reason for the motion is that the opinion heretofore filed fails to dispose of the claim of right of the petitioners under the Constitution of the United States of America to the protection afforded thereby against the statute under which the appeal permit is granted which the petitioners have alleged to be unconstitutional and void:

- a. By reason of an attempted grant of legislative authority to administrative authorities without proper standards or limitations to guide and control the exercise of such authority;
- b. By reason of an attempted grant to such administrative officials the power to act in an arbitrary and discriminatory manner; and
- c. By reason of an attempted grant to such administrative officials of an uncontrolled discretion to destroy the uniformity and equal operation of zoning laws, the uniformity and equality of which form the basis of valuable property rights and on the faith of which the petitioners have established and maintained their home and property.

The Court has considered the several contentions and is not in accord with the views of the petitioners.

The motion also sets out that in the opinion the Court fails to dispose of the claim of right of said petitioners under the Constitution of the United States of America to the protection afforded thereby against the illegal usurpation of power by the administrative agency which is limited in its jurisdiction for such purposes to the grant of a special permit only to those enterprises whose inherent nature requires their establishment in the location under consideration or those whose operations tend to contravene the public health, safety and morals.

Mr. Joseph, in his motion and in argument on this matter, stated that "the contention made in the arguments and in the briefs that the grant of this permit, in

Baltimore County, which has been, and is being, constructed for the purpose of being used as the residence of the said parties.

That Albert Reid, Jr. and Loretta Reid, his wife, are residents, citizens and taxpayers of the State of Maryland and of Baltimore County, and are the owners of, and reside upon, all that tract of land comprising 5.9 acres which is situated on the north side of South Avenue in Baltimore County in very close proximity to the site of the property hereinafter mentioned which is the subject of this Bill of Complaint.

That May E. Wolf is a citizen, resident and taxpayer of the State of Maryland and of Baltimore County, being the owner of, and residing at, all that tract of land known as 7701 Seven Mile Lane in Baltimore County.

2. That the Baltimore Trotting Races, Inc. is a body corporate of the State of Maryland, which was formed for the purpose of operating a commercial race track for trotting races for profit.

3. That Charles A. Deing is a resident of Baltimore County and occupies the office of Zoning Commissioner thereof.

4. That Christian H. Kahn, John R. Haut and Brennen A. Trail are residents of Baltimore County and constitute the County Commissioners thereof; and Christian H. Kahn being President thereof.

5. That Dr. Samuel H. Hoover, Earl L. Single and Calvin J. Carter are residents of Baltimore County and constitute the Board of Zoning Appeals of Baltimore County.

ORDER

UPON the foregoing Petition and Affidavit, it is this 17th day of June, 1948, by the Circuit Court for Baltimore County,

ORDERED that a Writ of Certiorari issue directed to Dr. Samuel H. Hoover, Earl L. Single and William A. Sapp, constituting the Board of Zoning Appeals for Baltimore County, to review the decision and Order of said Board of Zoning Appeals dated May 19, 1948, and requiring it to return to this Court all papers, records and proceedings in said matter and a transcript of all testimony presented before said Board in connection with said proceedings, and a copy of any and all rules and regulations pursuant to which said Order was entered and said Board acted, to enable this Court to review said Order and decision of the Board and that a return to this Petition shall be made and served upon Baltimore's Attorney within thirty days from the date of this Order, and

IT IS FURTHER ORDERED that this Board of Zoning Appeals for Baltimore County shall return to this Court all the original papers or certified or sworn copies thereof and the return shall concisely set forth such other facts as may be pertinent to show the grounds of the decision and Order appealed from, together with a transcript of all the testimony taken at the hearings and copies of the exhibits therewith.

Howard Murray
Judge

True Copy Test
J. H. [Signature]
Clerk

6. That the State of Maryland enacted a "State Zoning Enabling Act" by Chapter 705 of the Act of the General Assembly of Maryland, approved April 26th, 1927, as supplemented and amended by the Acts of the General Assembly of Maryland of 1933, Chapter 599, by which Acts and Amendments the County Commissioners of Baltimore County were authorized and empowered to adopt a comprehensive zoning law to regulate and restrict the location and use of buildings, structures, and land, for trade, industry, residence, and other purposes.

That in pursuance to the State Zoning Enabling Act and pursuant to the Acts of the General Assembly of Maryland of 1941, Chapter 247, and the Acts of the General Assembly of Maryland of 1943, Chapter 877, comprehensive zoning regulations and restrictions for Baltimore County were adopted by the County Commissioners of Baltimore County under date of January 2nd, 1945, and the County Commissioners caused copies of said regulations to be published and distributed, a copy of which is filed herewith as exhibit "A" and prayed to be taken as part hereof. As will appear by an examination of said Zoning Regulations, and particularly of Section 2 thereof, various zones were established as follows:

- "A" Residence Zone (Cottage)
- "B" Residence Zone (Semi-detached)
- "C" Residence Zone (Apartment)
- "D" Residence Zone (Group)
- "E" Commercial Zone
- "F" Light Industrial Zone
- "G" Heavy Industrial Zone

That further in pursuance of said authorizations the said Zones were applied to the various areas situated in Baltimore County.

7. That at the time of the adoption of the said Regulations a certain tract of land situated on the south side of

view of the Board's own findings, was completely beyond the authority and jurisdiction of the Board, was misunderstood by the Court as being to the effect that racetrack gambling is inherently immoral. He contends that this was not the argument intended to be made but that racetrack gambling is a matter of law, have a tendency to impair the morals of the public.

It is stated in the action that the difference in the two points of view has been many times pointed out, nowhere better than in the annotations to the Constitution of the United States of America, 1938, Document No. 232, Page 137, where it is said:

"A calling may not in itself be immoral, and yet the tendency of what is generally or ordinarily or often done in pursuing that calling may be toward that which is admittedly immoral or pernicious."

