

OPINION OF THE BOARD OF ZONING APPEALS OF BALTIMORE COUNTY

This is an appeal by W. Wallace Walker, Owner and Lessor, and Hiram W. Woodward, Lessee, of the property described in the petition from the Order of the Zoning Commissioner of Baltimore County, dated the 16th day of June 1949, by which Order the petition for a Temporary Use Permit in an "A" Residence Zone was dismissed:

The case came on for hearing before the Board and testimony was taken at five separate hearings before and against the petition for the Temporary Use Permit and counsel for both sides heard.

The property, which is the subject of the petition, is located on the south side of Smith Avenue, in the Third District of Baltimore County. The purpose for which the petitioners propose to use the property is to fill hollows, mine holes, ravines and gulleys with garbage, trash and other refuse collected from Baltimore City and Baltimore County and at the time of dumping such refuse to cover it with dirt by means of a bull-dozer and other mechanical equipment, the object being not only to dispose of refuse but to reclaim the land.

Section 14, Sub-Section B of the Zoning Regulations and Restrictions of Baltimore County, provides: "In any residential or commercial zone a permit shall be required for the temporary use of land, buildings or structures for any light industrial operation not of a dangerous, offensive or obnoxious character and which will not adversely affect surrounding or neighboring properties".

The Board feels that the operation of such a landfill, as described in the testimony, would be "dangerous, offensive and obnoxious and would affect adversely the surrounding and neighboring properties."

The property is located in an "A" Residence Zone and has been improved with homes of the highest type, both from the standpoint of esthetics and of monetary value. The Board is of the opinion that the operation of a landfill in close proximity to these homes would have a depreciating effect upon the values of these properties because of the odors emanating therefrom and the constant passage of these homes by the garbage trucks bringing the garbage to the landfill.

The roads leading to this property are narrow and over-crowded at the present time and the Board feels that the operation of garbage trucks thereon, in addition to the present traffic, would jeopardize and render these roads unsafe thereby creating a traffic hazard.

The Board, therefore, finds that the granting of this Temporary Use Permit for a Sanitary Landfill would create congestion in the roads, would lessen safety from fire, panic, traffic and other dangers, would adversely affect the health, morals and the general welfare, and, the Board further finds that there is no need for this Temporary Use Permit at this particular location and will sign an Order in accordance with this opinion.

Samuel M. Brown
Chairman
Carl J. P. [unclear]
Board of Zoning Appeals
of Baltimore County

IN THE MATTER OF
THE PETITION OF
W. WALLACE WALKER
Owner-Lessor
and
HIRAM W. WOODWARD
Lessee

BEFORE THE
ZONING COMMISSIONER
OF
BALTIMORE COUNTY

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

Please enter an Appeal to the Board of Zoning Appeals of Baltimore County from the Order of the Zoning Commissioner dated June 16, 1949, in the above entitled application for temporary use permit on that certain parcel of land located in the Third Election District of Baltimore County, State of Maryland, in that said Order of the Commissioner is ambiguous and does not clearly define the position of the Petitioners under the Zoning Regulations of Baltimore County. Please consolidate this appeal with the appeal filed in this case on June 20, 1949.

Samuel M. Brown
Attorney for Petitioners

RE: PETITION FOR TEMPORARY USE PERMIT FOR
SANITARY LANDFILL - 3.1 SMITH AVENUE -
3RD DISTRICT - W. WALLACE WALKER AND
HIRAM W. WOODWARD, PETITIONERS

The appeal in the above entitled petition for a Temporary Use Permit having come on for hearing before the Board of Zoning Appeals of Baltimore County from an Order of the Zoning Commissioner of Baltimore County, passed on the 9th day of June, 1949, dismissing the petition, and it appearing from the facts and evidence adduced at the appeal hearing that the petition for a Temporary Use Permit for a Sanitary Landfill should be denied, since the granting of same would adversely affect the health, safety, morals and the general welfare of the community, therefore:

It is this 2nd day of February, 1950,
ORDERED by the Board of Zoning Appeals of Baltimore County that the petition for a Temporary Use Permit for Sanitary Landfill is hereby denied.

