

RECD OCT 1 1948

ISAAC GATE LYNETT, Plaintiff
vs.
SAMUEL H. BROOKER, EARL L. TINGEL and WILLIAM A. SAFF, constituting the BOARD OF ZONING APPEALS FOR BALTIMORE COUNTY, Defendant

TO THE HONORABLE, THE JUDGE OF SAID COURT:

The Petition of Isaac Gate Lynett and others, Petitioners, respectfully represents:

(1) That on or about October 5, a petition was filed in this Court requesting a Writ of Certiorari directed to the Board of Zoning Appeals to review a decision of the Board of Zoning Appeals with respect to the granting of a special permit for the erection of a broadcasting station on property owned by James G. Saffell and this Honorable Court allowed a Writ of Certiorari to review said decision.

(2) That because of the adverse effect upon the community involved, which would be occasioned by the commercial use in a residential area, your Petitioner requests this Honorable Court to stay proceedings pending the hearing and determination of the matter by this Honorable Court.

WHEREFORE, your Petitioner prays this Honorable Court to stay all proceedings upon the decision appealed from pending determination of the matter by this Court.

AND as in duty bound, etc.

(s) Brown and Brune
(s) Jennifer and Jennifer
Attorneys for Plaintiff

ISAAC GATE LYNETT, Plaintiff
vs.
SAMUEL H. BROOKER, EARL L. TINGEL and WILLIAM A. SAFF, constituting the BOARD OF ZONING APPEALS FOR BALTIMORE COUNTY, Defendant

UPON the foregoing Petition, it is this 8th day of October, 1948, ORDERED by the Circuit Court of Baltimore County that pending the decision of the matter by this Honorable Court, all proceedings upon the decision of the Board of Zoning Appeals granting a special permit for the construction of a broadcasting station upon the property of James G. Saffell, be stayed, unless cause to the contrary be shown on or before the 12th of October, 1948, provided a copy of this petition and order be served on the counsel to the Board of Zoning Appeals on or before the 15th day of October, 1948.

Judge
(s) J. Howard Murray

True Copy Test
Richard A. Murray
Attorney for Plaintiff

RECD JUN 1 1948

RE: PETITION FOR SPECIAL PERMIT FOR COMMERCIAL TRANSMISSION ON BROADCASTING STATION - SOUTHERNMONT & EASTERNMONT SIDES OF PAINTER'S LANE - 4th DISTRICT - JAMES G. SAFFELL, PETITIONER

Mr. Charles H. Doing
Zoning Commissioner
Towson 4, Maryland

Re: Petition for Special Permit for Commercial Transmittion or Broadcasting Station - SOUTHERNMONT & EASTERNMONT SIDES OF PAINTER'S LANE - 4th DISTRICT - JAMES G. SAFFELL, Petitioner

Mr. Commissioner:

You will please enter an appeal to the Board of Zoning Appeals of Baltimore County from your decision of May 26th, 1948 denying the petition filed by James G. Saffell in the above case and forward the papers to the Board of Zoning Appeals of Baltimore County.

Richard A. Murray
Attorney for Petitioner

Dated this 28th day of May, 1948.

The appeal in the above entitled petition for special permit to use the property described therein for Broadcasting and/or Transmitter Station to be used in Broadcasting purposes coming on for hearing on July 15, 1948 from the Order of the Zoning Commissioner of Baltimore County passed on May 26, 1948 denying the petition, and it appearing from the facts, evidence and data adduced at the appeal hearing that the granting of the petition for the use as aforesaid will not adversely affect adjoining or adjacent property, there being no valid reason from the standpoint of safety, health or morals for the refusal of such petition, nor any evidence that it will cause congestion in the roads and streets and create a traffic hazard, therefore:

It is this 7th day of August, 1948, ORDERED by the Board of Zoning Appeals of Baltimore County that the above Order of the Zoning Commissioner is hereby reversed; and it is further ORDERED that the petition for special permit as aforesaid is hereby granted, provided, however, that the area of land so to be used and the setbacks of any buildings or structures shall comply with the Zoning Regulations and Restrictions for Baltimore County.