The Court is still of the opinion that Mr. Joseph contended that all racetrack gambling was inherently immoral, and urged that basic immorality as the grounds for the "tendency" to which he refers. At the time of the hearing before the Court and in the Brief reply, Mr. Joseph particularly referred to the statements of the moral leaders of the community, the clergy, "The better element of the community spoke both for themselves and through their moral leaders, Minister, Priest, and Rabbi". He said that such testimony is not to be lightly or cavalierly disregarded, but that the Court is bound to accept from the moral leaders of the community guidance and direction where moral questions are involved. He also quoted in his Brief reply, the statement of Judge Dillon in his Commentary on the Laws of Jurisprudence in England and America:

"Not less sacred than the revelations of the starry heavens, and such were important, and to no class of men more so than lawyers, is the moral law which has found within himself, and which is likewise found within, and is consequently recognized by, every man. This moral law holds its dominion by divine ordination over us all, from which escape or evasion is impossible. This moral law is the eternal and indelible source of justice and of right, written on the living tablets of the human heart and revealed in his holy deeds."

"The Court," said the petitioners' attorneys, "will look in vain for any hint by anyone in the entire record to the effect that the operation of a race track is aught but destructive of community morals, or, at least, has a tendency toward such destruction."

Certainly, the inherent or fundamental morality of horse racing were in mind when the reply brief was prepared.

South Avenue between Greenbriar Avenue and Clark Lane in the Third District of Baltimore County was then being used as an airport, when tract of land, however, was classified under the said regulations in the "A" residence zone, and that for all of the area immediately surrounding said tract of land in Baltimore County and for a considerable distance beyond the immediate vicinity the area was likewise designated "A" residence zone" under and pursuant to said regulations. That further in pursuance to said regulations the airport was permitted to continue to operate in one said area as a "non-conforming use" under and by virtue of section 11 of said regulations. That the aforesaid tract of land is situated at the southern boundary-line of Baltimore County, marking the division line between Baltimore County and Baltimore City to its south; that the area immediately to the south of the said tract of land, and for a great and considerable distance beyond and otherwise adjacent to said tract of land, there were, and still are, principally fine and expensive homes and estates used as residences by persons living in Baltimore City, and it is the site and location of certain planned residential communities known as "Fairleaf", "Hampton", and "Upper Park Heights section", and almost all of said land is exclusively used for fine suburban residences and estates and in all of said areas large investments have been made by various home owners for the purchase and construction of residences therein, and now at all times, and continues to be, maintained as a fine residential area, and is generally reputed, and accepted, to be the finest residential area of northwest Baltimore City.

That for a considerable distance east, west and to the north of said tract of land formerly occupied as an airport

The Court recognizes the distinction which he drew but does not feel it is necessary to enlarge upon the views as expressed in its opinion. Whether or not racetrack gambling has a tendency to impair the public morals is a question about which there is much difference of opinion. The Court has the greatest respect for the clerical witnesses offered by the petitioners and for their lofty calling, but in this matter we are not dealing with morals in the fundamental sense in which Kant and the religious leaders consider them, but in a restricted legal sense.

Without passing upon the tendency of racetrack or racetrack gambling one way or the other, it might be said that a large number of excellent citizens of various religious beliefs do not look upon racetrack gambling as having a tendency in any way to affect public morals. Others take a different point of view. Most persons' opinions are conditioned by their early training and the beliefs inculcated in them in their youth. Here we enter the realm of moral and ethical opinion. There is no place in this controversy. The Court considers the petitioners' position as unsound.

The third proposition presented by the motion is that the Court fails even to mention, either as a matter of the evidence or otherwise, the constitutional point raised by the opponents to seeking to introduce the records of the Huttler case into these proceedings. The Court did not mention this particular matter as it could see no earthly reason for considering the Huttler case in connection with this case. Mr. Joseph, in his Brief reply, urged that the Board's action in the Huttler case "requires a reversal here". Now the Court, in considering this case, could undertake to reverse the Huttler case or even consider it is beyond the Court's understanding.

There is no possible connection between this case and the Huttler case. It is a matter of common knowledge that the Huttler store in Baltimore is one of Baltimore's finest department stores as Mr. Joseph states but the reason for the action of the Board in the Huttler case are unknown to the Court and have no bearing on this case.

The Court has considered points four and five raised in the motion for reargument and does not find itself in accord with the conclusions of the petitioners' counsel.

I have not elaborated on the constitutional aspects of this case as Mr. Joseph has informed me that he expects to take the matter to the Supreme Court of the United States, and I feel that it would be a waste of time for this Court to set forth its reasons when the constitutional questions raised will possibly be reviewed by that august tribunal.

True Copy Test
J. H. [Signature]
Clerk
March 10, 1949
John B. Souter
John B. Souter, Judge

In Baltimore County the area has been designated "A-1 Residence Zone" under and pursuant to the Regulations heretofore referred to. That many fine and expensive homes and estates were in existence in said area at the time of the adoption of the zoning regulations of Baltimore County, and further, since said period of time additional fine and expensive homes and estates have been built, extended and maintained in said area in conformity with the type of home theretofore existing and in reliance upon the classification established for said area by the aforesaid Regulations. That subsequent to the adoption of the Regulations affecting zoning and restrictions in Baltimore County heretofore referred to the use of the land situated on Smith Avenue as an Airport has been abandoned and discontinued for a period of more than one year and, therefore, under Section 11 of the aforesaid Regulations is no longer entitled to be used for a "Non-conforming Use".