Samuel M. Brown
Chairman
Carl J. P. [unclear]
Board of Zoning Appeals
of Baltimore County

IN THE MATTER OF
THE PETITION OF
W. WALLACE WALKER
Owner-Lessor
and
HIRAM W. WOODWARD
Lessee

BEFORE THE
BOARD OF ZONING APPEALS
OF BALTIMORE COUNTY

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The protestants in this case made a motion to dismiss these proceedings because of lack of jurisdiction in the Board of Zoning Appeals to hear the case. We have given this motion considerable thought and it is our opinion that the use of the words "light industrial operation" in section 14 of the Zoning Regulations means such uses as under the Zoning Regulations themselves are required to be carried on in a light industrial zone. In other words we feel that we are to determine what is a light industrial operation not in the abstract, but with reference to what the Zoning Regulations say is a light industrial operation for public or private dumps for the disposal of refuse cannot be operated in a residential zone or in a commercial zone, so that the highest classification in which they can be operated is a light industrial zone. It follows from this that the Zoning Regulations themselves classify the operation of a disposal dump as a light industrial operation and it seems to us that the intent of the Regulations is that any uses which can only be carried on in a light industrial zone may be permitted, temporarily, under Section 14. It

seems to us that this Regulation was designed to permit operation in residential or commercial zones, which would otherwise be banned therefrom, provided they are not of a dangerous, offensive and obnoxious character and would not adversely affect the surrounding or neighboring properties, and, further provided that they are operated only on a temporary basis, so that if the character of the neighborhood should later change, the Zoning Commissioner would be in a position to force an abandonment of the use.

We will over-rule the motion to dismiss these proceedings on the ground of lack of jurisdiction and will proceed to hear the case on its merits.

Samuel M. Brown
Chairman
Carl J. P. [unclear]
Board of Zoning Appeals
of Baltimore County

November 3, 1949

IN RE: PETITION OF W. WALLACE WALKER, OWNER-LESSOR AND HIRAM W. WOODWARD, LESSEE, FILED JULY 1, 1949, IN THE MATTER OF PETITION OF SAID PETITIONERS FILED APRIL 20, 1949, FOR A TEMPORARY USE PERMIT FOR A SANITARY LANDFILL TO BE MADE ON THE SOUTH SIDE SMITH AVENUE - 3RD DISTRICT OF BALTIMORE COUNTY.

The instant petition, after a brief recitation that there were two previous hearings and orders on the original petition, states that the Petitioners are desirous of knowing if an operation such as is proposed on the site in question "is an operation which is subject to the Zoning Regulations and Restrictions of Baltimore County, or one which may be conducted without violating the said Regulations".

The petition respectively requests an interpretation of the Regulations for this purpose in accordance with the Seventh Power of the Zoning Commissioner as permitted under "Powers of Zoning Appeals Procedure and Charges".

The land in question is located in an "A" Residence Zone. Section III of the Regulations provide that in an "A" Residence Zone, except as hereinafter expressly provided, no building or land shall be used and no building or structure shall be hereafter erected, altered, repaired or used except for one or more of the following uses. Then follows a list of thirteen different uses which are permitted. An operation such as is proposed by the Petitioners on the site in question is not one of the thirteen uses permitted. Therefore, it necessarily follows that the proposed use is prohibited in said zone.

Under Section VII "B" Commercial Zone, Item 8, "dump, either public or private, for disposal of refuse", is expressly prohibited.

Under Section VIII "C" Light Industrial Zone, buildings, structures and land may be used, erected, altered or repaired for any use whatsoever, except forty three uses enumerated therein. A dump, either public or private for disposal of refuse, or a Sanitary Landfill, is not one of those forty three enumerated uses. Therefore, a dump, either public or private

for the disposal of refuse, or Sanitary Landfill, is allowed in this zone, unless the Zoning Commissioner, or Board of Zoning Appeals, upon appeal, should find the use noxious or offensive by reason of the emission of odor, dust, smoke, gas, or noise as to be adverse to these regulations or inappropriate to the area affected and detrimental to the health, safety and morals thereof.

Under Section IX "C" Heavy Industrial Zone, buildings, structures and land may be used, erected, altered or repaired for any use whatsoever, except eight enumerated uses. A dump, either public or private for disposal of refuse, or a Sanitary Landfill, is not one of the said eight enumerated uses. Therefore, the proposed use is permitted in this zone.