William A. Saff
Attorney for Plaintiff

Honorable John B. Gontrom,
The Circuit Court,
for Baltimore County,
Towson 4, Maryland

Re: Appeal in the case of
Isaac Gate Lynett vs.
Board of Zoning Appeals
and James G. Saffell

Dear Judge Gontrom:

Replying to your letter of January 10th making inquiry regarding our opinion in the above case, this Board fully considered the question of "general welfare of the community" and we were and are fully satisfied that there is no valid reason from the standpoint of safety, health, morals or the general welfare - why the petition should not be granted. As a matter of fact our Board was fully convinced by the testimony in this case, that there is no reason from any standpoint under the Zoning Laws and Regulations why the petition should not be granted and we respectfully, fully re-affirm our decision and order in this case.

Respectfully yours,

Board of Zoning Appeals
of Baltimore County

By: Chairman

The Circuit Court for Baltimore County

THIRD JUDICIAL CIRCUIT OF MARYLAND

TOWSON 4, MD.

January 10, 1949

Board of Zoning Appeals
Richard A. Murray
Towson 4, Maryland

Sentence:

In considering the appeal in the case of Isaac Gate Lynett vs. Board of Zoning Appeals and James G. Saffell, I find that in your opinion you stated that "there being no valid reason from the standpoint of safety, health or morals for the refusal of such petition, nor any evidence that it will cause congestion in the roads and streets and create a traffic hazard" the Zoning Commissioner was reversed and the petition for the special permit was granted.

The question was raised in appeal that the Board of Zoning Appeals did not in this case consider the question of "general welfare of the community". I should appreciate your letting me know whether or not this phase of the problem had been considered by the Board and your conclusion on that particular proposition.

Very sincerely yours,

John B. Gontrom
John B. Gontrom

(e) Interfere improperly with adequate provisions for schools, parks, water, sewerage, transportation and other public requirements, conveniences and improvements.

(f) Interfere with adequate light and air.

The Zoning Commissioner or Board of Zoning Appeals, upon appeal, shall have the right to impose such conditions, restrictions or regulations as may be deemed advisable for the safety and protection of surrounding and neighboring properties.

It necessarily follows that the law of nuisance may be considered, not for the purpose of controlling, but for the helpful aid of its analogies in the process of ascertaining the scope of the power. Thus, the question whether the power exists to forbid the erection of a building or structure of a particular kind or for a particular use, like the question whether a particular thing is a nuisance, is to be determined, not by an abstract consideration of the building or structure or of the thing considered apart, but by considering it in connection with the circumstances and the locality. *Sturgis vs. Bridgman* 12 U. Chapter 852, 865. A nuisance may be merely a right thing in the wrong place like a pig in the parlor instead of the barnyard. If the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control. (U.S. Supreme Court Reporter, Page 116.)

It must certainly have been the intent of the Legislature, and the Board of Zoning Appeals, that the Zoning Commissioner, and the Board of Zoning Appeals, upon appeal, should exercise judgment and discretion as to the location of buildings and structures requiring a Special Permit. Otherwise, the use which require a Special Permit would, no doubt, have been allowed in an "R" residence zone.

State Enabling Acts, however, recognized that such county may desire to have exceptional cases peculiar to it submitted to the discretion of the Zoning Commissioner or Board of Zoning Appeals. Thus, the Zoning Regulations for Baltimore County permit certain commercial uses in residential zones upon special permit from the Zoning Commissioner, or Board of Zoning Appeals, upon appeal. In permitting the special commercial uses in residential zones upon special permit by the Zoning Commissioner, or Board of Zoning Appeals, upon appeal, a controlled discretion was necessarily vested in the Commissioner or Board. Some necessary body, naturally, must decide what locations are proper for such special uses. There can be no question but that the use applied for in this case is a non-conforming use and in discussing an Ordinance passed by the City Council of Baltimore City involving a non-conforming use Judge Offutt in the case of *Lindsay vs. Zoning Appeals Board*, Page 166, 173 Md. said, "such ordinances are in derogation of the common law right to use private property as to realize the highest utility, and while they should be liberally construed to accomplish their plain purpose and intent, they should not be extended by implication to cases not clearly within the scope of the purpose and intent manifested in their language".