8. That by the Act of the General Assembly of Maryland of 1943, Chapter 877, the County Commissioners of Baltimore County were authorized and empowered to provide, by Zoning Regulations to be promulgated and adopted by it, that the Zoning Commissioner may, in appropriate cases, and subject to appropriate principles, standards, rules, conditions and safeguards set forth in the Regulations, make special exceptions to the provisions of the Zoning Regulations adopted by it in harmony with their general purpose and intent and in cases where the inherent character of the use requires that it be carried on in a district or area to which it does not conform, or where the use has a peculiar tendency to impair the health, safety and morals of the public, the County Commissioners were further authorized and empowered to promulgate and adopt Regulations requiring a special permit from

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the Zoning Commissioner for such use, provided that the issuance of such special permits shall be subject to appropriate principles, standards, rules, conditions and safeguards, set forth in said Regulations, and that all decisions of the Zoning Commissioner with respect to such special permits shall be subject to appeal to the Board of Zoning Appeals.

That purporting to act in pursuance thereof the County Commissioners of Baltimore County promulgated and adopted Section 13 of its Zoning Regulations, which provides as follows:

"Zones Relative to Special Exceptions and Special Permits.

"It is hereby determined that the inherent character of the hereinafter mentioned uses require that they be carried on in districts or areas to which they do not conform, or such uses have a peculiar tendency to impair the health, safety and morals of the public, and such uses may be permitted only upon a special permit granted by the Zoning Commissioner, subject to appeal to the Board of Zoning Appeals:

"A. In any residential zone a special permit shall be required for the following particular uses:

1. Amusement Park.
2. Antique shop (operated as a home occupation).
3. Airport.
4. Commercial chicken raising and housing.
5. Commercial greenhouses.
6. Commercial transmitting or broadcasting station.
7. Country club.
8. Game pavilion.
9. Dog kennels.
10. Horticultural nursery.
11. Hospital.
12. Private club.
13. Private school.
14. Public swimming pool.
15. Riding academy.
16. Sanitarium.
17. Storage yard (contractors).

Provided, however, that the area of such land so to be used and the set backs of any buildings or structures shall be subject to approval of the Zoning Commissioner or the Board of Zoning Appeals, upon appeal.

"D. In any residential zone a special permit shall be required for the following particular uses:

affirmed the action of the Zoning Commissioner; that none of the Complainants herein were parties to the said proceeding; that a further appeal was taken by the said protestants to the Circuit Court of Baltimore County, and on the 7th day of February, 1945, the action of the Board of Zoning Appeals affirming the action of the Zoning Commissioner was affirmed.

10. The Complainants allege that the action of the Zoning Commissioner in granting the special permit for the use of the property on the south side of Smith Avenue by the Baltimore Trotting Races, Inc. as a commercial race track under the alleged authority of Section 13 of the Zoning Regulations of Baltimore County, as amended, is illegal, void, and invalid for the following reasons:

- (a) That the said Section, as amended, is unreasonable.
- (b) That the said Section, as amended, is arbitrary.
- (c) That the said Section, as amended, does violence to the otherwise uniform and comprehensive zoning plan for Baltimore County.
- (d) That the said Section, as amended, does violence to the uniform application of said rules and regulations to the "Use" provisions of the Zoning Regulations for Baltimore County.
- (e) That the said Section, as amended, does not require the Zoning Commissioner or the Board of Zoning Appeals to take into consideration the conservation of values of land and buildings in Baltimore County in determining whether or not a special permit should be granted.
- (f) That the said Section, as amended, permits

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1. Self driving course (including miniature golf).
2. Rifle range.
3. Back quarry.
4. Sand, gravel or clay pit.
5. Sheet or trap shooting area.

Provided, however, that any such use (under this paragraph B) shall be a temporary use of vacant land and shall be subject to such restrictions and safeguards which may be deemed necessary by the Zoning Commissioner, or the Board of Zoning Appeals, on appeal, to protect the respective properties in the vicinity and any such use shall not impair the use of such properties in accordance with the zone plan embodied in these regulations and the zoning map in connection therewith.

- "G. In any residential zone a special permit shall be required for use of land for automobile parking, subject to the following regulations:
- (a) Land to be used for any such use must be adjoining or across an alley from a lot in a commercial zone.
- (b) Parking must be limited to the use of patrons of the building or enterprise on said lot in the commercial zone.
- (c) No charge may be made for parking on said lot.
- (d) No vehicles other than passenger cars shall be permitted to use such parking space.
- (e) No service of any kind be extended persons occupying such parked vehicles.
- (f) The Zoning Commissioner or Board of Zoning Appeals, upon appeal, shall have the right to impose such conditions, limitations or restrictions as to hours of use, mode of lighting, location and height of screening whether wall, fence or shrubbery for the protection, convenience and quiet of the surrounding and neighboring properties.
- "D. In any residential zone a special permit shall be required for an accessory building to be built to the height of two stories to provide living quarters for servants employed on the lot, provided, such height and purpose are reasonably necessary for the convenience of the family occupying the named building as a dwelling and will not injuriously affect the adjoining properties."

Here follow other provisions for special permits in the other enumerated zones.

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On November 12th, 1945 the County Commissioners amended Section "A" of Section 13 of its Zoning Regulations and added various uses which required a special permit, including that of a "commercial race track or course or center or exhibition of any kind."