The Zoning Commissioner and the Board of Zoning Appeals, upon appeal, are given certain power and authority under "Special" and "Temporary Permits" in the various zones, but nowhere in the Regulations do I find the power in the Zoning Commissioner and the Board of Zoning Appeals, upon appeal, to grant either a Special Permit or a Temporary Permit to allow the proposed use, or operation, in an "A" Residence Zone. Therefore, I conclude that we do not have the power to grant the original Temporary Permit applied for and dismissed the petition.

The Petitioners held the relationship to one another of that of lessor and lessee, W. Wallace Walker, being the owner of the property in question and lessor to Hiram W. Woodward, lessee. At the original hearing it was shown that the consideration in the lease for the premises on which the proposed project is to be carried on is \$1.00 per year, and it is argued on behalf of the Petitioners that aside from this nominal consideration the only benefit to be derived by the owner and lessor is to have his land graded, improved and rendered usable for such uses as are permitted in an "A" Residence Zone under the Zoning Regulations.

It was also shown that the lessee and petitioner, Hiram W. Woodward, proposed to charge a fee on a tonnage basis to the Mayor & City Council of Baltimore City and the County Commissioners of Baltimore County and others for the privilege of dumping from which it can be reasonably inferred that he hopes to make a profit. This puts the project in the category of a commercial operation. It seems to be the purpose of the Zoning Regulations to prohibit commercial undertakings in an "A" residence zone and they do except that they permit farming, home occupations, professional offices, tourist homes and truck gardening.

I believe that the disposal of garbage, mixed trash and refuse is the main purpose sought to be accomplished and is commercial in nature and, therefore, is not allowed in an "A" residence zone. The fact that the land is reclaimed, graded and improved so as to permit its use for some purposes permitted under the Regulations does not alter the situation, this result being merely incidental to the use and not at all controlling.

Respectfully,

Charles H. Walker
Zoning Commissioner
of Baltimore County

Dated:
July 21, 1949

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RE: PETITION FOR TEMPORARY USE PERMIT FOR SANITARY LANDFILL - S. S. SMITH AVENUE - 3RD DISTRICT - W. WALLACE WALKER AND HIRAM W. WOODWARD, PETITIONERS.

The Petitioners in the above entitled matter filed their petition for a Permit for the temporary use of the land described therein for a Sanitary Landfill for an initial period of two years.

The land in question is in an "A" residence area, in which no such use is permitted. However, under Section 14 - Powers relative to Permit for Temporary Use - Sub-section b, it is provided "In any residential or commercial zone a permit shall be required for the temporary use of land, buildings or structures, for any light industrial operation not of a dangerous, offensive or obnoxious character and which will not adversely affect surrounding or neighboring properties."

The applicants propose to fill hollows, mine holes, ravines and gullies with garbage, trash and other refuse collected from Baltimore City and Baltimore County and simultaneously with the dumping of such refuse to cover it over with dirt by means of bulldozers and other equipment, the object being not only to dispose of the refuse but to reclaim the land which is practically useless and valueless in its present state.

Said section 14, sub-section b, empowers the Zoning Commissioner to grant a permit for the temporary use of land, buildings and structures in any residential or commercial zone for any light industrial operation not of a dangerous, offensive or obnoxious character, and which will not adversely affect surrounding or neighboring properties. But since the proposed use does not fall within the category of an industrial operation, I do not find any power, or authority, vested in me, as Zoning Commissioner, to grant the permit as requested. Since I do not have the authority to grant the permit for the above reason, it is hardly necessary for me to pass upon the question as to whether or not the proposed landfill would be of a dangerous, offensive or obnoxious character which would adversely affect surrounding or neighboring properties.

Therefore, said Petition is hereby dismissed this 21st day of June, 1949.

Charles H. Walker
Zoning Commissioner
of Baltimore County

RE: PETITION FOR TEMPORARY USE PERMIT FOR SANITARY LANDFILL - S. S. SMITH AVENUE - 3RD DISTRICT - W. WALLACE WALKER AND HIRAM W. WOODWARD, PETITIONERS.

The petitioners in the above entitled matter filed their petition for the temporary use of the land described therein as a "Sanitary Landfill". The evidence disclosed that the landfill would be made by the dumping of garbage, trash and other refuse collected from Baltimore City and Baltimore County and simultaneously with the dumping of such garbage, trash and refuse, it would be covered with soil by means of mechanical equipment, the purpose being a two-fold one. Firstly, to dispose of the refuse and secondly to reclaim the land for a use, or uses, permitted under the Zoning Regulations in an "A" Residence Zone, in which the land in question is located.