Judge Bond, in the case of Elliott vs the City of Baltimore, 150 Md. Page 131, said "The purpose of the zoning law is, of course, to devote general areas or districts to selected uses. The whole value of zoning lies in the establishment of more or less permanent districts, well planned and arranged". And in the same opinion, on page 132, the Judge said, "an exception of one such lot as that of Levine for a filling station would be a departure from the purpose, and unless made by reason of some exceptional conditions, under authority of the enabling act, would be illegal, even if attempted by municipal ordinance. Clearly there can be no valid exception of one lot merely as a favor to one owner, because it is more profitable to him. ~~essays~~ In the effort to bring about the greatest good of the greatest number, collective communal action is indispensable, and, therefore, the state requires, and may lawfully exact, of every individual that he submit to such restraints in the exercise of his liberty or his rights of property as may, under the state and federal constitutions, reasonably be necessary for the common good."

For the reasons above stated, it is this 26th day of May, 1948, ORDERED that the foregoing petition for a Special Permit be denied and that the area remain an "A" residence zone as heretofore.

Charles H. Daring
Zoning Commissioner
of Baltimore County

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PETITION FOR SPECIAL PERMIT

IN THE MATTER OF
Petition of
James G. Saffell
ZONING COMMISSIONER
OF BALTIMORE COUNTY

For a Special Permit

To the Zoning Commissioner of Baltimore County

James G. Saffell 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 Broadcasting and/or

Transmitter Station to be used in broadcast purposes.
situate on the southwestmost and easternmost sides of Painters Lane, near Owings Mills, in the 4th District of Baltimore Co., beginning at the southwest corner of Painters Lane and Eastern Maryland Railroad, thence southwesterly, along the southwest side of Painters Lane and southerly along the east side of Painters Lane, 4200' thence southeast 35° 15' east 1600', thence N 50° 30' west 3000' to the southwest side of the right-of-way of the Western Maryland Railroad and thence northwesterly along said right-of-way 1000' to beginning.

James G. Saffell Legal Owner
Contract Purchaser
Address
Address

*6200 1/2
S
1600
1000
333
M. B. Smith*

ORDERED by the Zoning Commissioner of Baltimore County this 22nd day of April, 1948, 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 10th day of May, 1948, at 2:00 o'clock P.M.

Charles H. Daring
Zoning Commissioner
of Baltimore County

914.00

RECEIVED of Messrs. Brown & Brown, the sum of Fourteen Dollars and Twenty Cents (\$14.20), being cost of certified copies filed in the office of the petition for special permit for a Commercial Transmitter or Broadcasting Station on Painters Lane, 4th District of Baltimore County, James G. Saffell, Petitioner.

Zoning Commissioner

PAID
NOV 15 1948
COUNTY COMMISSIONERS
OF BALTIMORE COUNTY

June 2, 1948

RECEIVED of Michael Paul Smith, Attorney for James G. Saffell, 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 passed on May 26, 1948 denying the petition for Special Permit to use the property on Painters Lane, 4th District, for Transmitter or Broadcasting Station.

Zoning Commissioner.

PAID
JUN 2 1948
COUNTY COMMISSIONERS
OF BALTIMORE COUNTY

RECEIVED of Baltimore Broadcasting Company the sum of Thirty Two (\$32.00) Dollars, being cost of petition for special permit, advertising and posting of property, southwestmost and easternmost sides of Painters Lane, near Owings Mills, 4th District of Baltimore County.

Zoning Commissioner

Hearings
Monday, May 10, 1948
at 2:00 P.M.

PAID
APR 23 1948

CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY Towson, Maryland

District: 4 Date of Posting: April 29/48
Posted for: Broadcasting Transmitter Station
Petitioner: James G. Saffell
Location of property: south west side of Painters Lane west of P.M.R.R.
Location of signs: Signs on the south side of 4 signs on the east side of Painters Lane
Remarks: 1000' x 1600' x 3000' 1000' x 1600' x 3000' 1000' x 1600' x 3000' 1000' x 1600' x 3000'
Posted by: Harry C. Saffell Date of return: April 29/48

MICROFILMED

NO PLAT
IN
THIS FOLDER