9. That prior to the adoption of the Amendment of November 12th, 1945 heretofore referred to in the next preceding paragraph the Baltimore Trotting Races, Inc. sought a permit or license from the Maryland Racing Commission to conduct trotting races at the site of the former Airport on the tract of land situated on the south side of Smith Avenue between Greenspring Avenue and Charles Lane and the Maryland Racing Commission refused to grant such permit or license for the reason, among others, that the aforesaid tract of land could not lawfully be used for said purpose without authority from the Zoning Commissioner of Baltimore County. That as heretofore set forth, on November 12th, 1945, the County Commissioners of Baltimore County promulgated and adopted a Regulation which purported to authorize the Zoning Commissioner of Baltimore County to grant a special permit for an area designated as an "A-1 Residence Zone" for the use thereof as a "Commercial Race Track". That on the next day, to wit, November 13th, 1945, the Baltimore Trotting Races, Inc. filed, or caused to be filed, a Petition or Application with the Zoning Commissioner of Baltimore County seeking a special permit to use the tract of land formerly used as an Airport on the south side of Smith Avenue between Greenspring Avenue and Charles Lane for a "Commercial Race Track". That after the required advertisement and posting of the property and a public hearing the permit was granted, despite an overwhelling protest of residents in and

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around the vicinity of the aforesaid tract of land. The Zoning Commissioner of Baltimore County, on the 19th day of February, 1945, granted the application or petition for a special permit as aforesaid, and in his written opinion granting said special permit, stated as follows:

"Pursuant to the advertisement, posting of property and public hearing on the above petition and it appearing from the testimony and data submitted that the use of said property for a commercial race track will not be detrimental to the health, safety and morals of the community involved. That while there is no doubt there will be a tremendous increase in the traffic over the streets and roads in the vicinity of the location in question during a race meet, there is every reason to expect that the public officials charged with the duty of providing and maintaining adequate public highways safe for public travel will meet the daily racing upon them by widening existing public roads and constructing new connecting links when and where necessary.

"That said use will not create a fire hazard, a health menace or endanger the safety of the public from past or other dangers.

"That the area in question, as well as the adjoining land, is mainly non-residential by use and is likely to remain so for a long time by reason of the absence of commercial enterprises and adequate transportation facilities necessary for the public convenience and that, therefore, there is no large number of residents that could be greatly affected by said proposed use.

"There has been considerable testimony and discussion concerning the desirability and feasibility of establishing the use of said property as an Airport but I do not feel that I am called upon to do so. I am entitled to choose between the two. Finding that the proposed use of said property will not be detrimental to the health, safety, morals and general welfare of the community, I do not believe it is within my power under the zoning regulations for Baltimore County to prohibit the proposed use. Therefore, the special permit applied for will be granted.

"It is observed by the Zoning Commissioner of Baltimore County, this 19th day of February, 1945, that the above described property or area be permitted to be used as a commercial race track for harness racing only and that the off street parking areas for motor vehicles as shown on the plat filed with the Zoning Department of Baltimore County, be provided for the purpose as a condition to the granting of this permit.

That an appeal was taken by the protestants to the Board of Zoning Appeals, which, on the 19th day of March, 1945,

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special privilege and "spot zoning".

(g) That the said Section, as amended, is not a proper or lawful exercise of the authority contemplated by the Acts of the General Assembly of 1943, as amended.

(h) That the said Section, as amended, permits an enforcement thereof so as to virtually destroy the "Use" provisions of the Zoning Regulations of Baltimore County, in total disregard of any unified and comprehensive zoning plan, and with consequent impairment and destruction of the values of properties in Baltimore County.

(i) That the said Section, as amended, permits an enforcement thereof so as to completely destroy the classifications of zones known as "Residence Zones" under the Zoning Regulations of Baltimore County.

(j) That the said Section, as amended, does not set forth with sufficient definiteness and detail the principles, standards, rules, conditions and safeguards by which to guide the Zoning Commissioner and the Board of Zoning Appeals of Baltimore County in determining, in any given state of facts, whether it is sufficient to authorize and empower them to make special exceptions to the provisions of the Zoning Regulations of Baltimore County or to grant a special permit thereunder.

(k) That the Acts of the General Assembly of 1943, Chapter 877 thereon, as amended, under which Section 13 of the Zoning Regulations of Baltimore County, as amended, purported to be promulgated is illegal and void because said Act does not set forth in clear and definite terms the guides which the Zoning Regulations of Baltimore County should contain by which the Zoning Commissioner and the Board of Zoning Appeals of Baltimore County should determine in any given state of facts whether they should or not make special exceptions to the Zoning

Regulations of Baltimore County or to grant a special permit thereunder.

(l) That the Acts of the General Assembly of 1943, as amended, under which Section 13 of the Zoning Regulations of Baltimore County, as amended, purported to be promulgated is illegal and void because it does not set forth with sufficient definiteness and detail the principles, standards, rules, conditions and safeguards which the Zoning Regulations of Baltimore County should contain as a guide by which the Zoning Commissioner and the Board of Zoning Appeals of Baltimore County should determine in any given state of facts whether they should or not make special exceptions to the Zoning Regulations of Baltimore County or to grant a special permit thereunder.

(m) And for other reasons to be shown at the hearing of this cause.

11. That irreparable loss, damage and injury will be suffered by the Complainants if the Baltimore Trotting Races, Inc. or any other person, firm, association, or corporation is permitted to use, maintain or operate, or cause to be used, maintained, or operated, on or at that part of that tract of land situated on the south side of Smith Avenue, between Greenspring Avenue and Charles Lane in the Third Election District of Baltimore County heretofore referred to, for the purpose of a commercial race track or harness or trotting race.

12. That the Complainants are without a complete and adequate remedy at law.

WHEREFORE, these Complainants pray that this Honorable Court may:

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IN THE MATTER OF THE APPLICATION OF BALTIMORE TROTTERING RACES, INC. for a special permit to conduct HARNESS TROTTERING RACES at SMITH AVENUE AND GREENSPRING AVENUE in BALTIMORE COUNTY.

BEFORE CHARLES H. DOING ZONING COMMISSIONER FOR BALTIMORE COUNTY

Mr. Commissioner:

Baltimore Trotting Races, Inc., having changed the location at which it desires to operate harness trotting races, hereby formally requests that the Order passed by the Zoning Commissioner, thereafter approved by the Board of Zoning Appeals for Baltimore County, granting a permit for the location at Smith and Greenspring Avenues in Baltimore County, be rescinded, and the application covering said site be withdrawn.