After the public hearing on petition the Commissioner filed his Order dismissing the petition, giving as his reason for doing so the fact that the Zoning Regulations authorize him to grant a permit for a temporary use of land for industrial purposes only, holding that the proposed operation of dumping, filling and reclaiming land is not an industrial operation and, therefore, it is not within the statutory authority of the Zoning Commissioner to grant the permit requested.

The petitioners filed a petition for reargument of the petition on the grounds that they deem the Order of the Commissioner to be erroneous and did not clearly define the position of the petitioners under the Zoning Regulations of Baltimore County. A reargument was allowed, consequently, this further order and opinion.

The Zoning Regulations for Baltimore County establish six different areas, or zones. The first four are residential zones. In each of these four zones the Regulations specify the use of lots and buildings that may be carried on therein. In neither one of these four zones is the dumping of garbage and refuse permitted. In the commercial zone lots and buildings may be used for any purpose except those uses enumerated, one of them being a dump, either public or private, for the disposal of refuse. In the light and heavy industrial zone lots and buildings may be used for any use whatsoever, except those uses enumerated therein, and in neither one of the two industrial zones is a dump of any kind enumerated.

Therefore, it would seem that dumping for the disposal of refuse is not permitted in any residential zone and is expressly prohibited in a commercial zone, but is allowed in both of the two industrial zones.

Nowhere in the Regulations do I find that the Zoning Commissioner is authorized to issue a Special Permit, or Temporary Permit for dumping, for the disposal of refuse. Therefore, there seems to be no course open to the Zoning Commissioner other than to refuse the permit requested and dismiss the petition.

And nowhere in the Regulations do I find any reference to grading and preparation of land for use. This is ordinarily done without reference to the Zoning Commissioner or Buildings Engineer. It is my understanding and belief that no permit of any kind is needed for this purpose.

For the reasons above stated, I find no reason why I should disturb my Order of June 9, 1949, except that the petition is dismissed without prejudice.

Charles H. Walker
Zoning Commissioner
of Baltimore County

Dated:
June 16, 1949

PETITION FOR PERMIT FOR TEMPORARY USE

IN THE MATTER OF : BEFORE THE
THE PETITION OF :
W. WALLACE WALKER, : ZONING COMMISSIONER OF
Owner-Lessor :
and : BALTIMORE COUNTY
HIRAM W. WOODWARD, :
Lessee :

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

W. WALLACE WALKER - Legal Owner
and
HIRAM W. WOODWARD - Lessee

hereby petition for permit for temporary use as prescribed by the Zoning Regulations of Baltimore County and the authority and procedure conferred on said Zoning Commissioner, thereunder, to use the following described parcel of land, to wit:

All that lot or parcel of ground located in the Third Election District of Baltimore County, State of Maryland, the southern boundary of which is located two hundred feet to the North of and parallel to the center line of Smith Avenue for a distance of six hundred feet and the western boundary of which is located twelve hundred feet, more or less, East of Seven Mile Lane; being a parallelogram in shape one thousand feet by six hundred feet; and being part of that parcel of land which by deed dated September 8, 1947 and recorded among the Land Records of Baltimore County in Liber J.W.B. No. 1000 folio 258 was conveyed by Edward H. Burke, et al., Trustees, to W. Wallace Walker, unmarried, and described as follows:

Beginning for the same at a point 200 feet North of the center line of Smith Avenue on the third line or North 7 degrees 06 minutes 30 seconds East 913-47/100 feet line of that parcel of land which by deed dated September 11, 1947, and recorded among the Land Records of Baltimore County in Liber J.W.B. No. 1000 folio 261, was granted and conveyed by

W. Wallace Walker, unmarried, to Albert Reid, Jr. and Loretta Reid, his wife; and running thence with and binding on a part of the third line of said parcel of land, North 7 degrees 06 minutes 30 seconds East 1000 feet; thence the three following courses and distances, viz: South 83 degrees 32 minutes 30 seconds West 600 feet, South 7 degrees 06 minutes 30 seconds West 1000 feet, North 83 degrees 32 minutes 30 seconds East 600 feet and parallel to the center line of Smith Avenue and 200 feet North thereof to the place of beginning.