John Francis Turchi
John Francis Turchi
Attorney for Baltimore Trotting Races, Inc.

ORDER

Upon the foregoing Petition and Request, it is, this 3rd day of October, 1949, by the Zoning Commissioner for Baltimore County, ORDERED that the special permit to conduct harness trotting races at the location of Smith and Greenspring Avenues in Baltimore County, heretofore approved in the entitled application, be and the same is hereby rescinded and the application therefore withdrawn.

Charles H. Doing
Charles H. Doing
Zoning Commissioner for Baltimore County

ORDER

Upon the foregoing Bill of Complaint, Affidavits and Exhibit it is this 6th day of June, 1949, ORDERED by the Circuit Court of Baltimore County that the Defendants show cause on or before the 27th day of June, 1949, why the relief prayed for should not be granted; provided a copy of the Bill of Complaint be served on the Defendants on or before the 13th day of June, 1949.

J. Francis Murray

True Copy Test
J. Francis Murray
Clerk

STATE OF MARYLAND }
OF BALTIMORE } TO WIT

I HEREBY CERTIFY that on this day of June, 1949, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County of Baltimore aforesaid, personally appeared DR. NATHAN JARNEY and MARION JARNEY, his wife, and MAY W. ROEP, who made oath in due form of law that the matters and facts set forth in the foregoing Bill of Complaint are true to the best of their knowledge, information and belief.

AS WITNESS my hand and Notarial Seal.

Notary Public

STATE OF MARYLAND }
OF BALTIMORE } TO WIT

I HEREBY CERTIFY that on this day of June, 1949, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County of Baltimore aforesaid, personally appeared ALBERT REID, JR. and LORETTA REID, his wife, who made oath in due form of law that the matters and facts set forth in the foregoing Bill of Complaint are true to the best of their knowledge, information and belief.

AS WITNESS my hand and Notarial Seal.

Notary Public

(1) Permanently restrain and enjoin the Baltimore Trotting Races, Inc. from constructing, using, maintaining or operating, or on any part of that tract of land situated on the south side of Smith Avenue formerly occupied as an airport, and which is situated between Greenspring Avenue and Clark Lane in the Third Election District of Baltimore County for use as a commercial race track or for trotting or harness racing, and that they be permanently restrained and enjoined from proceeding in any manner whatsoever under and pursuant to the special permit granted it by the Zoning Commissioner of Baltimore County under date of February 19th, 1948;

(2) Restrict the Zoning Commissioner of Baltimore County, the Board of Zoning Appeals of Baltimore County and the County Commissioners of Baltimore County from permitting the Baltimore Trotting Races, Inc. to use the land hereinafore referred to for the purpose of a commercial race track or trotting or harness racing;

(3) Decree that the special permit granted to the Baltimore Trotting Races, Inc. by the Zoning Commissioner of Baltimore County is annulled, null, void and of no effect.

(4) Decree that Section 17, as amended, of the Zoning Regulations of Baltimore County is illegal, null, void and of no effect; and

(5) For such other relief as may be proper in this case.

Subscribed and sworn to before me this day of June, 1949.

Notary Public
Notary Public

Complainants.

RE: PETITION FOR SPECIAL PERMIT FOR COMMERCIAL RACE TRACK, SMITH AVENUE, BETWEEN GREENSPRING AVENUE AND CLARK LANE, 3rd ELECTION DISTRICT, BALTIMORE TROTTERING RACES, INC., PETITIONERS

SUPPLEMENTAL OPINION OF THE BOARD OF ZONING APPEALS OF BALTIMORE COUNTY

The Circuit Court for Baltimore County having referred this case back to us for further consideration and the taking of additional testimony, we have heard and carefully considered what has been presented to us.

This consisted principally of asking a comparison between a trotting race track operated at Laurel during the past summer and the proposed track now under consideration.

The question of traffic congestion was discussed at length and comparisons were made between the traffic problem at the proposed track and that at the Laurel Race Track and at Timonium. In this connection we can only say that nothing was presented to us to change our opinion that while the gathering of a large crowd of spectators at the proposed track will necessarily result in some temporary congestion, we believe that this problem can and will be properly handled by the police and that the public safety will not be adversely affected.

We wish to point out that Mr. Ballard requested his original testimony that one lane of traffic could easily not more than 720 cars per hour. The undisputed facts showed that by an actual count made on the York Road near the Timonium Fair grounds on two consecutive days during the peak period the southbound single lane of traffic carried approximately 1500 cars per hour.

On cross-examination, Mr. Thompson, who appeared for the applicant, was asked to make a comparison between the typical

situation at Timonium and that at the Smith Avenue location. Although cross-examination of Mr. Thompson along that line was permitted over objection, we sustained the objection to the questioning of Mr. Ballard along such lines as we felt this comparison was immaterial and unnecessary. In reaching this conclusion, we have not considered that specific part of Mr. Thompson's cross-examination, and, even if Mr. Ballard had testified that conditions at the two locations were markedly different our opinion would not have been changed.

As against this technical testimony by the engineers, we were greatly impressed with the testimony of the State Police Officer who has had seventeen years of actual experience with large concentrations of automobile traffic. As a practical man he convinced us that the traffic problem at the proposed location can be adequately handled.

The other question discussed at length was the lighting system to be used at the proposed track and its effect upon the neighboring properties. We are convinced from the testimony of the experts that it is possible to provide adequate lighting for the operation of the track at night without in any manner disturbing nearby residents or interfering with their enjoyment of their homes. We have every reason to believe that such a lighting system will be installed.

An attempt was made to compare this case with a previous decision of this Board involving the refusal of a commercial center requested by Hyster Brothers Company on New Mendham Avenue, about one-half mile west of the City Line. The suggestion apparently is that our decision in this case is inconsistent with the decision in that case. We do not feel that the two

situations are even remotely comparable. The Hyster application was for a large commercial zone to be in operation during the day immediately adjacent to a heavily populated residential area. We think the cases are in no sense comparable.

After careful consideration of the additional testimony presented to us, we are even more firmly of the opinion that the operation of the proposed race track at the Smith Avenue location will not in any manner adversely affect the public health, safety and morals, and a Special Permit will be granted.

ORDER

This case having been referred back to us by the Circuit Court for Baltimore County for the taking of additional testimony and further consideration and such additional testimony having been fully heard and considered by us, it is this 20th day of September, 1949, by the Board of Zoning Appeals, ORDERED that the Special Permit applied for be and it is hereby granted.

It is further ORDERED that pursuant to the directions of the Circuit Court for Baltimore County the additional testimony taken before us and our opinion and this Order shall be immediately submitted to the Circuit Court for Baltimore County.

William A. Sapp

Earle L. Hinkle
Board of Zoning Appeals
of Baltimore County.

RM: PETITION FOR SPECIAL PERMIT FOR
COMMERCIAL RACE TRACK - S. S.
SMITH AVE., BETWEEN CLARK LANE
AND GREEN SPRING AVE., 3rd DIST.,
BALTIMORE TROTTING RACES, INC.,
Petitioners

OPINION OF THE BOARD OF ZONING APPEALS

This is an appeal from an Order of the Zoning Commissioner granting a Special Permit to conduct a race track in an "A" Residence Zone.

The property involved is the large tract of land on Smith Avenue which has been used for some years as an airport under the name of Curtis-Wright or Pinalco Airport.

The applicant is a corporation which proposes to operate a race track for trotting races with pari-mutuel betting.

It is obviously the hope and expectation of the applicant that this race track will attract large crowds of spectators and the opposition to the granting of the permit is based largely on the congestion, noise, heavy traffic and other annoyances which those living in the neighborhood anticipate as a result of the operation of this type of sport.

It is important to note that the applicant will have at its disposal a large tract of land. There is ample room for the race track itself as well as adequate space for off-the-street parking. There is no reason why there should be any great congestion by reason of cars being parked on the nearby streets such as now exists, for example, at the Baltimore Stadium and the present Pinalco Race Track where the provisions for off-the-street parking are entirely inadequate.

The point is made that there will be a heavy flow of motor traffic to and from the proposed race track which the existing streets cannot adequately handle. A certain amount of traffic congestion is no doubt to be expected but we have no reason to believe that proper methods of traffic control by the police, plus such improvements to the roads in the vicinity as may become necessary, will not solve this problem here just as similar problems have been solved in numerous other locations in Baltimore City and Baltimore County where large crowds of people congregate.

The protestants anticipate annoyance from lights, from the voice amplifier system which they expect will be used, from the cheering of the crowd, and similar difficulties.

We do not think that we are required to assume that the applicant will so conduct its business as to constitute a nuisance to the owners of surrounding property. If it should develop that a nuisance is created surrounding property owners would have a right of recourse to the Courts for its abatement. In this connection we are reminded of the recent suit against the use of the Baltimore Stadium for the playing of professional baseball where similar objections were made as are here presented to us.

Some protestants insist that the value of their properties will be greatly diminished and that the community will be adversely affected by the presence of what they described as "undesirable characters". The operation of the present Pinalco Race Track, a much larger enterprise than that here proposed, in a thickly populated residential area of the City, does not appear to have produced these results. There are many fine homes in close proximity to that race track which do not appear to have been adversely affected.

We think it also proper to state that some of the protestants are residents of Pikesville and other communities far removed from the proposed site. We do not feel that they can in any manner be affected by the operation of this race track.

Another protest comes from a group interested in aviation whose real concern apparently is that the operation of the proposed race track will mean the elimination of the airport at this location. While the operation of the track will no doubt have that result we feel to see how that fact is of concern to us. It appears probable that the airport will eventually be abandoned whether the race track is operated there or not.

We have given this matter thorough consideration, we have read and considered the voluminous testimony taken before the State Racing Commission and the Zoning Commissioner, we have visited the property and surveyed the surrounding territory and we have concluded that a properly conducted race track at this location, with adequate parking facilities, will not in any manner adversely affect the public health, safety, morals or general welfare and we will, therefore, sign an Order sustaining the action of the Zoning Commissioner and grant the Special Permit applied for.

William A. Sapp
Earle P. Plough

Board of Zoning Appeals
of Baltimore County

Upon hearing on appeal on April 1, 1948 from the Order of the Zoning Commissioner of Baltimore County passed on the 10th day of February, 1948, granting the petition for Special Permit, in the above entitled matter, and it appearing from the facts and evidence adduced at the appeal hearing that the petition should be granted for reasons set forth in an opinion of this Board filed herewith, therefore:

It is this 19th day of May, 1948, ORDERED by the Board of Zoning Appeals of Baltimore County that the Order of the Zoning Commissioner in granting the petition for Special Permit be and the same is hereby affirmed.