(SEE ATTACHED PLATS)

And the (building): None - See Section 5 below

For the temporary use as: Sanitary Landfill (The period within which any specific section of the property is being used is relatively short, i.e. a few weeks; while the actual fill and preliminary cover of each "cell" is completed daily.)
For the period of two years

Subject to the following conditions:

If the requested permit is granted it is intended to use the low lying portions of the property as sanitary landfill, which will accept refuse from Bureau of Sanitation of the City of Baltimore, Maryland.

The following specific restrictions will not only be gladly accepted but are requested:

1. No refuse other than that delivered by the Bureau of Sanitation of the City of Baltimore may be placed upon the property except with the written permission of the Health Authorities of Baltimore County.

2. No refuse may be dumped within two hundred (200) feet of Smith Avenue, and any alterations of grade less than two hundred (200) feet from Smith Avenue are to be made from refuse free material.

3. Final grades must meet any applicable regu-

lations of the County Planning Commission and the County Roads Engineer.

4. The operators must accept refuse from the Board or County Commissioners of Baltimore County or their duly authorized agents, at such hours of the day as, and at no higher rates per amount of measurement than are applicable to refuse accepted from Baltimore City; PROVIDED approval has been previously granted by the County Health Authorities.

5. No structures are to be erected except those required for truck scales and shelter for weighmaster and clerk; and protection of equipment when not in use.

W. Wallace Walker
W. Wallace Walker
Legal Owner
Address: 1308 Poplar Grove Street
Baltimore 16, Maryland

Hiram W. Woodward
Hiram W. Woodward
Lessee
Address: Ridewood, Maryland
and
c/o S. E. McKenrick
Jennifer Building
Towson 4, Maryland

NOTED by the Zoning Commissioner of Baltimore County, this 29th day of April, 1949, that the property contained and described in this petition or noted, as required by the aforesaid Zoning Regulations and Procedure, and that a public hearing thereon be held in the office of the Zoning Commissioner of Baltimore County, Maryland, on the 20th day of MAY 1949, at 2:30 o'clock A.M.

Zoning Commissioner of
Baltimore County

5/20
4:30
begin

April 20, 1949

\$23.00 ✓

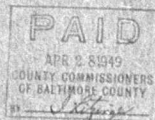
RECEIVED of Stratford E. McKendrick, the sum of Twenty Three (\$23.00) Dollars, being cost of petition for temporary use permit and posting property on Smith Avenue, 3rd District of Baltimore County.

Zoning Commissioner

Hearings:

Friday, May 20, 1949

at 9:30 a.m.

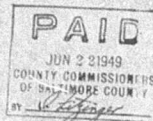


June 21, 1949

\$22.00 ✓

RECEIVED of Stratford E. McKendrick, attorney for W. Wallace Walker and H. W. Woodward, petitioners, 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 denying the petition for temporary use of property on Smith Avenue, 3rd District of Baltimore County.

Zoning Commissioner



CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

1438 T

District 3 Date of Posting May 5/49
Posted for: Sanitary Landfill
Petitioner: W. Wallace Walker - Hiram W. Woodward
Location of property: north side of Smith Ave 1225' east of 7 mile Lane
Location of Signs: sign on the north side of Smith Ave 1304-75-1450-1500' east of 7 mile Lane and 2 sign
Remarks: 200 north of Smith Ave
Posted by: Harry C. Hartwick Signature Date of return: May 5/49

W.W. Walker

S. 83° 32' 30" W - 600 feet

W.W. Walker



S. 7° 06' 30" W - 1000 feet

W.W. Walker

N. 7° 06' 30" E - 1000 feet

Albert Meid, Jr.

N. 7° 06' 30" E (west) Boundary of Property conveyed to Albert Meid, Jr. and Loreta Meid, his wife, by W. Wallace Walker, unmarried, by deed dated August 9, 1945. 9/11/47 Land Records of Baltimore County Liber ~~F.S. No 1500, Folio 265.~~

JWB No 1600 Folio 261

N. 83° 32' 30" E - 600 feet

W.W. Walker

This portion is 122.5' long more or less, with width of 10' and 12' at each end. See also M. & L. Co.

N. 8° 32' 30" E

Smith Avenue

PLAT showing PORTION of LAND of W.W. Walker, leased to H.W. Woodward, for which permit for temporary use as SANITARY LANDFILL is requested.

April 20, 1949

See also 100 ft.