William A. Sapp
Earle P. Plough

Board of Zoning Appeals
of Baltimore County

Approved:

County Commissioners
of Baltimore County
By *William A. Sapp*
President

Date: May 21, 1948

- 2 -

IN THE MATTER OF:
PETITION OF BALTIMORE TROTTING RACES, INC.,
TO THE ZONING COMMISSIONER OF BALTIMORE
COUNTY FOR A SPECIAL PERMIT TO USE ALL
THAT LAND SITUATE ON S.S. SMITH AVE.,
BETWEEN GREEN SPRING AVE. AND CLARK LANE,
3rd District of Baltimore County -
for a COMMERCIAL RACE TRACK

REPORT
CHARLES H. DOUGLASS
ZONING COMMISSIONER
OF BALTIMORE COUNTY

ORDER FOR APPEAL

Mr. Commissioner:

Please enter an Appeal to the Board of Zoning Appeals of Baltimore County in the matter of the Order of the Zoning Commissioner of Baltimore County passed in the above captioned cause on February 19, 1948, and transmit all records and papers incident thereto to said Board of Zoning Appeals.

Charles H. Douglass
Charles H. Douglass
Charles H. Douglass
Charles H. Douglass
Attorney for Petitioner -
Charles V. Purcell, Michael V.
Freeman, et al

IN THE MATTER OF :

BEFORE THE
ZONING COMMISSIONER
OF BALTIMORE COUNTY

For a Special Permit
To The Zoning Commissioner of Baltimore County
Baltimore Trotting Races, Inc. (E.W. Beer, Jr.) Legal Owner

Contract
Purchaser

hereby petition for a Special Permit, under the Zoning Regulations and Restrictions passed by the County Commissioners of Baltimore County, agreeable to Chapter 877 of the Acts of the General Assembly of Maryland of 1943, for a certain permit and use, as provided under said Regulations and Act, as follows:

A Special Permit to use the land (and improvements now or be erected thereon) hereinafter described for _____
Commercial Race Track

All that parcel of land situate on the south side of Smith Avenue, between Green Spring Ave. and Clark's Lane, 3rd District of Balto. Co., beginning at the southeast corner of Smith and Green Spring Aves., fronting westerly, on south side of Smith Ave., 1100', more or less, to the east side of Clark's Lane, with an average rectangular depth southerly of 125', more or less, to the northern boundary line of Baltimore City and ending on both Green Spring Avenue and Clark's Lane.

Submitted to:
Howard F. Knapp
Howard F. Knapp
Charles H. Douglass
Legal Owner
600 S. Fulda St.
Address

BALTIMORE TROTTING RACES, INC.
by *Earle P. Plough*
Contract Purchaser
1 Whitfield Road.
Address

1089
no

ORDERED by the Zoning Commissioner of Baltimore County this 13th day of November, 1947, that the subject matter of this petition be advertised in a newspaper of general circulation throughout Baltimore County and that the property be posted, as required by the Zoning Regulations and Act of Assembly aforesaid, and that a public hearing thereon be had in the office of the Zoning Commissioner of Baltimore County, Maryland, on the 1st day of December, 1947, at 3:00 o'clock P.M.

Charles H. Douglass
Zoning Commissioner
of Baltimore County

RE: PETITION OF BALTIMORE TROTTING RACES, INC., TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY FOR A SPECIAL PERMIT TO USE ALL THAT LAND SITUATE ON S.S. SMITH AVE., BETWEEN GREEN SPRING AVE. AND CLARK LANE, 3rd District of Baltimore County - for a COMMERCIAL RACE TRACK

Pursuant to the advertisement, posting of property and public hearing on the above petition and it appearing from the testimony and data submitted that the use of said property for a commercial race track will not be detrimental to the health, safety and morals of the community. That while there is no doubt there will be a tremendous increase in the traffic over the streets and roads in the vicinity of the location in question during a race meet, there is every reason to expect that the public officials charged with the duty of providing and maintaining adequate public highways safe for public travel will meet the duty resting upon them by widening existing public roads and constructing new connecting links when and where necessary.

That said use will not create a fire hazard, a health menace, or endanger the safety of the public from panic or other dangers.

That the area in question as well as the adjoining land is mainly non-residential by use and is likely to remain so for a long time by the absence of commercial enterprises and adequate transportation facilities necessary for the public convenience and that, therefore, there is no large number of residents that would be greatly affected by said proposed use.

There has been considerable testimony and discussion concerning the desirability and feasibility of continuing the use of said property as an airport but I do not feel that I am called upon to or am legally entitled to choose between the two. Finding that the proposed use of said property will not be detrimental to the health, safety, morals and general welfare of the community, I do not believe it is within my power under the Zoning Regulations for Baltimore County to prohibit the proposed use, therefore, the special permit applied for will be granted.

It is ORDERED by the Zoning Commissioner of Baltimore County, this 10th day of February, 1948, that the above described property or area be PERMITTED to be used as a Commercial Race Track for harness horses only and that the off-street parking areas for motor vehicles, as shown on the plat filed with the Zoning Department of Baltimore County, be provided and maintained as a condition to the granting of this permit.

Charles H. Douglass
Zoning Commissioner
of Baltimore County

Approved: County Commissioners
of Baltimore County

By President

Date:

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

1089

District 3 Date of Posting Nov 12/47
Posted for: Commercial Race Track
Petitioner: Baltimore Trotting Races, Inc
Location of property: South side of Smith Ave. bet Green Spring Ave and Clark's Lane
Location of Sign: Sign on the southeast corner of Smith Ave and Clark's Lane
2 signs on the west side of Clark's Lane 600 feet south of Smith Ave
2 signs on the south side of Smith Ave 600 feet west of Clark's Lane
2 signs on the southwest corner of Smith Ave and Green Spring Ave
2 signs on the southeast corner of Smith Ave and Green Spring Ave
Posted by: Harry E. Barlow Date of return: Nov 19/47

November 17, 1947

\$36.00

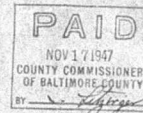
RECEIVED of John Orason Turnbull the sum of Thirty Six (\$36.00) Dollars, being cost of petition for Special Permit, advertising and posting of property on the south side of Smith Avenue, between Green Spring Ave. and Clark's Lane, 3rd District of Baltimore County.

Zoning Commissioner

Hearings:

Monday, Dec. 1, 1947

at 3:00 o'clock P. M.

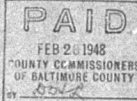


February 25, 1948

\$22.00

RECEIVED of Smalkin & Neasian, Attorneys for Charles W. Purcell, Michael P. Freedman, et al, the sum of Twenty two (\$22.00) Dollars, being cost of appeal to the Board of Zoning Appeals of Baltimore County from the decision of the Zoning Commissioner of Baltimore County in granting the petition for special permit for Commercial Race Track on south side of Smith Ave. between Green Spring Ave. and Clark's Lane, 3rd District of Baltimore County.

Zoning Commissioner of Baltimore County.



Michael P. Freedman, Esquire,
1711 Court Square Building,
Baltimore - 2, Md.

to

June 24, 1948

County Commissioners of
Baltimore County,
Zoning Department,
Record Building,
Towson - 4, Maryland

To making certified copies of papers to be filed in the matter of Baltimore Trotting Races, Inc. for Special Permit for Commercial Race Track, south side of Smith Ave. between Green Spring Ave. and Clark's Lane, 3rd District

\$7.20

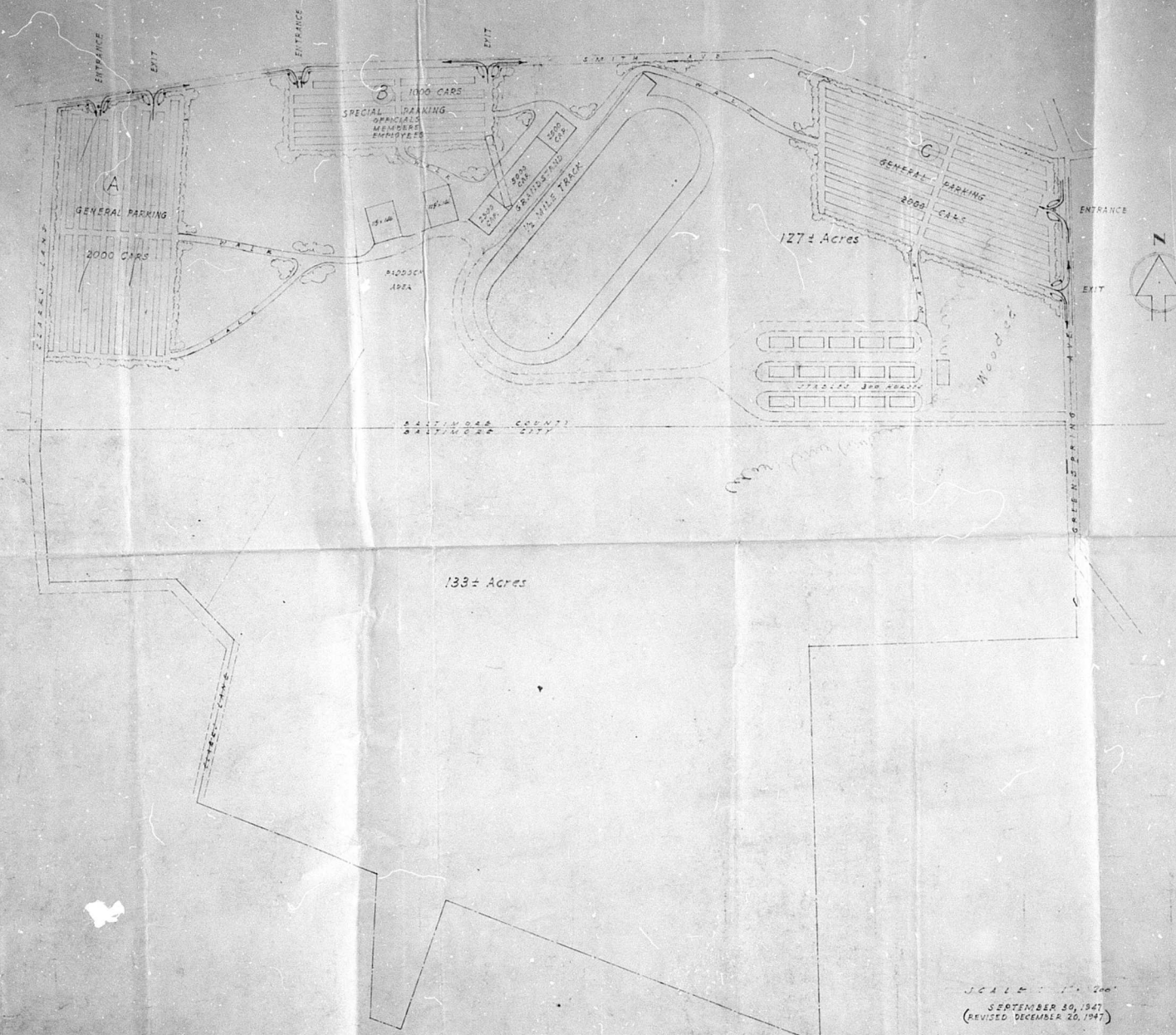
July 19, 1948

\$7.20

RECEIVED of Michael P. Freedman, the sum of Seven Dollars and Twenty Cents (\$7.20) being cost of certified copies of papers filed in the matter of appeal for special permit to operate Commercial Race Track on south side of Smith Ave., between Green Spring Avenue and Clark Lane, 3rd District of Baltimore County - Baltimore Trotting Races, Inc., petitioner.

Zoning Commissioner





SCALE 1" = 200'
 SEPTEMBER 30, 1947
 (REVISED DECEMBER 20, 1947)

SAXE, WILLIAM & ROBERTSON
 ENGINEERS-CONSULTANTS
 BALTIMORE, MD.